



## DEFINITIONS

2. "Nazi Regime" is defined as the National Socialist government of Germany from 1933 through 1945, as more specifically defined in "the Accused Organizations and Individuals" in The Nurnberg Trial, 6 F.R.D. 69 (1946), and persons, organizations or entities which acted in furtherance of the interests of, on behalf of, or under the authority of, that government (including persons, organizations and/or entities of the European Axis countries).

3. "Deposited assets" is defined as any and all assets deposited in Swiss banks, including, but not limited to, cash, securities, bonds, gold, jewels or jewelry, or any other tangible or intangible items of personal property, or any documents indicating ownership or possessory interests in real, personal or intangible property, by persons who were persecuted for religious, racial or political reasons by the Nazi Regime (hereinafter at times "persecutees").

## JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to the following:

(a) The named plaintiffs are citizens of the United States, and/or citizens of the state in which they reside, each of whom asserts a claim against one or more of the defendants in excess of \$50,000, exclusive of interest or costs. Defendant banking corporations are citizens of Switzerland. Accordingly, subject matter jurisdiction over the claims of the named-plaintiffs is conferred on this Court by 28 U.S.C. 1332(a) (1) and (4); 28 U.S.C. 1367; and principles of ancillary jurisdiction. Venue is appropriate under 28 U.S.C.. 1391(a) (3); and

(b) The putative plaintiff class contains persons who are citizens of the United States, permanent residents of the United States, and citizens of foreign states. Each putative class member asserts claims against one or more of the defendant banks in excess of \$50,000, exclusive of interest and costs. Accordingly, subject matter jurisdiction over the claims of putative class members is conferred on this Court by 28 U.S.C. 1332(a) (1) and (4), and 28 U.S.C. 1367, including principles of ancillary jurisdiction recognized in Supreme Tribe of Ben Her v. Cauble, 255 U.S. 256 (1921).

## PARTIES

### The Plaintiffs

5. Plaintiff Gizella Weisshaus is 66 years old and a citizen of the United States residing in Brooklyn, New York. She was born into a family of Hasidic Jews. She lived in Sighet, Romania until 1944, when she was transported in a sealed boxcar to the German concentration camp in Auschwitz, Poland. Before being separated from her father, he confided in her that he had deposited significant assets in a bank account with Union Bank of Switzerland. Her father and 55 other relatives died in German concentration camps in 1944 and 1945. Weisshaus survived the German concentration camps and emigrated to the United States in 1950. At the end of World War II, Weisshaus requested that defendant Union Bank of Switzerland acknowledge her father's account and pay her the proceeds deposited therein. The defendant bank failed and refused to do so.

6. Plaintiff Jacob Friedman is a United States citizen and a resident of Brooklyn, New York. Jacob Friedman was born to Jewish parents January 7, 1921, and is presently 76 years old. He was born in Chust, Czechoslovakia, and grew up in Satu Mare, Romania.

Jacob Friedman is the only surviving heir of his father, Marton Friedman, and his mother, Margita Friedman, who were gassed to death in Auschwitz in the spring of 1944.

7. In 1936, Marton Friedman, a businessman dealing in commodities such as wheat, cattle and wood, traveled to Zurich, Switzerland, and opened three bank accounts. Jacob Friedman does not know how much was deposited by his father at that time. On information and belief, Marton Friedman did not open the accounts under his own name, because it was illegal for Romanian citizens to have foreign accounts at that time.

8. During the years 1937 and 1938, Jacob Friedman, then 17 years old, made seven trips to Switzerland to make deposits in his father's accounts. He traveled primarily by train from Timishoara, Romania, to Vinkovec to Zagreb to Lubiana to Trieste to Milano and to Zurich. He would arrive at 7:00 a.m. in Zurich and stay with an acquaintance of his father named Reiger, who lived at Anwand Strasse 60 near a synagogue. Each time he went to Zurich he was instructed by his father on which bank to go to and he was given an envelope that contained an account number. Jacob Friedman's best recollection is that each deposit was converted to approximately 22,500 Swiss Francs. On one occasion Jacob Friedman also brought two kilograms of gold into Switzerland and was sent to the town of Le Locle to have the gold melted down to assess its purity, after which he was given 10,000 Swiss Francs to deposit. Jacob Friedman's best recollection is that he made one 22,500-Swiss-Franc deposit at the Wohl and Landau Bank in Zurich, three 22,500-Swiss-Franc deposits in the Schweizerische Bankgesellschaft (Union Bank of Switzerland) in Zurich, three 22,500-Swiss-Franc deposits in the Schweizerische Bankverein (Swiss Bank Corporation) in Zurich, and an additional 10,000-Swiss-Franc deposit at the Schweizerische Bankverein (Swiss Bank Corporation) in Le Locle. Jacob Friedman did not receive any receipts to the

best of his knowledge. The receipts were provided to Reiger, the acquaintance of his father. His father and Reiger confirmed the deposits by telephone conversations, conducted in code.

