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SUMMARY

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This case seeks recovery of six paintings by Gustav Klimt owned by Maria V. Altmann, but in the wrongful possession of the Republic of Austria and the Austrian Gallery.

Mrs. Altmann was born in Austria but fled, for her life, when Austria delivered itself into the hands of the Nazis in 1938. In 1938 as well, the Nazis and their Austrian accomplices seized the property not only of Mrs. Altmann, but the rest of her family, including all property of her uncle, Ferdinand Bloch-Bauer. They did so for no other reason than because Altmann and her family were Jewish. Included among Ferdinand's possessions at the time were six fabulous paintings by Gustav Klimt (copies of which are reproduced as Exhibit A hereto), consisting of two portraits of his wife (*Adele Bloch-Bauer I* and *Adele Bloch-Bauer II*), three landscapes (*Beechwood*; *Apple Tree I*; *Houses in Unterach am Attersee*), and a portrait of a close friend (*Amalie Zuckermandl*). A seventh painting (*Schloss Kammer am Attersee III*) had been donated by Ferdinand to the Austrian Gallery in 1936, prior to the Austrians' rejection (and for those who were unable to flee, murder) of its Jewish population.

Ferdinand died in exile in Zurich, childless and a widower, in November 1945. He left his entire estate to three of his brother Gustav Bloch-Bauer's children: 25% to Mrs. Altmann, then living in Los Angeles; 25% to Robert Bentley, then living in Vancouver, Canada; and 50% to Luise Gattin, then living in Zagreb, Yugoslavia. His will was admitted to probate in Zurich in 1947. Mrs. Altmann, age 88, is the last surviving named heir.

Notwithstanding Ferdinand's bequest to his nieces and nephews; notwithstanding the fact that the paintings were stolen from Ferdinand; notwithstanding the fact that no party took good title from the defeated Nazis and their Austrian accomplices; and notwithstanding that the Republic of Austria had the legal – not to say moral – obligation to deliver the paintings to the heirs upon probate of Ferdinand's will, the Republic of Austria and the Austrian Gallery did not do so. Instead, motivated entirely

1 by a now-admitted hatred of the Jews that continued even *after* they and their Axis
2 partners were defeated in World War II and *after* the depths of the Holocaust were
3 exposed, the Republic of Austria and the Austrian Gallery extorted the heirs out of their
4 possessory rights in exchange for purported “export permits” allowing the heirs to
5 retrieve other property stolen from them.

6 Only in 1999 did the true facts about the Republic of Austria’s and the Austrian
7 Gallery’s wrongful possession begin to come to light. Prior to then, the Republic of
8 Austria and the Austrian Gallery hid these facts from the heirs and from the world,
9 claiming – falsely – that they in fact had taken good title, honestly acquired. To their
10 continuing disgrace, the Republic of Austria and the Austrian Gallery refuse to return the
11 paintings or to pay for them.

12 There being no other recourse, Maria V. Altmann alleges against the Republic of
13 Austria and the Austrian Gallery as follows:

14 Plaintiff MARIA V. ALTMANN alleges as follows:

15 **THE PARTIES**

16 1. Plaintiff MARIA V. ALTMANN (“ALTMANN”), is an individual
17 residing in Los Angeles, California. ALTMANN was born in Vienna, Austria on
18 February 18, 1916. In October 1938, after the annexation of Austria by Nazi Germany,
19 she fled because of religious and racial persecution by the Nazis. (For example, before
20 leaving Vienna her jewelry and other valuable possessions were confiscated by the
21 Gestapo and her husband, Fritz Altmann, was imprisoned in the infamous Dachau
22 concentration camp for several months and subsequently placed under house arrest.)
23 ALTMANN came to the United States in 1940, settled in Los Angeles County in 1942
24 and has resided in Los Angeles County ever since. ALTMANN became an American
25 citizen in 1945.

26 2. ALTMANN is heir to 25% of the estate of her uncle Ferdinand Bloch-Bauer.
27 ALTMANN brings this claim for herself and on behalf of the entire estate of Ferdinand
28 Bloch-Bauer. The heirs of her brother Robert Bentley have assigned their claims to her,

1 as has one of the heirs of her sister Luise Gattin. Mrs. Altmann therefore represents 75%
2 of the estate of her uncle Ferdinand Bloch-Bauer in this action.

3 3. Defendant REPUBLIC OF AUSTRIA is a foreign state, as defined in 28
4 U.S.C. §1603(a), located in Central Europe.

5 4. Defendant AUSTRIAN GALLERY is an art museum in Vienna, Austria.
6 The AUSTRIAN GALLERY is also known in German as the *Österreichische Galerie*
7 *Belvedere*, and has been formerly known as the *Moderne Galerie*, the *Österreichische*
8 *Staatsgalerie*, and the *Galerie des XIX. Jahrhunderts*.

9 5. At all relevant times herein, and until January 1, 2000, the AUSTRIAN
10 GALLERY was an agency and instrumentality, as defined in 28 U.S.C. §1603(b), of the
11 REPUBLIC OF AUSTRIA, owned and operated by the REPUBLIC OF AUSTRIA (or
12 during the Nazi era, by Germany). On January 1, 2000, the AUSTRIAN GALLERY
13 was purportedly divested from the federal government and made a separate legal entity
14 in Austria. However, the REPUBLIC OF AUSTRIA continues to own all of the
15 paintings in the museum operated by the AUSTRIAN GALLERY, including the paintings
16 that are the subject of this action. The REPUBLIC OF AUSTRIA continues to control,
17 operate and fund the AUSTRIAN GALLERY. Because all of the facts alleged below
18 concern events prior to January 1, 2000, the AUSTRIAN GALLERY and the
19 REPUBLIC OF AUSTRIA are sometimes referred to herein collectively as the
20 “AUSTRIAN GALLERY.”

21 **JURISDICTION AND VENUE**

22 6. This Court has subject-matter jurisdiction and personal jurisdiction over
23 the REPUBLIC OF AUSTRIA and the AUSTRIAN GALLERY under 28 U.S.C. §1330
24 because these are claims as to which neither party is entitled to immunity under 28
25 U.S.C. §1605-7 (the Foreign Sovereign Immunities Act (“FSIA”)). See Republic of
26 Austria v. Altmann, 317 F.3d 954, *modified* 327 F.3d. 1246 (9th Cir. 2003), *affirmed*
27 541 U.S. ___, 124 S.Ct. 2240 (2004). Process has been served on both defendants
28 pursuant to 28 U.S.C. §1608.

1 7. ALTMANN is a citizen of California. The AUSTRIAN GALLERY is an
2 agency and subject of the REPUBLIC OF AUSTRIA, a foreign state. The amount in
3 controversy is approximately \$200 million.

4 8. This action concerns rights in property expropriated in violation of
5 international law, namely six paintings by Gustav Klimt which were taken from
6 Ferdinand Bloch-Bauer after March 1938 as a result of discriminatory taxes levied by
7 the Nazis. After the Second World War, the AUSTRIAN GALLERY withheld these
8 paintings from Ferdinand's heirs by deception, fraud and duress utilized in furtherance
9 of the violations of international law committed by the Nazis. The truth was revealed
10 only recently, but the AUSTRIAN GALLERY has still refused to relinquish the
11 paintings to Ferdinand's heirs.

12 9. Before January 1, 2000, the property at issue was in the possession of the
13 AUSTRIAN GALLERY, an entity that was an agency and instrumentality of the
14 REPUBLIC OF AUSTRIA. Since January 1, 2000, the property at issue is in the
15 possession of the REPUBLIC OF AUSTRIA and housed in the museum operated by the
16 AUSTRIAN GALLERY.

17 10. The AUSTRIAN GALLERY is engaged in commercial activity in the
18 United States.

19 a) The AUSTRIAN GALLERY engages in a commercial activity in
20 the United States by authoring, editing, and publishing in the United States both a book
21 entitled *Klimt's Women*, as well as an English-language guidebook, containing
22 photographs of the looted paintings. The AUSTRIAN GALLERY asserts U.S.
23 copyright ownership over these books, which is also published in New Haven and New
24 York. One of the looted artworks at issue in this action, the portrait of ALTMANN's
25 aunt, *Adele Bloch-Bauer I*, is reproduced on the cover of the guidebook.

26 b) The AUSTRIAN GALLERY engages in and receives the benefit of
27 tourist advertising in the United States conducted by the official Austrian National
28 Tourist Office, a non-profit agency sponsored and controlled by the REPUBLIC OF

1 AUSTRIA, which has offices in various cities in the United States, including an office in
2 Los Angeles, California. This advertising often features the AUSTRIAN GALLERY's
3 famous collection of paintings by Gustav Klimt, which is comprised in substantial part
4 by the looted artworks that are the subject of this action. The AUSTRIAN GALLERY
5 promoted through advertising in the United States its fall 2000 show entitled "Gustav
6 Klimt and the Image of Women in Europe," which was on display from September 20,
7 2000 to January 7, 2001. The looted pictures that are the subject of this action were
8 some of the main works in this exhibition. The AUSTRIAN GALLERY has borrowed
9 artworks from the United States for this exhibition and others. The AUSTRIAN
10 GALLERY actively promoted this exhibition in America and towards Americans with
11 the intention of attracting American tourists to this exhibition for the purpose of
12 charging them entrance fees and selling merchandise to them.

13 c) The AUSTRIAN GALLERY is visited by thousands of U.S. citizens
14 each year, and accepts entrance fees from these visitors. The artworks that are the
15 subject of this action are some of the main attractions of the museum. In its gift shop,
16 the AUSTRIAN GALLERY sells memorabilia, including numerous images of the looted
17 artworks at issue in this action, to U.S. citizens. The AUSTRIAN GALLERY accepts
18 payment by U.S. credit card for these purchases.

19 d) The AUSTRIAN GALLERY has in the past also loaned artworks,
20 including, upon information and belief, at least one of the works at issue in this action,
21 *Adele Bloch-Bauer I*, to museums in the United States, and receives reciprocal benefits
22 thereby.

23 e) In sum, the AUSTRIAN GALLERY uses the looted artworks at
24 issue in this action for commercial activities directed at U.S. citizens, including citizens
25 of Los Angeles, California.

26 11. The REPUBLIC OF AUSTRIA is engaged in numerous other commercial
27 activities in the United States, and in Los Angeles County in particular.

28 a) The REPUBLIC OF AUSTRIA has a consular office in Los

1 Angeles, California, which serves to promote Austrian cultural and business interests in
2 California and the Western United States.

3 b) The REPUBLIC OF AUSTRIA actively promotes its cultural
4 interests in Los Angeles, including for example the interests of Austrian filmmakers.
5 Representatives of the Austrian Federal Ministry for Education and Culture routinely
6 visit Los Angeles as part of their mission to promote Austrian culture.

7 c) The Austrian National Tourist Office, a non-profit agency
8 sponsored and controlled by the REPUBLIC OF AUSTRIA, has an office in Los
9 Angeles. It conducts advertising campaigns promoting tourism to Austria in California
10 and throughout the United States.

11 d) The REPUBLIC OF AUSTRIA owns real property in Los Angeles,
12 which is used to promote Austrian business interests.

