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28 CLAUDE CASSIRER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CLAUDE CASSIRER,
Plaintiff,

vs.

KINGDOM OF SPAIN, a foreign
state, and THYSSEN-BORNEMISZA
COLLECTION FOUNDATION, an
agency or instrumentality of the
Kingdom of Spain,
Defendants.

Case No. CV05-3459 GAF (CT)

COMPLAINT FOR:

1. DECLARATORY RELIEF;
2. IMPOSITION OF A CONSTRUCTIVE TRUST;
3. POSSESSION OF PERSONAL PROPERTY;
- AND
4. CONVERSION

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SUMMARY

This action seeks to recover a masterpiece of French impressionist art, the painting *Rue Saint-Honoré, après-midi, effet de pluie* by Camille Pissarro, that was looted by the Nazi regime from its Jewish owner in 1939 and is now in the Thyssen-Bornemisza Museum in Madrid.

In 1939, fearing for her life in the face of the Nazi regime's persecution of Jews, the owner of the painting, Lilly Cassirer Neubauer, decided to flee Germany. This decision probably saved her life, for her sister Hannah, who was unable to leave Germany because she was taking care of their sick mother, was later taken to the Theresienstadt extermination camp where she was murdered. To obtain exit visas out of Germany for herself and her husband, Lilly Cassirer Neubauer was forced to relinquish the Pissarro to an official appraiser appointed by the Nazi regime.

Lilly Cassirer Neubauer died in 1962 without ever having recovered the painting or having learned of its whereabouts. In 2000, her grandson and sole heir, plaintiff Claude Cassirer, learned that the painting was in the collection of the Thyssen-Bornemisza Museum, a museum in Madrid operated by the Thyssen-Bornemisza Collection Foundation, an agency or instrumentality of the Kingdom of Spain. Claude Cassirer petitioned the Spanish Minister of Culture, who is also the chair of the board of the Thyssen-Bornemisza Collection Foundation, for return of the painting. Even though Spain has signed several international agreements calling for the return of art plundered during the Holocaust, Spain and its Thyssen-Bornemisza Collection Foundation have refused to return the painting to Claude Cassirer, its rightful owner.

Claude Cassirer therefore brings this action and alleges as follows:

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THE PARTIES

1. Plaintiff, Claude Cassirer (“Cassirer”), is an 84-year-old retired photographer residing in San Diego, California. He was born in Germany and has been an American citizen since 1947. Cassirer is the sole heir of the estate of his grandmother, Lilly Cassirer Neubauer.

2. Defendant Kingdom of Spain is a foreign state, as defined in 28 U.S.C. § 1603(a).

3. Defendant Thyssen-Bornemisza Collection Foundation, also known in Spanish as Fundación Colección Thyssen-Bornemisza, is a foundation created under Spanish law with its principal place of business in Madrid, Spain. The Thyssen-Bornemisza Collection Foundation operates the Thyssen-Bornemisza Museum (known in Spanish as the Museo Thyssen-Bornemisza), an art museum in Madrid, Spain. The Thyssen-Bornemisza Collection Foundation and the Kingdom of Spain are sometimes referred to herein collectively as the “Thyssen-Bornemisza Collection Foundation.”

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction and personal jurisdiction over the Kingdom of Spain and the Thyssen-Bornemisza Collection Foundation under 28 U.S.C. § 1330(a) because defendants are foreign states within the meaning of 28 U.S.C. § 1603(a) and this is a non-jury civil action as to which neither defendant is entitled to immunity under 28 U.S.C. §§ 1605 – 1607 or any applicable international agreement. *See Republic of Austria v. Altmann*, 317 F.3d 954, modified 327 F.3d 1246 (9th Cir. 2003), *aff’d* 541 U.S. 677 (2004).

5. This action concerns rights in property expropriated in violation of international law, namely a painting by the French Impressionist painter Camille Pissarro, *Rue Saint-Honoré, après-midi, effet de pluie* (the “Painting”). The Painting was confiscated from Lilly Cassirer Neubauer by the Nazi regime in Germany in

1 March 1939 when, fearing further persecution as a Jew, she fled Germany and was
2 forced to surrender the Painting to an official of the Nazi regime. A reproduction of
3 the Painting is attached as Exhibit A.

