

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LÉONE MEYER

Plaintiff,

- against -

THE BOARD OF REGENTS OF THE
UNIVERSITY OF OKLAHOMA, DAVID
L. BOREN IN HIS INDIVIDUAL
CAPACITY, DAVID L. BOREN IN HIS
CAPACITY AS THE PRESIDENT OF
THE UNIVERSITY OF OKLAHOMA,
THE UNIVERSITY OF OKLAHOMA
FOUNDATION, INC., DAVID FINDLAY
GALLERIES, INC., WALLY FINDLAY
GALLERIES (NEW YORK), INC.,
WALLY FINDLAY GALLERIES
INTERNATIONAL DEVELOPMENT
CORP., DFG ART CORP., FINDLAY
ART CONSIGNMENTS, INC., FINDLAY
GALLERIES, INC., THE AMERICAN
ALLIANCE OF MUSEUMS, THE
ASSOCIATION OF ART MUSEUM
DIRECTORS,

Defendants



13 Civ. 3128 (CM)

FIRST AMENDED COMPLAINT

Plaintiff Léone Meyer ("Plaintiff"), by and through her attorney, Pierre Ciric, with the Ciric Law Firm, PLLC, as and for her Complaint against the Board of Regents of the University of Oklahoma, David L. Boren in his individual capacity, David L. Boren in his capacity as the President of the University of Oklahoma, the University of Oklahoma Foundation, Inc., (the "Oklahoma Defendants"), David Findlay Galleries,

Inc., David Findlay Jr., Inc., Wally Findlay Galleries (New York), Inc., Wally Findlay Galleries International Development Corp., DFG Art Corp., Findlay Art Consignments, Inc., Findlay Galleries, Inc. (the “New York Defendants”), the American Alliance of Museums (“AAM”), and the Association of Art Museum Directors (“AAMD”), upon information and belief, states as follows:

PRELIMINARY STATEMENT

1. This action seeks the recovery of an oil on canvas painted by Camille Pissarro in 1886, entitled “*La bergère rentrant des moutons*” [herein referred to as “La Bergère”]. La Bergère, which measures 18 ¼ x 15 inches, is currently on permanent display at the Fred Jones, Jr. Museum of Art (“Fred Jones Museum”) in Norman, Oklahoma. The Fred Jones Museum is an entity of the University of Oklahoma and/or the University of Oklahoma Foundation



Shepherdess Bringing In Sheep (“Bergère rentrant des moutons”) (1886)
Oil on canvas, Camille Pissarro, France, 1830 - 1903
Aaron M. and Clara Weitzenhoffer Bequest, 2000
[Source: Fred Jones Museum]

2. This action is initiated by Plaintiff Léone Meyer, the daughter and heir of Raoul Meyer, who owned a large collection of impressionist paintings prior to the Second World War (“WWII”), which included La Bergère. Raoul Meyer was a well-known Jewish French businessman, as well as a collector of art, who had amassed a large collection of impressionist paintings prior to WWII.

3. The Meyer family co-owned with the Heilbronn family one of the most exclusive department stores in France, the “Groupe Galeries Lafayette.” La Bergère, as well as the whole art collection of Meyer, were among the valuable art and other objects deliberately and systematically looted and seized by Nazi Occupation forces in France and the Vichy Regime, a war-time ally of Nazi Germany. The seizure of La Bergère was part of a brutal campaign of genocide directed at Jews living in France during WWII that ultimately resulted in the murder of more than 76,000 Jews between 1940 and 1944.

4. After WWII, and unbeknownst to Raoul Meyer, his family and his heir, La Bergère entered the United States in 1956 through David Findlay Galleries in New York, from an art dealer in Holland, E. J. van Wisselingh & Co. David Findlay Galleries illicitly converted La Bergère by selling it to Aaron M. and Clara Weitzenhoffer. David Findlay Galleries failed to investigate La Bergère’s prior title and its provenance.

5. In 2000, the estate of Aaron M. and Clara Weitzenhoffer made a significant bequest to the University of Oklahoma’s Fred Jones Museum, which included La Bergère. Fred Jones Museum failed to investigate La Bergère’s prior title and its provenance.

6. Today, La Bergère is in the wrongful possession of the Fred Jones Museum, the University of Oklahoma, and/or the University of Oklahoma Foundation, Inc. La Bergère is among the most prominent artworks in the permanent collection of the Fred Jones Museum.

7. In addition, Oklahoma Defendants have failed to perform any meaningful investigation into title or perform any provenance research of La Bergère upon the 2000 bequest to the University of Oklahoma, and have unlawfully profited from the fruits of this bequest, which was a product of the Holocaust. Therefore, plaintiff is entitled to full and complete restitution of La Bergère from Oklahoma Defendants.

8. Both New York Defendants and Oklahoma Defendants have been unjustly and unlawfully enriched at the expense of Plaintiff. New York Defendants and Oklahoma Defendants obtained La Bergère through violations of international law, as well as New York and Oklahoma common law. Oklahoma Defendants have wrongfully retained possession, dominion and control of La Bergère from Plaintiff. Plaintiff is entitled to full and complete restitution of La Bergère.

9. Defendant University and Defendant AAM entered into a valid and binding contract regarding AAM's accreditation program. Defendant University and Defendant AAM have materially breached this contract, to the detriment of third party beneficiary Plaintiff, among other things: (1) by AAM failing to monitor the Fred Jones Museum's lack of compliance with the terms of AAM's accreditation program, and (2) by continuing to accredit the Fred Jones Museum despite the breach in the terms of AAM's accreditation program.

10. Defendant University and Defendant AAMD entered into a valid and binding membership contract. Defendant University and Defendant AAMD have materially breached the membership contract, to the detriment of third party beneficiary Plaintiff, among other things: (1) by AAMD failing to monitor the Fred Jones Museum's lack of compliance with the guidelines in its Code of Ethics in its handling of the acquisition of La Bergère, either when La Bergère was accepted by the Fred Jones Museum in 2000, or when no further follow-up research or inquiry were made in 2009 after Dr. Schlagenhauff submitted her documents to the Fred Jones Museum, and (2) by failing to reprimand, suspend, or expel from its association the Fred Jones Museum for violating its Code of Ethics when the Fred Jones Museum accepted the Weitzenhoffer bequest, because the Fred Jones Museum performed little or no inquiry into or research on provenance information of at least 20 paintings included in this bequest.

THE PARTIES

11. Plaintiff Léone Meyer is a French citizen who resides in Paris, France. Plaintiff is the daughter of Raoul Meyer (1892-1970), and Yvonne Bader (1897-1971). Yvonne Bader was the daughter of Théophile Bader (1864-1942), the founder of "Groupe Galeries Lafayette", and Jeanne Bloch (1872-1965). Upon the death of Yvonne Bader on January 5, 1971, Plaintiff became Raoul Meyer's only heir.

12. Upon information and belief, Defendant Board of Regents of the University of Oklahoma, created by the Oklahoma Territorial Legislature in 1890, has its principal office at 660 Parrington Oval, Room 119, Norman, OK 73019-3074. The University of Oklahoma ("University") is part of the educational system of the State of Oklahoma, and

is maintained and operated from public funds raised by taxation in the State of Oklahoma. The government of the University is vested in a Board of Regents with authority delegated to it to do everything, not expressly or impliedly prohibited, necessary to accomplish the objectives of the school. The Board of Regents of the University of Oklahoma is a proper Defendant in this action because the University received the benefit of the 2000 Aaron M. and Clara Weitzenhoffer Bequest. As of the filing of this action, the members of the Board of Regents of the University of Oklahoma are: Richard R. Dunning, Chairman; Tom Clark, Vice Chairman; Jon R. Stuart; A. Max Weitzenhoffer; Clayton I. Bennett; Kirk Humphreys; Leslie J. Rainbolt-Forbes, M.D.

13. Upon information and belief, Defendant David L. Boren (“Boren”) is the President of the University, and either he or his predecessors in office have been so at all times relevant herein. The President is responsible for the management, control and direction of all entities of the University, including the Fred Jones Museum, which currently possesses dominion and control over La Bergère. Defendant Boren, in his capacity as President of the University, has his principal office at University of Oklahoma, Evans Hall Room 110, 660 Parrington Oval, Norman, OK 73019-3073. As President, Boren is a final policy-maker for the University. He is sued in his capacity as President of the University. Upon information and belief, the University’s decision to accept La Bergère was authorized or ratified by Boren. Upon information and belief, prior to acceptance of La Bergère, Boren and the University failed to undertake any reasonable effort to investigate proper title or the provenance of La Bergère, although knowledge of La Bergère’s disputed title and provenance was readily available using only minimal diligence. As a consequence of Boren’s failure to reasonably investigate

the title and provenance of La Bergère, the University wrongfully took possession of the painting to the detriment of Plaintiff. Boren then transferred possession of La Bergère to the University of Oklahoma Foundation, Inc., (“Foundation”). However, upon information and belief, Boren has retained sufficient dominion and control over La Bergère to direct the Foundation to return La Bergère to Plaintiff. Boren has deprived Plaintiff of a property interest in La Bergère, first by accepting the painting without investigating proper title and provenance, and second, by the continued possession by Foundation.

14. Boren is an individual and President of the University. As President, Boren is a final policy-maker for the University. He is sued in his individual capacity. In 2000, the University obtained La Bergère from the Estate of Aaron M. and Clara Weitzenhoffer. Upon information and belief, the University’s decision to accept La Bergère was authorized or ratified by Boren. Upon information and belief, prior to acceptance of La Bergère, Boren and the University failed to undertake any reasonable effort to investigate proper title or the provenance of La Bergère, although knowledge of La Bergère’s disputed title and provenance was readily available using only minimal diligence. As a consequence of Boren’s failure to reasonably investigate the title and provenance of La Bergère, the University wrongfully took possession of the painting to the detriment of Plaintiff. Boren then transferred possession of La Bergère to the Foundation. However, upon information and belief, Boren has retained sufficient dominion and control over La Bergère to direct Foundation to return La Bergère to Plaintiff. Boren has deprived Plaintiff of a property interest in La Bergère, first by accepting the painting without investigating proper title and provenance, and second, by

continued possession by Foundation. Accordingly, Plaintiff seeks all available remedies against Boren in his individual capacity, to include declaratory and injunctive relief compelling the return of La Bergère to Plaintiff.

15. Upon information and belief, the Foundation is an independent, not-for-profit corporation organized pursuant to the provisions of Title 18, § 1001 of the Oklahoma Statutes. It was established on December 1, 1944, and re-organized on February 25, 1955 as an independent, separate entity from the University. The Foundation is an independent tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. Because the University claims that La Bergère is under the custody of the Foundation, the Foundation is a proper Defendant in this action. The Foundation has its principal office at 100 Timberdell Road, Norman, OK 73019-0685.

16. Upon information and belief, Defendant David Findlay Galleries, Inc. is a domestic corporation, duly organized under and by virtue of the laws of the State of New York, and does business in the State of New York. Defendant David Findlay Galleries, Inc. has consented to jurisdiction in this court pursuant to the matter herein. Defendant David Findlay Galleries, Inc. has its principal place of business at 984 Madison Avenue, New York, NY 10021 (DOS ID #783219), and is a successor entity or a successor in interest of David Findlay Galleries in existence in New York in 1956.