13 12. Venue is proper in this District under 28 U.S.C. §1391(f)(3) because the
14 REPUBLIC OF AUSTRIA and the AUSTRIAN GALLERY conduct business in his
15 District, because they are in breach of their obligation to deliver the six Klimt paintings
16 to ALTMANN in this District, and because ALTMANN presently resides and resided in
17 this District at the time of the misappropriation of the property at issue from her and
18 afterwards. There is no other venue in the United States that would be more appropriate
19 for this action than Los Angeles County. Austria is not a feasible venue for this action
20 because the Austrian courts require payment of fees in proportion to the amount in
21 controversy. In this case, those fees far exceed the value of ALTMANN's assets.
22 ALTMANN applied to the Austrian courts for a waiver of the fees, which was only
23 partially granted so that ALTMANN would have been required to expend all of her
24 available assets other than her house – including her entire life savings – in order to
25 proceed. The REPUBLIC OF AUSTRIA appealed this ruling, seeking to raise the level
26 of costs even higher. As a result, ALTMANN cannot afford to proceed in Austria.
27 Thus, there is no reasonable venue other than this court for this important matter to be
28 heard.

1 **BACKGROUND FACTS**

2 **The Bloch-Bauer Family Before The War**

3 13. ALTMANN was born into the affluent Jewish Bloch-Bauer family in
4 Vienna, Austria in 1916. Every Sunday she and her four older siblings would have
5 brunch over at the beautiful home owned by her uncle Ferdinand and aunt Adele.
6 Ferdinand was her father’s brother; Adele was her mother’s sister. Together, the two
7 couples had combined their names to form the Bloch-Bauer family. Ferdinand’s home, a
8 large building on one of the finest streets in Vienna, was gorgeously decorated with fine
9 artworks, tapestries, porcelain and furniture.

10 14. Ferdinand was a patron of Gustav Klimt and owned seven of his most
11 important paintings, which are the paintings at issue in this case: *Adele Bloch-Bauer I*;
12 *Adele Bloch-Bauer II*; *Beechwood*; *Schloss Kammer am Attersee III*; *Apple Tree I*;
13 *Houses in Unterach am Attersee*; and *Amalie Zuckerkandl*. Reproductions of these
14 paintings are attached hereto as Exhibit A.

15 15. Ferdinand was a citizen of Czechoslovakia with his principle residence
16 (until 1938) in Vienna, Austria. The Klimt paintings were housed in his large home
17 located at Elisabethstrasse 18 in Vienna.

18 16. When Adele died suddenly of meningitis o January 24, 1925, Ferdinand
19 created a memorial room for her with the two full-length portraits of her and all four
20 landscapes by Klimt. A seventh Klimt painting, the portrait of *Amalie Zuckerkandl*, was
21 in Ferdinand’s bedroom.

22 17. Adele was survived by her husband Ferdinand Bloch-Bauer, having
23 designated him her sole heir in her will dated January 19, 1923. Adele’s will asked, but
24 did not require, that her husband consider donating the two portraits of her and the four
25 landscapes to the AUSTRIAN GALLERY after his death. The entire will provided as
26 follows (in translation):

27 *My Last Will:*

28 *Of sound mind and subject to no outside influence, I dispose as follows in*

1 *the event of my death:*

2 *I. I appoint my husband, Ferdinand Bloch-Bauer, as the sole heir to my*
3 *entire estate.*

4 *II. If my husband predeceases me, my sole heir shall be my brother-in-law*
5 *Dr. Gustav Bloch-Bauer or, if he predeceases me, his descendants.*

6 *III. I bequeath fifty thousand (50,000) Kc (Czech crowns) to:*

7 *1) the Viennese workers association Kinderfreunde [Friends of the*
8 *Children]; and*

9 *2) the Viennese association Die Bereitschaft [Preparedness].*

10 *As my sole heir, my husband shall bear the cost of these transfers.*

11 *As I am convinced that my husband will fulfill these obligations in their*
12 *entirety, no collateral for the entitlements of the associations is required. If*
13 *one of the associations stated above should be dissolved prior to the*
14 *payment of the above legacies the portion thus becoming available shall*
15 *be given to the Wiener Rettungs-Gesellschaft [Vienna Rescue Service].*

16 *I kindly ask my husband to bequeath my two portraits and the four*
17 *landscapes by Gustav Klimt after his death to the Austrian State Gallery in*
18 *Vienna, and to leave the Vienna and Jungfer, Brezan library, which*
19 *belongs to me, to the Vienna People's and Workers' Library.*

20 *I leave it at the discretion of the Vienna People's and Workers' Library to*
21 *keep the books or to sell them and accept the proceeds as a legacy. Also*
22 *for that legacy no collateral is required.*

23 *I kindly ask my husband to leave my jewelry after his death to our nephews*
24 *Karl, Robert and Leopold Bloch-Bauer as well as to our nieces Luise and*
25 *Maria-Viktoria Bloch-Bauer and our nieces Mira and Bettina Bauer, to*
26 *the extent possible in equal shares.*

27 *IV*

28 *If my brother-in-law Dr Gustav Bloch-Bauer or his descendants become*
my heirs, I obligate him or his descendants immediately after my death to
make the following bequests: 50,000 Czech crowns each to the Viennese
workers' association Kinderfreunde and to the Viennese association Die
Bereitschaft respectively; the two portraits and the four landscapes by
Gustav Klimt to the Austrian State Gallery in Vienna; and my Vienna and
Jungfer, Brezan library to the Vienna People's and Workers' Library.

1 *I have written and signed this last will and testament with my own hand.*

2 *Adele Bloch-Bauer*

3 *Vienna, 19th January 1923*

4 *I appoint my brother-in-law Dr Gustav Bloch-Bauer my executor.*

5 18. In the probate proceedings for Adele Bloch-Bauer, ALTMANN's father
6 Gustav Bloch-Bauer, "as the party assigned authority to handle the estate and
7 proceedings" (i.e. Ferdinand Bloch-Bauer's representative) supplied the property
8 affirmation in lieu of an oath, the verification of the estate, and the testamentary
9 compliance confirmation, via the following declaration:

10 *I hereby provide the testamentary compliance confirmation, as follows:*

11 *In Section I of her will dated 19th January 1923, the testatrix designates*
12 *her husband Mr. Ferdinand Bloch-Bauer her sole heir.*

13 *To verify fulfillment thereof, I hereby refer to the statement of inheritance,*
14 *which was issued unconditionally in his name and for him, relates to the*
15 *entire estate, and is hereby accepted.*

16 *Section II is irrelevant, as Mr. Ferdinand Bloch-Bauer has survived his*
17 *wife.*

18 *In Section III, Paragraph 1, the testatrix gives instructions regarding*
19 *legacies in favor of*

20 *1) the Viennese workers' association Kinderfreunde; and*

21 *2) the association Die Bereitschaft.*

22 *These associations have received notification from the court regarding the*
23 *accrual of the legacy.*

24 *In the second and third paragraphs of item III the testatrix asks her*
25 *husband several favors, which he promise duly to comply with even though*
26 *they do not have the mandatory quality of a testamentary disposition.*

27 *It is important to note that the Klimt paintings are not the property of the*
28 *testatrix, but rather of the testatrix's widower.*

The nephews and nieces of the testatrix who are listed in Section III,
Paragraph 3, have duly noted the contents of the will.

1 Although Fritz was subsequently placed under house arrest, he and ALTMANN
2 managed to escape on the way to a doctor's appointment. With Bernhard's help, they
3 fled over the border to the Netherlands where they were met by Bernhard and flown to
4 Liverpool, England, where the British had invited Bernhard to build a new sweater
5 factory. ALTMANN and Fritz soon came to the United States and in 1942 reached Los
6 Angeles, where ALTMANN has resided ever since. ALTMANN became a U.S. citizen
7 in 1945.

8 24. Ferdinand, who was Jewish and had supported efforts to resist the Nazis
9 prior to the annexation of Austria, fled the country ahead of the Nazis in March 1938 to
10 avoid persecution. Ferdinand ultimately settled in Zurich, Switzerland, where he
11 remained until his death in November 1945. Ferdinand fled first to his summer home in
12 Czechoslovakia, a large castle and estate outside Prague. When the Nazis took the
13 Sudetenland (western Czechoslovakia), Ferdinand fled to Zurich, Switzerland, and his
14 estate outside Prague was used as the principal residence for the Nazi commander of the
15 so-called Protectorate, Reinhard Heydrich. Heydrich, one of the principal architects of
16 the Nazi's "Final Solution" for the extermination of European Jewry, was leaving
17 Ferdinand's castle when he was assassinated in 1942.

18 The Looting

19 25. In April and May 1938, the Nazis levied enormous taxes against Ferdinand
20 in Vienna because he was Jewish. The imposition of these taxes was motivated by
21 religious and racial animus.

22 26. In exile in Switzerland, Ferdinand was cut off from his family and all his
23 possessions. The sugar company he directed was aryanized, and Ferdinand's shares held
24 in Swiss banks were handed over to the Nazis. Ferdinand's home in Vienna was
25 transferred to the railroad for its new headquarters. The artworks were plundered. In
26 early 1939, a large group of Nazi and museum officials, including representatives of the
27 AUSTRIAN GALLERY, met in Ferdinand's palais to discuss dividing up the enormous
28 art collection. His famous 400-piece porcelain collection was sold at a public auction,

1 with the best pieces going to Vienna's museums. Some of his 19th century artworks by
2 Austrian masters were taken and given to Adolf Hitler and Hermann Göring. Others
3 were bought for Hitler's planned museum in Linz. Dr. Erich Führer, the Nazi lawyer
4 appointed to liquidate the estate, was given permission by Hitler's museum director
5 Hans Posse to take a few paintings for his own personal collection in consideration for
6 his service to the Third Reich.

7 27. Dr. Führer disposed of Ferdinand's six remaining Klimt paintings as
8 follows:

9 a) In October 1941, Dr. Führer traded two Klimt paintings -- *Adele*
10 *Bloch-Bauer I* and *Apple Tree I* -- to the AUSTRIAN GALLERY in exchange for the
11 return of the painting *Schloss Kammer am Attersee III*, which Ferdinand had delivered to
12 the AUSTRIAN GALLERY in 1936.

13 b) *Schloss Kammer am Attersee III* was subsequently sold by Dr.
14 Führer to Ingeborg and/or Gustav Ucicky (an illegitimate son of Gustav Klimt who was
15 a successful director of Nazi propaganda films) for approximately 6,000 Reichsmarks.

16 c) In November 1942, the painting *Beechwood* was sold by Dr. Führer
17 to the Museum of the City of Vienna (*Wiener Städtische Sammlung*) for 5,000
18 Reichsmarks.

19 d) In March 1943, the AUSTRIAN GALLERY purchased the painting
20 *Adele Bloch-Bauer II* from Dr. Führer for 7,500 Reichsmarks.

21 e) Dr. Führer kept the painting *Houses in Unterach am Attersee* for
22 himself.

23 f) The portrait of *Amalie Zuckerkandl* also left the collection during
24 this time and ended up in the hands of the art dealer Vita Künstler, whose husband
25 Gustav Künstler allegedly purchased the painting from the the son-in-law of Amalie
26 Zuckerkandl, Wilhelm Müller-Hofmann.

27 28. The disposition of the artworks from Ferdinand's estate was undertaken
28 without Ferdinand's consent, against his will and in violation of international law. The

1 liquidation was motivated by religious and racial hatred and occurred without payment
2 of any just or fair compensation.