9. In 1939 Jacob Friedman moved to Budapest. He returned to visit his parents in 1940 or 1941. At that time he was beaten by "police officers." In the spring of 1944, Jacob Friedman's parents, along with the other residents of Satu Mare, were placed in a Jewish "ghetto" by officers of the Nazi Regime and their home and possessions were looted. Soon thereafter, Jacob Friedman's parents, along with the other residents of Satu Mare, were placed on railroad "cattle" cars, taken to Auschwitz and gassed to death.

10. In approximately 1970, an acquaintance of Jacob Friedman's, a Mr. Beck, met with representatives of the Union Bank of Switzerland in Zurich. He was informed by bank officials that accounts belonging to Marton Friedman could not be identified without an account number. In July 1996, Senate Banking Committee Chairman, the Honorable Alfonse D'Amato, wrote letters to the Union Bank of Switzerland and the Swiss Bank Corporation regarding Jacob Friedman and his father's bank accounts. Representatives of each bank answered and stated that the accounts could not be identified and also stated that they were aware that Jacob Friedman had sent an inquiry to more than one bank. On information and belief, these banks have communicated with each other regarding personal and confidential information concerning the bank accounts holding the funds of Marton Friedman. Also in the summer of 1996, Jacob Friedman, through his son Robert Friedman, made telephone inquiries to Mr. Toothaker of the Swiss Bank Corporation in New York City and Mr. Martin Wirz of the Swiss Bank Corporation in Basel, Switzerland. He also sent a fax inquiry to the Swiss Banking Ombudsman. Jacob Friedman has been unable to recover any of the funds from his father's accounts in Swiss Banks.

11. Plaintiff Estelle Sapir is over 70 years old and is a permanent resident alien of the United States, residing in Queens, New York. Her father, Joseph Sapir, was a wealthy investment banker and a currency trader who resided with his daughter and family in Poland. Estelle Sapir and her family were arrested for being Jews in 1942 and were placed in a detention deportation camp. She survived, along with her mother, sister and brother. However, Estelle Sapir's father died in a concentration camp. The last thing Estelle Sapir's father told her was that he had deposited substantial sums of money in accounts in and around Switzerland with defendant Credit Suisse, as well as other Swiss banks. After her liberation at the end of World War II, Estelle Sapir contacted defendant Credit Suisse and requested the return of all monies in the accounts. Defendant Credit Suisse acknowledged the existence of her father's accounts, but refused to return the monies to Estelle Sapir unless she could produce an account number and a death certificate for her father. Defendant Credit Suisse has refused to this day to pay over to her the amounts in the accounts established by Joseph Sapir.

12. Plaintiff Miriam Stern is a citizen of the United States residing in Brooklyn, New York. Ms. Stern is the daughter of Elizabeth Friedman Schreiber, the sister of Meir Friedman.

13. Meir Friedman was a prosperous businessman who lived in Oradea Mare, Hungary. In 1937, after obtaining the appropriate documentation, Mr. Friedman's wife, Rosalia, disguised herself and traveled to Zurich with \$50,000 in U.S. dollars. Rosalia Friedman opened two bank accounts: one at the main office of Union Bank and one at Creditanstalt Bank on Turin Street. Between 1937 and 1944, additional deposits were made in these accounts.

14. In the spring of 1944, the Nazis occupied Oradea Mare. Jewish residents were herded into a ghetto. In the summer of 1944, the ghetto was liquidated and its surviving residents, including Meir and Rosalia Friedman and their only child, were shipped to Auschwitz, where they were murdered.

15. After the war, Elizabeth Friedman Schreiber retained counsel several different times in an effort to obtain the bank accounts of her brother. On each occasion she was told that, absent documentation, the banks would not reveal any information regarding the accounts or even confirm their existence. Elizabeth Friedman Schreiber died in the 1970's.