17. Upon information and belief, Defendant Wally Findlay Galleries (New York), Inc., is a foreign business corporation, duly organized under and by virtue of the laws of the State of Delaware, and does business in the State of New York. Defendant Wally Findlay Galleries (New York), Inc. has consented to jurisdiction in this court pursuant to the matter herein. Defendant Wally Findlay Galleries (New York), Inc. has a registered

agent in New York at CT Corp. System, 277 Park Avenue, New York, NY 10017 (DOS ID #161281), and is a successor entity or a successor in interest of David Findlay Galleries in existence in New York in 1956. As of the date of this amended complaint, Defendant Wally Findlay Galleries (New York), Inc. has been dismissed without prejudice from this action Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).

18. Upon information and belief, Defendant Wally Findlay Galleries International Development Corp. is a domestic business corporation, duly organized under and by virtue of the laws of the State of New York, and does business in the State of New York. Defendant Wally Findlay Galleries International Development Corp. has consented to jurisdiction in this court pursuant to the matter herein. Defendant Wally Findlay Galleries International Development Corp. maintains a New York address, Wally Findlay Galleries International Development Corp., 14 East 60th Street, New York, NY 10022 (DOS ID # 2383741), for purposes of service of process in New York, and is a successor entity or a successor in interest of David Findlay Galleries in existence in New York in 1956. As of the date of this amended complaint, Defendant Wally Findlay Galleries International Development Corp. has been dismissed without prejudice from this action Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).

19. Upon information and belief, Defendant DFG Art Corp. is a domestic business corporation, duly organized under and by virtue of the laws of the State of New York, and does business in the State of New York. Defendant DFG Art Corp. has consented to jurisdiction in this Court pursuant to the matter herein. Defendant DFG Art Corp. maintains a New York address, Bernard H. Berkowitz, 41 East 42nd Street, New York, NY 10021 (DOS ID # 118330), for purposes of service of process in New York,

and is the successor entity or the successor in interest of David Findlay Galleries in existence in New York in 1956.

20. Upon information and belief, Defendant Findlay Art Consignments, Inc., is a domestic business corporation, duly organized under and by virtue of the laws of the State of New York, and does business in the State of New York. Defendant Findlay Art Consignment, Inc. has consented to jurisdiction in this Court pursuant to the matter herein. Defendant Findlay Art Consignments, Inc. maintains a New York address, Findlay Art Consignments, Inc. 124 East 57th Street, New York, NY 10022 (DOS ID # 3192203), for purposes of service of process in New York, and is a successor entity or a successor in interest of David Findlay Galleries in existence in New York in 1956. As of the date of this amended complaint, Defendant Findlay Art Consignments, Inc. has been dismissed without prejudice from this action Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).

21. Upon information and belief, Defendant Findlay Galleries, Inc. is a domestic business corporation, duly organized under and by virtue of the laws of the State of New York, and does business in the State of New York. Defendant Findlay Art Galleries, Inc. has consented to jurisdiction in this Court pursuant to the matter herein. Defendant Findlay Galleries, Inc. maintains a New York address, Findlay Galleries, Inc., 124 East 57th Street, New York, NY 10022 (DOS ID # 3154578), for purposes of service of process in New York, and is a successor entity or a successor in interest of David Findlay Galleries in existence in New York in 1956. As of the date of this amended complaint, Defendant Findlay Galleries, Inc. has been dismissed without prejudice from this action Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).

22. Upon information and belief, Defendant American Alliance of Museums (“AAM”) is a corporation incorporated in Washington D.C. with its principal place of business at 1575 Eye Street NW, Suite 400, Washington D.C. 20005. The Fred Jones Museum is listed as an “accredited institution” by AAM. Plaintiff is an intended beneficiary to the accreditation contract that was breached between AAM and the Fred Jones Museum. Therefore, AAM is a proper Defendant in this action.

23. Upon information and belief, Defendant Association of Art Museum Directors (“AAMD”) is a corporation incorporated in Washington D.C. with its principal place of business at 120 East 56th Street, Suite 520, New York, New York 10022. The Fred Jones Museum is listed as a member of AAMD. Plaintiff is an intended beneficiary to the membership contract that was breached between AAMD and the Fred Jones Museum. Therefore, AAMD is a proper Defendant in this action.

JURISDICTION AND VENUE

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

25. This Court has personal jurisdiction over this action pursuant to C.P.L.R. 301 because the University is engaged in a continuous and systemic course of doing business in New York with a fair measure of permanence and continuity.

(A) Upon information and belief, the University has engaged in substantial commercial activity in New York. The University of Oklahoma has been

active in the municipal bond market since 1975. Between 2010 and 2013, the University of Oklahoma made at least 21 municipal bond issues in 276 different securities. These were intended to finance improvement projects involving many aspects of the University's activities, such as campus roads, utility system improvements, and real property acquisitions. These bond issuances all used New York services, such as New York underwriters, bond insurers, depository banks, securities depositories, rating agencies, and/or brokers. Pursuant to these bond issuances, the University of Oklahoma also solicited institutional investors in New York. The University also solicited New York services by disseminating in 2013 a request for proposals from New York bond underwriters.

(B) The University also actively solicits business and students in New York. The University also has an association with New York University's Stern School of Business. Under the Price Scholars program, University students are selected annually to intern and study in New York City. The University provides a scholarship to fully cover the tuition at NYU, housing in the NYU graduate dorm, and other expenses. The University also actively recruits its student athletes from New York. In 2013, the University attempted to recruit a Garden City, New York, high school student named Chad Mavety to play for their football team. The University gave him an offer to play for their team. In 2012, the University successfully recruited Isaiah Cousins, a Mount Vernon, New

York, high school student, to play for their basketball team. In 2010, the University offered Felicia Crowder, a full rowing scholarship. Ms. Crowder was a member of Row New York, a program to teach New York City's under-resourced communities the sport of rowing. The University's athletic teams also regularly travel to New York for athletic events.

26. This Court has personal jurisdiction over this action pursuant to C.P.L.R. 302(a)(1) because the University has contracted to provide services within New York. By signing a membership contract with AAMD, the University has conducted purposeful activity directed at New York. The controversy controlled by this action has a substantial relationship with the membership contract with AAMD.

27. This Court has personal jurisdiction over this action pursuant to C.P.L.R. 301 because the University of Oklahoma Foundation is also engaged in a continuous and systemic course of doing business in New York with a fair measure of permanence and continuity. Upon information and belief, the University of Oklahoma Foundation has engaged in substantial commercial activity in New York. The Foundation's pooled, non-alternative investment funds, are held in the custody of the Bank of New York. The Foundation also receives donations and grants from New York individuals and companies. The Foundation also collects dues from New York residents that are used, in part, to provide scholarships for a New York City student to attend the University of Oklahoma

28. This Court has personal jurisdiction over this action pursuant to C.P.L.R. 301 because AAM is engaged in a continuous and systemic course of doing business in New

York with a fair measure of permanence and continuity. Upon information and belief, AAM has engaged in substantial commercial activity in New York. AAM has accredited at least 60 institutions in the State of New York. The accreditation process is extensive, including a multiple day on-site evaluation at each institution when they initial apply and another on-site evaluation when the institution is reaccredited every ten years.

29. This Court has personal jurisdiction over this action pursuant to C.P.L.R. 301 because AAMD's principal place of business is a located in the Southern District of New York.

30. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2), because "a substantial part of the events or omissions giving rise to the claim occurred" in the Southern District of New York, since Aaron M. and Clara Weitzenhoffer acquired La Bergère from the David Findlay Galleries in 1956, a third-party located in the Southern District of New York, and since defendant AAMD, which breached its membership contract to which Plaintiff was an intended beneficiary, has its principal place of business located in the Southern District of New York, making it a New York citizen.

31. Venue is also proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(3), since New York Defendants are subject to this court's personal jurisdiction with respect to this action.

FACTUAL BACKGROUND

32. Gaston Lévy was an active collector of French modern art in Paris during the inter-war period. Prior to 1940, Lévy sold La Bergère to Théophile Bader, the founder of

Group Galleries Lafayette. Bader's collection was divided between his two daughters, Yvonne Meyer and Paulette Heilbronn. Yvonne Meyer, Raoul Meyer's wife, ended up with La Bergère

33. On May 10, 1940, the Nazis invaded France. On June 22, 1940 an armistice was signed between France and Germany. On July 12, 1940 the so-called "Vichy Regime" was created through the adoption of constitutional acts which granted Philippe Pétain all legislative, judicial, administrative and executive powers. Both Nazi occupation forces and the newly formed "Vichy Regime" passed a series of statutes and decrees designed to deprive Jews of their civil, political, and economic rights. These events laid the groundwork for expropriation, deportation, and eventually the Holocaust. German Ordinance regarding Measures Against Jews of September 27, 1940,

34. Nazi forces immediately set out to seize cultural objects and collections belonging to France's most prominent Jewish families.

35. In March 1940, the Meyer and Heilbronn families placed their art collections in a branch of the French bank Crédit Commercial de France, located in Mont-de-Marsan, France, for safe keeping. Mr. Hartmann, head of the Devisenschutzkommando ("DSK"), a German Financial investigative Agency in Paris, notified Mr. Meyer and Mrs. Heilbronn that their works of art were subject to seizure. On or around February 22, 1941, following the notice by Mr. Hartmann, a DSK unit obtained access to the Meyer safe and Heilbronn safe at the branch of the Crédit Commercial de France in Mont-de-Marsan, France, and seized a collection of works of art registered under the name of Mrs. Raoul Meyer. The DSK drew up a cursory inventory of the seized items belonging to Mrs. Raoul Meyer. The inventory included 13 paintings, four etchings, and one

engraving. Item number 8 on the inventory, as described by the DSK, was a “Landschaft mit Gutshof” by Pissarro, which measured 39 x 65 cm. The DSK then transferred the content of both the Meyer safe and the Heilbronn safe to the Einsatzstab Reichsleiter Rosenberg’s (“ERR”) depot at the Louvre Museum, a museum located in the gardens of the Tuileries in central Paris, known as the “Séquestre du Louvre”, “Louvre Annex”, or “Jeu de Paume”. The Jeu de Paume served as the main processing, sorting, and distribution station for art and cultural objects confiscated by the ERR.

36. The ERR was a “Special Task Force” headed by Adolf Hitler’s leading ideologue Alfred Rosenberg; it was one of the main Nazi agencies engaged in the plunder of cultural valuables in Nazi-occupied countries during WWII. The Meyer family and the Heilbronn family had appeared on special listings drawn up by the ERR of Jewish collections targeted for seizure in German-occupied France.

37. La Bergère entered the Jeu de Paume shortly after the February 1941 seizure, where the ERR assigned it the code “Meyer 13.”

