UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

THOMAS GROSSMAN
609 S. Warley Street
Florence, South Carolina 29501
United States;

FANNY AIZENBERG
1111 University Boulevard, #1015
Silver Spring, Maryland 20902
United States;

OLDRICH STRANSKY
Na Slovance 32
180 00 Preha 8
Czech Republic;

FELIX KOLMER
Vinohradska 172
130 00 Praha 3
Czech Republic; and

ANATOLI MARKOWITSCH MANITSH
14-B Wasylja Poryka Str., Apt. 101
Kiev, Ukraine,

On Behalf of Themselves and All Others
Similarly Situated,

Plaintiffs,

v.

INTERNATIONAL BUSINESS MACHINES,
CORPORATION,
New Orchard Road
Armonk, New York 10504

Defendant.

ibm.wpd

COMPLAINT

OVERVIEW OF ACTION

1. The plaintiffs file this action on behalf of themselves and all others similarly situated against defendant International Business Machines, Inc. ("IBM").[1/] Plaintiffs assert their claims against IBM solely for the conduct of IBM in the United States[2/] described herein, which is distinct and apart from the conduct of its German subsidiary, formerly known as Deutsche Hollerith Maschinen Gesellschaft or DEHOMAG[3/], and now known as IBM Deutschland, G.m.b.H. ("IBM Germany"). Although the conduct of IBM Germany is described by way of factual background, IBM Germany is not a defendant, and none of the plaintiffs are asserting claims in this action against IBM Germany. IBM USA's conduct, although its impact was felt in Germany (and of course around the world), was conceived and implemented from the

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[1/]The technology that made IBM great was first developed by a German American inventor, Hermann Hollerith. Hollerith, a Census Bureau statistician, invented a series of machines that enabled statistical "photographs" to be taken of individuals for the purpose of national censuses. In 1896, Hollerith incorporated his company Tabulating Machines Company ("TMC"). *See* Emerson W. Pugh, *Building IBM: Shaping an Industry and Its Technology*, 18 (1995).

[2/]For purposes of clarity, when solely referring to conduct of IBM in the United States, IBM will be referred to herein as "IBM USA", distinguishing it from conduct of IBM's other subsidiaries.

[3/]In 1910, Hollerith licensed his patents to a German businessman, Willy Heidinger, who created a firm called Deutsche Hollerith Maschinen Gesellschaft ("DEHOMAG"). In 1911, TMC merged with two other companies to form the Computing-Tabulating-Recording Company ("CTR"). In 1914, Thomas J. Watson joined CTR as general manager and became its president within one year. By 1922, due to financial difficulties, Heidinger was forced to relinquish 90% ownership of DEHOMAG to Watson which reduced DEHOMAG to a subsidiary of CTR. In 1924, the company changed its name to International Business Machines Corporation. In the same year, Watson became the company's chief executive officer. *See* Pugh, *supra* at 18; Letter from Willy Heidinger, Managing Director of DEHOMAG, to Advisory Committee 3 (June 17, 1943), IBM USA archival materials ("Heidinger Letter").

United States.

2. IBM USA "implemented, aided, assisted or consciously participated in"[4/] the commission of crimes against humanity and violations of human rights.[5/] IBM USA accomplished this by providing the technology, products and services it knew would be used to facilitate persecution and genocide, and by acting as described in this Complaint. IBM USA understood that its equipment, information and services were being used in concentration camps, where information about Jews and others was recorded, tabulated and sorted for purposes of

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[4/]Trials of war criminals before the Nuremberg Military Tribunals under Control Council Law No. 10, Vol. XIV at 475 (October 1946-April 1949); *see also, id.* at 611 ("he who participates or plays a consenting part [in such crimes against humanity] is guilty of a crime against humanity.").

[5/]IBM USA is liable under the law defined and established by the International Military Tribunal that operated in Nuremberg after World War II. Under Article II, 2 of Law No. 10 of the Control Council:

> Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was (a) the principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (d) was connected with plans or enterprises involving its commission or (e) was a member of any organization or group connected with the commission of any such crime . . .

See XV The United Nations War Crimes Commission*, Law Reports of Trials of War Criminals,* 52 (1949).

This law made clear that individuals who were complicit in the Nazi regime's crimes, as someone who abetted the commission of the crime, consented to it, or was connected to the plan involving its commission, also committed a crime. Under this law, many private businessman were indicted and convicted as war criminals because they were complicit in the commission of crimes against humanity, even if they themselves did not participate in executions or establish the policies allowing for slave labor. *See* IX Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No. 10, at 10, 23, 29-30 (October 1946-April 1949); *see also* VIII, *Id*. at 14; XIV, *Id*. at 680-81.

perpetuating slave labor and ultimately extermination.

3. IBM USA declined to exercise the control it could have exercised to prevent its technology, products and services from being used in furtherance of persecution and genocide. Instead, the company wielded its substantial authority to ensure that it and its subsidiaries flourished financially.

4. IBM USA expressly and/or tacitly sanctioned the pursuit of such profits even at the knowing inevitable cost of life and human rights. Even after the United States entered the war, the company continued to conduct and direct business with its subsidiaries in occupied territories or Axis countries.

5. After the war, IBM USA took affirmative steps to cover up its conduct, including limiting access to its archives to suppress the dissemination of information regarding its actions during the Nazi era. IBM USA fraudulently concealed its active role in the Holocaust from those persecuted by the Nazi regime and the public at large.

6. For the aforementioned reasons, plaintiffs seek injunctive, declaratory and equitable relief, specifically that IBM USA be enjoined from destroying any documentation related to its role in the Holocaust, and ordering it to open its archives and produce any data it has which was derived from its Hollerith technology and utilized by the Nazi regime, so that the victims of its acts and others can finally learn the truth and set the record straight about the company's complicity in the Holocaust.

7. Moreover, as a matter of equity and fairness, IBM USA must disgorge any ill-gotten gains it acquired from its conduct during World War II.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this matter pursuant to the following statutes:

a. 28 U.S.C. § 1331. Two of the named plaintiffs are United States citizens who bring claims for violations of fundamental human rights law and customary international law, enforceable in this Court as federal common law. Plaintiffs' claims involve substantial international and federal questions;

b. 28 U.S.C. § 1350. This Court has subject matter jurisdiction over this action pursuant to the Alien Tort Claims Act, 28 U.S.C. § 1350, in that some of the named plaintiffs are aliens whose tort claims arise under the law of nations, including the following laws, treaties, and agreements:

> Customary International Law;
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> Common Law of the United States of America;
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> Principles of International Law Recognized in the Charter of the Nuremberg Tribunal, G.A.Res. 95(I), UN GAOR, 1st Sess., at 188, UN Doc. A/236 (1947);
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> Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277 (1948);
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> Universal Declaration of Human Rights, U.N. G.A. Res. 217 (III 1948);
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> International Covenant on Civil & Political Rights, 999 U.N.T.S. 171 (December 16, 1966);
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> International Declaration Concerning the Laws and Customs of War, adopted by the Conference of Brussels, Aug. 27, 1874, reprinted in, (1907) 1 Am.Jur.Int.L. Supp. 96;

Convention Concerning the Laws and Customs of War on Land (1907), TS 403 BEVANS: 1 Bevans 247 ("Hague Convention"); and

Protocol No. 1 to the European Convention on Human Rights and Fundamental Freedoms (Mar. 20, 1952, 213 U.N.T.S. 262, E.T.S.9).

Article II, 2 of Law No. 10 of Control Council (Oct. 1946 - Apr. 1949).

9. This Court has supplemental jurisdiction over plaintiffs' non-federal law claims pursuant to 28 U.S.C. § 1367.

10. This Court has personal jurisdiction over the alien plaintiffs in that all of the plaintiffs are aliens alleging tort violations arising under the law of nations in accordance with the Alien Tort Claims Act and the named defendant does business within the State of New York and has minimum contacts with the State based on defendant's continuous and systematic general business activities within the State of New York.

11. Venue is proper in this Court because the defendant is doing business in this District and may be found in this District within the meaning of 28 U.S.C. § 1391(b).