3 29. In a letter sent from Zurich on April 2, 1941 to the artist Oskar Kokoschka,
4 Ferdinand described his dire situation and his hopes to obtain the release of the two
5 Klimt portraits of Adele as well as the portrait of Ferdinand by Kokoschka:

6 *In your position I would have gone to America and if it is still*
7 *possible, go immediately! Europe will be a heap of ruins, perhaps the*
8 *whole world; for art there will be no place here for decades! My people*
9 *are in Canada in Vancouver, would like that I come, but I am already too*
10 *old! I think about it, although I believe that I have missed the 'ferry.' For*
11 *months there is no seat on a ship, not a clipper available! Your friend Dr.*
12 *Ehrenstein was here with me yesterday. He obtained a visa for America,*
13 *but how can he get over there?*

14 *In Vienna and Bohemia they took away everything from me. Not*
15 *even a souvenir was left for me. Perhaps I will get the 2 portraits of my*
16 *poor wife (Klimt) and my portrait. I should find out about that this week!*
17 *Otherwise I am totally impoverished and probably will have to live very*
18 *modestly for a few years, if you can call this vegetation living. At my age,*
19 *alone, without any of my old attendants, it is often terrible. I have luckily*
20 *a few good friends here in Geneva and Lausanne. Now I am already*
21 *'amortised,' will wait and find out, whether justice will still come, then I*
22 *will gladly lay my hammer down!*

23 *What one hears from Vienna and Prague is terrible!*

24 30. In his second-to-last will, dated Oct. 8, 1942, written while in exile in
25 Zurich, Switzerland, Ferdinand wrote:

26 *In an illegal manner, a tax penalty of one million Reichsmarks was*
27 *imposed and my entire estate in Vienna was confiscated and sold.*

28 31. Indeed, by early 1943, Ferdinand's entire art collection, including all the
Klimt paintings, was liquidated and expropriated. The sole exception was a portrait of
Ferdinand by Kokoschka, which was considered "degenerate" by the Nazis and was
allowed to be sent to Ferdinand in Zurich.

Post-War Hostilities

32. Ferdinand died on November 13, 1945 in Zurich, Switzerland, several

1 months after the War ended, having taken preliminary steps to retrieve his stolen
2 property. In his last will, dated October 22, 1945, he revoked all prior wills and left his
3 entire estate to two nieces (including plaintiff ALTMANN) and one nephew. He made
4 no bequest to the AUSTRIAN GALLERY.

5 33. The government of Austria in the post-War period after 1945 was
6 extremely hostile to restitution claims by exiled Jews. For example, at the end of the
7 War, in April 1945, Dr. Karl Renner, a noted legal scholar, chancellor and post-war
8 president of Austria, wrote:

9 *Restitution of property stolen from Jews, this [should be] not to the*
10 *individual victims, but to a collective restitution fund. The establishment*
11 *of such and the following foreseeable arrangements is necessary in order*
12 *to prevent a massive, sudden flood of returning exiles. A circumstance,*
13 *that for many reasons must be paid very close attention to. . . . The*
14 *restitution to the victims cannot follow naturally. As soon as the property*
15 *of the fund, which shall serve to compensate collectively all of the robbed*
16 *individuals, is established, shares will be given out, for each pro rata*
17 *based on the suffered damages -- not by the measure of whether a person's*
18 *property is completely, partially or not at all recoverable; this collective*
19 *procedure naturally provides that claims can only be satisfied in relation*
20 *to the recovered property and only after the completion of investigation,*
21 *prosecution and return of valuables (that is after years!). . . . Basically the*
22 *entire nation should be made not liable for damages to Jews.*

23 34. This overwhelming hostility to the claims of Jews on the part of the
24 Austrian government carried over from the Nazi period into the post-War period and
25 placed every Jewish family with claims against the government in a very precarious
26 position. If a claimant was to have any success at all, deals had to be made to assuage
27 the government ministers and their cohorts, who in many cases were as anti-Semitic as
28 their Nazi predecessors.

35. On May 15, 1946, the REPUBLIC OF AUSTRIA enacted a law declaring
that all transactions which were motivated by discriminatory Nazi ideology were to be
deemed null and void. In effect, this law should have nullified all of the transactions
entered into by Dr. Führer during the liquidation and expropriation of Ferdinand's estate.
Although the law appeared satisfactory on its face, in practice restitution was far from

1 simple. The REPUBLIC OF AUSTRIA frequently put up legal roadblocks to
2 restitution, such as demanding repayment of the purchase price before returning property
3 to its Jewish owners, even though, as in Ferdinand's case, the Jewish owners had never
4 received the payment. The restitution process in Austria after the War was imperfect, to
5 say the least.

6 36. Under the law of Austria, artworks which were deemed to be important to
7 Austria's cultural heritage could not be exported from the country, and no artworks
8 could be exported without the permission of the Austrian Federal Monument Agency
9 (*Bundesdenkmalamt*). ALTMANN alleges that the application of this law to Jews who
10 were forced to flee Austria, or to their heirs who were attempting after the War to
11 recover property left in Austria, was discriminatory and in violation of international law.

12 37. After the War, it was the practice of the AUSTRIAN GALLERY and the
13 Federal Monument Agency to use the export permit laws to force Jews to donate or trade
14 valuable artworks to the museum in exchange for export permits for other works. The
15 REPUBLIC OF AUSTRIA has itself recently declared this practice to have been illegal,
16 unethical and immoral extortion. ALTMANN alleges that this practice itself violated
17 international law, and was an act in furtherance of the expropriations in violation of
18 international law committed by the Nazis.

19 38. The Allies unwittingly facilitated the REPUBLIC OF AUSTRIA's
20 extortionate practices. They had collected looted artworks and held them in the Art
21 Collecting Point in Munich, Germany. However, individual applicants were not
22 permitted to retrieve their property directly. Rather, the artworks would only be returned
23 to their country of origin, which was then responsible for determining whether the
24 artworks should be restituted. The REPUBLIC OF AUSTRIA used this procedure and
25 laws against exporting cultural items to obtain and hold Nazi-looted artworks hostage.
26 The Austrian Federal Monument Office routinely demanded donations to federal
27 museums before it would permit any artworks to be returned and exported to their
28 former owners, most of whom remained outside Austria. Ferdinand's heirs were victims

1 of this illicit practice.

2 **The Heirs Try To Recover Ferdinand's Property**

3 39. On May 23, 1947, the Zurich District Court recognized ALTMANN as the
4 heir to 25% of Ferdinand's estate. At the time, ALTMANN was a U.S. citizen residing
5 in Los Angeles County. ALTMANN's older brother Robert Bentley of Vancouver,
6 Canada, and sister Luise Gattin of Zagreb, Yugoslavia, were recognized as heirs of 25%
7 and 50% of the estate, respectively. Luise was stranded in Yugoslavia, where she had
8 survived the War with two young children. Her husband was arrested by the
9 communists and executed for being a "capitalist." ALTMANN's older brother Robert,
10 who had fled to Vancouver, Canada with his two other brothers, took up the task of
11 attempting to retrieve Ferdinand's property, which by law now belonged to his heirs.

12 40. Robert retained a lawyer in Vienna, Dr. Gustav Rinesch, a family friend
13 who had also been retained by Ferdinand in the months before his death, to locate and
14 retrieve property stolen from Ferdinand during the Nazi period.

15 41. ALTMANN's older brother Karl Bloch-Bauer, a captain in the allied
16 armed forces, returned to Vienna and recovered one of the Klimt paintings, *Houses in*
17 *Unterach am Attersee*, from Dr. Führer, who was imprisoned for Nazi activities. The
18 painting was kept, along with other artworks taken by Dr. Führer from Ferdinand's
19 collection, in Karl's (or his lawyer's) apartment in Vienna pending a request for
20 permission to export the works to Canada.

21 42. In December, 1947, the Museum of the City of Vienna offered to return
22 the painting *Beechwood* to Ferdinand's heirs in exchange for a refund of the purchase
23 price.

24 43. In January 1948, Dr. Rinesch wrote to the AUSTRIAN GALLERY
25 informing it of the heirs' claim to the three paintings that had come into the museum's
26 possession as a result of transactions conducted by Dr. Führer.

27 *I am the legal representative of the heirs of the Viennese collector*
28 *Ferdinand Bloch-Bauer, deceased in 1945. The said collection, inter alia,*
contained three paintings by Gustav Klimt, i.e. two portraits of Adele

1 *Bloch-Bauer and one landscape. The paintings were handed over to the*
2 *Austrian museum by Bloch-Bauer's attorney-at-law Dr. Erich Führer,*
3 *during the German Reich in the course of the forced liquidation of the*
4 *private property of Bloch-Bauer. I do not know the exact terms and*
5 *condition of that delivery.*

6 *I would appreciate hearing your position with respect to my clients'*
7 *restitution claims. I look forward to receiving your reply . . .*

8 44. In February 1948, Dr. Karl Garzarolli of the AUSTRIAN GALLERY
9 responded in writing to Dr. Rinesch, asserting (falsely) that six Klimt paintings were
10 bequeathed to the museum by the will of Adele Bloch-Bauer, who died in 1925, and that
11 Ferdinand had asked permission from the museum to keep the paintings during his
12 lifetime. Dr. Garzarolli demanded that the heirs deliver the other paintings referenced in
13 Adele's will to the museum. These false claims were repeated to Dr. Rinesch in
14 February, 1948 by the former director of the AUSTRIAN GALLERY, Prof. Bruno
15 Grimschitz, who had been removed from his position after the War. At the end of
16 February, 1948, Dr. Rinesch wrote to Robert Bentley informing him of the AUSTRIAN
17 GALLERY's position and its claims concerning the will of Adele Bloch-Bauer.

18 45. In March 1948, Dr. Garzarolli learned of the true contents of Adele's will
19 and probate proceedings. He then realized that the AUSTRIAN GALLERY's claims
20 concerning the Klimt paintings were untenable. First, in the probate proceedings
21 concerning Adele Bloch-Bauer's will, the attorney for the estate, Ferdinand's brother
22 Gustav Bloch-Bauer, had declared that the Klimt paintings were not the property of
23 Adele, but of her husband Ferdinand, and they were treated as such in the estate
24 proceedings. Second, in her will Adele had expressed only the unenforceable wish that
25 her husband consider leaving the paintings to the museum after his death. Third,
26 although Gustav Bloch-Bauer in 1926, and Prof. Grimschitz in 1948, declared that
27 Ferdinand, had promised to fulfill his wife's wishes, there was no notarized document
28 signed by Ferdinand, making the alleged promise unenforceable against Ferdinand or his
 heirs.