38. On July 12, 1942, Dr. Eggemann, an ERR specialist at the Jeu de Paume, worked on the Meyer inventory. Her colleague, Ms. Tomforde, completed the evaluation of the works on July 18, 1942. The ERR’s Meyer inventory consisted of 13 works of art, listed as the property of “Frau Raoul Meyer.” Of the 13 works, 9 paintings were designated for future exchanges against works that Nazi dignitaries found more desirable, especially European Old Masters. When a painting was set aside for exchange, it was either sent back to the Louvre Annex or placed in a distinct and isolated room in a far corner of the Jeu de Paume, known as the “Salle des Martyrs”. There, “undesirable” works of art confiscated by the Nazis were set aside either to be sold to

dealers and collectors to obtain foreign exchange, or to be exchanged for more acceptable works of art that could then be repatriated to the Reich and incorporated into Nazi collections.

39. La Bergère was set aside for a possible exchange. At some point before August 1, 1944, La Bergère was either exchanged or was handed over to intermediaries for shipment to Switzerland while the Germans evacuated Paris.

40. At least two other paintings belonging to Meyer left France through such intermediaries. First, Gustav Rochlitz, an art dealer who became an important agent of the German government in Paris, coordinated with the ERR many of these “exchanges”. He handled another Meyer painting by Camille Pissarro, entitled “Frauen auf dem Wegen zur Arbeit,” which Rochlitz shipped to a depot in Baden in July 1944. For a brief moment, the Swiss authorities had confused this painting with La Bergère, thinking that it had entered Switzerland from Baden-Baden through a man named Léon de Sépibus (“de Sépibus”). Second, another Meyer painting, signed by Auguste Renoir and coded as “Meyer 1” and listed as such in an inventory drawn up by the ERR at the Jeu de Paume, entered the property of Baron Alexander von Frey, in Basel, Switzerland, the same city where La Bergère eventually ended up in the late 1940s.

41. In the months following the liberation of Paris in late August 1944, the interim French government (“gouvernement provisoire”), created a special Commission, called the “Commission de Récupération Artistique” (“CRA”) [Commission for Art Recovery], the purpose of which was to document the thefts of cultural assets between June 1940 and August 1944 and research in France and overseas those works of art and art objects stolen from private collections during the Vichy Regime and the German

occupation of France. Decree of November 24, 1944, Journal Officiel de la République Française [J.O.] [Official Gazette of France]. January 1, 1945. The CRA received from Raoul Meyer an inventory of the works of art which he had lost at the hands of the Nazis in February 1941. The list included a painting by Camille Pissarro entitled “Petit tableau: la Bergère.” Although Raoul Meyer recovered a number of paintings from the CRA between 1946 and 1949, he never recovered La Bergère.

42. “The « Office des biens et intérêts privés » (“OBIP”) [Office of private goods and interests], was a service of the French Ministry of Foreign Affairs created in 1919 to process claims filed by French victims of German plunder during World War I. The mandate of the OBIP was amended by decree in 1944 to process claims for property stolen or misappropriated by the Vichy Regime and/or the German occupying force in France between June 1940 and August 1944. These claims included claims for cultural assets. Decree of December 13, 1944, Journal Officiel de la République Française [J.O.][Official Gazette of France]. December 15, 1944. The CRA transferred to the OBIP all unsatisfied claims for looted cultural assets. In that regard, it received claims from Meyer for all artworks not retrieved or found after 1945, under claim No. 32058.”

43. The artworks from Raoul Meyer’s collection which were still missing were incorporated into a massive compilation of French cultural losses entitled “Répertoire des Biens Spoliés en France Pendant la Guerre de 1939-1945” [Registry of Assets Looted in France During the War of 1939-1945, herein referred to as “Répertoire”] published by the French Ministry of Culture. This “Répertoire”, or Registry was widely disseminated through France’s embassies and consulates in Europe and the Americas

with the specific goal of alerting governments, institutions and market participants of those nations that any object listed in that “Répertoire” which might be located in their territory was the subject of a legal claim for restitution and could not be sold, bought, traded, or exhibited. Instead, local authorities should notify the French government of the presence of claimed stolen items mentioned on that list in their jurisdiction so as to facilitate their repatriation to France and the restitution of the missing objects to their rightful owners. Site Rose-Valland, Musées Nationaux Récupération, *available at* <http://www.culture.gouv.fr/documentation/mnr/MnR-rbs.htm>.

44. In addition, confronted by the realities of thousands of high-quality works of art of dubious provenance available for sale, the United States, France and Great Britain signed the so-called “Tripartite Agreement” on July 8, 1946, which was later endorsed by 14 other nations. Its purpose was to uphold the policy of restitution of looted assets, and for each government to ensure that looted works of art would not reach safe harbor on their shores and that every effort would be deployed to return these works to their legitimate owners. Such efforts were to include distribution of missing artworks information to art dealers, museum authorities, and public opinion at large through the press. As part of its obligations under the Agreement, the U.S. State Department incorporated the July 6, 1946 “Tripartite Agreement” and distributed a series of consolidated registries of art losses compiled by various European governments to 72 American museums, 57 New York galleries, 2 Boston-based galleries, and close to 40 colleges and universities. One of those registries was the “Répertoire.” The first copy of the “Répertoire” was produced and circulated in 1947 through French diplomatic channels to all signatories of the Tripartite Agreement as well as to the governments of neutral countries which might have received property looted

from Nazi-occupied France, including Switzerland. RALPH STIMSON TO SURREY, BAKER, RESTITUTION OF LOOTED CULTURAL PROPERTY SEEKING SAFEHAVEN IN THE UNITED STATES: INTERNATIONAL OBLIGATIONS AND LEGAL BASIS, February 27, 1947, RG 59, Lot 62D4, Box 24, National Archives, College Park, MD.

45. La Bergère was listed on Page 215 of the “Répertoire”. BUREAU CENTRAL DES RESTITUTIONS, MINISTÈRE DE LA CULTURE, RÉPERTOIRE DES BIENS SPOLIÉS EN FRANCE PENDANT LA GUERRE 1939-1945-ANIMAUX ET SCÈNES CHAMPÊTRES [Central Office of Restitutions, Ministry of Culture, Registry of Assets Looted in France During the War of 1939-1945-Animals and Pastoral Scenes], 215 (1947). On December 19, 1996, the Federal Council of Switzerland, i.e. Switzerland’s executive branch, created the Bergier commission, also known as the Independent Commission of Experts (“ICE”). Headed by Jean-François Bergier, an economic historian, the ICE’s mandate was to investigate the volume and fate of assets moved to Switzerland before, during, and immediately after WWII

46. On March 3, 1998, Pablo Crivelli (“Crivelli”), an ICE member, submitted the confidential report titled “Internal Report-The Issue of Looted Assets (Works of Art) in the Swiss Federal Archives, 1943-1950” (herein referred to as “the Crivelli Report”). The Crivelli Report’s goal was to ascertain the extent and breadth of knowledge of Swiss Federal authorities and their involvement with looted art entering Swiss territory during and after the Nazi era. The Crivelli report was later obtained by the U.S. Holocaust Memorial Museum in Washington, DC.

47. In this report, Crivelli examined the procedures of several Swiss agencies involved in the restitution of looted artworks, such as the Federal Political Agency of the

Swiss Government (“Département Politique Fédéral” or “DPF”), which was in charge of investigating artworks looted in neighboring countries by Nazi officials that had entered Switzerland. Crivelli used the Basel civil case between Raoul Meyer and Christoph Bernoulli (“Bernoulli”), which is described below, as support to express significant doubts about the lack of proper information provided by the Swiss federal agencies.

48. Two Swiss agencies, the Swiss Compensation Office (“OSC” or “Office Suisse de Compensation”) and the Federal Department of the Interior (“DFI” or “Département Fédéral de l’Intérieur”, i.e. the Swiss equivalent of the American Federal Bureau of Investigation) were summoned to testify and submit documents relevant to Raoul Meyer’s claims that La Bergère, after having been looted, was sent to Switzerland to be sold. One set of documents produced pertained to Léon de Sépibus (“de Sépibus”), an importer of paintings from France who had attempted several times in late 1944 and early 1945 to bring into Switzerland paintings by Camille Pissarro and Johan Barthold Jongkind. Swiss customs authorities asked a curator from a Lausanne museum to appraise paintings imported by de Sépibus. At the behest of the DFI, the curator contacted the Mayor’s office of Crissier, the town where de Sépibus resided, to warn him that de Sépibus might have imported looted cultural property into Switzerland. Acting on that suspicion, the DPF requested that the OSC launch an inquiry into the provenance of paintings imported by de Sépibus. Throughout 1945, de Sépibus ignored numerous requests from the OSC to submit all documents relevant to the paintings he imported into Switzerland. He finally responded and admitted he had imported several paintings from France to Switzerland.

49. In January 1947, the French Embassy in Switzerland sent to the DPF fifty (“50”) copies of the “Répertoire” for distribution to all Swiss government agencies and entities responsible for monitoring the art market and preventing the sale or resale of art looted in France and other European countries during the Nazi years.

50. According to Crivelli, in the 1947 edition of the “Répertoire”, an OSC investigator added a note where Meyer’s painting La Bergère was mentioned stating it was the same painting de Sépibus had brought into Switzerland which Bernoulli had later acquired.

51. Bernoulli was a prominent Basel art dealer both known in Switzerland and internationally. Bernoulli’s name was present in a 1946 “Index of enemy and collaborationist personnel involved in art looting recommended for exclusion from the United States” compiled and released by the Art Looting Investigative Unit (ALIU) of the Strategic Services Unit (SSU), an American intelligence organization that had succeeded the wartime Office of Strategic Services (OSS) run by General William Donovan. INDEX OF ENEMY AND COLLABORATIONIST PERSONNEL INVOLVED IN ART LOOTING RECOMMENDED FOR EXCLUSION FROM THE UNITED STATES, ALIU/SSU, p. 128, Reel 93, RG 239, M1944, National Archives and Records Administration, College Park, MD. Bernoulli was also doing business with Alexander von Frey of Basel, who had acquired a Meyer painting which he was forced to surrender in 1949, and had also sold at least one looted painting to Allied intelligence sources. INDEX OF ENEMY AND COLLABORATIONIST PERSONNEL INVOLVED IN ART LOOTING RECOMMENDED FOR EXCLUSION FROM THE UNITED STATES, ALIU/SSU, frame 314, Reel 92, RG 239, M1944, National Archives and Records Administration, College Park, MD.

52. At some point in 1946, Bernoulli acquired La Bergère. That same year, he sold it to André Maus (“Maus”), one of the leading executives of a Swiss department store chain, Maus Frères S.A., through an intermediary, Mrs. Bondanini, who collected 1,000 Francs as a fee for her services.

53. In the summer of 1951, i.e. 4 years after the “Répertoire” was widely distributed throughout Switzerland, Raoul Meyer discovered that La Bergère was in the possession of André Maus in Geneva. Maus then asked Bernoulli to take La Bergère back. At some point afterwards, Bernoulli regained custody and control over La Bergère.