PARTIES

Plaintiffs

12. **Thomas Grossman** is a citizen of the United States. Mr. Grossman was born on May 1, 1927 in Budapest, Hungary. In March 1944, Adolf Hitler invaded Hungary and shortly thereafter, Mr. Grossman, along with his parents and two sisters, being singled out by the German authorities for being Jewish,[6/] was arrested by the Nazis and deported to Auschwitz

[6/]In the first two years of Nazi rule, numerous laws and decrees were established discriminating against Jews. Jews were being isolated socially, culturally and economically. By 1938, with the "Decree for the Exclusion of Jews from German Economic Life," Jews became

Concentration Camp[7/]. Upon arrival, he was given the prisoner number 43544. He and his father were separated from his mother and sisters and transported in a box car to a forced labor camp to a small town called Oberwüstegiersdorff in Oberschlezien (now Poland), where his father perished. In February 1945, Mr. Grossman, along with 1,200 other prisoners, were sent on a death march[8/] to Flossenbürg Concentration Camp. During this so-called march, over 1,000 of these prisoners perished. From Flossenbürg he was taken to Dresden, Leitmeritz, and then to Theresienstadt, where he was liberated on May 8, 1945. After his liberation, Mr. Grossman went to Sweden, where he was reunited with his mother and sisters, and from there emigrated to the United States where he resides today.

13. **Fanny Aizenberg** is a citizen of the United States. Mrs. Aizenberg, [9/] was born in Lodz, Poland on December 3, 1916. At the age of 10, she, along with her father, mother,

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excluded from all facets of German life. On January 20, 1942, at the Wannsee Conference meeting of key German government leaders, it was evident that the Nazi's aim was total destruction of the Jews of Europe:

> The Holocaust in the Nazi period of during World War II was, above all, the process of the oppression and murder of some six million European Jews. . . .

United States Holocaust Memorial Museum ("USHMM"), *In Pursuit of Justice*, 34-35 (1997).

[7/]Concentration camps were places of imprisonment to which political and religious dissidents and ethnic and racial undesirables were sent, usually without judicial process. *Id.* at 244.

[8/]A "death march" is the forced evacuation of all able-bodied concentration camp prisoners from one camp to another under heavy guard and intolerable conditions, in the course of which many prisoners were mistreated and killed. These marches took place during the final stage of the war as Allied forces approached. *See* 1 Shmuel Krakowski, "Death March," *Encyclopedia of the Holocaust*, 348-354 (1990).

[9/]Her maiden name is Orenbuch.

and two sisters, moved to Brussels, Belgium where her mother's family lived. In 1938, she married Jack Aizenberg and on March 21, 1939 gave birth to their daughter, Josiane. After the Nazis invaded Belgium on May 10, 1940, Mrs. Aizenberg's husband fled to England, along with others, joining a regiment to fight against Nazi persecution. Fearing for their lives, because of Nazi persecution of Jews, Mrs. Aizenberg gave her then two-year-old daughter, Josiane, to a nearby convent for safekeeping and went into hiding with her mother. In 1942, her father, along with their Rabbi and others, was arrested by the Nazis and transported to Auschwitz Concentration Camp. Her father had been beaten so badly that he perished during the transport. At the end of 1943, Fanny was found, arrested and transported from Belgium by cattle car to Auschwitz Concentration Camp where she was forced to work in an ammunition factory. In January 1945, as the Allied forces approached, she and others from the camp were sent on a death march to Ravensbrück Concentration Camp and other camps before being liberated by the Soviets near the Elbe river. The Red Cross brought her back to Brussels where she was reunited with her daughter. In 1946, she and her daughter joined her husband in England. In January 1949, they emigrated to the United States where she continues to reside today.

14. **Oldrich Stransky** is a Czech citizen. He was 18 years old when the Nazis invaded Czechoslovakia in 1939. Mr. Stransky was singled out for persecution by the German authorities because he was Jewish and a member of the Social Democratic Party. In June 1941, at the age of 20, he was arrested by the Nazis and sent to work on an SS[10/]-run farm. In July

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[10/]The SS was the "Protection Squad" formed in 1925 as Adolf Hitler's personal bodyguard. After 1929, they became the elite units of the Nazi party. Heinrich Himmler built the SS into a giant organization that, among other roles, provided staff for the police, camp guards and the fighting units (Waffen-SS); *see* USHMM, *supra*, at 254.

1942, his family was deported from Czechoslovakia. His mother and grandmother were sent to Treblinka Extermination Camp[11/] and gassed upon arrival. His father and brother were arrested and deported to Majdanek Concentration Camp. After being forced to work on the SS-run farm, Mr. Stransky was sent to Theresienstadt Ghetto[12/] and subsequently, in December 1943, transported to Auschwitz Concentration Camp. In June 1944, he was transferred to Schwarzeheide near Dresden to work in a synthetic fuel plant. After the evacuation of Schwarzeheide, he was sent to the Sachsenhausen Concentration Camp and remained there until its liberation by Soviet Forces on April 20, 1945. Most of Mr. Stransky's family was killed during the Holocaust. Currently, he lives in Prague in the Czech Republic with his wife.

15. **Dr. Felix Kolmer** is a Czech citizen. He was born in Prague on March 5, 1922. In November 1941, Mr. Kolmer was singled out and arrested by Nazis for being Jewish and sent to Theresienstadt where he was a forced laborer, given no protective clothing for the winter and fed about 1,000 calories a day. He was transferred to Auschwitz Concentration Camp and was forced to construct roads for the camp and then to Friedland, a sub-camp of the Gross Rosen Concentration Camp, where he was forced to work as a welder and a carpenter for

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[11/]Extermination camps were specifically built to kill Jews and other "enemies of the German nation." These killing centers included Belzec, Chelmno, Sobibor and Treblinka, as well as sections of the Auschwitz and Majdanek Concentration Camps. *See id*. at 250.

[12/]Ghettos were compulsory "quarters," established mostly in occupied eastern Europe, where all Jews from a city (*i.e.* Lodz, Warsaw, Vilna, Kovno, Riga, Minsk) and its surrounding area were forced to reside. These poor sections of a city were enclosed by barbed wire or walls and sealed so that no one could leave except under strict German supervision. These ghettos were characterized by overcrowding, disease, starvation and hard labor. Several ghettos also housed Gypsies ("Romani") deported from the surrounding regions and from western Europe. By the end of the war all ghettos had been dissolved and their inhabitants either killed on site or deported to extermination camps and murdered. *See id.* at 247-248.

Hermann Göring Werk. At Auschwitz and Friedland, he survived on 300-500 calories a day. In all the camps, he was closely guarded by the SS. After liberation, Dr. Kolmer returned to Czechoslovakia and resides today in Prague.

16. **Anatoli Markowitsch Manitsch** is a citizen of the Ukraine. He was born on October 20, 1922. He was arrested and deported by the Nazis to Bergen-Belsen Concentration Camp. He was assigned prisoner number 17686 and was imprisoned in various locations from May 1942 to 1945 before he was liberated by Allied Forces. Mr. Manitsch currently lives in the Ukraine.

17. Each of the plaintiffs described above suffered and was directly injured by the unlawful conduct of defendant. Each plaintiff and the members of their families went through the "selection" process[13/] and suffered persecution via technology provided by IBM.

Defendant

18. IBM USA provided the technology, products and services that identified, tabulated and sorted plaintiffs and facilitated the persecution and suffering they experienced in the concentration camps. Each plaintiff was sent to a concentration camp that used the Hollerith equipment knowingly supplied by IBM USA.

19. IBM is an international company that develops and manufactures information technologies, including computer systems, software, networking systems, storage devices and microelectronics. IBM sells its products and professional services worldwide. IBM

[13/]"Selection" was deciding and separating victims of persecution by the Nazis, immediately upon arrival at a camp, into those to be exterminated and those assigned to be slave laborers. *See id.* at 254.

is incorporated in the state of New York and its corporate office is located at New Orchard Road, Armonk, New York 10504. Before the era of computers, IBM's primary business was providing large-scale, custom-built tabulating solutions for business and government customers.[14/]

20. The Nazi regime was a major customer. IBM USA provided the solution the Nazi regime sought to implement -- racial discrimination and extermination.

I. IBM USA IMPLEMENTED, AIDED, ASSISTED AND/OR CONSCIOUSLY PARTICIPATED IN THE COMMISSION OF CRIMES AGAINST HUMANITY

21. In order to fulfill the Nazi racial "master plan"[15/] of a "final solution,"[16/] IBM USA's technology was essential. IBM USA's technology enabled Nazi Germany to systematically identify, enslave and exterminate Jews and other persecutees throughout Europe.