16. Mirian Stern is a member of a congregation affiliated with the World Council of Orthodox Jewish Communities, Inc.

17. Each of the named plaintiffs brings this action in his or her personal capacity.

### The Putative Plaintiff Class

18. The putative plaintiff class (the "deposited assets" class) consists of persons seeking to recover assets deposited by targets of Nazi persecution in defendant banks, or their predecessors, between 1933-1945 which have not been returned to their lawful owners. Upon information and belief, while a percentage of the deposited assets remains in defendant banks in the form of dormant accounts, a significant proportion of the deposited assets is held in nominee name; has been transferred to the accounts of third-persons; has been eroded or wiped out by fees; or has been withdrawn by unauthorized parties.

## The Defendants

19. Defendants Credit Suisse, Union Bank of Switzerland, and Swiss Bank Corporation are the three largest private banks in Switzerland. Upon information and belief, through merger, acquisition, transfer, or succession, the defendant banks represent at least 75% of the private banking institutions operating in Switzerland from 1933-45. Each defendant bank carries on extensive business operations in the United States and the State of New York.

20. Upon information and belief, defendant banks and their predecessors transferred at least hundreds of millions of dollars in assets, including substantial segments of the deposited assets, to New York State during the Second World War for safekeeping. Upon information and belief, the records documenting the wartime transfer to New York and re-transfer to Switzerland, of Swiss banking assets remain in the United States.

21. Swiss Bankers Association ("SBA") is the trade association of the Swiss banks and currently has 405 member banks. The SBA serves two primary functions: (1) a traditional trade association; and (2) a "self-regulatory" organization. In its capacity as a trade association, the SBA functions as the domestic and international spokesperson for its members. It also establishes rules and mandates policies to be followed by its member banks. In its capacity as a "self-regulatory" organization, the SBA cooperates closely with the Swiss Federal Banking Commission and the Swiss National Bank in implementing specific policies and procedures for its members to follow. As set forth in detail below, the SBA engaged in the misconduct alleged herein and continues to engage in such misconduct individually and as part of a common scheme among all of the defendants and other co-conspirators including a substantial number of the SBA's members.



22. Various other persons and entities, the exact identities of which are presently unknown, have participated as co-conspirators with the defendants in the violations alleged herein and have performed acts and made statements in furtherance thereof.

23. As a result of the defendants' actions and statements in furtherance of their attempts to conceal the nature and extent of the deposited assets of which they have possession or in which they transacted, defendants have fraudulently concealed their activities such that plaintiffs' claims could not be ascertained until recently.

### CLASS ALLEGATIONS

24. Fed. R. Civ. P. 23(a)(1). Each of the proposed classes is so numerous that individual joinder of all its members is impracticable under the standards of Fed. R. Civ. P. 23(a)(1). As the factual allegations demonstrate, thousands of persons are members of each class. While the exact number and identities of the class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery.

25. Fed. R. Civ. P. 23(a)(2) and 23(b)(3). There are questions of law and fact that are common with respect to each class, which predominate over any individual issues which may exist as to each class. Common questions of fact and law include the following:

(a) Did the defendant Swiss banks accept deposited assets and then deny, block or obstruct access to the deposited assets of persons (or their heirs) who were the object of religious, racial or political persecution by the Nazi Regime?

(b) Did the defendant Swiss banks conspire with each other to deny, block and/or obstruct access to the deposited assets of persons (or their heirs) who were the object of religious, racial or political persecution by the Nazi Regime?

(c) Did defendant Swiss banks violate applicable standards of banking conduct?

(d) Did the defendants knowingly or intentionally conceal their efforts to deny, block or obstruct access to deposited assets of persons (or their heirs) who were the object of religious, racial or political persecution by the Nazi Regime?

26. Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical of the claims of the members of each class. Plaintiffs and all members of the classes have been similarly affected by defendants' common course of conduct, and the members of each class have identical claims against the Swiss bank defendants.

27. Fed. R. Civ. P. 23(a)(4). The class representatives for each class will fairly and adequately protect the interests of the members of that class and do not have interests which are antagonistic to the interests of other class members. The class representatives have retained attorneys experienced in the prosecution of complex litigation and class action litigation.

28. Fed. R. Civ. P. 23(b)(3). A class action is superior to other available methods for the fair, efficient and just adjudication of this litigation. Individual joinder of all members of each class is impractical. Even if individual class members had the resources to pursue individual litigation, such litigation would unduly burden the courts. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by defendant Swiss banks' common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all plaintiffs' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system, and protects the rights of each class member. Furthermore, for many, if not

most, class members, a class action is the only feasible mechanism that allows them an opportunity for legal redress and justice.