54. The following information is based upon the curatorial file of the Fred Jones Museum, which includes a large folder of documents obtained by Dr. Annette Schlagenhauff from the Mendelssohn Archives located at the State Library of Berlin, Germany (“Staatsbibliothek zu Berlin”). Dr. Annette Schlagenhauff, associate curator at the Indianapolis Museum of Art in Indianapolis, IN, took an interest in researching La Bergère when she was doing research on behalf of the Indianapolis Museum of Art on the Mendelssohn collection. During this research, she discovered documents at the Mendelssohn Archives regarding Bernoulli. After she ordered a copy of the Bernoulli documents from Roland Schmidt-Hensel of the Mendelssohn Archive in March 2009 she provided Fred Jones Museum with a copy of the Bernoulli documents. She explicitly indicated that the documents could be shared with other provenance researchers. The curatorial file at the Fred Jones Museum does not contain any research records performed prior to 2009, nor does it contain any follow-up documentation regarding any research performed on La Bergère after Dr. Schlagenhauff provided her documents to the Fred Jones Museum. The Schlagenhauff documents cover the years 1952 and 1953.

55. The Schlagenhauff documents, which include letter exchanges between the parties and their lawyers, confirm that Raoul Meyer was in the process of seeking the return of La Bergère from Bernoulli, and throughout 1952, settlement negotiations took place between Raoul Meyer, Bernoulli, Maus and Bondanini which culminated into a meeting to be held in Geneva on October 21, 1952. Bernoulli attempted to bring de Sépibus into these negotiations for purposes of reimbursing Bernoulli. This correspondence also confirms that La Bergère, referred to by OSC as having been imported into Switzerland by de Sépibus in 1945, was indeed Raoul Meyer's painting.

56. On December 10, 1945, the Swiss Government adopted a five year-decree instituting a special legal procedure for "restitution of assets seized in the war-occupied territories", whereby claimants could seek the restitution of looted artworks from the current possessors located in Switzerland, regardless of whether they were acquired in good faith or bad faith. After the expiration of the special Swiss statute in 1950, civil claims involving looted artworks located in Switzerland were subject to the Swiss civil code, which required, contrary to the American rule, that the claimant prove the current possessor's bad faith.

57. By the summer of 1953, the Basel Civil Court had held that Raoul Meyer failed to prove Bernoulli's bad faith in acquiring La Bergère, which Raoul Meyer had lost at the hands of the Nazis, even though the French government had advertised it as looted unrecovered property in its 1947 "Répertoire" of which had been sent to Swiss federal authorities in 1947.

58. In September 1953, Bernoulli attempted to resell La Bergère to Raoul Meyer, who refused to pay for a painting that was his rightful property.

59. Following the judgment, Raoul Meyer lost track of the whereabouts of La Bergère.

60. In his 1998 report, based on its research and cases such as the civil case between Raoul Meyer and Bernoulli, Crivelli concluded that the Swiss Government's policies led to permissive importations of looted works of art into Switzerland, as well as significant delays in tracking these looted works of art in Switzerland. In addition, Crivelli concluded that OSC and DPF, which had held critical information about looted works of art entering Switzerland, had exercised censorship over this information. Furthermore, Crivelli acknowledged that the private sector failed to properly cooperate with OSC's investigations, which further impeded the resolution of claims in looted works of art. Finally, Crivelli acknowledged that the default civil code rule in the Swiss legal system was almost unassailable in the context of works of art looted from Nazi-occupied territories and imported into Switzerland. The same concern over the default civil code rule leading to fundamental unfairness was echoed by the DPF and expressed to the private market, via a letter addressed to the Swiss Association of Art Dealers ("SAAD"). Similar concerns were also expressed by the DPF over other asset categories, such as financial assets, as documented in a 1945 letter from DPF to the Swiss Banking Association ("SBA"). Both SBA and SAAD expressed opposition to these concerns, which Crivelli found to be unjustified and baseless. Finally, Crivelli found that, even though the Allies pressured Switzerland to extend the 1945 decree, Switzerland refused such an extension while it knew that critical information about looted assets as well as claims were still making their way into Switzerland.

61. The Swiss press echoed the same concerns regarding litigation between the Swiss Government and alleged good faith purchasers who were allowed to seek compensation for returning looted artworks under the 1945 decree. The Swiss press widely noted that the Swiss Government, which had the same obligation to prove bad faith by the current possessor to avoid compensation payments, was ordered to make such payments by Swiss courts, even with significant evidence of knowledge of problematic provenance by the purchasers (Basler Nachrichten, Oct. 12, 1951, No. 433, National-Zeitung Oct. 13-14, 1951, No. 473, Berner Tagwacht, Oct. 13, 1951, No. 240, National-Zeitung, July 22, 1952, No. 333).

62. Unbeknownst to Raoul Meyer and his heir, La Bergère entered the David Findlay Galleries in New York in the fall of 1956 as part of an exhibit of “French Paintings of the XIXth and XXth centuries” from the collection of E. J. van Wisselingh & Co., an art dealer based out of Amsterdam, Holland. The exhibit took place between November 15 and December 15, 1956. The catalogue for the exhibit listed the Pissarro painting as No. 26 followed by a reproduction. David Findlay Galleries is located in the judicial district of the Southern District of New York. By 1947, the “Répertoire des Biens Spoliés en France Pendant la Guerre de 1939-1945” [Registry of Assets Looted in France During the War of 1939-1945] was distributed to major museums, such as the Metropolitan Museum of Art of the Frick Collection, as well as prominent art galleries in New York, such as M. Knoedler & Co. Therefore, from 1947 on, David Findlay Galleries was on notice that La Bergère was amongst those looted artworks which were subject to the restitution policy of the U.S. Government expressed in the July 8, 1946 “Tripartite Agreement.” Aaron M. and Clara Weitzenhoffer acquired this painting from

the David Findlay Galleries in late 1956, and received an invoice for it on January 16, 1957. Therefore, a commercial transaction involving La Bergère was entered into with a party located in the Southern District of New York.

63. From 1956 to 1979, Findlay also sold to the Weitzenhoffer family a series of paintings, most of which were subsequently bequeathed to the Fred Jones Museum in 2000 and incorporated into that museum's permanent collection.

64. On October 18, 1956, Findlay sold to Mrs. Aaron M. Weitzenhoffer "Le repos du vacher au pied des fraîches," by Jean-Baptiste Corot, c. 1855-65, oil on canvas. This painting entered the United States by early 1930. Although the ownership trail is clear enough to ensure that it has no taint associated with WWII-related looting, and the untainted provenance history of the Corot, Eric McCauley Lee, the director of the Fred Jones Museum at the time of the Weitzenhoffer Collection bequest, placed this painting onto the Nazi-Era Provenance Internet Portal (NEPIP), an Internet portal created by AAM.

65. On October 18, 1956, Findlay sold to Mrs. Aaron M. Weitzenhoffer "Les Oeillets," by Odilon Redon, which had previously been the property of a collector in Chicago, IL. Although this painting appears to have remained in the United States throughout WWII, the Fred Jones Museum also placed this painting onto the NEPIP.

66. On October 18, 1956, Findlay sold to Mrs. Aaron M. Weitzenhoffer "Portrait de Mme. Henriot, actrice/jeune femme dans les champs" by Auguste Renoir (1877), which was once the property of Otto Gerson in Berlin who sold it to Sam Salz of New York from whom Knoedler's Gallery obtained it prior to selling it to Findlay. Although Otto Gerson fled Nazi Germany and settled in New York to build an art dealing business

known as Fine Arts Associates, the curatorial file shows no attempt to investigate whether this painting was involved in a duress sale.

67. On January 16, 1957, Findlay sold to Mrs. Aaron M. Weitzenhoffer La Bergère for \$14,000, as well as “Paddock”, an oil on canvas, by Raoul Dufy. Although the curatorial file for La Bergère is the thickest in the whole Weitzenhoffer bequest, no provenance information is documented whatsoever for “Paddock”.

68. On October 1, 1957, Findlay sold to Mrs. Aaron M. Weitzenhoffer “La berge à Lavacourt,” a 1879 oil on canvas by Claude Monet, which once belonged to a Mr. Mancini in Paris who sold it to Durand-Ruel from which a Mrs. Colombel obtained it. According to the Fred Jones Museum curatorial file, the curatorial staff knew nothing about the owners of the painting prior to Findlay and had no idea how and when Findlay acquired the painting. Hence, there is no possibility of ascertaining whether or not there were any other individuals involved in the ownership history of this work, and no dates have been assigned to anyone’s ownership of the painting in question.

69. On January 5, 1958, Findlay sold to Mrs. Aaron M. Weitzenhoffer “Coco/Claude,” a 1905 oil on canvas by Auguste Renoir, which was sold to Findlay by Howard Young Galleries. The only provenance information in the file indicates a private French collection, with no additional provenance information.

70. On October 15, 1958, David Findlay sold to Mrs. Aaron M. Weitzenhoffer “Nature morte à la théière,” by Pierre Bonnard. The only inquiry by the curatorial staff was whether Dr. Garin, one of the names in the provenance, might be of Jewish descent, without further inquiry or explanation for this comment.

71. On October 15, 1958, David Findlay sold to Mrs. Aaron M. Weitzenhoffer “Sara in a Dark Bonnet tied under her chin,” by Mary Cassatt, a pastel on paper from 1901, which once belonged to Ambroise Vollard until his accidental death in 1939. No provenance information is available until “Mrs. Ader” in 1957. This name may refer to Etienne Ader, one of the most famous auctioneers at the Paris Drouot auction house, since he and his wife worked together at his auction house. The absence of any provenance information between Vollard’s death in 1939 and 1957 raises serious questions about the whereabouts of this painting during WWII. Such questions are heightened by the research notes from the curatorial file, because they allege that Vollard’s heirs “quickly sold” most of his collection through his brother before “war breaks out.” The historical records about the Vollard estate contradict the Fred Jones Museum research about a swift liquidation of the estate, as the distribution and management of the estate became a contentious matter soon after Vollard’s death and continued on for decades after the end of WWII.

72. On May 15, 1958, David Findlay sold to Mrs. Aaron M. Weitzenhoffer “Coast scene,” by Paul Signac, a 1893 oil on canvas. The piece once belonged to a prominent dealer in Impressionist works, the Bernheim-Jeune gallery in Paris, which sold it to the New York industrialist and banker, Robert Lehman, from whom Findlay acquired it before selling it to the Weitzenhoffer family. No transaction dates or other information is given, although it was widely known that the Bernheim-Jeune gallery had been requisitioned and confiscated by the ERR in 1941. The only research effort documented in the curatorial file is a cursory read by the Fred Jones staff of the book

“The Lost Museum,” by Hector Feliciano, which describes thefts of art in France during WWII.

73. On May 15, 1958, David Findlay sold to Mrs. Aaron M. Weitzenhoffer “Copenhagen” by Paul Gauguin, a 1886 oil on canvas. This is the only painting where the curatorial file shows an impeccable and doubtless ownership history, starting from the Gauguin family through Gauguin’s widow’s solicitor, Konrad Levysohn, who then sold the painting to David Findlay.