 46. Garzarolli realized the invalidity of his museum's claim to the Klimt

1 paintings, as he very revealingly confided in a letter to his Nazi-era predecessor, Bruno
2 Grimschitz, on March 8, 1948:

3 *In the documents in the possession of the Austrian Gallery, no mention is*
4 *made of these facts, and there are no statements from a district court, nor*
5 *are there any notarized statements or even a personal statement from Mr.*
6 *Ferdinand Bloch-Bauer. In my view you should definitely have sorted this*
7 *out. I am therefore in a particularly difficult situation, especially as the*
8 *letter from Dr. Führer dated 3rd October 1941, which mentions the will,*
9 *creates a situation that is inconsistent with the meaning of the will and*
10 *your knowledge thereof. I cannot understand why, even during the Nazi*
11 *period, an existing incontestable bequest in favor of a national institution*
12 *was not taken into account, by making reference to it or by contacting Mr.*
13 *Bloch-Bauer, who was already abroad, via his temporary asset manager.*
14 *Furthermore, there are no references in the files regarding the purchase of*
15 *the late portrait for 7,500 Reichsmark. Therefore please supply me with*
16 *the necessary statements, as I have to prepare a report.*

17 *The situation is turning into a sea-snake, because at present the City*
18 *Collections are holding in safekeeping or in possession of one of the*
19 *landscapes from the former Bloch-Bauer estate.*

20 *It worries me enormously that so far all the circumstances surrounding the*
21 *restitution issues are very unclear. It will be in your interest to stick closely*
22 *to me through all this confusion. That will probably be the best way for us*
23 *to emerge from this rather dangerous situation.*

24 **The Extortion**

25 47. Despite the heirs' diligent efforts to locate the records and the truth
26 regarding their inheritance, Dr. Garzarolli did not disclose these facts to Dr. Rinesch or
27 the heirs, and kept the files from Adele's probate proceedings in his possession. Instead,
28 despite his private reservations, Dr. Garzarolli took an aggressive stance against the heirs
and prepared to sue them to obtain the other Klimt paintings that were not yet in the
AUSTRIAN GALLERY's possession.

48. On around March 30, 1948, officials from the AUSTRIAN GALLERY
reviewed artworks in the apartment of Karl Bloch-Bauer (or his attorney) in order to
advise the Federal Monument Agency whether to permit the artworks to be exported to
Canada, where Karl and his brother, Robert Bentley, resided. The officials from the

1 AUSTRIAN GALLERY recognized that several of the artworks in the apartment,
2 including Klimt's *Houses in Unterach am Attersee*, were formerly part of the estate of
3 Ferdinand Bloch-Bauer.

4 49. On April 1, 1948, Dr. Garzarolli of the AUSTRIAN GALLERY wrote to
5 the Austrian Attorney General (*Finanzprokuratur*) seeking legal assistance in obtaining
6 the Klimt paintings which were not yet in the possession of the AUSTRIAN
7 GALLERY, including the Klimt painting in Karl Bloch-Bauer's (or his lawyer's)
8 apartment.

9 50. On April 2, 1948, Dr. Garzarolli wrote to Dr. Otto Demus, president of the
10 Federal Monument Agency, notifying him that the AUSTRIAN GALLERY was
11 interested in obtaining several of the artworks belonging to the heirs of Ferdinand Bloch-
12 Bauer which were seen in Karl's apartment. In order to gain an advantage in negotiating
13 with Ferdinand's heirs, Dr. Garzarolli requested that the processing of export permits for
14 the heirs' artworks be delayed -- "*please delay this for tactical reasons.*"

15 51. On April 3, 1948, Dr. Demus of the Federal Monument Agency
16 telephoned and met with Dr. Rinesch and informed him that the AUSTRIAN
17 GALLERY put great value in the artworks in Karl's apartment and that a quick
18 agreement concerning export permits was unlikely. Dr. Demus discussed the subject of
19 the Klimt paintings with Dr. Rinesch and informed him that if there was a dispute over
20 these works, none of the artworks from Ferdinand's collection would be permitted to be
21 exported to the heirs until that dispute was resolved. Dr. Demus' handwritten notes of
22 this conversation state: "*Inform Dr. Rinesch that if the [illeg. 12 or K] paintings are assessed*
23 *separately, it will be necessary to hold on to all of them.*"

24 52. This discussion also pertained to a large number of valuable artworks from
25 Ferdinand's collection that had been stolen by the Nazis for the collections of Adolf
26 Hitler and Hermann Göring, among others, and were being held in the Allied Art
27 Collecting Point in Munich, Germany. These artworks could only be returned to the
28 heirs after the allied forces had delivered them to Austrian authorities at the request of

1 the Federal Monument Agency. These works would also be subject to review by the
2 AUSTRIAN GALLERY and the Federal Monument Agency, and export permits would
3 only be granted with their consent. Given the high artistic and monetary value of these
4 other works, Dr. Rinesch had every reason to expect that the AUSTRIAN GALLERY
5 and the Federal Monument Agency would attempt to use the export permit restrictions to
6 obtain “donations” of a number of these artworks.

7 53. On April 10, 1948, Dr. Rinesch met with Dr. Garzarolli to discuss the
8 impending application for export permits for the entire collection of Ferdinand Bloch-
9 Bauer, including the artworks in Karl’s apartment and those sought from the Art
10 Collecting Point in Munich. In the course of this meeting, Dr. Rinesch told Dr.
11 Garzarolli that Ferdinand’s heirs would acknowledge the will of Adele Bloch-Bauer and
12 allow the AUSTRIAN GALLERY to keep the six Klimt paintings mentioned in that
13 will. Dr. Rinesch made this agreement with the hope and expectation that Dr. Garzarolli
14 would permit the heirs to export other artworks. Dr. Rinesch knew that Dr. Garzarolli’s
15 cooperation was absolutely necessary if he was to obtain export permits for any of the
16 artworks from Ferdinand’s collection.

17 54. Dr. Rinesch saw the probate files for Adele’s will for the first time on
18 April 10, 1948, the same day he met with Dr. Garzarolli and agreed that the heirs would
19 “donate” the Klimt paintings. He apparently realized that Adele’s will was not legally
20 binding, but purportedly believed at the time that the evidence of Ferdinand’s purported
21 promise to fulfill his wife’s wishes would be sufficient to give the museum a claim, as he
22 reported to Robert Bentley on April 11, 1948:

23 *As the contents of Carl’s apartment are now being packed up, the*
24 *Memorial Office also paid their visit this week. As I anticipated, the*
25 *officials noticed immediately that among the paintings there were several*
26 *from the Bloch-Bauer collection. I then received a phone call from Dr.*
27 *Demus, and George and I went to his office. Dr. Demus explained that he*
28 *and the Austrian Gallery placed great value on the paintings. He also said*
it would be difficult to reach agreement regarding the small group of
paintings for which we want export permits immediately. In my view, we
should file a joint application for all the export permits for the paintings in

1 question, including those currently in Munich. We also discussed the Klimt
2 paintings and Adele Bloch-Bauer's legacy. I think that by resolving this
3 matter we can win the favor of the Memorial Office and the museum, so
4 yesterday I obtained the estate file from the district court.

5 According to her will dated 19th January 1923, your aunt's legacy of two
6 portraits and four landscapes by Klimt to the Austrian Gallery was in the
7 following form:

8 [quote from the will]

9 It is true that this is not in the form of a legacy; nevertheless, the file
10 contains a declaration from your uncle in which he promises to fulfill his
11 wife's request. This doubtless gives the Austrian Gallery a legal claim, just
12 as to a legacy, and it will be necessary to fulfill the terms of the will. You
13 are in any case in agreement (per your letter dated 8th March) that this
14 should happen.

15 Yesterday I visited Dr. Garzarolli of the Austrian Gallery. He has already
16 viewed the paintings in Carl's apartment and knows about your aunt's will
17 and your uncle's declaration. I made a declaration that Ferdinand Bloch-
18 Bauer's heirs will fulfill his (your uncle's) wishes, and I am glad to say
19 this was duly noted. According to the declaration I made, the Klimt
20 painting (Houses on Attersee) which is in Carl's apartment, and for which
21 in any case no export permit has been requested, will be given to the
22 museum. Per our agreement, it will be up to the museum to handle the
23 proceedings regarding the return of the painting (Birch Forest) in the
24 possession of Vienna City Collections and the one that Ucicky bought from
25 Dr. Führer. The six paintings will be given dedication plates and hung
26 alongside one another in the gallery.

27 The museum is already favorably disposed regarding this, so I immediately
28 discussed the question of exporting the other paintings. I have not yet
received a definitive commitment, but I agreed to submit a list of all
paintings that we want to immediately export, and that they will be
exported gradually once they have been brought back here. I will do this
immediately, and perhaps some of the things can be sent along with the
shipment of Carl's furniture.

55. Dr. Rinesch's April 11, 1948 report to Robert Bentley was mistaken and
his legal conclusion concerning the enforceability of Ferdinand's purported promise was
incorrect. In fact, Ferdinand's purported promise had no binding effect and was legally
unenforceable. Dr. Rinesch most likely did not know at the time that Ferdinand's

1 purported promise was never memorialized. In later documents, Dr. Rinesch alleged
2 that the heirs had had the ability to prevent the Klimt paintings from going to the
3 AUSTRIAN GALLERY, and successfully argued that their “donation” to the museum
4 justified the granting of export permits for other artworks.

5 56. On April 12, 1948, Dr. Rinesch executed a document purporting to
6 acknowledge on behalf of the heirs of Ferdinand Bloch-Bauer the intention expressed in
7 Adele’s will concerning the Klimt paintings. Dr. Rinesch asked that the agreement be
8 confirmed with his client Robert Bentley. The confirmation never took place.

9 57. On or about April 12, 1948, Dr. Rinesch allowed the AUSTRIAN
10 GALLERY to pick up the Klimt painting *Houses in Unterach am Attersee* from Karl’s
11 apartment.

12 58. On April 13, 1948, Dr. Rinesch submitted to the Federal Monument
13 Agency a lengthy application for export permits for the remainder of Ferdinand Bloch-
14 Bauer’s art collection. Dr. Rinesch sent a copy of the application to Dr. Garzarolli
15 asking for his support for the application, concluding in his cover letter, “I rely on your
16 sense of justice.”

17 59. Although not without difficulties caused by Dr. Garzarolli and Dr. Demus,
18 over the next 18 months Dr. Rinesch obtained export permits for almost all of the other
19 recovered artworks. Still fighting for export permits in July 1949, Dr. Rinesch wrote:

20 *The Bloch-Bauer heirs have, to document their interest in the public*
21 *Austrian collections, in the most loyal way agreed that the major works of*
22 *the Austrian painter Gustav Klimt from the Bloch-Bauer collection may*
23 *remain at the AUSTRIAN GALLERY as a bequest. Even if this bequest*
24 *was originally already foreseen in the will of Ferdinand Bloch-Bauer’s*
25 *deceased wife, the heirs certainly had the ability to prevent the fulfillment*
26 *of this bequest, because in the meantime the financial circumstances of the*
testatrix’s family had changed catastrophically and also the remaining
conditions of the bequest had fallen away through the experiences of the
Third Reich.

27 60. Dr. Rinesch enlisted the support of Dr. Garzarolli, who now agreed to
28 approve lifting the export restriction on several remaining works, based on the purported

1 donation of the Klimt paintings:

2 *The Austrian Gallery has now reassessed the issues. In light of the reasons*
3 *indicated below, we now recommend to the Federal Monument Office that*
4 *export permits for the two paintings be granted, by way of an exception.*

5 *Despite various transactions which were carried out during the Nazi*
6 *period by Mr. Bloch-Bauer's legal representative and which significantly*
7 *worsened the Austrian Gallery's position, Mr. Ferdinand Bloch-Bauer's*
8 *heirs immediately acknowledged his declaration – supplied to the District*
9 *Court of Vienna I for the event of his death – indicating his intention to*
10 *uphold the desire of his deceased wife to donate five Klimt paintings to the*
11 *Austrian Gallery. As a result, they have created a situation in which the*
12 *Austrian Gallery can actually receive this legacy.*

13 61. In the course of seeking export permits, the heirs were also required to
14 donate one further work to the AUSTRIAN GALLERY, as well as 19 porcelain settings
15 and 16 Klimt drawings to other federal museums. A watercolor and 15 porcelain
16 settings had to be traded for comparable, but probably inferior, substitutes from the
17 federal museum collections.