4 6. The Painting is in the possession of the Thyssen-Bornemisza Collection
5 Foundation.

6 7. The Thyssen-Bornemisza Collection Foundation is, and at all relevant
7 times herein has been, an agency and instrumentality, as defined in 28 U.S.C.
8 § 1603(b), of the Kingdom of Spain.

9 8. The Thyssen-Bornemisza Collection Foundation is a separate legal
10 person, corporate or otherwise.

11 9. The Thyssen-Bornemisza Collection Foundation is an organ of the
12 Kingdom of Spain, or a majority of its shares or other ownership interest is owned by
13 the Kingdom of Spain or a political subdivision thereof, as is set out below.

14 a. The Kingdom of Spain, through its Ministry of Culture, co-
15 founded the Thyssen-Bornemisza Collection Foundation.

16 b. As authorized by a Spanish ordinance, Real Decreto-Ley 11/1993,
17 the Kingdom of Spain gave the Thyssen-Bornemisza Collection Foundation over
18 42 billion pesetas (more than \$327 million) for purchase of the Thyssen-Bornemisza
19 collection from a trust controlled by Baron Thyssen-Bornemisza. Through Real
20 Decreto-Ley 11/1993, the Kingdom of Spain also ceded the Villahermosa Palace in
21 Madrid to the Thyssen-Bornemisza Collection Foundation without charge for use as
22 the Thyssen-Bornemisza Museum, but directed that if the palace is no longer used as
23 the seat of the collection, the palace will revert to the Kingdom of Spain. Through
24 Real Decreto-Ley 11/1993, the Kingdom of Spain required that the Thyssen-
25 Bornemisza collection be exhibited in Spain, at the Villahermosa Palace and at the
26 Pedralbes Monastery near Barcelona, and limited the number of paintings from the
27 collection that may be lent to other institutions for exhibition, and the duration of
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1 such loans. Real Decreto-Ley 11/1993 provides that if the collection is not used in
2 this way, or if the Foundation ceases to exist, the Thyssen-Bornemisza collection will
3 become part of the “patrimony of the State,” thereby being owned by the Kingdom of
4 Spain.

5 c. As the Thyssen-Bornemisza Collection Foundation itself admits
6 in recounting on its website for the Thyssen-Bornemisza Museum how the collection
7 came to Spain, “[t]he Spanish State therefore acquired one of the most important
8 private collections in the world.”

9 d. In addition to providing the funds by which the Thyssen-
10 Bornemisza Collection Foundation purchased the collection, and the palace at which
11 the Thyssen-Bornemisza Collection Foundation displays the collection, the Kingdom
12 of Spain controls the Thyssen-Bornemisza Collection Foundation. Through Real
13 Decreto-Ley 11/1993, the Kingdom of Spain mandates that at least two-thirds of the
14 directors on the Foundation’s Board must be representatives of the Kingdom of
15 Spain, nominated and removed freely by the government through royal decree. In
16 fact, four of the governmental directors of the Thyssen-Bornemisza Collection
17 Foundation serve by virtue of their high positions in the Spanish government:
18 Spain’s Minister of Culture; its Secretary of State for Culture, its Secretary of State
19 for Budget and Expenses, and its Undersecretary of Culture, are all *ex officio*
20 members of the board of the Thyssen-Bornemisza Collection Foundation.

21 10. The Thyssen-Bornemisza Collection Foundation is neither a citizen of a
22 State of the United States as defined in 28 U.S.C. § 1332(c) and (d), nor created
23 under the laws of any third country other than the United States or Spain.

24 11. The Thyssen-Bornemisza Collection Foundation is engaged in
25 commercial activity in the United States.

26 a. The Thyssen-Bornemisza Collection Foundation has borrowed
27 artworks from museums in the United States, including from the Los Angeles County
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1 Museum of Art and the Fine Arts Museum of San Francisco, and, on information and
2 belief, lends artworks to museums in the United States.

3 b. The Thyssen-Bornemisza Collection Foundation engages in and
4 receives the benefit of tourist advertising in the United States conducted by the
5 official Spanish National Tourist Office, an agency sponsored and controlled by the
6 Kingdom of Spain, which has offices in various cities in the United States, including
7 in Los Angeles, California. For example, Turespaña, an arm of the Kingdom of
8 Spain, distributes in this District and throughout the United States a color brochure
9 entitled "The Great Museums of Madrid" that prominently features the Thyssen-
10 Bornemisza Museum.