74. On May 5, 1961, David Findlay sold to Mrs. Aaron M. Weitzenhoffer “la plage de Sainte-Adresse,” a 1906 painting by Raoul Dufy. This painting was transferred through several dealers known to have business relationships with the occupying forces during WWII, such as Mr. Bignou who sold it to Alex Maguy’s Galerie de l’Elysée at 69, Faubourg Saint-Honoré Paris. The transaction dates are unknown, which should have alerted the curatorial staff to raise additional questions about the wartime path of this painting. The Fred Jones Museum’s curatorial notes dating back to August 3, 2006, indicate that Maguy must have had the painting by 1955, because that is when his gallery opened in Paris, not realizing that Maguy and Bignou had both been active with the occupying German forces during WWII in Paris.

75. On March 14, 1961, David Findlay sold to Mrs. Aaron M. Weitzenhoffer “Nude with swan,” a 1895 lithograph by Camille Pissarro, which was sold to David Findlay at the Hôtel Drouot auction house in Paris on May 15, 1959. The curatorial file shows no provenance information whatsoever prior to the Drouot sale.

76. On January 13, 1963, David Findlay sold to Mrs. Aaron M. Weitzenhoffer “Portrait de Madame Hessel et Lulu dans la salle à manger du Château de Clayes”, a

portrait painted by Edouard Vuillard at some point between 1935 and 1938. There is no information in the curatorial file as to how Findlay obtained the painting and from whom before it was sold to the Weitzenhoffers.

77. On January 30, 1963, David Findlay sold to Mrs. Aaron M. Weitzenhoffer “Nature Morte,” a 1885 oil on canvas by Armand Guillaumin. There is no ownership history for it prior to David Findlay possession.

78. On May 9, 1963, David Findlay sold to Mrs. Aaron M. Weitzenhoffer “Femme en bleu,” a small 1901 painting by Edouard Vuillard, which provenance history covers some of the most important collections of French Impressionists in Paris. Vuillard sold the painting to Renou and Poyet from whom François Reichenbach acquired it before selling it to Jacques Lindon, a leading French publisher. At some point, Jeanne Castel obtained it and sold it to Findlay in 1963 from whom the Weitzenhoffer family acquired it. The absence of any curatorial notes contrasts with the fact that the Nazis plundered the Reichenbach and Lindon collections during the German occupation of Paris between 1940 and 1944. This information would have been easily retrieved from Feliciano’s book as well as from Lynn Nicholas’ volume, *The Rape of Europa*.

79. On September 5, 1963, David Findlay sold to Mrs. Aaron M. Weitzenhoffer “Danseuse à la barre,” a charcoal drawing with pastel and white chalk on paper signed by Edgar Degas, dated on or around 1885. This pastel had been the property of Georges Petit on December 13, 1918 who then sold it to the Count Amédée d’Anselme from whom Findlay obtained it at an unknown date. No provenance information is available between 1918 and 1963.

80. On May 5, 1965, David Findlay sold to Mrs. Aaron M. Weitzenhoffer “La loge [de la danseuse]”, a pastel and gouache on paper produced around 1890 by Jean-Louis Forain. It was formerly owned by a Dutch dealer and collector, E. J. van Wisselingh & Co., who sold it to Mr. Weitzenhoffer through David Findlay. The invoice to Mr. Weitzenhoffer was produced on Wisselingh stationery showing his temporary address in New York as the Blackstone Hotel on 50 E. 58th Street. All that is known about the painting’s provenance is that Wisselingh owned it in 1963 because it had been included in an exhibit entitled “Maîtres Français XIXème et XXème siècle, 18 November – 20 December 1963.” No other provenance information is available prior to 1963.

81. On May 27, 1976, Mrs. Aaron M. Weitzenhoffer acquired “Personnages sur la plage, Trouville,” a watercolor and graphite on paper by Eugene Boudin at a Sotheby’s auction as Lot 205. The purchaser was Gimpel and Weitzenhoffer. However, the page from the Sotheby’s catalogue which shows the painting actually has a different lot number on it—Lot 104—and the title is slightly different, “Crinolines à Trouville.” All that is known about the painting is that it belonged to “a French collector” and was exhibited in Paris in 1956 at the Galerie Hubert Brame (No. 54) and in 1961 at the Musée des Beaux-Arts of Dieppe, as No. 64. [1961, “Les Bains de Mer”]. The potential dual sale and the risk of other owners for this watercolor before its acquisition by Weitzenhoffer was never investigated by the Fred Jones curatorial staff.

82. At some point in 1979, David Findlay sold to Mrs. Aaron M. Weitzenhoffer “Femme au chapeau vert,” a 1890 oil on cardboard by Edouard Vuillard. Bela Hein obtained it from Vuillard’s studio. In 1951, Georges Renand acquired it and sold it to

Jean-Pierre Selz in 1964. Findlay obtained it at some point before its purchase by the Weitzenhoffer family in 1979. The ownership gap between Bela Hein and Georges Renand is significant, and would have required enhanced scrutiny in light of the fact that Renand was an active dealer in German-occupied Paris.

83. Additional paintings from the Weitzenhoffer Collection at the Fred Jones Museum of Art do not include any provenance information, such as Childe Hassam's "Good Harbor Beach, Gloucester", executed in 1909 as a watercolor and gouache on paper.

84. These examples demonstrate that the University, through the Fred Jones Museum, has shown a blatant disregard of its common law obligations and its obligations under the AAM accreditation requirements and under its membership agreement with AAMD, as to its guidelines of inquiry into and research on provenance information of most artworks in the Weitzenhoffer bequest.

85. During the 1990s, the Executive and Legislative Branches of the U.S. Government found new interest in the issue of Nazi-looted artworks finding their way into American Museums. First, the Holocaust Victims Redress Act expressed the "sense of the Congress" that "all governments should undertake good faith efforts to facilitate the return" of Nazi-confiscated property. Pub.L. No. 105-158, § 202, 112 Stat. 15, 17-18 (1998). In addition, the Clinton Administration, under the leadership of Stuart Eizenstat, who was then Under Secretary of State for Economic, Business, and Agricultural Affairs, led the way in urging governments around the world to seek ways to effectuate the policy of identifying art looted by the Nazis and returning it to their rightful owners. In 1998, following a series of congressional hearings, the U.S. Government convened a

conference of government officials, art experts, museum officials and many other interested parties from around the world in Washington, D.C. to consider and debate the many issues raised by the continuing discovery of Nazi-looted assets, including artworks. The Conference promulgated eleven principles concerning Nazi-confiscated art, which were adopted by 44 nations. One principle states that pre-War owners and their heirs should be encouraged to come forward to make known their claims to art that was confiscated by the Nazis and not subsequently restituted. U.S. Dep't of State, the Washington Conference on Holocaust Era Assets, Washington Conference Principles on Nazi-Confiscated Art (dec. 3, 1998) (available at <http://www.state.gov/www/regions/eur/holocaust/heacappen.pdf>). At the same time, the AAMD task force drafted its guidelines in the Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War II Era (1933-1945). In addition, the American Alliance of Museums (formerly American Association of Museums, or AAM) formed a working group to begin drafting their guidelines, AAM Guidelines concerning the Unlawful Appropriation of Objects during the Nazi Era, issued in 1999. These AAM guidelines specifically provide that:

“Standard research on objects being considered for acquisition should include a request that the sellers, donors or estate executors offering an object provide as much provenance information as they have available, with particular regard to the Nazi era. [...]

Where the Nazi-era provenance is incomplete or uncertain for a proposed acquisition, the museum should consider what additional research would be prudent or necessary to resolve the Nazi-era provenance status of the object before acquiring it.

If credible evidence of unlawful appropriation without subsequent restitution is discovered, the museum should notify the donor, seller or estate executor of the nature of

the evidence and should not proceed with acquisition of the object until taking further action to resolve these issues.”

Standards Regarding Collections Stewardship (available at <http://aam-us.org/resources/ethics-standards-and-best-practices/characteristics-of-excellence-for-u-s-museums/collections-stewardship>)

86. The Fred Jones Museum is listed as a member of AAMD (available at <https://aamd.org/our-members/members>) as well as AAM (available at <http://www.aam-us.org/docs/accreditation/list-of-accredited-museums.pdf?sfvrsn=4>). Therefore, the University of Oklahoma, through its Fred Jones Museum, is bound by these guidelines since their issuance in 1999.

87. In 2000, two years after the Washington Conference, and one year after the issuance of both the AAMD and the AAM guidelines, the estate of Aaron M. and Clara Weitzenhoffer made a significant bequest to the University of Oklahoma’s Fred Jones Museum, which included La Bergère.

88. Although the curatorial file at the Fred Jones Museum includes minimal ownership information at the time of the 2000 bequest, some provenance information was provided to the Fred Jones Museum in 2009, nine years after the 2000 bequest, initiated by Dr. Annette Schlagenhauff, associate curator at the Indianapolis Museum of Art in Indianapolis, IN. This nine-year gap confirms that the Fred Jones Museum failed to perform any meaningful investigation into title or perform any provenance research of La Bergère upon the 2000 bequest to Defendant University of Oklahoma, in blatant violation of AAMD guidelines

89. From 1945 up until their death, respectively in 1970 and 1971, Raoul and Yvonne Meyer (born Bader) made numerous attempts to research the whereabouts of all

missing paintings in the Meyer art collection. For instance, in 1960, investigative requests to the German Government were made through the French OBIP, which included the Bergère. The “Federal Service of External Restitutions”, a Department of the Federal Republic of Germany, responded and asserted that, after researching its records for a total of 12 paintings belonging to Meyer, it could not locate any of them, including the “Bergère.””

90. Raoul Meyer’s only daughter, the Plaintiff in the present action, was equally determined to recover missing paintings from the Raoul Meyer collection, and continuously performed an exceptional level of due diligence to search for artworks missing from her father’s art collection. For instance, in 1994, Plaintiff attended an exhibit at the Musée d’Orsay on artworks restituted by Germany to France, called “Musées Nationaux Récupération” [MNR], which include unclaimed works of art repatriated from Germany and Austria to France after 1945, and which were exhibited by the French Government for the purpose of locating Holocaust survivors or their heirs who might have claims against these heirless paintings.

91. In 1996, Plaintiff obtained a copy of all Raoul Meyer records related to the CRA and OBIP administrative procedures from the French National Archives. In 1996, Plaintiff attended a symposium called “Looting and Restitution of Artworks Exported from France during World War II”, organized by the “Direction des Musées de France” (“DMF” or “Department of Museums of France”) “Pillage et restitution des œuvres d’art sorties de France pendant la seconde guerre mondiale” in Paris, which was attended by Foreign Affairs Ministry officials. That same year, Plaintiff sent a letter to Louis Amigues, Director of Archives and Documentation at the Ministry of Foreign Affairs

who quickly responded and provided copies of the Ministry of Foreign Affairs archives regarding the Raoul Meyer art collection.

92. In 1997, Plaintiff enlisted the assistance of Hector Féliciano, an American-born journalist living in France and the United States who published “The Lost Museum [Le Musée disparu]” a best-seller focused on the looting of artworks in France during WWII, by sending him copies of the declassified records from the Ministry of Foreign Affairs.