18 62. With the assistance of Dr. Rinesch, the AUSTRIAN GALLERY also
19 obtained the Klimt painting *Beechwood* from the Städtische Sammlungen, and a
20 notarized agreement from Gustav Ucicky to donate his Klimt paintings, including
21 *Schloss Kammer am Attersee III*, to the AUSTRIAN GALLERY after his death, which
22 occurred in 1961.

23 63. The government continued to fight the heirs in other ways, dragging out the
24 negotiations over the return of Ferdinand's sugar factory for over ten years. The heirs
25 and their attorney finally gave in, settling for a payment of just \$600,000 from the sale of
26 the sugar factory. As part of the settlement, they were forced to give up the beautiful
27 Elisabethstrasse home, which to this day houses the offices of the Austrian railroad.
28 They also had to sell a number of the returned artworks to pay taxes the government said
were due from the factory. Nothing was ever retrieved from Czechoslovakia. Almost
all of the fabulous porcelain collection was never returned, and pieces continue to show
up at auction – the owners purportedly immune from suit under Europe's "bona fide"

1 purchaser rules, despite the fact that it is difficult to imagine how purchasers could have
2 been unaware that these were snatched from their rightful owners.

3 64. From Ferdinand's once enormous personal estate, little or nothing
4 remained. The post-war restitution process in Austria had turned the old maxim on its
5 head – to the defeated went the spoils.

6 **Lack of ALTMANN's Authorization, Knowledge or Consent**

7 65. At her brother's request, ALTMANN apparently executed a general power
8 of attorney form for Dr. Rinesch on December 31, 1945. However, ALTMANN was not
9 informed of Mr. Rinesch's actions with regard to the Klimt paintings and never
10 authorized Dr. Rinesch to allow the AUSTRIAN GALLERY to obtain the Klimt
11 paintings. ALTMANN was not fully informed of these activities and proceedings until
12 January 1999, when documents relating to the transfer of the Klimt paintings were
13 released by the REPUBLIC OF AUSTRIA in connection with a review of the
14 provenance of artworks obtained by the AUSTRIAN GALLERY in the post-war period.
15 Until 1999, ALTMANN mistakenly believed that the artworks had been freely donated
16 by her aunt Adele and uncle Ferdinand to the AUSTRIAN GALLERY before the War.
17 She was unaware that the paintings were stolen from her uncle and that it was only
18 through the unauthorized agreement of Dr. Rinesch in April 1948, purportedly made on
19 her behalf, that the AUSTRIAN GALLERY had claimed ownership of the paintings.

20 66. ALTMANN's mistaken belief was the result of the false and fraudulent
21 statements made by the AUSTRIAN GALLERY to Dr. Rinesch, which were transmitted
22 to ALTMANN's brother, Robert Bentley, in Vancouver, Canada, and later recounted to
23 ALTMANN by her brother and other family members. Furthermore, in numerous
24 exhibits and publications concerning the Klimt works, the AUSTRIAN GALLERY had
25 provided incorrect provenance information and had repeated the false claim that the
26 artworks were donated by Ferdinand and Adele Bloch-Bauer to the museum on dates
27 inconsistent with the true facts.

28 67. For example, in the book *Gustav Klimt in the AUSTRIAN GALLERY*

1 *Belvedere in Vienna* by Dr. Gerbert Frodl, the current director of the AUSTRIAN
2 GALLERY, it is alleged that the two paintings *Adele Bloch-Bauer* and *Apple Tree I*
3 were obtained by the museum through a bequest of the Bloch-Bauer family in 1936.
4 The book also states that *Adele Bloch-Bauer II* was obtained from Ferdinand Bloch-
5 Bauer in 1928. This provenance information is false, and is belied by numerous
6 documents that were in the AUSTRIAN GALLERY's possession and kept secret by the
7 AUSTRIAN GALLERY. The paintings were obtained in 1941-1943, during the
8 liquidation of Ferdinand's estate by the Nazis.

9 68. Until the recent investigation prompted by the enactment of a new
10 Austrian law in December 1998, however, ALTMANN had no reason to question these
11 statements and did not know, and could not have known, the truth until documents
12 evidencing these facts were released by the AUSTRIAN GALLERY and the Federal
13 Monument Agency in 1999.

14 69. ALTMANN's brother Robert and sister Luise, both of whom died before
15 1999, also were unaware of the truth regarding Ferdinand's Klimt paintings.
16 ALTMANN is informed and believes, and based thereon alleges that the heirs did not
17 properly authorize Dr. Rinesch's April 1948 agreement, and could not have learned of
18 the truth before 1999. For his part, Dr. Rinesch may have believed that under the
19 circumstances, and the duress imposed by the REPUBLIC OF AUSTRIA and the
20 AUSTRIAN GALLERY, he was doing the best for Ferdinand's heirs. Indeed, Dr.
21 Rinesch was relatively successful in securing the release of other artworks, largely as a
22 result of his "donation" of the Klimt paintings. But this does not mitigate the fact that
23 none of the heirs were fully informed of the underlying facts prior to his decision, and
24 none of them properly authorized the "donation" of the Klimt paintings.

25 70. As explained below, Defendants are estopped under Austrian law from
26 relying on the 1948 transaction by Dr. Rinesch in this dispute over title to the Klimt
27 paintings.

28 **The Revelation**

1 owners. The law was unanimously approved by the Austrian parliament and signed into
2 law by the President of Austria in December 1998.

3 75. The 1998 art restitution law states that artworks should be returned without
4 regard to the statute of limitations, prescription or export permit restrictions.

5 76. Indeed, during the parliamentary debate concerning the new law,
6 Representative Dr. Andreas Khol, a prominent member of Austrian People's Party,
7 stated

8 *Before everything and for all it must be: Wrong cannot be made into right*
9 *through the passage of time. . . . We give artworks back to the people who*
10 *were robbed of them by the Nazis, artworks that were in truth returned to*
11 *these people after the war, but from which a portion was required to stay*
12 *in the Republic and made the property of the Republic. The artworks were*
13 *actually given back to the victims of the robbery, but in order to export*
14 *them to a foreign country, they had to donate a portion to the Republic.*
15 *These actions which may have been legal at the time, but under our*
16 *current view were illegal, we wish to correct. . . .Ladies and gentlement!*
17 *Justice is universal. Justice is preciely in this noble house a special task.*
18 *There are always people who say: Is there never an end to this? When*
19 *will there finally be an end to these things? -- I say to them, what I*
20 *already said at the begnning: Each generation is newly and repeatedly*
21 *obligated to deal with the consequences of the Holocaust, and in my view*
22 *there will never be an end to achieving justice for these unbelievable and*
23 *unique crmes.*

24 77. Another pominent representative of the People's Party, Franz Morak,
25 voiced similar views:

26 *There are naturally also in Austria still people who ask . . . Do we need*
27 *this law? -- To those people I would like to say; I invite you to read the*
28 *letters that were written after the war in these cases by the federal*
monument agency and the federal museums . In these files are things that
make you sick to your stomach, when you see how people were treated!
That in the course of the Nazi-oganized mass murder of Jews property was
robbed and people were killed, is not new. But in the files concering the
restitution of Jewish property, with which we are dealing today, is not only
evidence of a gigantic Nazi-theft action, but also evidence of the often
cynical bureaucratic games that our Republic played with the returning
victims. Whoever studies these documents is upset and disturbed about the
manner in which the bureaucracy of our land almost from the top down

1 only a little more than half as much in today's market as Ferdinand Bloch-Bauer's Klimt
2 paintings that are at the core of the Klimt collection at the AUSTRIAN GALLERY,
3 Vienna's most popular museum. Certainly in terms of their importance to Austria,
4 Ferdinand's Klimt paintings are in a class by themselves.

5 83. Anticipating possible opposition from the very conservative committee,
6 Schoenberg obtained an opinion from an Austrian expert on probate and estate law, Dr.
7 Andreas Lintl, on the significance of Adele's will. Lintl concluded (as had Gustav
8 Bloch-Bauer in 1948 and Garzarolli and Dr. Rinesch in 1948) that the statements in
9 Adele's will were of no legal consequence and that the heirs had not been required to
10 give the paintings to the AUSTRIAN GALLERY. This meant that the paintings were
11 donated solely in exchange for export permits and would have to be returned under the
12 new restitution law. Schoenberg sent the opinion to Wran.

13 84. In March, Bacher's research committee submitted a report on the Bloch-
14 Bauer collection to Wran's committee, and sent a copy to Schoenberg. The report
15 omitted key documents, gave only a partial view of the story, and made several incorrect
16 conclusions. For example, the report omitted the crucial portions of Dr. Garzarolli's
17 March 8, 1948 letter to Dr. Grimschitz. Schoenberg wrote to Wran and Bacher
18 correcting the report and asked that his letter and further documents be shown to Wran's
19 committee. Unbeknownst to Schoenberg, this request was not honored and the rest of
20 the committee was forced to rely on an incomplete and misleading report.

21 85. Schoenberg met with Wran in late April, but Wran could not discuss the
22 specifics of the case. Wran forced the decision on the Bloch-Bauer collection to be
23 pushed off by the committee until the end of June. In the meantime, he and one of his
24 compatriots on the committee, Manfred Kremser, a government attorney, drafted a legal
25 opinion contrary to the one submitted by the heirs. Not knowing the conclusions of the
26 government attorney's opinion, Schoenberg requested by telephone and in writing that
27 he be given an opportunity to read any contrary opinion and to address the committee
28 and respond to any arguments made against restitution. This request was refused by

1 Wran and Kremser. Having heard from the press that opposition was brewing, but in the
2 dark as to what Kremser had written, Schoenberg submitted a further opinion from Lintl
3 again concluding that neither Ferdinand, nor his heirs, were legally required to donate
4 the paintings to the AUSTRIAN GALLERY.

5 The Decision

6 86. On June 28, 1999, the committee met and quickly affirmed the
7 recommendation of Wran and Kremser that the Klimt paintings not be returned. The
8 committee did agree to return 16 Klimt drawings and 19 porcelain settings that had been
9 donated by the family in 1948 as part of the consideration for export permits. Gehrler
10 simultaneously announced her adoption of the committee's recommendations.

11 87. The other members of the committee were not given copies of the two
12 opinions by Lintl, nor were they given most of Schoenberg's letters or informed of his
13 request to see and respond to Kremser's opinion. Wran confirmed this when he
14 informed Schoenberg of the committee's decision. The Bloch-Bauer heirs and their
15 attorney had been purposely excluded from the entire decision-making process.