A. IBM USA Knew Its Hollerith Machines Were Being Used in Concentration Camps.

22. IBM Hollerith machines were located in the concentration camps as early as 1940.[17/] According to Holocaust experts,

> there is solid documentary evidence . . . indicating that after mid-

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[14/] *See* http://www.ibm.com.

[15/] On July 31, 1941, Hermann Göring, Nazi supreme commander of the German *Luftwaffe* and responsible for the Nazi rearmament program, authorized "an overall plan" for "organizational, functional, and material measures to be taken" to murder all Jews in Europe. *See* 1 Christopher R. Browning, "'Final Solution'," *Encyclopedia of the Holocaust*, 492 (1990).

[16/] The "Final Solution" in full would be "the final solution to the Jewish question in Europe" ("*die Endlösung der Judenfrage in Europa*") which was the Nazi code name for the physical extermination of European Jews. *See* USHMM, *supra*, at 246.

[17/] *See* International Business Machines Corp. New York Maschinen, Stand am 30.9.1940, IBM USA archival materials ("Stand am 30.9.1940"); International Business Machines Corp. New York Maschinen, Stand am 30.6.1941 IBM USA archival materials ("Stand am 30.6.1941").

> 1944 Hollerith offices were installed at the main concentration camps at Mauthausen, Ravensbrück, Flossenbürg, and Buchenwald, and were probably present at Auschwitz and other main camps as well. Hollerith technology performed an important function in implementing the genocidal policy of "extermination through work,"[18/]

This was done through the transfer of Jews and others to concentration camps and the "selection" process.

23. Soon after the Nazis came to power in 1933, they established the first concentration camp, the Dachau Concentration Camp near Munich, Germany – for so-called protective custody of prisoners – mainly Communists and Social Democrats. These prisoners were guarded by the Bavarian State Police until the SS took over the camp on April 11, 1933.[19/] Sachsenhausen Concentration Camp, near Berlin, was created soon thereafter. By 1939, the Germans expanded the concentration camp system to accommodate the growing number of "enemies" of the Reich, including Gypsies ("Romani"), Jehovah's Witnesses, homosexuals, and so-called political and social dissidents.

24. By 1944, there were fifteen major camps: Neuengamme, Bergen-Belsen, Dora-Mittelbau, Buchenwald, Natzweiler-Struthof, Flossenbürg, Dachau, Mauthausen, Gross-Rosen, Auschwitz-Birkenau, Plaszow, Majdanek, Stutthof, Sachsenhausen and Ravensbrück.[20/]

25. Upon arrival in concentration camps, a "selection" process took place

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[18/]David Martin Luebke and Sybil Milton, *Locating the Victim: An Overview of Census-Taking, Tabulation Technology, and Persecution in Nazi Germany*, 16 IEEE of the History of Competing 25, 35 (1994); *see also* Merry Madway Eisenstadt, *High-Tech Holocaust*, Washington Jewish Week, 1 (September 17, 1998).

[19/]*See* 1 Barbara Distel, "Dachau," *Encyclopedia of the Holocaust*, 339 (1990).

[20/]*See* USHMM, *supra*, at 111.

separating those who could be used as slave laborers and those deemed for extermination. Victims with some potential for labor were often worked to death.

26. The total number of people who perished in concentration camps, not including those sent to extermination camps, is estimated to be from 700,000 to 1.2 million.[21/]

27. IBM USA knew its Hollerith machines were located in concentration camps. Major camps were located not only in Germany, but in Poland, France and Austria as well. IBM USA kept careful records of where its leased property was located and played an active role in servicing these machines and providing punchcards for their use. IBM USA's inventories of 1940 and 1941 indicate the company knew which Hollerith machines were located in camps (*Lager*) along with their serial numbers and the amount they were being paid for the lease of each machine.[22/] At Dachau Concentration Camp alone there were approximately twenty-four IBM sorters, tabulators and printers.[23/]

28. The Hollerith machines were so central to the movement and exploitation of prisoners and the operation of the concentration camps, most camps had their own Hollerith Department (*Hollerith Abteilung*).[24/] The punchcards were often processed by SS personnel in

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[21/] *See* 1 Falk Pingel, "Concentration Camps," *The Encyclopedia of the Holocaust*, 308-317 (1990).

[22/] *See* Stand am 30.9.1940, *supra*; Stand am 30.6.1941, *supra*.

[23/] *See* Combined Services Detail Interrogation Center ("CSDIC"), "Secret Report PW Intelligence Bulletin No. 2/57," Apr. 25, 1945, RG 226 National Archives and Records Administration ("NARA"); "Oral Testimony of Jean Frederic Veith," *The Avalon Project: Nuremberg Trial. Proceedings,* Vol. 6, Jan. 28, 1946 cited in http://www.yale.edu/lawweb/avalon.

[24/] *See* Letters from concentration camps "Konzentrationslager Mauthausen Abteilung Hollerith," USHMM Archives, Hollerith File ("Letters from concentration camps"); *See* Luebke,

the camps in its Labor Assignment Office (*Arbeitseinsatz Abteilung*).[25/] Registration cards were filled out upon arrival of prisoners, supplying the Reich with critical information used for slave labor. *See* Exhibit 1, attached.

29. The Labor Assignment Office issued daily work assignments and processed inmate cards and labor transfer rosters.[26/] Hollerith punchcards were used in the camps to access the numbers of inmates available in a particular camp for reassignment as slave labor to armaments factories.[27/] Prisoners were categorized by occupation and each individual's punchcard was fed into a mechanical sorter. The dials were adjusted to select skills for particular work battalions. Prisoners' numbers were printed out by Hollerith machines and prisoners were transported according to labor needs.[28/]

30. The administration tabulated not only work assignments, but camp hospital indexes, as well as death and general statistics, which were provided to the political section of the Nazi government.[29/]

31. Concentration camps were each assigned a number.[30/] A typical Hollerith

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supra, at 35.

[25/]*See* Letters from Concentration Camps, *supra*; *See* Luebke, *supra,* at 35.

[26/]*See* Letters from Concentration Camps, *supra; see also* Luebke, *supra*, at 35.

[27/]*See* Letters from Concentration Camps, *supra*; Luebke, *supra*,7 at 35.

[28/]*See* Papers of Rudolf Martin Cheim, Joodsche Raad Voor Amersterdam, at 26, RG804 Institute for Jewish Research ("YIVO") ("Cheim"); *see also* Luebke, *supra*, at 35.

[29/]*See* "Secret Report: Poland Birkenau (Auschwitz II) Concentration Camp," May 31 1945 208/4296 PRO WO Public Records Office War Office ("PRO WO").

[30/]*See* Cheim, *supra,* at 26; RG 242/338, T1021, Roll 5, Frame 126 NARA (also listing Herzogenbusch and Neuengamme).

card used by the SS for registering concentration camp inmates included codes for the receiving and current camp, the grounds for confinement (*i.e.* Jehovah's Witness = 01, homosexual = 02, Jew = 05), birthdate, gender, ethnicity (*i.e.* Reich German = 0, Ethnic German = 1, Foreigner = 2), labor capacity, occupation and reason for departure (*i.e.* execution = 3, escape = 4, special treatment = 6).[31/] A decoding key for a concentration camp card index indicates type of prisoner (*i.e.* Jehovah's Witness/*Bibelforscher* = 2, Homosexual/*Homosexueller* = 3, Jews/*Juden = 8*, Asocial/*Asoziale = 9*, Romani/*Zigeuner = 12*), type of departure (*i.e.* Transferred/*Überstellung* = A2, Died/*Gestorben* = B3, Executed/*Exekution* = D4, Suicide/*Freitod* = E5) and which concentration camp (Auschwitz = 1, Buchenwald = 2, Dachau = 3, Flossenbürg = 4, Groß-Rosen = 5, Mauthausen = 7, Natzweiler = 8, Neuengamme = 9, Ravensbrück = 10, Stutthof = 12). *See* Exhibit 2, attached.