93. In addition, Plaintiff personally conducted research on the Raoul Meyer collection at Centre Pompidou in Paris using records of the symposium called “Artworks Restituted and Entrusted to the Custody of the Musée National d’Art Moderne”. In July 1997, Plaintiff organized a private conference at the Copernic synagogue in Paris about looted artworks with Hector Feliciano and the former French Minister of Culture, Philippe Douste-Blazy.

94. Later in 1997, Plaintiff contacted a French attorney and proceeded to file claims with the so-called “Matteoli Commission”, which was entrusted by the French Government to investigate looted assets from WWII during the Vichy Regime.

95. In 2000, during a trip in New York, Plaintiff met with Hector Feliciano to evaluate how to make progress with researching these claims.

96. In 2000 and 2001, Plaintiff met several times and exchanged letters with Sandrine and Lionel Pissarro, heirs to the Pissarro Estate and art dealers, to investigate the whereabouts of two missing Pissarro paintings, including la Bergère, as well as another Pissarro painting called “La Cave”. Plaintiff was provided with a catalog on all Pissarro paintings, but no information surfaces on the whereabouts of La Bergère, as

Sandrine and Lionel Pissarro acknowledged they could not identify the whereabouts of La Bergère.

97. In February 2001, Plaintiff reached out to the Art Loss Register in London, via a claim letter addressed to Sarah Jackson, Historic Claims Director. The ALR is the world's largest private database of lost and stolen art, antiques and collectables, and allows claimants to register and search for lost artworks.

98. Over these years, Plaintiff retrieved numerous listings of artworks owned by private collectors for purposes of cross-referencing the Meyer art collection from the French National Archives, the German Archives, including the Rosenberg Task Force inventories, as well as catalogs of exhibits of looted artworks and transferred to the Custody of French National Museums (Centre Pompidou, Musée National d'Art Moderne, Le Louvre, Musée d'Art et d'Histoire du Judaïsme).

99. In 2011, Plaintiff hired Gérard Auguier, an art expert specialized in paintings and drawings, and member of the Board of Trustees of the Foundation "Société des Amis du Louvre", to specifically perform an exhaustive research, including a full internet research, on the whereabouts of La Bergère. The research produced no lead.

100. On March 26, 2012, Plaintiff's family discovered an entry involving La Bergère created by Marc Masurovsky, an expert historian in the field of Nazi-looted art. The first entry was made in a blog managed by the Holocaust Art Restitution Project, co-founded in September 1997 in Washington, DC, by Ori Z. Soltes, Willi Korte, and Marc Masurovsky to document cultural property losses suffered by Jewish individuals, families, and institutions between 1933 and 1945 at the hands of the National Socialists

and their Fascist allies across continental Europe (available at <http://plundered-art.blogspot.com/2011/05/err-databaseraoul-meyer-pissarro.html?q=Meyer>).

101. Promptly after the discovery of this information, Plaintiff, through her attorney, demanded the return of La Bergère from the University of Oklahoma on December 12, 2012. In a response dated January 18, 2013, Defendant David L. Boren claimed that La Bergère was in the custody of Defendant University of Oklahoma Foundation, Inc., and not of Defendant University of Oklahoma, the original benefactor of the 2000 Aaron M. and Clara Weitzenhoffer bequest.

102. Oklahoma, as most US jurisdictions, has accepted the common law rule that no one, not even a good faith purchaser for value, can obtain good title to stolen property. “The universal and fundamental principle of our law of personal property is that no man can be divested of his property without his own consent, and, consequently, that even the honest purchaser under a defective title cannot hold against the true proprietor.” *Ernie Miller Pontiac, Inc. v. The Home Insurance Co.*, 534 P.2d (Okla. 1975).

103. In the present case, no one took good title from Raoul Meyer and the Plaintiff with respect to La Bergère, and nothing following the looting of Raoul Meyer’s collection in February 1941 would defeat Plaintiff’s good title.

104. The Second Circuit has long held that New York law rather than Swiss law controls the issue of title of looted artworks, when New York has an interest in preventing the state from becoming an international marketplace for stolen goods. There is no factual dispute in this case that La Bergère was stolen from Raoul Meyer and that Plaintiff is the proper heir to Raoul Meyer. Since La Bergère entered the United States

through New York, and since this Court has personal jurisdiction over all Defendants, New York law rather than Swiss law should control the title adjudication of La Bergère.

105. In addition, both New York Defendants and Oklahoma Defendants have failed to identify proper provenance of La Bergère, either in 1956 or upon the 2000 Aaron M. and Clara Weitzenhoffer bequest, and have unlawfully profited from the fruits of this conversion, itself the consequence of Germany's illegal acts of genocide more than seventy years ago. Therefore, Plaintiff is entitled to full and complete restitution of La Bergère from the Oklahoma Defendants.

TIMELINESS OF THE ACTION

106. The looting of La Bergère constituted an act of genocide and other violation of international law, for which no statute of limitations period applies.

107. Neither the Oklahoma Defendants nor the New York Defendants ever obtained ownership rights to La Bergère following WWII.

108. Instead, the Oklahoma Defendants' continued possession of La Bergère was the result of conversion, for which the statute of limitations has not run.

109. In addition, no statute of limitations has begun to run on the causes of action asserted herein because the Oklahoma Defendants' misconduct is continuing; neither the New York Defendants nor the Oklahoma Defendants have made any reasonable attempt to investigate provenance of La Bergère, to restitute La Bergère to Plaintiff, to disgorge their illicit profits, or to otherwise compensate Plaintiff. By continuously maintaining dominion and control of La Bergère, the Oklahoma Defendants have continued to reap

profits as a result of their actions and are therefore estopped from interposing any type of time bar defense to these claims.

110. To the extent that any statute of limitations period could be construed as applying to Plaintiff's claims, this action is brought within the time limits of that statute of limitations, or any such statute has been equitably tolled.

111. To the extent that any statute of limitations could be construed as applying to Plaintiff's claim, this action is brought within two years of discovery by Plaintiff of the presence of La Bergère in the custody of the Oklahoma Defendants on March 14, 2012.

112. Any statute of limitations applicable to Plaintiff's claims was tolled during the pendency of WWII.

113. Any statute of limitations applicable to Plaintiff's claims was also equitably tolled following WWII because of New York Defendants' and Oklahoma Defendants' conduct, and extraordinary circumstances outside of Plaintiff's control, prevented Plaintiff from timely asserting a claim.

FIRST CLAIM FOR RELIEF (CONVERSION)

114. Plaintiff incorporates by reference all of the preceding paragraphs.

115. The New York Defendants failed to perform any meaningful investigation into the title or perform any provenance research of La Bergère, and failed to exercise their common law due diligence obligations upon obtaining La Bergère.

116. By failing to perform any meaningful investigation into the title of or perform any provenance research on La Bergère, New York Defendants breached the warranty of title, and are liable to Plaintiff for conversion of La Bergère.

117. The Oklahoma Defendants failed to perform any meaningful investigation into the title or perform any provenance research of La Bergère, and failed to exercise their common law due diligence obligations, or their contractual obligations under the University's membership agreement with AAMD and the University's accreditation agreement with AAM, upon obtaining La Bergère. Since neither a thief, nor any purchaser from a thief, including an innocent purchaser who subsequently transfers an artwork to a museum, can convey good title, the Oklahoma Defendants breached their duty to ensure that the transferor or donor of the artwork is its owner or is authorized to pass title. M.E. PHELAN, MUSEUM LAW 33, 48 (1994).

118. The Oklahoma Defendants violated their obligations regarding the 2000 Aaron M. and Clara Weitzenhoffer bequest, in contravention of a) their common law obligations to ensure that title of La Bergère was properly obtained, b) the due diligence obligations under the accreditation agreement between AAM and the University, and under the membership agreement between AAMD and the University.

119. These examples demonstrate that the University, through the Fred Jones Museum, has shown a blatant disregard of its common law obligations and its obligations under the accreditation agreement between AAM and the University, and under the membership agreement between AAMD and the University, as to its guidelines of inquiry into and research on provenance information of most artworks in the Weitzenhoffer bequest.

120. In Oklahoma, any illegal taking or wrongful assumption of rights of another to personal property constitutes conversion. Therefore, the Oklahoma Defendants converted La Bergère, and are liable to Plaintiff for conversion of La Bergère.

121. At no point did Plaintiff consent to New York Defendants' or Oklahoma Defendants' exercise of ownership rights over La Bergère.

122. Plaintiff has been damaged by the conversion of her property and is entitled to restitution of La Bergère from the Oklahoma Defendants, or payment of the interest in La Bergère from either the Oklahoma Defendants or the New York Defendants, the calculation of which will be subject to proof at trial.

SECOND CLAIM FOR RELIEF (REPLEVIN)

123. Plaintiff incorporates by reference all of the preceding paragraphs.

124. At the time of the commencement of this action and at all times hereafter mentioned, Plaintiff was and is the owner of and entitled to immediate possession of La Bergère.

125. The Oklahoma Defendants are in possession of La Bergère.

126. The Oklahoma Defendants' control and dominion of La Bergère is wrongful in violation of common law and international law since La Bergère rightfully belongs to Plaintiff.

127. Prior to commencement of this action, Plaintiff discovered Oklahoma Defendants' wrongful control and dominion of La Bergère, demanded restitution of La Bergère, and filed a timely action to exercise her rights.

128. By reason of such wrongful detention of La Bergère by Oklahoma Defendants, Plaintiff is entitled to an order directing that La Bergère be returned to Plaintiff. *Brook v. James A. Cullimore & Co.*, 436 P.2d 32, 34 (Okla 1967) (reaffirming that “[i]f a return of the property sought by replevin is possible, it *must* be returned.” *Leeper, Graves & Co. v. First Nat. Bank of Hobart*, 26 Okl. 707, 110 P. 655, 29 L.R.A., N.S., 747.”).

THIRD CLAIM FOR RELIEF (CONSTRUCTIVE TRUST)

129. Plaintiff incorporates by reference all of the preceding paragraphs.

130. The Oklahoma Defendants wrongfully obtained La Bergère through violations of common law and international law. Oklahoma Defendants have continued to wrongfully detain La Bergère.

131. As a result, Plaintiff is entitled to the imposition of a constructive trust on La Bergère which is currently in the possession of the Oklahoma Defendants, obligating the Oklahoma Defendants to return La Bergère to Plaintiff or to compensate her for her interest in La Bergère, which interest will be subject to proof at trial.

FOURTH CLAIM FOR RELIEF (DECLARATORY RELIEF)

132. Plaintiff incorporates by reference all of the preceding paragraphs.

133. An actual case or controversy has arisen between Plaintiff and the Oklahoma Defendants concerning the right to ownership and possession of La Bergère.

134. The Oklahoma Defendants have wrongfully detained La Bergère. Plaintiff contends that the Oklahoma Defendants never obtained good title to La Bergère because

the original 1941 seizure of the artworks violated international law and common law. Plaintiff further contends that none of the subsequent transactions following the original seizure of La Bergère in 1941 provided any party with good title to La Bergère. Thus, the issues in this case are ripe for declaratory relief.