16 88. Not all of the committee members were in accord with Wran's tactics.
17 Ilsebill Barta-Fliedl abstained from the vote and questioned the judgment and motives of
18 the other members. Before the committee even discussed the matter she had been
19 ordered by her superior, one of the government ministers, not to vote in favor of
20 restitution in the Bloch-Bauer case. Apparently, the committee vote was predetermined
21 by the Austrian government before the committee had even discussed the matter. The
22 vote was a sham. At the end of the year, Barta-Fliedl resigned from the committee in
23 protest. She has stated that it was clear from the first couple of meetings that the
24 attitudes of the other members of the committee were inconsistent with the purposes of
25 the committee. The committee was made up of people who opposed art restitution in
26 general and were especially hostile to the claims of Ferdinand's heirs.

27 The Law

28 89. Kremser's legal opinion, and therefore the committee's decision, was

1 premised on the false assertion that Adele’s will gave the AUSTRIAN GALLERY an
2 ownership interest in the paintings. In coming to this conclusion, however, Kremser
3 purposely misread Adele’s will and expressly disagreed with all of the leading Austrian
4 legal experts who have written on this precise legal issue in the last several years (before
5 the Bloch-Bauer case arose). First, Adele’s will merely expresses a request, but did not
6 purport to obligate Ferdinand to make the donation. Second, even if Adele did purport
7 to obligate Ferdinand, the obligation would not have been enforceable because the
8 paintings belonged to Ferdinand.

9 90. In his 1994 article on “The Legacy of an Object Not Belonging to the
10 Estate,” Prof. Rudolf Welser, Director of the Institute for Civil Law at the University of
11 Vienna, concluded:

12 *[The rule] that the testamentary disposition of an object not belonging to*
13 *the estate is valid when the object belongs to an heir, does not apply in the*
14 *case when the testator sets forth that the heir should upon his own death*
15 *leave an object from his own separate property to a third party.*

16 91. Adele’s will reads as follows:

17 *I kindly ask my husband to bequeath my two portraits and the four*
18 *landscapes by Gustav Klimt after his death to the Austrian State Gallery in*
19 *Vienna*

20 92. In the estate files is a declaration dated January 1926 from Gustav Bloch-
21 Bauer (Ferdinand’s brother), the attorney for the estate, stating:

22 *It should be noted that the referenced Klimt paintings are not the property*
23 *of the deceased testatrix, but of her husband.*

24 93. The Klimt paintings were not included as part of Adele’s estate during the
25 course of the probate proceedings.

26 94. Thus, even if one were to conclude that Adele’s request purported to
27 obligate her husband, it is clear that her request was not a legal bequest, but was at most
28 a “*Legacy of an Object Not Belonging to the Estate*” asking her husband Ferdinand to
dispose of his own property in a certain way after his death. This wish, according to
Prof. Welser and the other Austrian legal scholars, is, and was, unenforceable (as it

1 would be under American law). To enforce such a request against the terms of
2 Ferdinand's last will would violate and circumvent the strict laws regarding testamentary
3 dispositions. And yet Kremser and Wran led the commission members to believe the
4 exact opposite so that there would be no opposition to the government's pre-ordained
5 decision not to return the paintings to Ferdinand's heirs.

6 95. Indeed at ALTMANN's request, Prof. Welser has reviewed and analyzed
7 this case and concluded in a lengthy and exhaustive expert opinion:

8 ***I. In the period between 1923 and 1948, the Republic of Austria did not***
9 ***acquire a claim to or ownership of the Klimt paintings.***

10 *1. Adele Bloch-Bauer's testamentary request to her husband Ferdinand*
11 *Bloch-Bauer to leave the paintings to the Austrian Gallery after his death*
12 *constitutes a non-binding wish, and therefore does not constitute the basis for*
13 *any estate law claims. Even if one assumed there was an intention to establish an*
14 *obligation, that testamentary order would be ineffective, as it would encroach*
15 *upon Ferdinand Bloch-Bauer's testamentary freedom. It would only be possible*
16 *to convert the ineffective testamentary order into a reversionary-heir legacy if*
17 *the paintings were the property of Adele Bloch-Bauer. A conversion of this kind*
18 *is impermissible, as it would encroach upon testamentary freedom if the*
19 *paintings were the property of Ferdinand Bloch-Bauer. Ferdinand Bloch-Bauer*
20 *'s declaration to the probate court, and the legal presumption pursuant to § 1237*
21 *(old version) of the General Civil Code, are indications that the paintings*
22 *belonged to Ferdinand. Moreover, one cannot infer from Adele Bloch-Bauer's*
23 *will that she believed the paintings belonged to her.*

24 *2. In making his declaration to the probate court that he intended to*
25 *faithfully fulfill his wife's request, Ferdinand Bloch-Bauer merely non-bindingly*
26 *held out the prospect of fulfilling that request. In doing so, he did not establish a*
27 *binding legal obligation with regard to the Austrian Gallery that he would*
28 *bequeath the paintings. In any case, it would not have been legally feasible to*
establish a binding obligation of this kind, because not only did Ferdinand
Bloch-Bauer have no intention of establishing an obligation to make a donation
due upon death, but also the formal requirements were not met. Furthermore,
Ferdinand Bloch-Bauer's statement of intent is definitely not an indication that
he wished to donate the paintings to the Austrian Gallery during his lifetime.
Even if one were to assume he intended to bind himself in this way, the formal
requirements (a notarial act) were not met, nor was there an actual surrender of
the paintings.

3. The sale of Adele Bloch Bauer I, Adele Bloch Bauer II and Apple Tree
I to the Austrian Gallery and of Beech Forest (Birch Forest) to the Vienna City
Collections by Dr. Führer, the lawyer officially assigned the task of liquidating
Ferdinand Bloch-Bauer's assets between 1938 and 1945, cannot be deemed a

1 legal transaction attributable to Ferdinand Bloch-Bauer. The sale neither
2 constituted the basis of nor fulfilled an obligation on the part of Ferdinand
Bloch-Bauer.

3 **II. The prerequisites for authorization to restitute the paintings to the heirs of**
4 **Ferdinand Bloch-Bauer without remuneration pursuant to § 1 of Austria's**
5 **Federal Act Regarding the Restitution of Artworks from Austrian Federal**
6 **Museums and Collections dated 4th December 1998 are met.**

7 1. The legal element set forth in § 1 Paragraph 3 of the Restitution Act
8 1998 is not applicable. Nevertheless, the paintings do fulfill the wording of the
9 legal element regarding restitution set forth in Paragraph 2: As a result of Dr.
10 Führer's transactions, all the paintings were the subject of legal transactions or
11 legal acts as defined in § 1 of the Annulment Act, and after 1945 passed lawfully
12 into the ownership of the Federal Government pursuant to an agreement between
Ferdinand Bloch-Bauer's heirs and the Austrian Gallery. However, in light of the
legislator's intentions, § 1 Paragraph 2 must be interpreted restrictively, such
that it applies only to acquisition from third parties, in particular from
authorized dealers or at auctions. Paragraph 2 does not apply to acquisition
from parties with a valid claim, because if it did, Paragraph 1 would lose its
entire sphere of applicability.

13 2. The prerequisite for authorization pursuant to § 1 Paragraph 1 of the
14 Restitution Act 1998 is that the artworks were the subject of restitution to their
15 original owners or legal successors upon death and after 8th May 1945 in the
16 course of proceedings arising therefrom passed into the ownership of the
Federal Government without remuneration pursuant to the federal Law
Regarding the Ban on the Export of Objects of Historical, Artistic or Cultural
Significance.

17 Adele Bloch Bauer I, Adele Bloch Bauer II, and Apple Tree I were not
18 restituted; instead, Ferdinand Bloch-Bauer's heirs came to an agreement with
19 the Austrian Gallery that the pictures should remain with the Gallery
permanently, and that the heirs would not demand that they be restituted. In light
20 of the legislator's intentions, a short-cut procedure of this kind is not a barrier to
21 the applicability of Paragraph 1. The question of whether Houses in Unterach
am Attersee and Beech Forest (Birch Forest) also fulfill that legal element
22 hinges on whether the prerequisite for fulfillment of the legal element "subject of
a restitution" as set forth in § 1 Paragraph 1 of the Restitution Act 1998 is that
23 the artworks were first restituted by the Republic. If that is not a prerequisite,
then those two paintings do fulfill that legal element.

24 All the paintings were surrendered to the Republic without remuneration as
25 defined in § 1 Paragraph 1, because the Federal Government gave no material
26 quid pro quo, and Ferdinand Bloch-Bauer's heirs were not under any legal
27 obligation. The transfer of ownership was carried out in direct connection with
the offer to facilitate the granting of export permits for the remaining artworks.
Indeed in her reply to a written parliamentary question about artworks in the
28 possession of the Republic of Austria, the current Minister of Education, Science
& Culture stated that there was an evident connection between the

1 *relinquishment of the paintings and the granting of an export permit.*

2 3. *To sum up: § 1 Paragraph 1 of the Restitution Act 1998 is applicable*
3 *at least to Adele Bloch Bauer I, Adele Bloch Bauer II and Apple Tree I. Whether*
4 *the same is true of Houses in Unterach am Attersee and Beech Forest (Birch*
5 *Forest) depends on whether it is irrelevant that after 1945 the paintings were in*
6 *the possession of Dr. Führer and the City of Vienna respectively rather than the*
7 *Republic. In light of the practices of the Advisory Council established pursuant*
8 *to § 3 of the Restitution Act 1998, on balance it is fair to say that § 1 Paragraph*
9 *1 is probably applicable to those two paintings as well.*

7 Political Pressure

8 96. Schoenberg wrote to Gehrer to inform her of the committee’s grave error
9 and the denial of due process to Ferdinand’s heirs. He recommended an arbitration
10 process to resolve the dispute over the legal significance of Adele’s will. Gehrer
11 rejected this approach, stating that if the heirs believed the decision was wrong, their
12 only remedy was to go to court. Gehrer also stated, contrary to all the facts that were
13 available to her and in clear denial of what had transpired during the Nazi era, that “[t]he
14 *paintings were not stolen from Ferdinand Bloch-Bauer.*”

15 Attempts To File An Austrian Lawsuit

16 97. In September, 1999, ALTMANN announced that she would file a lawsuit
17 in Austria to vindicate her claim. However, the government had more in store for her.
18 First, it was necessary to apply for a waiver of the enormous court costs required to bring
19 a lawsuit in Austria. These court costs are based on the value of the recovery that is
20 sought and in this case would total several million dollars, far beyond what ALTMANN,
21 who at the time still worked as a specialty dress supplier at age 84, could afford.

22 98. However, in November, 1999, the Austrian court granted ALTMANN and
23 some of the other heirs only a partial waiver, and ruled that they were required to spend
24 approximately \$350,000 or all the assets at their disposal – essentially their entire life
25 savings – in order to proceed. The Court ruled as follows:

26 *Given that the statutory rate for a claim valued at 2 billion*
27 *shillings amounts to about 20 million, it is evident that the*
28 *demonstrated income and assets of the plaintiffs do not*
permit them to bear all the expenses themselves. Of course,

1 *it is [also] evident from the findings that they must pay the*
2 *amount set by the statute themselves to the extent they can be*
3 *required to draw upon their assets. In particular, there is no*
4 *reason to spare [the plaintiffs'] savings accounts at the*
5 *expense of the general public [i.e., the Austrian State].*

6 99. Not content with even this impossible ruling, in December, 1999 the
7 Austrian government appealed the court's decision, arguing that the amount Mrs.
8 Altmann and the other heirs should have to pay should include the value of the porcelain
9 and drawings that were finally returned to them, after lengthy bureaucratic delays, in
10 November, 1999. This appeal was rejected as moot because ALTMAN was unable to
11 file the lawsuit in Austria.