32. With the aid of Hollerith technology, the Labor Service Director at the Bergen-Belsen camp was able to keep the SS informed of whether the camp death toll reached what the Nazi regime deemed ideal.[32/] Prisoner and Dutch Jew Rudolf Martin Cheim worked with the Labor Service Director for five weeks at the Bergen-Belsen camp, starting in December 1944. On the basis of Hollerith technology, Cheim was able to calculate the average death toll, which at that time was 50 per day. However, the Labor Service Director told an SS official that 1,500 deaths was desirable. The SS calculated that "an inmate would remain in a concentration camp for a maximum of 9 months. Alive."[33/] In March 1945, indeed, the death toll at Bergen-

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[31/] *See* Cheim, *supra,* at 26.

[32/] *See id.*

[33/] *Id.* at 28.

Belsen reached 20,000.[34/]

33. Information collected via the Hollerith system was sent from the concentration camps to the Department of Statistics at the SS Economics Office, where General Oswald Pohl managed the administration of the camps.[35/] Weekly Hollerith reports, noting the arrival, transfer or death of every prisoner, were sent from the camps to the Central Inspectorate of Concentration Camps in Berlin-Oranienburg.[36/] Holocaust experts and historians recognize, "DEHOMAG [IBM Germany] and the official statisticians of Nazi Germany contributed in no small way to the comprehensive enrollment that facilitated so vast and deadly a persecution."[37/]

B. IBM, With its Hollerith Technology, Played an Interactive Role With Nazi Germany and its Other Customers.

34. IBM knew that its Hollerith machines and punchcards were being used to contribute to the persecution and extermination of Jews and others in concentration camps because of its direct involvement in the development of the punchcards for the Nazi regime. Each set of punchcards was custom designed for a specific purpose[38/] and application of the Hollerith technology. Only IBM technicians could design the punchcards for their particular

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[34/] *See id.*

[35/] *See id.* at 26.

[36/] *See* Luebke, *supra*, at 35.

[37/] *Id.* at 36.

[38/] *See, e.g.*, CSDIC, *supra*, at 4-17; "Deutsche Hollerith Maschinen: Confidential Report 242," at 2-3, submitted by Harold J. Carter, Dec. 8, 1943, Dept. of Justice, War Div., Economic War Section, RG60 NARA ("Confidential Report 242").

use.[39/]

35. The process began with an evaluation of the precise data needs of the project. This required IBM field engineers to collect information and undertake studies of the subject to be measured.[40/] With the aid of an IBM technician, a customer would develop a questionnaire form for collecting the desired information.[41/] On the basis of the questionnaire, the information would be reduced to a series of code numbers,[42/] and a punchcard would be designed with its own specific layout, with columns tailored for its specific purpose. Information would be punched onto cards by a punchcard press, which contained plates designed specifically for each type of card produced. A code book was developed to define the different items of information that would be captured by the numbers and number groups on the punchcard.[43/]Categories of data from the punchcards could then be sorted and tabulated by Hollerith machines.

36. In order for a customer to use the various Hollerith machines and equipment (*i.e.* punchcards, presses, feeders, sorters, verifiers and tabulators), the customer

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[39/]*See* Confidential Report 242, *supra*, at 10, ("Each customer requires a separate printing job of the highest precision.").

[40/]*See* CSDIC, *supra*, at 4-17; Confidential Report 242, *supra*, at 1-7.

[41/]*See* "Mobile Field Interrogation Unit No. 2, PW Intelligence Bulletin No. 2/27, Hollerith Record Machines in Germany" (Jan. 15, 1945) USHMM Archives, Hollerith File, at Annex A ("PW Intelligence Bulletin No. 2/27").

[42/]*See id.*

[43/]*See id.*

required training by IBM personnel.[44/] Such training was conducted over a period of weeks and was offered at various stages, from beginners to the advanced.[45/] Nazi personnel had to be trained by IBM staff in how to use the tabulators, sorters and other Hollerith machines.[46/]Salespersons and officials from IBM Germany and IBM subsidiaries in Europe, in turn, would come to New York for training, sometimes at significant expense to IBM USA.[47/]

37. Customers relied on IBM to supply them with the materials for the Hollerith machines. IBM was the exclusive source for supplying punchcards to the Reich.[48/] Until 1928, the only source of IBM punchcards was the United States.[49/] When IBM opened a new factory in Berlin in 1934, the manufacturing of Hollerith machines and punchcards expanded, enabling Hollerith technology to flourish in Germany. In 1942, plants in Germany produced 90 - 95% of the punchcards used in Germany.[50/] By 1943, it was estimated that the IBM plants in Lichterfelde-Ost and Sindelfingen, Germany, were responsible for cutting and printing the 1.5 billion punchcards that the Nazi regime required each year to run its Hollerith

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[44/] *See* CSDIC, *supra*.

[45/] *See* CSDIC, *supra*, at 4.

[46/] *See id.*

[47/] *See* Confidential Report 242, *supra,* at 19; *see also* H.J. Carter, Draft Notes of Interview with J.W. Schotte, June 14-16, 1943, at 23, Dept. of Justice, War Div., Economic Warfare Section, RG60 NARA ("Interview with Schotte").

[48/] *See* IBM contracts restricted German customers to using punchcards manufactured only by IBM; *see also* Interview with Schotte, *supra*, at 4, 9; *see also* Confidential Report 242, *supra*, at 6.

[49/] *See* Interview with Schotte, *supra,* at 3.

[50/] *See* Confidential Report 242, *supra*, at 1.

machines.[51/]

38. The presses, the templates for the punchcards, were imported solely from the United States until the beginning of the war. A customer had to have these Hollerith presses imported from IBM in the United States or have the parts sent and assembled in Berlin.[52/]

39. Watson considered the Hollerith technology and machines the exclusive intellectual property of IBM USA. The machines and the systems developed for the implementation of solutions were the sole product and creation of IBM USA. IBM USA and its subsidiaries refused to sell the Hollerith machines, but instead leased them to its customers.[53/] IBM renewed its leases on a yearly basis, thereby ensuring the "company a close control over the use of its machines."[54/] These machines were inspected on site at no additional charge on a regular and sometimes even monthly basis by IBM Germany.[55/] IBM representatives were responsible for installing, connecting, repairing and replacing machines and parts and generally keeping the machines "in working order."[56/] Moreover, IBM Germany usually supplied its

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[51/] *See id.* at 8.

[52/] *See* Interview with Schotte, *supra*, at 8.

[53/] *See* CSDIC, *supra*, at 4; PW Intelligence Bulletin No. 2/27, *supra*, at 2; *see also* International Business Machines Corporation, NY Agreement for Electric Accounting Machine Service Dept. of Justice War Div. Economic Warfare Section RG60 NARA ("IBM New York ("NY") Contract").

[54/] PW Intelligence Bulletin No. 2/27, *supra*, at 2; *see also* IBM NY contract *supra*, at 2.

[55/] *See* CSDIC, *supra*, at 4; *see also* IBM NY *supra*.

[56/] CSDIC, *Supra,* at 3.

customers with a complete new set of machines every six years.[57/]

C. IBM USA's Micromanagement of IBM Germany Enabled the Parent to Know of Its Role in Facilitating Nazi Oppression and Genocide..

40. IBM USA's substantial involvement in the operations and business of IBM Germany made it impossible for the parent not to know and understand its involvement in the Nazi regime's implementation of racial and persecution policies. Watson's domination over IBM Germany and his intimate involvement in every facet of its management, guaranteed Watson's complicit participation in the Reich's agenda. Indeed, rather than distance himself from such involvement, Watson embraced it.

41. On January 30, 1933, Adolf Hitler, was appointed chancellor of Germany. After basic civil rights were suspended and parliamentary rule was abolished in February 1933 and upon the death of German President Paul von Hindenburg in August 1934, Hitler became head of state and the commander in chief of the *Wehrmacht*, assuming the title of *Führer* and chancellor, resulting in his dictatorship over what was to be Nazi Germany. Under Hitler's rule, decrees eradicating the civil rights of the political enemies and Jews were immediately established.[58/] Consequently, thousands of Jews were imprisoned "and singled out for particularly cruel and humiliating treatment, which in many instances resulted in death."[59/]

42. On April 12, 1933, the Nazi regime announced its intention to conduct a

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[57/] *See* PW Intelligence Bulletin No. 2/27, *supra*, at 2; *see also* IBM NY contract *supra*, at 2.