135. Plaintiff is entitled to a declaratory judgment declaring her to be the owner of La Bergère and directing the Oklahoma Defendants to return La Bergère to her, or to compensate her for her interest in La Bergère, which interest will be subject to proof at trial.

FIFTH CLAIM FOR RELIEF (RESTITUTION BASED ON UNJUST ENRICHMENT)

136. Plaintiff incorporates by reference all of the preceding paragraphs.

137. As described above, both the Oklahoma Defendants and the New York Defendants have been unjustly and unlawfully enriched at the expense of Plaintiff. New York Defendants and Oklahoma Defendants obtained La Bergère through violations of international law and common law, and have wrongfully converted La Bergère from Plaintiff, and unjustly profited from these transactions.

138. As a result of New York Defendants' and Oklahoma Defendants' unjust enrichment, Plaintiff is entitled to restitution of La Bergère from the Oklahoma Defendants, or compensation for her interest in La Bergère from either the Oklahoma Defendants or the New York Defendants, which interest will be subject to proof at trial.

SIXTH CLAIM FOR RELIEF (BREACH OF CONTRACT AGAINST THIRD PARTY BENEFICIARY PLAINTIFF)

139. Plaintiff incorporates by reference all of the preceding paragraphs. As described above, the Fred Jones Museum is accredited by the AAM's Accreditation Commission.

140. The accreditation is a contract between the University, through its Fred Jones Museum unit, and AAM. For a contract to be valid there must be an offer, acceptance, and consideration. There is an offer and acceptance based on the accreditation procedure outlined by the AAM. In order to become an accredited institution with AAM, an applicant must submit a formal accreditation application to AAM according to a rigorous application process, which, among other things, requires the applicant to conduct a self-study submitted to AMM and a site visit from AAM's Visiting Committee. The Visiting Committee conducts a thorough review of the institution over two full days and writes a report detailing its observation about the museum for the Accreditation Commission which is used to make a final decision on the applicant's accreditation. *Accreditation Process and Timeline*, American Alliance of Museums, <http://www.aam-us.org/resources/assessment-programs/accreditation/process-and-timeline>. There is consideration in the form a yearly fixed fee. *Accreditation Costs*, American Alliance of Museums, <http://www.aam-us.org/resources/assessment-programs/accreditation/cost>. To become accredited a museum must demonstrate it meets the "Characteristics of Excellence for U.S. Museums" ("Characteristics of Excellence"). *Eligibility Criteria*, American Alliance of Museums, *available at* <http://www.aam-us.org/resources/assessment-programs/accreditation/eligibility>. The Characteristics of Excellence include 38 core standards divided into seven categories. The seven categories

are: (1) Public Trust and Accountability, (2) Mission and Planning, (3) Leadership and Organization Structure, (4) Collections Stewardship, (5) Education and Interpretation, (6) Financial Stability, and (7) Facilities and Risk Management. The category Collections Stewardship includes additional standards titled “Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era” (“Unlawful Appropriation Standards”). Accredited museums are supposed to develop and implement policies and practices that address the issue of Nazi-looted artwork based on the Unlawful Appropriation Standards. *Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era*, American Alliance of Museums, <http://www.aam-us.org/resources/ethics-standards-and-best-practices/collections-stewardship/objects-during-the-nazi-era>. The Unlawful Appropriation Standards state that museums should take all reasonable steps to resolve the Nazi-era provenance status of objects before acquiring them through purchase, gift, bequest or exchange. Additionally, museums should make “serious efforts” to allocate the time and funding to conduct research on existing collection whose provenance is incomplete or uncertain. If evidence of unlawful appropriation is discovered through research, the museum should take prudent and necessary steps to resolve the status of the object.

141. There is a blatant disregard of the Unlawful Appropriation Standards set forth by AAM when the Fred Jones Museum acquired La Bergère. There was no inquiry into or research on provenance information when La Bergère was accepted by the Fred Jones Museum, and no further follow-up research or inquiry after Dr. Schlagenhauff submitted her documents to the Fred Jones Museum in 2009.

142. There is blatant disregard of the Unlawful Appropriation Standards set forth by AAM when the Fred Jones Museum accepted the Weitzenhoffer bequest, because the Fred Jones Museum performed little or no inquiry into or research on provenance information of at least 20 paintings included in this bequest.

143. Accreditation is supposed to be mark of distinction as a validation of a museum's operations. *Accreditation*, American Alliance of Museums, *available at* <http://www.aam-us.org/resources/assessment-programs/accreditation>. A museum must continue to meet the Characteristics of Excellence which includes the standards pertaining to Nazi-looted artwork in order to be reaccredited every ten year. *Accreditation Process and Timeline*, American Alliance of Museums, <http://www.aam-us.org/resources/assessment-programs/accreditation/process-and-timeline>.

144. AAM failed to hold Fred Jones Museum to the high standards required in order to become accredited when AAM either issued or renewed Fred Jones Museum's accreditation without any regards to its adherence to the Unlawful Appropriation Standards.

145. A third-party beneficiary may bring an action for specific performance. A third-party beneficiary does not have to establish that it is explicitly mentioned in the contract. A person is a third-party beneficiary in New York if the circumstances indicate that the promisee to the contract intends to give the beneficiary the benefit of the promised performance. Plaintiff and all other original owners of works looted by Nazis and their heirs are intended beneficiaries of the Unlawful Appropriation Standards and Characteristics of Excellence. Therefore, as a third-party beneficiary, Plaintiff may bring an action for specific performance by AAM to remove Fred Jones Museum from its

accredited museums for violating the Unlawful Appropriation Standards pertaining to Nazi era purchases, gifts, bequests and exchanges.

146. Defendant University and Defendant AAM entered into a valid and binding contract regarding its accreditation program. Defendant University and Defendant AAM have materially breached this contract, to the detriment of third-party beneficiary Plaintiff, among other things: (1) by AAM failing to monitor the Fred Jones Museum's lack of compliance with the Unlawful Appropriation Standards and Characteristics of Excellence, and (2) by continuing to accredit the Fred Jones Museum despite the AAM Unlawful Appropriation Standards and Characteristics of Excellence.

147. The following terms of the accreditation agreement contained in the "AAM Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era" (*available at* <http://www.aam-us.org/resources/ethics-standards-and-best-practices/collections-stewardship/objects-during-the-nazi-era>) were violated by the University, through its Fred Jones Museum unit:

- (A) "**General Principles...** When faced with the possibility that an object in a museum's custody might have been unlawfully appropriated as part of the abhorrent practices of the Nazi regime, the museum's responsibility to practice ethical stewardship is paramount. Museums should develop and implement policies and practices that address this issue in accordance with these guidelines." The Fred Jones Museum failed to comply with this term when it did not develop and implement policies and practices, as demonstrated by its failure to properly investigate 20 paintings from the Weitzenhoffer bequest.

- (B) “**General Principles**...In order to aid in the identification and discovery of unlawfully appropriated objects that may be in the custody of museums, the Presidential Advisory Commission on Holocaust Assets in the United States (PCHA), Association of Art Museum Directors (AAMD), and the Alliance have agreed that museums should strive to: (1) 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 between those dates...” The Fred Jones Museum failed to comply with this term when it did not identify La Bergère as an object resulting from Nazi pillage in 2000. Additionally, the Fred Jones Museum failed to identify and further investigate La Bergère in 2009 when there was no follow-up research or inquiry after Dr. Schlagenhauff submitted her documents to the Fred Jones Museum.
- (C) “**Acquisitions**...Standard research on objects being considered for acquisition should include a request that the sellers, donors or estate executors offering an object provide as much provenance information as they have available, with particular regard to the Nazi era.” The Fred Jones Museum failed to comply with this term when it did not perform these steps for La Bergère and 20 other paintings belonging to the Weitzenhoffer bequest.
- (D) “**Acquisitions**...Where the Nazi-era provenance is incomplete or uncertain for a proposed acquisition, the museum should consider what additional research would be prudent or necessary to resolve the Nazi-era provenance status of the object before acquiring it. Such research may involve consulting appropriate

sources of information, including available records and outside databases that track information concerning unlawfully appropriated objects.” The Fred Jones Museum failed to comply with this term when it did not perform these steps for La Bergère and 20 other paintings belonging to the Weitzenhoffer bequest.

(E) “**Acquisitions**... Museums should document their research into the Nazi-era provenance of acquisitions” The Fred Jones Museum failed to comply with this term when it did not perform these steps for La Bergère and 20 other paintings belonging to the Weitzenhoffer bequest.

(F) “**Research**... Museums should review the covered objects in their collections to identify those whose characteristics or provenance suggest that research be conducted to determine whether they may have been unlawfully appropriated during the Nazi era without subsequent restitution.” The Fred Jones Museum failed to comply with this term when it did not perform these steps for La Bergère and 20 other paintings belonging to the Weitzenhoffer bequest.

(G) “**Research**... In undertaking provenance research, museums should search their own records thoroughly and, when necessary, contact established archives, databases, art dealers, auction houses, donors, scholars and researchers who may be able to provide Nazi-era provenance information.” The Fred Jones Museum failed to comply with this term when it did not perform these steps for La Bergère and 20 other paintings belonging to the Weitzenhoffer bequest.

(H) “**Research**... Museums should document their research into the Nazi-era provenance of objects in their collections” The Fred Jones Museum failed to

comply with this term when it did not perform these steps for La Bergère and 20 other paintings belonging to the Weitzenhoffer bequest.

(I) “**Discovery of Evidence of Unlawfully Appropriated Objects...** If credible evidence of unlawful appropriation without subsequent restitution is discovered through research, the museum should take prudent and necessary steps to resolve the status of the object, in consultation with qualified legal counsel. Such steps should include making such information public and, if possible, notifying potential claimants.” The Fred Jones Museum failed to comply with this term when it did not perform these steps for La Bergère in 2009 when there was no follow-up research or inquiry after Dr. Schlagenhauff submitted her documents to the Fred Jones Museum.

(J) “**Discovery of Evidence of Unlawfully Appropriated Objects...** The Alliance acknowledges that retaining an unclaimed object that may have been unlawfully appropriated without subsequent restitution allows a museum to continue to care for, research and exhibit the object for the benefit of the widest possible audience and provides the opportunity to inform the public about the object’s history. If the museum retains such an object in its collection, it should acknowledge the object’s history on labels and publications.” The Fred Jones Museum failed to comply with this term when it did not perform these steps for La Bergère and 20 other paintings belonging to the Weitzenhoffer bequest.

SEVENTH CLAIM FOR RELIEF (BREACH OF CONTRACT AGAINST THIRD PARTY BENEFICIARY PLAINTIFF)

148. Plaintiff incorporates by reference all of the preceding paragraphs.

149. As described above, the Fred Jones Museum is a member of AAMD. The membership in AAMD is a contract between the Fred Jones Museum and AAMD. For a contract to be valid, there must be an offer acceptance, and consideration. There is an offer and acceptance based on the membership procedure outlined by the AAMD. In order to become an AAMD member, an applicant sends an application to AAMD. The Membership Committee then reviews the application and a recommendation is made to the Board of Trustees who then votes on membership. *Membership*, Association of Art Museum Directors, <https://aamd.org/about/membership>. There is consideration in the form of a membership application fee and membership dues. 2012 Form 990 (2012), *available at* <http://www.guidestar.org/FinDocuments/2012/237/164/2012-237164969-08ed2e92-9O.pdf>.