11 c. The Thyssen-Bornemisza Collection Foundation seeks publicity
12 in the United States promoting the Thyssen-Bornemisza Museum and encouraging
13 residents of the U.S. to visit the museum.

14 d. The museum operated by the Thyssen-Bornemisza Collection
15 Foundation, the Thyssen-Bornemisza Museum, is visited by thousands of U.S.
16 citizens each year, and accepts entrance fees from these visitors. In its gift shop, the
17 Thyssen-Bornemisza Museum sells various items to U.S. citizens. These include
18 objects bearing images of the Painting, such as posters, address books, and
19 transparencies. The Thyssen-Bornemisza Collection Foundation accepts payment by
20 U.S. credit card for payment of entrance fees and for purchases at its gift shop.

21 e. The Thyssen-Bornemisza Collection Foundation has a website,
22 www.museothyssen.org, at which U.S. citizens may purchase tickets for admission to
23 the Thyssen-Bornemisza Museum using U.S. credit cards. Visitors to the website
24 can view the paintings on display in the Thyssen-Bornemisza Museum, including
25 *Rue Saint-Honoré, après-midi, effet de pluie*.

26 12. The Kingdom of Spain is engaged in numerous other commercial
27 activities in the United States, and in this judicial district in particular.
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1 a. The Kingdom of Spain actively promotes its cultural and
 2 commercial interests throughout the United States, including within Los Angeles.
 3 The Kingdom of Spain has a consular office in Los Angeles, California, that
 4 promotes Spanish cultural and business interests in California and the Western
 5 United States. The Kingdom of Spain has a commercial office in Los Angeles,
 6 California, that promotes Spanish business interests in California and the Western
 7 United States.

8 b. The Spanish National Tourist Office, an agency sponsored and
 9 controlled by the Kingdom of Spain, has an office in Los Angeles. It conducts
 10 advertising and marketing in California and throughout the United States promoting
 11 tourism in Spain generally and the Thyssen-Bornemisza Museum in particular.

12 13. Venue is proper in this District under 28 U.S.C. §1391(f)(3) because the
 13 Kingdom of Spain and the Thyssen-Bornemisza Collection Foundation conduct
 14 business in this District. There is no other venue in the United States that would be
 15 more appropriate for this action than this District.

16 **FACTS**

17 **Ownership of the Painting**

18 14. Camille Pissarro completed *Rue Saint-Honoré, après-midi, effet de pluie*
 19 in 1897. He sold the Painting in 1898 to his friend and representative, Durand-Ruël,
 20 who in turn sold it that same year to Julius Cassirer.

21 15. The Cassirers were a well-known and highly regarded Jewish family
 22 that played a leading role in Germany's economic and cultural life until the Nazis
 23 drove them from the country in the 1930's. Julius Cassirer and his six brothers were
 24 highly successful industrialists with interests in timber, paper and pulp, real property
 25 development, and electrical cables. The next generation of Cassirers – Julius
 26 Cassirer's children, nieces and nephews – were prominent in Germany's intellectual
 27 and cultural life. For example, Julius's son Bruno Cassirer ran an influential art
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1 publishing house in Berlin, and his nephew Paul Cassirer was an outstanding art
2 dealer who championed the French Impressionists and later the German
3 Expressionists at his gallery in Berlin.

4 16. When Julius Cassirer died in 1924, his son, Fritz Cassirer, and Fritz's
5 wife, Lilly Cassirer, inherited the Painting.

6 17. Fritz and Lilly Cassirer had one child, Eva Cassirer, who married her
7 cousin, Friedrich Wilhelm Cassirer. Eva and Friedrich Wilhelm Cassirer had one
8 child, the plaintiff Claude Cassirer. Eva Cassirer died in an influenza epidemic in
9 1921, when Claude Cassirer was four months old, and he was raised largely by his
10 grandmother, Lilly Cassirer.

11 18. Fritz Cassirer died in 1926, and the Painting then passed to his widow,
12 Lilly Cassirer. Lilly Cassirer subsequently married Otto Neubauer, after which she
13 was known as Lilly Cassirer Neubauer, or simply Lilly Neubauer.