29. This action is also certifiable under the provisions of Fed. R. Civ. P. 23(b)(1) and/or 23(b)(2) because:

(a) Inconsistent or varying adjudications with respect to individual members of each class would establish incompatible standards of conduct for the defendants toward that class;

(b) Adjudications of individual class members' claims with respect to the defendants would, as a practical matter, be dispositive of the interests of other members not party to the adjudications, and could substantially impair or impede the ability of other class members to protect their interests;

(c) With respect to each class, the defendants have acted and refused to act on grounds generally applicable to that class, thereby making equitable relief with respect to that class as a whole appropriate.

#### **THE FACTS UNDERLYING BOTH INDIVIDUAL AND CLASS CLAIMS**

30. Beginning in 1933, Nazi Germany embarked on a policy of anti-Semitism designed to, inter alia, confiscate property owned by Jews in countries under Nazi domination. In an effort to avoid Nazi confiscatory policies, and to safeguard family assets, Jews throughout Europe sought a safe haven for their property in foreign banks. The Nazi Regime responded by making it a capital offense for a Jew to transfer wealth abroad without official permission.

31. Beginning in 1934, in an effort to make Swiss banks an attractive depository for persons seeking to avoid Nazi persecution, Switzerland enacted comprehensive bank secrecy laws designed to make it difficult for the Gestapo to determine the identities of persons depositing funds in Swiss banks. As Gestapo surveillance intensified throughout the 1930's, Swiss banks permitted and encouraged persons seeking to shield assets from Nazi persecution to open accounts in the names of nominees or other false names, and rapidly merged the deposits of such persons into consolidated custodial accounts, rendering it increasingly difficult to trace and identify the true owner of an account.

32. As the Nazi vise tightened, targets of Nazi persecution, increasingly desperate about their fate under the Nazi Regime but unable to flee because of widespread immigration quotas, poured enormous sums into defendant banks lured by promises of confidentiality and trustworthiness. Upon information and belief, the accounts into which these assets were deposited were interest bearing accounts to which interest was automatically credited.

33. Virtually all targets of Nazi persecution who deposited funds for safekeeping in Swiss banks during the period in question were murdered by the Nazis in the Holocaust.

34. With the defeat of Nazi Germany and the liberation of the Nazi death camps in 1945, and with European Jewry and other targets of Nazi persecution decimated and traumatized by the Holocaust, survivors of the death camps, and the families of those who failed to survive, approached defendant banks and their predecessors in an effort to trace and recover sums deposited for safekeeping prior to the Holocaust.

35. In violation of their legal obligations, defendant banks made no effort to assist survivors and the families of those who failed to survive with the tracing and recovery of assets deposited for safekeeping on the eve of the Holocaust. Upon information and belief,

no Swiss bank, including defendant banks, made any effort to ascertain the true owners of funds deposited during the period of Nazi repression in order to return the assets to their rightful owners at the close of the Second World War. Instead, in a perversion of the original purpose of the law, defendant banks invoked Swiss bank secrecy laws to frustrate all efforts to trace and identify the true owners of deposited assets, and systematically destroyed records needed to trace the true ownership of many deposited asset accounts. Upon information and belief, the bulk of records needed to trace the ownership of deposited asset accounts in defendant banks no longer exist because they have been wrongfully destroyed by defendants.

36. Upon information and belief, for more than 50 years, defendant banks failed to take any affirmative steps to identify, locate or return assets to the true owners of deposited assets. Instead, for 52 years, defendant banks have permitted a portion of the deposited assets to languish in dormant accounts; have closed numerous deposited asset accounts for non-payment of accumulated bank fees; have permitted deposited asset accounts to be wrongfully transferred to the names of third-persons; and have wrongfully permitted unauthorized persons to withdraw some or all of the funds in a deposited asset account.

37. In 1962, the Swiss government promised to return all deposited assets to their rightful owners. Upon information and belief, the Swiss banking community, including defendant banks, frustrated the promise by failing to conduct an adequate search of their records, and by denying the existence of deposited asset accounts.