150. AAMD members adopted a code of ethics in June 1966 that was later amended in 1971, 1973, 1974, 1991, 2001, and 2011. This code of ethics incorporates policies of and core values which are adopted by the AAMD on an ongoing basis. Code of Ethics, Association of Art Museum Directors, *available at* <https://aamd.org/about/code-of-ethics>. Fred Jones Museum must adhere to guidelines set forth by AAMD as part of its membership.

151. In 1997, the AAMD convened a task force to draft guidelines on art looted by the Nazis that was not restituted. These guidelines were first published in June 1998 via the production of Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War II Era (1933-1945) ("June 1998 Report"). *Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War II Era (1933-1945)*,

Association of Art Museum Directors, (Jun. 4, 1998), *available at* <https://aamd.org/sites/default/files/document/Report%20on%20the%20Spoliation%20of%20Nazi%20Era%20Art.docx>. The guidelines were later amended in 2001, and again on June 1, 2007 under the title “Art Museums and the Restitution of Works Stolen by the Nazis.”

152. The statement of principles published in the June 1998 Report states that AAMD reaffirms the commitment of its members to weigh, promptly and thoroughly, claims of title to specific works in their collection that may have been unlawfully confiscated during the Holocaust and WWII.

153. In addition, AAMD’s core values that members subscribe are based on the idea that, “American museums are committed to conducting research to determine if works in their collections were stolen by the Nazis and not restituted, and responding quickly and scrupulously to requests for restitution from the heirs of the original owners.” *Art Museums and the Identification and Restitution of Works Stolen by the Nazis*, Association of Art Museum Directors, (May 2007), *available at* https://aamd.org/sites/default/files/document/Nazi-looted%20art_clean_06_2007.pdf.

154. The Code of Ethics incorporates the statement of principles and guidelines included in the June 1998 Report. In addition, the Code of Ethics also incorporates the core values relating to conducting research to determine if works were stolen and responding to requests for restitution.

155. The Code of Ethics states that:

(A) That the museum director “will act with integrity and in accordance with the highest ethical principles;” and

(B) That “A museum director should not knowingly acquire or allow to be recommended for acquisition any object that has been stolen, removed in contravention of treaties or international conventions to which the United States is a signatory, or illegally imported in the United States.”

156. Therefore, AAMD members must comply with the AAMD published guidelines and with the Code of Ethics as a condition of maintaining their membership in the organization.

157. There is blatant disregard of the guidelines set forth by AAMD when the University, through its Fred Jones Museum unit, acquired La Bergère. There was no inquiry into or research on provenance information when La Bergère was accepted by Fred Jones Museum, and no further follow-up research or inquiry after Dr. Schlagenhauff submitted her documents to Fred Jones Museum in 2009.

158. There is blatant disregard of the guidelines set forth by AAMD when the Fred Jones Museum accepted the Weitzenhoffer bequest, because the Fred Jones Museum performed little or no inquiry into or research on provenance information of at least 20 paintings included in this bequest.

159. AAMD’s Code of Ethics outlines the procedure for handling a violation of the Code of Ethics, which incorporates guidelines like the ones published in the June 1998 Report. The Code of Ethics states: “*AAMD members who violate this code of ethics will be subject to discipline by reprimand, suspension, or expulsion from the Association. Infractions by any art museum may expose that institution to sanctions, such as suspension of loans and shared exhibitions by AAMD members are directors.*”

160. AAMD failed to monitor Fred Jones Museum's lack of compliance with the guidelines in the 1998 Report, and did not follow its Code of Ethics' procedure pertaining to violations of its code when Fred Jones Museum utterly failed to comply with the guidelines in the 1998 Report.

161. A third-party beneficiary may bring an action for specific performance. A third-party beneficiary does not have to establish that it is explicitly mentioned in the contract. A person is a third-party beneficiary in New York if the circumstances indicate that the promisee to the contract intends to give the beneficiary the benefit of the promised performance. Plaintiff and all other original owners of works looted by Nazis and their heirs are intended beneficiaries of AAMD's 1998 Report and Code of Ethics. Therefore, as a third-party beneficiary, Plaintiff may bring an action for specific performance by AAMD to reprimand, suspend, or expel from its association the Fred Jones Museum for violating AAMD guidelines and its Code of Ethics.

162. Defendant University and Defendant AAMD entered into a valid and binding membership contract. Defendant University and Defendant AAMD have materially breached the membership contract, to the detriment of third party beneficiary Plaintiff, among other things: (1) by AAMD failing to monitor the Fred Jones Museum's lack of compliance with the guidelines in the 1998 Report and its Code of Ethics in its handling of the acquisition of La Bergère, either when La Bergère was accepted by the Fred Jones Museum in 2000, or when no further follow-up research or inquiry were made in 2009 after Dr. Schlagenhauff submitted her documents to the Fred Jones Museum, and (2) by failing to reprimand, suspend, or expel from its association the Fred Jones Museum for violating the guidelines in the 1998 Report and its Code of Ethics

when the Fred Jones Museum accepted the Weitzenhoffer bequest, because the Fred Jones Museum performed little or no inquiry into or research on provenance information of at least 20 paintings included in this bequest.

163. <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CCsQFjAA&url=https%3A%2F%2Faamd.org%2Fsites%2Fdefault%2Ffiles%2Fdocument%2FReport%2520on%2520the%2520Spoliation%2520of%2520Nazi%2520Era%2520Art.docx&ei=TSTQUsjcEsuhsQsX1IGoDA&usg=AFQjCNFevyogA4zsHPVAMZ4pnGSFPlwpcA&bvm=bv.59026428,d.cWc>

164. The following terms of the member agreement contained by incorporation in the “Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War II Era (1933-1945)” (*available at* <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CCsQFjAA&url=https%3A%2F%2Faamd.org%2Fsites%2Fdefault%2Ffiles%2Fdocument%2FReport%2520on%2520the%2520Spoliation%2520of%2520Nazi%2520Era%2520Art.docx&ei=TSTQUsjcEsuhsQsX1IGoDA&usg=AFQjCNFevyogA4zsHPVAMZ4pnGSFPlwpcA&bvm=bv.59026428,d.cWc>) were violated by the Fred Jones Museum:

(A) “Research Regarding Existing Collections... As part of the standard research on each work of art in their collections, members of the AAMD, if they have not already done so, should begin immediately to review the provenance of works in their collections to attempt to ascertain whether any were unlawfully confiscated during the Nazi/World War II era and never restituted.” The Fred Jones Museum failed to comply with this term when it did not review the provenance of La

Bergère, and when it failed to properly investigate 20 paintings from the Weitzenhoffer bequest.

(B) “Research Regarding Existing Collections...” Member museums should search their own records thoroughly and, in addition, should take all reasonable steps to contact established archives, databases, art dealers, auction houses, donors, art historians and other scholars and researchers who may be able to provide Nazi/World-War-II-era provenance information.” The Fred Jones Museum failed to comply with this term when it did not take reasonable steps to investigate the provenance of both La Bergère as well as 20 other paintings from the Weitzenhoffer bequest.

(C) “Future Gifts, Bequests, and Purchases...” As part of the standard research on each work of art:... member museums should ask sellers of works of art to provide as much provenance information as possible with regard to the Nazi/World War II era.” The Fred Jones Museum failed to comply with this term when it did not take seek or obtain provenance information and records from the donor for both La Bergère as well as 20 other paintings from the Weitzenhoffer bequest.

(D) “Future Gifts, Bequests, and Purchases...” Where the Nazi/World-War-II-era provenance is incomplete for a gift, bequest, or purchase, the museum should search available records and consult appropriate databases of unlawfully confiscated art.” The Fred Jones Museum failed to comply with this term when it did not perform reasonable research or to seek provenance information and

records from the donor for La Bergère and 20 other paintings from the Weitzenhoffer bequest.

(E) “Future Gifts, Bequests, and Purchases... If there is evidence of unlawful confiscation, and there is no evidence of restitution, the museum should not proceed to acquire the object and should take appropriate further action.” The Fred Jones Museum failed to comply with this term when it accepted the Weitzenhoffer bequest.

(F) “Future Gifts, Bequests, and Purchases... When purchasing works of art, museums should seek representations and warranties from the seller that the seller has valid title and that the work of art is free from any claims.” The Fred Jones Museum failed to comply with this term when it accepted the Weitzenhoffer bequest.

(G) “Discovery of Unlawfully Confiscated Works of Art... If a member museum should determine that a work of art in its collection was illegally confiscated during the Nazi/World War II era and not restituted, the museum should make such information public.” The Fred Jones Museum failed to comply with this term when it did not make public disclosures in 2009 of the suspicious provenance of La Bergère and when no further follow-up research or inquiry was made after Dr. Schlagenhauff submitted her documents to the Fred Jones Museum in 2009.


REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

- (A) On her First Claim for Relief: for an order directing the Oklahoma Defendants to return La Bergère to Plaintiff which is now in Oklahoma Defendants' possession, custody or control, or for compensation from either the Oklahoma Defendants or the New York Defendants therefor in an amount to be proven at trial;
- (B) On her Second Claim for Relief: for an order directing the Oklahoma Defendants to return La Bergère to Plaintiff which is now in Oklahoma Defendants' possession, custody or control, or for compensation therefor in an amount to be proven at trial;
- (C) On her Third Claim for Relief: for an order declaring that the Oklahoma Defendants hold, as constructive trustees, for and on behalf of Plaintiff, La Bergère, which is now in their possession, custody or control, and directing the Oklahoma Defendants to deliver to Plaintiff possession of La Bergère or compensation therefor in an amount to be proven at trial;
- (D) On her Fourth Claim for Relief: for an order declaring that Plaintiff is the owner of La Bergère, which is now in Oklahoma Defendants' possession, custody or control, and directing the Oklahoma Defendants to deliver to Plaintiffs possession of the works or compensation therefor in an amount to be proven at trial;

- (E) On her Fifth Claim for Relief: for an order directing the Oklahoma Defendants and the New York Defendants to disgorge any profits earned by them from their unlawful possession of La Bergère;
- (F) On her Sixth Claim for Relief: for an order enjoining and directing AAM to remove the Fred Jones Museum from its list accredited institutions for violating certain terms of the accreditation agreement contained in the “AAM Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era;”
- (G) On her Seventh Claim for Relief: for an order enjoining and directing AAMD to reprimand, suspend, or expel from its association the Fred Jones Museum for violating the AAMD Code of Ethics as well as its standard and practices.
- (H) For pre- and post-judgment interest on any award; and
- (I) Awarding Plaintiff such other and further relief as this Court deems just and proper.

DATED: January 10, 2014
New York, New York


/s/ Pierre Ciric January 10, 2014

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