14 19. The Painting was prominently displayed in Lilly Cassirer Neubauer's
15 parlor in Germany. A photograph of Lilly Cassirer Neubauer's parlor in Berlin,
16 showing the Painting, is attached as Exhibit B. Claude Cassirer has vivid memories
17 of seeing the Painting hanging in his grandmother's parlor, and still has in his
18 possession the Barlach sculpture and several distinctive antiques shown in this
19 photograph.

20 Seizure of the Painting

21 20. As a Jew, Lilly Cassirer Neubauer was subjected to increasing
22 persecution in Germany after the Nazis seized power in 1933. The racist anti-Jewish
23 Nuremberg Laws that Germany enacted in September 1935 deprived her and other
24 German Jews of their civil rights. In 1937 and 1938, the Nazi regime set out to
25 impoverish Jews by requiring them to register their property and then by
26 "Aryanizing" Jewish businesses, under which the ownership of most Jewish
27 businesses was taken over by non-Jewish Germans who bought them at bargain
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1 prices fixed by Nazis. The persecution of Jews reached a new and far more
2 frightening level on the night of November 9, 1938, when the Kristallnacht pogroms
3 took place throughout Germany. In Munich, where Lilly Cassirer Neubauer was
4 living at that time, numerous Jews were arrested by the Gestapo and held at the
5 Dachau concentration camp, and several synagogues and numerous Jewish-owned
6 businesses were destroyed. Immediately after Kristallnacht, the Nazi regime
7 continued its campaign of genocide against German Jews by promulgating
8 regulations that (1) required the Jewish owners of businesses that were damaged
9 during Kristallnacht to repair the damage at their own expense, (2) excluded Jews
10 from business, and (3) required German Jews as a group to pay a "contribution" of
11 1 billion Reichsmarks to the German state.

12 21. In 1939, Lilly Cassirer Neubauer felt she had no choice but to flee
13 Germany. This decision saved her life. The Second World War broke out shortly
14 thereafter and her sister, Hannah, who could not leave Germany because she was
15 caring for their mother, was later taken to the Theresienstadt extermination camp and
16 murdered.

17 22. To secure entrance visas to England for Lilly Cassirer Neubauer and her
18 husband, Professor Otto Neubauer, four prominent London doctors who had studied
19 under Dr. Neubauer in Munich together sponsored the now impoverished couple by
20 guaranteeing their support for life, to reassure the British government that Lilly and
21 Otto Neubauer would never become a burden on society in England.

22 23. Lilly and Otto Neubauer still had to obtain official permission to leave
23 Germany, and to take their belongings with them. A Munich art dealer, Jakob
24 Scheidwimmer, was appointed by the Nazi regime as the official appraiser to
25 evaluate the works of art that Lilly Cassirer Neubauer wished to take with her. After
26 completing his appraisal, Scheidwimmer told Lilly Cassirer Neubauer that she could
27 not take the Painting out of Germany and demanded that she hand it over to him in
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1 exchange for a derisory payment of 900 Reichsmarks – about \$360 at 1939 exchange
2 rates. Lilly Cassirer Neubauer recognized that a speedy departure from Germany
3 was a question of life and death for her and her husband, and feared that refusal of
4 his demand might anger Scheidwimmer and result in denial of her request for
5 permission to leave Germany. Even though she knew that she would never be
6 permitted to take even the nominal payment offered by Scheidwimmer with her when
7 she fled to England, because it was to be paid into a blocked bank account from
8 which she would never be allowed to withdraw funds, Lilly Cassirer Neubauer had
9 no choice in the matter, and surrendered the Painting to Scheidwimmer as demanded.
10 The Nazi regime, through its appraiser Scheidwimmer, thus effectively stole the
11 Painting from Lilly Cassirer Neubauer, who received nothing from the transaction
12 other than freedom for herself and her husband.