12 The Treaty

13 100. In Article 26 of the Multilateral Austrian State Treaty of May 15, 1955,
14 Austria promised:

15 In so far as such action has not already been taken, Austria undertakes that,
16 in all cases where property, legal rights or interests in Austria have since
17 13th March, 1938, been subject to forced transfer or measures of
18 sequestration, confiscation or control on account of the racial origin or
19 religion of the owner, the said property shall be returned and the said legal
20 rights and interests shall be restored together with their accessories.

21 101. Austria has failed to live up to its treaty obligations because it has refused
22 to return the Klimt paintings to Ferdinand's heirs.

23 102. In his May 15, 1959 letter regarding the settlement of Article 26 claims
24 for restitution, U.S. Ambassador to Austria H. Freeman Matthews concluded:

25 My Government has instructed me to advise you that it may approach the
26 Austrian Federal Government in the future in connection with the
27 settlement of individual claims asserted under Article 26 of the State
28 Treaty which are not presently known to my Government and do not fall
 within the classes and categories of claims enumerated in paragraphs 1 and
 2 of Section A of your note [which do not including artworks].

 103. In other words, the U.S. reserved the right to assert unknown claims, such
 as the ones for the Bloch-Bauer's paintings. The fact that the Austrian government had
 misled the heirs and had falsified the provenance of the paintings was not revealed until
 last year, so these claims fall within the category of claims "not presently known" in

1 1959. Therefore, the United States has the ability to enforce ALTMANN's claims
2 against the AUSTRIAN GALLERY.

3 104. In 1998, the U.S. Congress enacted and President Clinton signed the
4 Holocaust Victims Redress Act, Pub. L. No. 105-158, 112 Stat. 18 (1998) which
5 provides:

6 TITLE II--WORKS OF ART SEC. 201. FINDINGS.

7 Congress finds as follows:

8 (1) Established pre-World War II principles of international law, as
9 enunciated in Articles 47 and 56 of the Regulations annexed to the 1907
10 Hague Convention (IV) Respecting the Laws and Customs of War on
11 Land, prohibited pillage and the seizure of works of art.

12 (2) In the years since World War II, international sanctions against
13 confiscation of works of art have been amplified through such conventions
14 as the 1970 Convention on the Means of Prohibiting and Preventing the
15 Illicit Import, Export and Transfer of Ownership of Cultural Property,
16 which forbids the illegal export of art work and calls for its earliest
17 possible restitution to its rightful owner.

18 (3) In defiance of the 1907 Hague Convention, the Nazis extorted
19 and looted art from individuals and institutions in countries it occupied
20 during World War II and used such booty to help finance their war of
21 aggression.

22 (4) The Nazis' policy of looting art was a critical element and
23 incentive in their campaign of genocide against individuals of Jewish and
24 other religious and cultural heritage and, in this context, the Holocaust,
25 while standing as a civil war against defined individuals and civilized
26 values, must be considered a fundamental aspect of the world war
27 unleashed on the continent.

28 (5) Hence, the same international legal principles applied among
states should be applied to art and other assets stolen from victims of the
Holocaust.

(6) In the aftermath of the war, art and other assets were transferred
from territory previously controlled by the Nazis to the Union of Soviet
Socialist Republics, much of which has not been returned to rightful
owners.

SEC. 202. SENSE OF THE CONGRESS REGARDING RESTITUTION
OF PRIVATE PROPERTY, SUCH AS WORKS OF ART.

It is the sense of the Congress that consistent with the 1907 Hague
Convention, all governments should undertake good faith efforts to
facilitate the return of private and public property, such as works of art, to
the rightful owners in cases where assets were confiscated from the
claimant during the period of Nazi rule and there is reasonable proof that

1 the claimant is the rightful owner.

2 **Last Resort**

3 105. As described above, Austria has failed to undertake good faith efforts to
4 facilitate the return of the Klimt paintings that are the subject of this action, in the sense
5 that would be required under the Holocaust Victims Redress Act.

6 106. ALTMANN alleges that she is essentially without any legal remedy in
7 Austria for her claims. The new Austrian law purports to give victims no additional
8 legal right to make claims for the return of artworks, although ALTMANN contends that
9 under Austrian law she may enforce her right to an equal application of the law.
10 However, in order to file an action in Austria challenging the decision of the minister,
11 ALTMANN would be required to post an enormous cost bond equivalent to a
12 percentage of the value of the paintings. ALTMANN requested a waiver of this bond
13 requirement, which request was granted only in part, so that ALTMANN would be
14 required to post a bond equal to all or most of her assets other than her home before
15 proceeding. ALTMANN cannot afford to proceed under these conditions in Austria.
16 This court is the only reasonably available forum in which ALTMANN's claims can be
17 heard and adjudicated.

18 107. Minister Gehrler has stated that she would follow a court's ruling on the
19 enforceability of the request in Adele's will, and ALTMANN is informed and believes
20 that the AUSTRIAN GALLERY will abide by the decision of an American court in this
21 matter.

22 **FIRST CAUSE OF ACTION**
23 **FOR DECLARATORY RELIEF**
24 **(28 U.S.C. 2201)**

25 108. ALTMANN incorporates here by reference paragraphs 1 through 107.

26 109. A dispute has arisen between ALTMANN and the AUSTRIAN
27 GALLERY concerning the Klimt paintings.

28 110. Pursuant to a law enacted by the REPUBLIC OF AUSTRIA in December

1 1998, all artworks which were objects of restitution after the War and which were
2 donated to the AUSTRIAN GALLERY in connection with a request for export permits,
3 or were never properly restituted and were subsequently obtained by the AUSTRIAN
4 GALLERY, must be returned to their original owners or their heirs. However, the
5 AUSTRIAN GALLERY has refused to return the Klimt paintings to ALTMANN and
6 the other heirs of Ferdinand Bloch-Bauer. On June 28, 1999, the federal minister who
7 governs the AUSTRIAN GALLERY, Elisabeth Gehrler, decided against restitution of the
8 Klimt paintings mentioned in Adele's will to Ferdinand's heirs. On July 12, 1999,
9 Gehrler wrote to ALTMANN's attorney stating that if the heirs continued to believe that
10 the artworks were stolen, they should take their dispute to court. Thus, the issues in this
11 case are ripe for declaratory relief.

12 111. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that
13 Adele Bloch-Bauer's will did not give the AUSTRIAN GALLERY an enforceable right
14 to inherit or obtain title to the six Klimt paintings before or after Ferdinand's death.

15 112. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that
16 Ferdinand Bloch-Bauer's response to Adele Bloch-Bauer's will, as set forth in Gustav
17 Bloch-Bauer's declaration, did not give the AUSTRIAN GALLERY an enforceable
18 right to inherit or obtain title to the six Klimt paintings before or after Ferdinand's death.

19 113. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that
20 Ferdinand Bloch-Bauer's purported oral promises and actions prior to 1938, including
21 the donation of one painting in 1936, did not give the AUSTRIAN GALLERY an
22 enforceable right to inherit or obtain title to the other five Klimt paintings before or after
23 Ferdinand's death.

24 114. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that the
25 six Klimt paintings mentioned in Adele's will were legally the sole property of
26 Ferdinand, and not Adele, at the time of Adele's death.

27 115. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that any
28 request in Adele's will or any purported intention by Ferdinand prior to 1938, with

1 regard to a donation of the Klimt paintings to the AUSTRIAN GALLERY, is
2 unenforceable because the implied condition underlying it -- namely, the ability of the
3 Bloch-Bauer family to live in Austria -- was unalterably changed by the events that
4 transpired after March 1938.

5 116. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that six
6 Klimt paintings -- *Adele Bloch-Bauer I*; *Adele Bloch-Bauer II*; *Beechwood*; *Apple Tree*
7 *I*; *Houses in Unterach am Attersee*; and *Amalie Zuckermandl* -- were taken from
8 Ferdinand by the Nazis in violation of international law.

9 117. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that
10 none of the actions taken by Dr. Führer and Ferdinand during the War (between March
11 1938 and May 1945), gave the AUSTRIAN GALLERY the right to inherit or obtain title
12 to the six Klimt paintings taken from Ferdinand's collection during the War.

13 118. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that the
14 six Klimt paintings taken from Ferdinand by the Nazis were subject to restitution to
15 Ferdinand after the end of the War in May, 1945.

16 119. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that the
17 six Klimt paintings taken from Ferdinand by the Nazis were subject to restitution to
18 Ferdinand's heirs after Ferdinand's death in November, 1945.

19 120. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that five
20 of the six Klimt paintings taken from Ferdinand -- with the sole exception of the portrait
21 of *Amalie Zuckermandl* -- were the subject of restitution proceedings from 1945 through
22 1948.

23 121. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that all
24 of the recovered artworks from the collection of Ferdinand Bloch-Bauer, including the
25 Klimt paintings, were or would have been subject to export permit restrictions imposed
26 by the Federal Monument Agency in conjunction with the AUSTRIAN GALLERY.

27 122. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that
28 proceedings concerning export permits for all of the recoverable artworks from the

1 collection of Ferdinand Bloch-Bauer, including the Klimt paintings, were initiated prior
2 to the purported “donation” of the Klimt paintings by Dr. Rinesch to the AUSTRIAN
3 GALLERY on April 10 or 12, 1948.

4 123. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that in
5 the course of seeking export permits for other portions of the collection, five of the
6 Klimt paintings were purportedly “donated” to the AUSTRIAN GALLERY by Dr.
7 Rinesch.

8 124. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that
9 ALTMANN was never obligated to transfer any of the Klimt painting to the
10 AUSTRIAN GALLERY.

11 125. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that any
12 purported “donation” of Klimt paintings to the AUSTRIAN GALLERY was made
13 without proper authorization from ALTMANN.

14 126. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that any
15 purported “donation” of Klimt paintings to the AUSTRIAN GALLERY was made under
16 economic duress, and the threat by the Federal Monument Agency and the AUSTRIAN
17 GALLERY of withholding export permits from the heirs.

18 127. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that any
19 purported “donation” by Dr. Rinesch of Klimt paintings to the AUSTRIAN GALLERY
20 was made under the mistaken belief that the AUSTRIAN GALLERY had a valid legal
21 claim to the Klimt paintings.

22 128. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that the
23 AUSTRIAN GALLERY was responsible for the mistaken belief which resulted in the
24 purported “donation” of the Klimt paintings by Dr. Rinesch to the AUSTRIAN
25 GALLERY by withholding records and misstating facts.

26 129. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that
27 ALTMANN is entitled to rescission of the purported “donation” by Rinesch of the Klimt
28 paintings to the AUSTRIAN GALLERY.

1 130. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that the
2 Klimt painting of *Amalie Zuckermandl* was donated to the AUSTRIAN GALLERY by
3 Vita Künstler in 1988, and is subject to restitution to the heirs of Ferdinand Bloch-Bauer.