[58/] *See* Luebke, *supra*, at 26.

[59/] 1 Otto Dov Kolka & Esriel Hildesheimer, "Germany," *Encyclopedia of the Holocaust*, 562 (1990).

national census[60/] and by 1934, various government bureaus of the Nazi regime began to collect information on Hollerith punchcards, identifying the political and racial adversaries of the regime, including Jews, Romani, and those deemed "genetically diseased."[61/]

43. The IBM punchcard and card sorting system, the best data-processing system available in the world, enabled the Nazi regime to record national census data for 1933 and 1939 onto Hollerith punchcards.[62/] Punchcards for the 1933 census collected information about a person's age, sex, residence, profession, religion and marital status, in an effort to carry out the Nazi regime's racial and eugenic agenda.[63/] The Reich Statistical Office (*Statistisches Reichsamt* or "SRA") oversaw the analysis and publication of the census.[64/]

44. IBM USA played a major role in the Reich's agenda. Just weeks after Hitler came to power, IBM USA invested over RM 7 million (over $1 million) to expand IBM Germany's capacity to develop Hollerith machines.[65/] On January 8, 1934, Willy Heidinger, managing director of IBM Germany, gave a speech at the opening of the Berlin factory, acknowledging the importance of the Hollerith punchcard system to the Reich's agenda. He stated proudly:

[60/] *See* Luebke, *supra*, at 26.

[61/] USHMM, Permanent Exhibition, Technology and Persecution ("Permanent Exhibition").

[62/] *See id; see also* Luebke, *supra*, at 34.

[63/] *See* Permanent Exhibition; Luebke, *supra*, at 26.

[64/] *See* Luebke, *supra*, at 27.

[65/] Letter, W. Heidinger to O.E. Braitmayer, Nov. 14, 1935, IBM USA archival materials.

> We are recording the individual characteristics of every single member of the nation onto a little card. . . . We are proud that we can contribute to such a task that provides the physician of our German body politic with the material [he needs] for his examination, so that our physician can determine whether, from the standpoint of the nation's health, the data thus arrived at correlate in a harmonious, that is, healthy, relationship – or whether diseased conditions must be cured by corrective interventions. . . . We have firm confidence in our physician and will follow his orders blindly, for we know that he will lead our nation toward a great future. *Heil* to our German people and their leader![66/]

Watson's personal representative, Walter Dickson Jones attended the formal opening of the new factory in Berlin and conveyed his impressions back to Watson just two days later. Watson, in turn, congratulated Heidinger on the event.[67/]

45. The invaluable role of statistics in aiding the Reich was openly discussed at the time. Pseudo-intellectual articles regarding "racial science" linked the importance of creating a national register with the eradication of persons considered inferior to the gene pool.[68/] Friedrich Zahn, president of the Bavarian Statistical Office, SS contributor, and president of the German Statistical Society from 1931 to 1936, stated it clearly,

> Statistics has become invaluable for the Reich . . . . German statistics has not only become the registering witness, but also a

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[66/] USHMM Quote 4.16 Heidinger quote about the Hollerith machine. "Festrede des Grunders, Generaldirektor Willy Heidinger," in *Denkschrift zur Einweihung der neuen Arbeitsstatte der Deutschen Hollerith Maschinen Gesellschaft m.b.H. in Berlin Lichterfelde am 8. January 1934* (Berlin) at 39.

[67/] *See* Telegram sent to Thomas J. Watson from W.D. Jones, Jan. 10, 1934, IBM USA archival materials ("Jones Telegram").

[68/] *See* Dr. Karl Keller, *Zur Frage der Rassenstatistik*, 24, Allgemeines Statistisches Archive ("ASA") 134, 136, 138-142 (1934/35); Dr. Friedrich Zahn, *Fortbildung der Deutschen Bevolkerungsstastistik*, 27 ASA 181 (1937/38); Dr. Friedrich Zahn, *Die Statistik im nationalsozialistischen Großdeutschland*, ASA 29 369-370 (1939).

collaborator (codesigner) in the great events of the time.[69/]

Those "great events" included the confiscation of assets, exploitation of labor and extermination of Jews and other minorities.

46. Leading statisticians in government and industry openly voiced their intention to use Hollerith technology to aid the Nazi government in the goal of "racial purity."[70/] The Reich Race and Settlement Office used these statistics, with the aid of IBM's Hollerith machines and punchcards, to carry out its work. *See* Exhibit 3, attached. In its attempt to racially categorize its population, the Race Office collected information such as height, weight, head size, shape of nose, lips and eyes, as well as hair and eye color, and recorded them on Hollerith punchcards.[71/] *See* Exhibit 4, attached.

47. An "astounding" number of other state and Nazi party institutions sought to collect similar racial data.[72/] Ultimately, in September 1935, with the enactment of the Nuremberg race laws and related decrees, the Nazi regime defined Jews on the basis of ethnic ancestry.[73/]

48. In 1939, the German government, in its effort to distinguish Jews as a race, for the first time had its census seek explicit racial information, in conformance with the

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[69/] *Die Statistik im nationalsozialistischen Großdeutschland*, *supra*, at 369-370.

[70/] *See* Luebke, *supra*, at 26.

[71/] *See* Götz Aly & Karl Heinz Roth, Die restlosse Erfassung: *Volkszählen, Identifizieren, Aussondern im Nationalsozialismus* 19 (1984).

[72/] *See* Luebke, *supra*, at 29.

[73/] *See id*. at 30.

Nuremberg laws.[74/] This census information formed the basis for a national register of Jews in Germany, enabling the Nazi government to identify within three years all Jews and Jewish *Mischlinge* ("mixed-breeds"), and their precise locations.[75/]

49. In 1940, the SRA published the tabulated results.[76/] This national register was used by the Nazi regime to enslave, deport and ultimately exterminate Jews and others in the concentration camps.[77/] The former senior historian of the United States Holocaust Memorial Museum Research Institute and renown expert on the history of the Holocaust, the late Sybil Milton, concluded, "it seems likely that material derived from the 1939 census and resident registration was used in developing the overall plan of deportation."[78/] The same was done to Romani.[79/]

50. Deportation of Jews was centralized and coordinated by Adolf Eichmann, the director of the Jewish Affairs department of the Central Office for Reich Security, at his office at the Gestapo headquarters in Berlin.[80/] Eichmann determined the quota of Jews to be rounded up from each locale and the train timetables followed.[81/] Instructions were then sent

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[74/] *See* Permanent Exhibition.

[75/] *See id*.

[76/] *See* Luebke, *supra*, at 31.

[77/] *See* Permanent Exhibition.

[78/] Luebke, *supra*, at 32-33.

[79/] *See id*. at 32.

[80/] *See id*. at 33.

[81/] *See id*.

from Berlin to local police and Jewish communal officials who produced the names of those to be deported.[82/] After October 1941, due to the 1939 census, conducted with Hollerith technology, mass deportations were directed with "remarkable accuracy."[83/]

D. IBM Hollerith Technology Was the Backbone of the Nazi Infrastructure.

51. IBM USA understood that its technology was driving the Reich's efforts. IBM's General Manager for Europe in New York, J.W. Schotte, conceded in a May 16, 1940 Confidential Memorandum, knowledge that "a large amount of punched card equipment is being used by the War Ministry" of Germany.[84/]

52. A 1943 Justice Department Confidential Report stated that German military organizations, in particular, relied heavily on IBM Germany's Hollerith technology. Among its military organizations which used the punchcards were the Luftwaffe, which tracked airplanes; the personnel department of the Reichskriegsministerium, which inventoried those in the armed services; and the medical section of the army, which tracked casualties and injuries.[85/] IBM's clients also included the Nazi Party Treasury, the Reichspost (postal system), the Reichsbank (central bank), the Reichsbahn (national railway system), and the central SS

[82/] *See id*.

[83/] *Id*. at 33-34.

[84/] J. W. Schotte, General Manager for Europe, "Confidential Report to Mr. L.M. La Motte on Our Dealings With the War Ministries in Europe," May 16, 1940, Dept. of Justice, War Div., Economic Warfare Section, RG60, NARA at 2.