13 24. Because Germany confiscated the Painting based on Lilly Cassirer
14 Neubauer's status as a Jew and as part of its genocide against Jews, the confiscation
15 was in violation of international law. As the United States Congress recognized in
16 the Holocaust Victims Redress Act, because "[t]he Nazis' policy of looting art was a
17 critical element and incentive in their campaign of genocide against individuals of
18 Jewish and other religious and cultural heritage", "the same international legal
19 principles applied among states should be applied to art and other assets stolen from
20 victims of the Holocaust." Pub. L. 105-158, § 201, 112 Stat. 15, 17 (1998).

21 **Failure to Recover the Painting After Germany's Defeat**

22 25. Scheidwimmer traded the Painting in 1939 to another dealer, Julius
23 Sulzbacher who, also persecuted by the Nazis, fled to Holland with it. Shortly
24 thereafter, Germany invaded Holland and the Gestapo confiscated the Painting from
25 Sulzbacher. In January 1943, the Painting was sold at auction in Berlin to an
26 anonymous purchaser.
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1 30. In 1993, the Kingdom of Spain provided 42,277,120,000 Pesetas – more
2 than \$327 million – to the Thyssen-Bornemisza Collection Foundation to enable it to
3 purchase the Thyssen-Bornemisza collection, including the Painting.

4 **Defendants' Refusal to Return the Painting**

5 31. In 2000, Claude Cassirer learned that the Painting was on display in
6 Madrid at the Thyssen-Bornemisza Museum. This was the first knowledge that
7 Claude Cassirer had of the Painting's whereabouts since it was stolen from his
8 grandmother in 1939.

9 32. On May 3, 2001, Cassirer, through counsel, presented a petition to
10 Ms. Pilar del Castillo Vera, at that time Spain's Minister for Education, Culture and
11 Sports and chair of the board of the Thyssen-Bornemisza Collection Foundation,
12 requesting the return of the Painting to him as its lawful owner. His request was
13 denied.

14 33. In July 2003, five members of the United States Congress wrote to
15 Minister del Castillo, requesting that the Kingdom of Spain and the Thyssen-
16 Bornemisza Collection Foundation return the Painting to Cassirer. Again the
17 Kingdom of Spain and the Thyssen-Bornemisza Collection Foundation refused to
18 return the Painting.

19 34. Under principles of international law to which the Kingdom of Spain
20 itself subscribes, the Kingdom of Spain and the Thyssen-Bornemisza Collection
21 Foundation should return the Painting to Cassirer.

22 a. The Kingdom of Spain was one of the forty-four states that
23 participated in the Washington Conference on Holocaust-Era Assets in 1998 and
24 subscribed to the Washington Conference Principles on Nazi-Confiscated Art that
25 resulted from the Washington Conference. Under the Washington Conference
26 Principles, the Kingdom of Spain and the Thyssen-Bornemisza Collection
27 Foundation should return the Painting to Cassirer.
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1 b. The Parliamentary Assembly of the Council of Europe,
2 representing forty-one nations, including the Kingdom of Spain, unanimously passed
3 Resolution 1205 on November 5, 1999, calling for the restitution of looted Jewish
4 cultural property in Europe. Among other things, Resolution 1205 directs that
5 “[b]odies in receipt of government funds which find themselves holding looted
6 Jewish cultural property should return it.” Under Resolution 1205, the Kingdom of
7 Spain and the Thyssen-Bornemisza Collection Foundation should return the Painting
8 to Cassirer.

9 c. The Vilnius International Forum on Holocaust Era Looted
10 Cultural Assets took place in October 2000, under the auspices of the Council of
11 Europe as a follow-up to the Washington Conference on Holocaust-Era Assets of
12 December 1998. The states present at the Vilnius Forum, including the Kingdom of
13 Spain, agreed to a declaration on October 5, 2000 that, among other things, “asks all
14 governments to undertake every reasonable effort to achieve the restitution of
15 cultural assets looted during the Holocaust era to the original owners or their heirs,”
16 and “encourages all participating States to take all reasonable measures to implement
17 the Washington Conference Principles on Nazi-Confiscated Art as well as Resolution
18 1205 of the Parliamentary Assembly of the Council of Europe.” Under the Vilnius
19 Forum Declaration, the Kingdom of Spain and the Thyssen-Bornemisza Collection
20 Foundation should return the Painting to Cassirer.