4 131. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that
5 there is no evidence that Ferdinand Bloch-bauer freely disposed of the Klimt painting of
6 *Amalie Zuckermandl*.

7 132. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that
8 there is no evidence to support the claim of the Müller-Hofmann family to the Klimt
9 painting of *Amalie Zuckermandl*.

10 133. ALTMANN contends, and the AUSTRIAN GALLERY disputes, that
11 under the 1998 art restitution law enacted by Austria, ALTMANN is entitled to recover
12 the following six Klimt paintings in the AUSTRIAN GALLERY: *Adele Bloch-Bauer I*;
13 *Adele Bloch-Bauer II*; *Beechwood*; *Apple Tree I*; *Houses in Unterach am Attersee*; and
14 *Amalie Zuckermandl*.

15 134. Wherefore ALTMANN prays for a declaration affirming ALTMANN's
16 view of the aforementioned factual and legal issues. Resolution of these issues will
17 allow ALTMANN to obtain restitution of the artworks from the AUSTRIAN
18 GALLERY. Minister Gehrler has stated and has been quoted in the *New York Times* as
19 saying that she will follow a court decision on the factual and legal issues involved in
20 this matter. Furthermore, Minister Gehrler has written to ALTMANN's attorney that the
21 heirs should seek relief in court if they feel aggrieved by her decision. Additionally, the
22 United States has the ability under its treaty with Austria to enforce the judgment of this
23 court declaring that ALTMANN is entitled to restitution of the Klimt paintings.

24 **SECOND CAUSE OF ACTION**

25 **FOR REPLEVIN**

26 135. ALTMANN incorporates here by reference paragraphs 1 through 107.

27 136. After Ferdinand's death in November, 1945, ALTMANN was entitled to
28 recover possession of the six Klimt painting: *Adele Bloch-Bauer I*; *Adele Bloch-Bauer*

1 *II; Beechwood; Apple Tree I; Houses in Unterach am Attersee; and Amalie Zuckerkandl.*

2 137. The AUSTRIAN GALLERY unlawfully withheld possession from
3 ALTMANN of the three Klimt paintings taken during the War.

4 138. The AUSTRIAN GALLERY unlawfully obtained possession of two
5 paintings based on false claims of ownership and duress.

6 139. The AUSTRIAN GALLERY obtained ownership of one further painting,
7 *Amalie Zuckerkandl*, in 1988, and thereafter made false claims of provenance for the
8 painting to hide the true fact that it was taken from Ferdinand Bloch-Bauer and rightfully
9 belonged to ALTMANN and his other heirs.

10 140. ALTMANN and the other heirs made reasonable efforts to reclaim their
11 inheritance, but despite such efforts, ALTMANN did not learn, and could not reasonably
12 have learned, of the facts revealing the false ownership claims until 1999.

13 141. ALTMANN has been damaged by the deprivation of her property, and is
14 entitled to either a recovery of the property or payment of her interest in the paintings,
15 which interest is valued at approximately \$200 million and will be subject to proof at
16 trial.

17 **THIRD CAUSE OF ACTION**

18 **FOR RESCISSION**

19 142. ALTMANN incorporates here by reference paragraphs 1 through 107.

20 143. The AUSTRIAN GALLERY claims that ALTMANN, or the attorney
21 purporting to represent her, Dr. Rinesch, agreed in April 1948 to acknowledge the
22 request in Adele's will and effectively "donated" five of the six Klimt paintings
23 referenced in Adele's will to the AUSTRIAN GALLERY.

24 144. ALTMANN alleges that any purported "donation" of the Klimt paintings
25 to the AUSTRIAN GALLERY was made by mistake, or under duress, or without proper
26 authority from ALTMANN.

27 145. ALTMANN further alleges that there was a failure of consideration for the
28 "donation," because the REPUBLIC OF AUSTRIA improperly threatened to withhold

1 and delay export permits in order to coerce the “donation” of the paintings.

2 146. At the time of the purported “donation,” Dr. Rinesch and Ferdinand’s heirs
3 were under the mistaken belief that Adele and Ferdinand had legally donated the Klimt
4 paintings to the AUSTRIAN GALLERY. The AUSTRIAN GALLERY was responsible
5 for this mistaken belief though its misstatements and concealment of the will, knew that
6 Ferdinand’s heirs and Dr. Rinesch held the mistaken belief, and knew that it was false at
7 the time of the purported donation in April 1948.

8 147. At the time of the purported “donation,” ALTMANN was under severe
9 economic duress, having been deprived of all her property taken by the Nazis, as well as
10 her inheritance. The AUSTRIAN GALLERY was responsible for this duress because it
11 purposely withheld property from the heirs and conspired with the Federal Monument
12 Agency to delay the granting of export permits for artworks belonging to the heirs.

13 148. At the time of the purported “donation,” Dr. Rinesch was not properly
14 authorized to act on ALTMANN’s behalf.

15 149. As a result, ALTMANN is entitled to rescind the purported “donation”
16 and recover the donated artworks from the AUSTRIAN GALLERY.

17 **FOURTH CAUSE OF ACTION**

18 **FOR DAMAGES FOR EXPROPRIATION AND CONVERSION**

19 150. ALTMANN incorporates here by reference paragraphs 1 through 107.

20 151. After Ferdinand’s death in November, 1945, ALTMANN was entitled to
21 recover possession of the six Klimt paintings: *Adele Bloch-Bauer I; Adele Bloch-Bauer*
22 *II; Beechwood; Apple Tree I; Houses in Unterach am Attersee; and Amalie Zuckerkanndl.*

23 152. The AUSTRIAN GALLERY unlawfully withheld possession from
24 ALTMANN of the three Klimt paintings taken during the War.

25 153. The AUSTRIAN GALLERY unlawfully obtained possession of two
26 paintings based on deceitful and false claims of ownership and duress, and through an
27 unauthorized “donation” obtained from Dr. Rinesch as a result of those deceitful and
28 false claims and duress.

1 154. The AUSTRIAN GALLERY obtained ownership of one further painting,
2 *Amalie Zuckerkandl*, in 1988, and thereafter made false claims of provenance for the
3 painting which hid the true fact that it was stolen from Ferdinand Bloch-Bauer and
4 rightfully belonged to ALTMANN and his other heirs.

5 155. ALTMANN did not learn, and could not reasonably have learned, of the
6 facts revealing the false ownership claims until 1999.

7 156. ALTMANN has been damaged by the conversion of her property, and is
8 entitled to either a recovery of the property, or payment of her interest in the paintings,
9 which interest is valued at approximately \$200 million and will be subject to proof at
10 trial.

11 **FIFTH CAUSE OF ACTION**

12 **FOR DAMAGES FOR VIOLATION OF INTERNATIONAL LAW**

13 157. ALTMANN incorporates here by reference paragraphs 1 through 107.

14 158. The AUSTRIAN GALLERY violated international law by knowingly
15 participating in and profiting from the Nazi persecution of Ferdinand Bloch-Bauer in the
16 following ways: (1) the AUSTRIAN GALLERY assisted in the systematic looting of the
17 property of Ferdinand Bloch-Bauer; (2) the AUSTRIAN GALLERY obtained artworks
18 belonging to Ferdinand Bloch-Bauer during the War; (3) the AUSTRIAN GALLERY
19 refused to return artworks to Ferdinand Bloch-Bauer and his heirs after the War; (4) the
20 AUSTRIAN GALLERY used duress and deceit to obtain artworks that should have
21 been restituted to Ferdinand's heirs during the post-war period, and (5) the AUSTRIAN
22 GALLERY concealed its misdeeds from the heirs until they were exposed in 1998-99.

23 159. As determined by the United States Congress in Title II of the Holocaust
24 Victims Redress Act of 1998, the above referenced actions by the AUSTRIAN
25 GALLERY were in violation of numerous international treaties, customary international
26 laws, and fundamental human rights laws prohibiting war crimes, including, or as
27 reflected by the United Nations Charter, the Universal Declaration of Human Rights, the
28 Geneva Convention of 1929, the supplemental Geneva Convention of the Treatment of

1 Non-Combatants During World War Time, the Nuremberg Principles, the Covenant on
2 Civil and Political Rights, the Hague Convention of 1907, and the Austrian State Treaty.

3 160. As a result of the above referenced violations of international law,
4 ALTMANN has suffered injury and is entitled to judgment, against the AUSTRIAN
5 GALLERY on this cause of action for compensatory damages in an amount to be
6 determined by the Court.

7 **SIXTH CAUSE OF ACTION**

8 **FOR IMPOSITION OF A CONSTRUCTIVE TRUST**

9 161. ALTMANN incorporates here by reference paragraphs 1 through 107.

10 162. The AUSTRIAN GALLERY obtained the Klimt paintings from
11 Ferdinand Bloch-Bauer and his heirs through violations of international law, duress and
12 deceit.

13 163. The AUSTRIAN GALLERY has wrongfully detained the Klimt paintings
14 from ALTMANN now that the facts have come to light.

15 164. As a result, ALTMANN is entitled to the imposition of a constructive
16 trust on the Klimt paintings, obligating the AUSTRIAN GALLERY to return the Klimt
17 paintings to ALTMANN, or to compensate her fairly for their loss.

18 **SEVENTH CAUSE OF ACTION**

19 **FOR RESTITUTION BASED ON UNJUST ENRICHMENT**

20 165. ALTMANN incorporates here by reference paragraphs 1 through 107.

21 166. As described above, the AUSTRIAN GALLERY has been unjustly and
22 unlawfully enriched at the expense of Ferdinand Bloch-Bauer and his heirs. The
23 AUSTRIAN GALLERY obtained the Klimt paintings from Ferdinand Bloch-Bauer and
24 his heirs through violations of international law, duress and deceit, and has wrongfully
25 withheld the paintings from ALTMANN.

26 167. As a result of the AUSTRIAN GALLERY's unjust enrichment,
27 ALTMANN is entitled to restitution of the Klimt paintings to her, or the reasonable
28 value thereof.

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PRAYER

WHEREFORE, MARIA V. ALTMANN prays relief as follows:

1. For a declaration that ALTMANN's contentions of fact and law set forth in the First Cause of Action are correct.
2. For an order directing the AUSTRIAN GALLERY to return the six Klimt paintings -- *Adele Bloch-Bauer I; Adele Bloch-Bauer II; Beechwood; Apple Tree I; Houses in Unterach am Attersee;* and *Amalie Zuckerkandl* -- to ALTMANN and the heirs of Ferdinand Bloch-Bauer, or to compensate them for the current value of those artworks.
3. For an order rescinding the purported "donation" of five of Ferdinand's Klimt paintings to the AUSTRIAN GALLERY and directing the AUSTRIAN GALLERY to return the artworks to ALTMANN and the heirs of Ferdinand Bloch-Bauer, or compensate them for their share of the current value of those artworks.
4. For an award of damages in the amount of ALTMANN's interest in the artworks converted by the AUSTRIAN GALLERY, in an amount to be proven at trial, but estimated at \$200 million.
5. For further compensatory damages for the AUSTRIAN GALLERY's violations of international law.
6. For pre- and post-judgment interest on any award.
7. For such other and further relief that the Court deems just and appropriate.

DATED: July __, 2004

BURRIS & SCHOENBERG, LLP

By: _____
E. Randol Schoenberg
Attorney for Plaintiff
MARIA V. ALTMANN