[85/] *See* Confidential Report 242, *supra*, at 2 (IBM Germany machines were also used to track animals, food, clothing and foreign intelligence). *See id*. at 2-3; *see also* Luebke, *supra*, at 34-35 (other customers included the Ministry of Air Travel, the War Ministry, the Army, the Navy, the Air Force High Commands, and the Armaments Ministry).

personnel office.[86/]

53. The punchcard technology was so central to the Nazi regime, it managed the nationwide system of data transfer to trace labor and materials for the Mechanical Reporting Institute ("MB"), a branch of the Armaments Ministry. [87/] The Nazi regime, through the MB, was able to precisely manage the major facets of social and economic life and move toward its vision "of a thoroughly punch-card encoded society."[88/] A department in the main Hollerith office in Berlin was created exclusively to deal with German agencies in the effort towards total central coordination (*Gleichschaltung*).[89/] Heidinger also envisioned that IBM Hollerith technology would ultimately lead to comprehensive surveillance of everyone and everything. [90/]

E. IBM's Concern About Economic Ramifications.

54. Despite their knowledge that the Hollerith machines and punchcards were being used to promote the subjugation and annihilation of Jews and others in the concentration camps, IBM USA opposed Nazi policies only when such policies harmed the economic wellbeing of the company. IBM bemoaned the fact that Nazi policies were compromising the bottom line.

55. For example, in 1934, while expressing his "friendship and admiration for

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[86/] *See* Luebke, *supra*, at 34-35; *see also* Confidential Report 242, *supra*, at 3.

[87/] *See* Luebke, *supra*, at 35.

[88/] *Id*.

[89/] *See* PW Intelligence Bulletin, No 2/27, *supra*, at 3.

[90/] An IBM Germany advertisement, with an eye spotlighting an entire town and stating "You are in control with Hollerith punchcards," captured IBM Germany's obsessive mission. *See* Exhibit 5, attached.

Germany," Watson expressed concern that Hitler's policies regarding race and religion were alienating countries throughout the world, thereby "exercising a decisive influence on Germany's financial and economic situation. . . . The present situation, if not corrected, is liable to lead to a progressive weakening of the German economy. . . . the[se] impressions and reflections on the German situation . . . are written in confidence to you."[91/]

56. Prisoner of war, Jakob Haering, formerly the branch manager of the Saarbrücken Hollerith Office, was captured by the Allies on December 12, 1944. During his interrogation, he stated that,

> all the head men in [IBM Germany's] employ are businessmen first and foremost. As such, and in view of the close connection between their concern and the IBM, they are internationally-minded, and very much opposed to the ruinous business policies of the Nazi regime.[92/]

II. IBM USA'S CONTROL OVER IBM GERMANY AND OTHER EUROPEAN SUBSIDIARIES

A. IBM USA's Domination Over Its German Subsidiary.

57. From the outset, IBM USA exercised substantial control over its German subsidiary, micromanaging its affairs and ensuring that its profits were secured for the benefit of its parent.[93/] Watson, the president of IBM, insured that IBM Germany never strayed too far from his watchful eye, despite Nazi Germany's rise to power and the central role IBM Germany played

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[91/] Letter, Thomas J. Watson to Dr. Hjalmar Schacht, circa 1937, IBM USA archival materials.

[92/] PW Intelligence Bulletin No 2/27, *supra*, at 3.

[93/] Plaintiffs reiterate that the conduct of IBM Germany is provided by way of factual background and that IBM Germany is not a defendant in this case.

in facilitating the Reich's agenda.

58. Even after the United States entered the war, IBM USA continued its close connection with and direction of its German subsidiary, camouflaging its relationship through transactions with other subsidiaries.

1. Before The United States Entered the War.

a. Watson Owned the Majority of Shares of IBM Germany.

59. IBM Germany was an American controlled, practically wholly-owned subsidiary of IBM USA with German shareholders and on-site managers. Because Watson owned 90% of the German subsidiary, he was ensured the vast majority of any dividends that would be declared out of IBM Germany's net profits. Not only did Heidinger own only 10% of the stock of IBM Germany,[94/] he was restricted from selling his stock[95/] without shareholder, *i.e.* Watson's, authority.[96/]

60. IBM USA refused to relinquish ownership of its subsidiary even as the United States's involvement in World War II became imminent. During 1940 and 1941, when Watson's representative and IBM attorney, Harrison J. Chauncey, and Heidinger were engaged in considerable discussions over a potential transfer of ownership, the latter ultimately concluded that "the Americans were carrying on the negotiations merely for the sake of form, without any

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[94/] This was later reduced to 85%. *See* Letter from J.G. Phillips, Secretary-Treasurer IBM NY, to the U.S. Secretary of State (Dec. 2, 1941) IBM USA archival materials.

[95/] *See* Agreement between IBM NY and Heidinger, May 8, 1936, RG60 NARA.

[96/] *See* IBM Germany By-Laws, June 23, 1934, at 11, 12, IBM USA archival materials ("IBM Germany By-Laws").

real intention of agreeing to an actual, not merely fictitious, Germanization.[97]"[98] Despite efforts by the Nazi government to make IBM Germany a "pure" German company, IBM USA refused.

b. <u>As the Majority Shareholder, Watson made the Decisions for IBM Germany.</u>

61. IBM's corporate structure guaranteed Watson a substantial ability to control IBM Germany. IBM Germany's corporate structure consisted of shareholders, a Board of Directors and other representatives and attorneys selected by the shareholders.[99] Initially, the Board was comprised of two IBM USA representatives, Walter Dickson Jones in Paris and John E. Holt in Geneva along with Heidinger.[100] The Board was later comprised of Heidinger, Dr. Gustov Voigt (Heidinger's brother- in-law), and Holt. In August 1940, under pressure from the Nazi government, Watson approved Holt's replacement with three high ranking Nazi officials: Otto Kiep, Ernst Schultz-Strathus and Emil Ziegler. Despite the composition of the Board, however, it was the shareholders who enjoyed veto power over Board decisions. IBM Germany's By-Laws explicitly stated, "[T]he shareholders shall be in a position to annul the board of directors" and the "representatives shall follow the [shareholders'] instructions."[101]

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[97] Germanization was the process by which the Nazis sought to restructure Europe along racial lines with Jews, Romani, Poles, and other "undesirables" to be systematically removed. At the same time, the "racially desirable" were ideologically indoctrinated to reinforce that their "race" was superior to all other racial groups. *See* USHMM, *supra*, at 243 and 247.

[98] Heidinger Letter, *supra*, at 9-10.

[99] *See* IBM Germany By-Laws, *supra*, at 11-13l.

[100] *See* IBM Germany Board Meeting Minutes, November 14, 1934, IBM USA archival materials.

[101] IBM Germany By-Laws, *supra*, at 11-13.

Given Watson's position as the majority shareholder, neither the Board nor others could make decisions without Watson's approval.

62. For example, Watson was personally involved in approving the plans to build a new building in Berlin for IBM Germany's apprentice school, bomb shelter and storage space. Watson's negotiations with German managers Hermann Rottke and Karl Hummel, in September 1937, resulted in his authorizing the new building. IBM's German subsidiary subsequently requested, in March 1938, the approval of all of the partners for the building plans, "with the reservation that Mr. Watson for the IBM as main partner of the company first gives his assent."[102/] IBM's By-Laws ensured that Watson participated even in the minutia of IBM Germany.

c. IBM USA Received Voluminous Reports From Its European Subsidiaries, Including IBM Germany.

63. Watson regularly received reports from its European subsidiaries and kept extensive files on each pertaining to numerous aspects of the business, including monthly reports.