21 d. The European Parliament, of which Spain is a member, passed a
22 resolution in December 2003 by a vote of 487 to 10 that, among other things, calls on
23 its Member States (including Spain) “to make all necessary efforts to adopt measures
24 to ensure the creation of mechanisms which favour the return of” property looted
25 before and during World War II, and “to be mindful that the return of art objects
26 looted as part of crime against humanity to rightful claimants is a matter of general
27 interest for the purposes of Article 1 of Protocol 1 to the European Convention of
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1 Human Rights.” Under the resolution of the European Parliament, the Kingdom of
2 Spain and the Thyssen-Bornemisza Collection Foundation should return the Painting
3 to Cassirer.

4 35. In spite of these principles of international law, the Kingdom of Spain
5 and the Thyssen-Bornemisza Collection Foundation have refused to return the
6 Painting to Cassirer, stating that Cassirer should “start legal proceedings before a
7 judge” to recover the Painting. Having exhausted his other means of recovering the
8 Painting, Cassirer now brings this action.

9 **FIRST CAUSE OF ACTION**
10 **FOR DECLARATORY RELIEF**

11 36. Cassirer incorporates here by reference paragraphs 1 through 35.

12 37. An actual controversy exists between Cassirer on the one hand, and the
13 Kingdom of Spain and the Thyssen-Bornemisza Collection Foundation on the other,
14 as to ownership of the Painting, and Cassirer’s right to return of the Painting.

15 38. Pursuant to 28 U.S.C. § 2201, Cassirer prays for a declaration affirming
16 Cassirer’s ownership of the Painting and his right to its immediate return.

17 **SECOND CAUSE OF ACTION**
18 **FOR IMPOSITION OF A CONSTRUCTIVE TRUST**

19 39. Cassirer incorporates here by reference paragraphs 1 through 38.

20 40. The Kingdom of Spain and the Thyssen-Bornemisza Collection
21 Foundation have wrongfully detained the Painting from Cassirer.

22 41. As a result, Cassirer is entitled to the imposition of a constructive trust
23 on the Painting, obligating the Kingdom of Spain and the Thyssen-Bornemisza
24 Collection Foundation to return it to Cassirer.

25 **THIRD CAUSE OF ACTION**
26 **FOR POSSESSION OF PERSONAL PROPERTY**

27 42. Cassirer incorporates here by reference paragraphs 1 through 41.
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43. Cassirer is the lawful owner of the Painting.

44. Cassirer is entitled to immediate recovery of the Painting.

45. Cassirer is also entitled to recover (a) damages for deprivation of possession of the Painting from the time of his demand for return of the Painting until he recovers possession of it, and (b) defendants' unjust enrichment resulting from use of the Painting during the same period of time.

FOURTH CAUSE OF ACTION
FOR CONVERSION

46. Cassirer incorporates here by reference paragraphs 1 through 45.

47. If for some reason the Court is unable to order return of the Painting, Cassirer has been damaged by the conversion of his property, and is entitled to damages in an amount to be proved at trial.

PRAYER

WHEREFORE, Claude Cassirer prays for relief as follows:

1. For a declaration affirming Cassirer's ownership of the Painting and his right to its immediate return.
2. For imposition of a constructive trust on the Painting.
3. For an order directing the Kingdom of Spain and the Thyssen-Bornemisza Collection Foundation to return the Painting to Cassirer.
4. In the alternative, if the Kingdom of Spain and the Thyssen-Bornemisza Collection Foundation do not return the Painting, for an award of damages in an amount to be proven at trial.
5. For further compensatory damages for the refusal of the Kingdom of Spain and the Thyssen-Bornemisza Collection Foundation to return the Painting after demand by Cassirer, together with an award in the amount of defendants' unjust enrichment resulting from their use of the Painting from the time of Cassirer's demand for return of the Painting until he recovers possession of it.

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- 6. For exemplary damages to the extent allowed by law.
- 7. For pre- and post-judgment interest on any award.
- 8. For costs, including a reasonable attorneys' fee, to the extent allowed by law.
- 9. For such other and further relief that the Court deems just and appropriate.

DATED: May 10, 2005

DAVIS WRIGHT TREMAINE LLP
ANDREW R. HALL
CATHERINE E. MAXSON


By: 
Andrew R. Hall
Attorneys for Plaintiff
Claude Cassirer

EXHIBIT A



EXHIBIT B