38. In 1997, prodded by world opinion, and fearful of the power of this Court, defendant banks have recently "discovered" thousands of so-called "dormant accounts" that had been "overlooked" during the past half-century. No effort has been made by defendants,

however, to estimate the full value of assets deposited with defendant banks for safekeeping in the years preceding the Holocaust; to locate accounts held in nominee or other false name; to identify accounts wrongfully closed for non-payment of fees; or to identify accounts wrongfully closed by unauthorized persons.

### CAUSES OF ACTION

39. Defendant banks, in failing to make timely return of the deposited assets to their true owners, violated their contractual obligations to depositors under the laws of New York and Switzerland.

40. Defendant banks, in failing to make adequate affirmative efforts to identify, locate, and return deposited assets to their true owners violated their legal and equitable obligations to depositors, both contractual, obligational and fiduciary, under the laws of New York and Switzerland.

41. Defendant banks, in destroying and failing to maintain adequate records needed to trace and identify the true owners of deposited assets violated their legal and equitable obligations to depositors, both contractual, obligational and fiduciary, under the laws of New York and Switzerland.

42. Defendant banks, deriving financial benefit from the failure to identify, locate, and return deposited assets to their true owners, violated their legal and equitable obligations to depositors, both contractual, obligational and fiduciary, under the laws of New York and Switzerland.

43. Defendant banks, in retaining deposited assets instead of returning them to their rightful owners, committed a breach of contractual obligation, a tort, a fraud, and a

violation of the duty to refrain from unjust enrichment under the laws of New York and Switzerland.

**WHEREFORE, plaintiffs pray that this Court:**

1. Declare that defendant banks are legally obligated to return all deposited assets to their rightful owners, including all interest that accrued or should have accrued on such deposits;
2. Direct that defendant banks make available forthwith all records needed to determine the existence, current status, and true ownership of all deposited assets;
3. Declare that defendant banks, in failing to take adequate steps to identify, locate and return deposited assets to their true owners, violated the laws of New York and Switzerland;
4. Award compensatory and, if appropriate, punitive or additional damages arising from breach of obligation, as a consequence of defendants' failure to take adequate steps to return the deposited assets to their rightful owners;
5. Declare that defendant banks, in destroying or failing to maintain adequate records needed to identify the true owners of deposited assets, violated the laws of New York and Switzerland;
6. Award compensatory and, if appropriate, punitive or additional damages arising from breach of obligation, as a consequence of defendants' destruction or failure to maintain adequate records needed to identify the true owners of deposited assets;
7. Declare that defendant banks, in permitting unauthorized persons to withdraw or assume ownership of some or all of the deposited assets, violated contractual duties and duties of care under the laws of New York and Switzerland;

8. Award compensatory and, if appropriate, punitive or additional damages arising from breach of obligation, or commission of a tort, as a consequence of defendants' acts in permitting unauthorized persons to withdraw or assume ownership of some or all of the deposited assets;

9. Declare that defendant banks, in imposing fees and other charges on deposited assets and in closing deposited assets accounts for non-payment of fees, violated contractual duties imposed under the laws of New York and Switzerland;

10. Award compensatory and, if appropriate, punitive or additional damages arising from breach of obligation as a consequence of wrongfully imposing fees and other charges on deposited assets, and in closing deposited assets accounts for non-payment of fees;

11. Declare that defendant banks hold the deposited assets as constructive trustees under the law of New York, or under a heightened obligation under the law of Switzerland, obligating defendants to act in a fiduciary capacity in connection with the return of the deposited assets;

12. Declare that defendants have breached their fiduciary obligations to the true owners of the deposited assets by failing to maintain adequate records, by failing to take adequate steps to return the deposited assets to their rightful owners, and by allowing themselves to derive economic benefit from the failure to return the deposited assets;

13. Award compensatory and, if appropriate, punitive or additional damages arising from breach of obligation, as a consequence of defendants' failure to abide by their fiduciary obligations under the laws of New York and Switzerland;



14. Declare that it would constitute unjust enrichment under the law of New York and Switzerland for defendant banks to retain any portion of the deposited assets;


15. Grant an order of disgorgement, requiring defendant banks to disgorge all deposited assets, as well as all profits derived from the wrongful retention of the deposited assets;


16. Grant an order for an accounting of all deposited assets that were or are in the possession of the defendants; and

17. Grant such other and further relief as shall seem just to the Court.

Dated: July 30, 1997

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

I, Daniel J. Dolcetti, do hereby certify that on this 30th day of July, 1997, I caused two copies of the foregoing Amended Complaint to be served by hand upon:

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