64. Harold J. Carter, an investigator for the Department of Justice, War Division Economic Warfare Section, submitted a memorandum in May of 1944, cataloging the voluminous information Watson kept on the activity of IBM's subsidiaries abroad. IBM reports contained information on the financial condition of the subsidiary, number of leased machines, card production, personnel problems, prospective customers, competition and statements on the economic condition of the host country. Files contained correspondence relating to the

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[102/] Letter from J.E. Holt, General Manager, to IBM Geneva at 5, Mar. 23, 1938, RG60 NARA. *See also* Memorandum, W. Heidinger to Assocs., October 6, 1936, IBM USA archival materials; ("The management can merely submit proposals; the decision as to whether something should be done . . . is the responsibility of the owners.").

administration of the business, inventory of business machines and spare parts, records of custom duties and tariffs, monthly statements on repairs in reconditioning machines, complaints, participation in national and international exhibits and fairs and even visitors entertained. The files also contained a list of all customers by country, name, location, equipment record, type of business, ownership, employment, card consumption and applications of the machines.[103/]

65. Among those subsidiaries which furnished Watson with extensive information about the Hollerith business was IBM's German subsidiary. For example, in 1934, IBM Germany sent IBM USA a list of customers using IBM Germany and its competitors' machines.[104/] In 1937, IBM Germany sent IBM USA a report describing its customer accounts and revenue for the Electric Accounting Machines, delineated by customer type (*i.e.* government, banks, insurance, transportation).[105/]

66. IBM USA kept track of IBM Germany's production and even machinery parts ordered. For example, IBM USA received a report dated December 1, 1937, of all the tool-machines ordered for the factory in Sindelfingen, Germany.[106/] IBM USA also received reports of IBM Germany's monthly production of different types of machines. In June, 1938, IBM USA

[103/] *See* Harold J. Carter, "Memorandum for the Files Re: File Search of the Foreign Division," at 2 (May 16, 1944), Dept. of Justice, War Div. Economic Warfare Section, RG60 NARA ("Memorandum for the Files").

[104/] *See* "Name and Location of Customers Using Both Our and Competitors's Machines," 1934 Dept. of Justice, War Div., Economic Warfare Section, RG60 NARA.

[105/] *See* "Germany EAM Account and Revenue by Industry Class," Jan. 1, 1937, War Division, Economic Warfare Section, RG6 NARA.

[106/] *See* "Tool-Machines Already Ordered for the Sindelfingen Factory," Dec. 1, 1937, RG60 NARA.

knew IBM Germany was producing each month, on average, 18 tabulating machines.[107/] Watson even required IBM Germany to send it invoices.[108/] No detail was too small for Watson's oversight.

d. Watson and His Representatives Traveled Extensively to Germany to Conduct Business With Its Subsidiaries.

67. Watson traveled to Europe extensively, spending six months out of the year conducting business there.[109/] For example, Watson visited Germany on October 12, 1933, where he oversaw Germany's major census operation.[110/] In 1934, Watson visited Germany twice. In 1935, Watson traveled to Berlin to celebrate IBM Germany's 25th anniversary. On June 28, 1937, Watson met Hitler in Berlin to accept the Merit Cross of the German Eagle with Star, the second highest honor bestowed on foreign nationals who have contributed to the Reich.[111/] That year, Watson also traveled to Berlin to attend the Congress of the International

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[107/] *See* "Notice for Mr. Johnston, (IBM's European Factory Manager)" June 15, 1938, RG60 NARA.

[108/] *See* Letter from P. Taylor, European General Offices Geneva, to B.J. Wallace, IBM NY (referencing letter of Dec. 23, 1940 concerning IBM Germany's invoices not received by New York and requesting IBM Germany to send to Geneva the missing invoices), IBM USA archival materials.

[109/] *See* Memorandum for the Files, *supra,* at 4; (citing Jurriann W. Schotte, European General Manager of IBM in New York).

[110/] *See* Letter, W. Heidinger to Thomas J. Watson, ½/34, IBM USA archival materials; Letter, W.D. Jones to Thomas J. Watson, January 10, 1934, IBM USA archival materials.

[111/] Watson did not return this honor to Hitler until 1940, after Hitler had already taken over most of Europe. *See* Thomas J. Watson, Jr., *Father Son & Co., My Life at IBM and Beyond*, 55 (1990).

Chamber of Commerce, of which he was president.[112/] In 1938, he again traveled to Berlin to approve of IBM Germany's plan to erect a new building in Berlin-Lichterfelde.[113/]

68. When Watson himself did not travel to IBM's foreign subsidiaries, his representatives would go in his stead. For example, when IBM's German subsidiary celebrated the official opening of its new Berlin factory on January 8, 1934, Walter Dickson Jones attended and gave a speech on Watson's behalf.[114/] Eugene Hartley, IBM USA's census specialist, was also sent to advise IBM Germany's efforts.[115/] Throughout 1940 and 1941, Harrison J. Chauncey, Secretary of IBM, represented Watson in negotiations in Berlin over the ownership and control of IBM's German subsidiary.[116/]

2. <u>After the United States Entered the War.</u>

69. Despite the United States State Department's confirmation in a press release of December 17, 1942, that the Nazis were carrying out their intention to "exterminate" the Jewish people in Europe, IBM USA continued to transact business with its German

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[112/] *See* The Congress was held there at his behest.

[113/] *See* Letter from J.E. Holt to J.G. Johnston, June 2, 1938, RGGO NARA.

[114/] *See* Jones Telegram.

[115/] *See* Letter, IBM Germany to J.T. Wilson, November 16, 1935, IBM USA archival materials; *see also* "*Davis named IBM Secretary*," *New York Times* (New York), February 22, 1940.

[116/] *See* Letter from H.J. Chauncey to IBM NY, Nov. 29, 1940, IBM USA archival materials; Letter from C.W. Hauss to H.J. Chauncey, January 27, 1941, IBM USA archival materials; Letter from Sam E. Woods, Commercial Attache of the U.S. Foreign Service in Berlin to H.J. Chauncey, Sept. 17, 1941, IBM USA archival materials.

subsidiary.[117] In mid-1943, IBM USA still owned the overwhelming majority of its German subsidiary, refusing to relinquish control.[118] IBM USA's close relationship with its German subsidiary remained intact throughout the war. As late as November 13, 1944, a German prisoner of war, formerly the branch manager of the Saarbrücken Hollerith Office, noted in an intelligence bulletin that he did "not know of any special measures of the Hollerith Co. to conceal its connection with IBM or to sever this connection."[119]

B. After the United States Entered the War, IBM USA Attempted to Mask Its Ongoing Business Relationship With the Nazi Regime By Transacting With Its European Subsidiaries.

70. Once the United States entered the war on December 10, 1941, IBM USA camouflaged its business transactions with the Nazi regime by using its European subsidiaries as a facade. IBM USA not only transacted and directed business with subsidiaries in neutral territories but it also did so with those occupied by the Nazi regime.

71. IBM Geneva, located in neutral territory, served as a conduit through which IBM USA could monitor and exercise authority over other European subsidiaries. For example, in 1942, IBM Geneva sent a report to IBM USA on the activities of IBM subsidiaries in Portugal, Spain, Sweden, Switzerland and Turkey.[120] In 1943, IBM Geneva sent a report to IBM

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[117] *See* Benjamin B. Ferencz International Criminal Court, 441 (New York, 1980); *see also* Benjamin B. Ferencz, "War Crimes Trials-The Holocaust the Rule of Law," USHMM, *supra,* at 16.

[118] *See* Interview with Schotte, *supra*, at 21.

[119] PW Intelligence Bulletin No 2/27, *supra*, at 3.

[120] *See* "European Activities in 1942 of U.S. Firm's Subsidiaries," from IBM Geneva to J.C. Milner, IBM NY (March 16, 1943), RG60 NARA.

USA, conveying information about German activities taking place in Switzerland.[121/] IBM Geneva, in turn had contacts with IBM's subsidiaries in Axis occupied countries, such as France and Belgium.[122/]

72. IBM USA also transacted business with and received documents from occupied territories directly. A copy of a contract for a sorting machine between the Reich Ministry for Armament and Munitions, in Berlin, and IBM USA, through its Amsterdam subsidiary, dated August 7, 1942,[123/] *see* Exhibit 6 attached, demonstrates that "a highly official German agency [was] dealing with IBM in New York, after the war had started."[124/]

73. IBM USA entered into contracts with customers in neutral Sweden authorizing its Swedish subsidiary to sell Hollerith machines from Italy, an Axis country. According to a Telegram from a Foreign Service Officer in Stockholm, Sweden to the United States State Department, dated September 1942, IBM's Swedish subsidiary was powerless to alter this arrangement because IBM's Italian subsidiary was "under contract to sell only to [IBM] in Sweden."[125/] The United States foreign service officer accurately characterized such business

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[121/] *See* "Business Machines: French & German Activities in Switzerland," from IBM–Estension Suisse to J.T. Wilson, IBM New York (August 16, 1943), RG60 NARA ("Business Machines: French & German Activities in Switzerland").

[122/] *See* Letter from Sidney Homer, Foreign Economic Administration, Washington D.C., to C.C. McIvor, U.S. Treasury Dept. (March 9, 1944) (discussing possible contact with subsidiaries in France and Belgium and making salary remittances), RG60 NARA.

[123/] By May of 1940, Germany had already invaded the Netherlands, where IBM's Amsterdam subsidiary was located.

[124/] Eisenstadt, *supra* at 25.

[125/] Telegram from Foreign Service Office in Stockholm to State Department RE: A.B. Svenska Watson" September 1942, Dept. of Justice, War Div. Economic Warfare Section

as IBM Sweden's "transactions with the enemy."[126/]

74. IBM's subsidiary in Prague, which was occupied by Nazi Germany as early as October 1939, continued to conduct business with the IBM USA in 1942.[127/] IBM USA's Secretary and Legal Representative, Harrison Chauncey, met Dr. Georg Schneider, the manager of IBM Prague,[128/] in Berlin in 1942, authorizing IBM Prague to buy machines from IBM Germany and lease them under the Prague subsidiary's name and account.[129/]

75. IBM USA also received accounting information during the war about the financial circumstances of its European subsidiaries in enemy controlled countries.[130/] For example, IBM USA documents show stock dividends, net foreign assets, securities and advances, and undistributed surplus for IBM foreign subsidiaries in Nazi controlled territories.[131/] IBM Geneva continued to send reports to IBM USA in the summer of 1943.[132/]

76. A report by the Economic Warfare Section of the United States Justice Department shows that despite Germany's invasion of France in June of 1940, IBM USA continued to receive a quarterly reports as late as 1942 from its French subsidiary describing

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RG 60 NARA.

[126/] *Id*.

[127/] *See* Letter from Dr. Georg Schneider, manager of DEHOMAG Prague, to IBM NY, July 4, 1945, IBM USA archival materials.

[128/] *See id*.

[129/] *See id*.

[130/] *See* Eisenstadt, *supra*, at 25.

[131/] *See id*.

[132/] *See* Business Machines French and German Activities in Switzerland, *supra*.

Germany's agreement for the leasing of Hollerith equipment.[133/]

III. IBM USA PROFITED FROM THE REICH'S OPPRESSION

77. IBM USA enjoyed tremendous profits from IBM Germany. Even prior to Hitler's taking power, by 1927, IBM Germany's profits resulted in over 400% of its purchase price.[134/] In 1933, IBM Germany sold 237% of its 1933 quota, more than all of the IBM foreign operations combined.[135/] Weeks after Hitler came to power in 1933, IBM USA expanded IBM Germany, investing more than $1 million to expand the ability to manufacture punchcard machines.[136/]

78. IBM USA made substantial profits in Germany throughout the 1930s and 1940s. The demands of re-armament and the war caused the sale of Hollerith machines to increase substantially from 1936 onward.[137/] From 1938 to 1943, IBM Germany increased its rate of production of business machines by 40%.[138/]

79. Watson ensured that IBM USA would continue to enjoy its substantial profits despite Reich opposition to monies being transferred out of the Reich. IBM USA

[133/] *See* Confidential Report 242, *supra*, at n. 1-3.

[134/] *See* James Connolly, *History of Computing in Europe* 18 (IBM World Trade Corp.: circa 1967).

[135/] *See* Eisenstadt, *supra*.

[136/] *See* Letter W. Heidinger to D.E. Braitmayer, Nov. 14, 1945, IBM USA archival materials.

[137/] *See* PW Intelligence Bulletin No. 2/27, *supra*.

[138/] *See* Confidential Report 242, *supra*.

received approximately $4.5 million in dividends from IBM Germany during this period.[139/] Even when dividends and profits from Germany were blocked from going to the United States, such monies were channeled to IBM's European subsidiaries located in Denmark, Belgium, Holland, Switzerland and Italy.[140/]

80. At the end of 1946, IBM Germany had a value of more than RM 56.6 million and a gross profit of RM 7.5 million.[141/]

IV. IBM USA HAS FRAUDULENTLY CONCEALED ITS ROLE IN THE HOLOCAUST

81. IBM USA has misrepresented and concealed information about its role in the Holocaust. When asked by historians and others about the role IBM USA and its subsidiaries played in the Holocaust, IBM USA has knowingly perpetuated confusion and misinformation on the subject or outright refused to provide answers.[142/]

82. A senior corporate IBM archivist from New York stated publically that IBM's archives "don't have any documents here that relate to the Holocaust."[143/] Moreover, he added that IBM had not issued a statement or paper regarding IBM Germany's role in the Holocaust.[144/] While conceding that "[t]he Germans did use the DEHOMAG [IBM Germany]

[139/] *See* Connolly, *supra*, at 37.

[140/] *See* Private and Confidential Report, Price Waterhouse to IBM Geneva, April 24, 1937, IBM Rule; Connolly, *supra*, at E-10.

[141/] *See* "IBM Germany Balance Sheet As of December 31, 1946," RG260 NARA.

[142/] *See* Eisenstadt, *supra*.

[143/] *Id.* at 24.

[144/] *See id*.

Hollerith," the archivist claims that "[t]hat's about all I know."[145/] The few documents retrieved from IBM USA's archive, however, reveal that the company has information relevant to its role in the Holocaust and that such documents are only the tip of the iceberg.

83. IBM USA has stymied the efforts of historians and others from getting access to its archival records. While the same IBM archivist claimed that the company's archives were "open to anybody would wants to come,"[146/] this has not proven true. Historians who have sought information from IBM have been largely unsuccessful.[147/]

84. IBM USA has also refused to provide an accurate and complete accounting of the earnings of its European subsidiaries. In particular, IBM USA has not fully disclosed the earnings made by IBM Germany for supplying the Nazi regime with Hollerith technology that enabled it to conduct its 1933 and 1939 censuses.[148/] In addition, IBM USA has not fully disclosed the deferred revenues of its subsidiaries that conducted business in enemy territories during World War II.[149/]

CLASS ALLEGATIONS

85. Plaintiffs bring this action on behalf of themselves and all others similarly situated worldwide pursuant to Federal Rules of Civil Procedure 23. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of

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[145/] *Id*.

[146/] *Id*.

[147/] *See, e.g., id*.

[148/] *See id.* at 25.

[149/] *See id*.

Rule 23.

86. The class is defined as: all victims and survivors of Nazi persecution interned in concentration camps. The class does not include the Judge or defendant.

87. This action may be properly maintained as a class action pursuant to Rule Fed. R. 23(b)(1)(A), 23(b)(1)(B) and/or 23(b)(2).

88. The class satisfies the requirements of Rule 23(a)(1) in that the exact number of plaintiff class members is not known, but plaintiffs estimate that the class exceeds 100,000 persons and is so numerous and geographically dispersed that joinder of individual members is impracticable.

89. The class satisfies the requirements of Rule 23(a)(2) in that questions of fact and law are common to the class. Common questions of fact and law include:

a. Whether IBM USA engaged in conduct separate and apart from anything done by any of its German subsidiaries that constitutes facilitation of genocide;

b. Whether the conduct of IBM USA constitutes violations of international law;

c. Whether IBM USA profited by its misconduct and by how much;

d. Whether IBM USA knew or should have known that it was assisting and/or acting as an accomplice, collaborating with and/or playing a crucial role in the Nazi regime's scheme to murder millions of civilians;

e. Whether IBM USA knew or should have known that through its provision of Hollerith Technology, it was generating financial profits by facilitating the enslavement and murder of civilians;

f. Whether IBM USA knowingly assisted the Nazi regime in enhancing the Nazi war effort and the systematic persecution, enslavement, torture and extermination of Holocaust victims;

g. Whether IBM USA knowingly concealed information about its wrongdoing during and after the Second World War; and

h. Whether IBM USA has been unjustly enriched by its wrongful conduct.

90. The class satisfies the requirements of Rule 23(a)(3) in that the claims of the individually named plaintiffs are typical of the claims of the plaintiff class. All class members have the same claims against IBM USA arising out of the single course of conduct described herein.

91. The class satisfies the requirements of Rule 23(a)(4) in that plaintiffs and their attorneys are able to and will fairly and adequately protect the interests of the plaintiff class. Plaintiffs know and understand their asserted rights and their role as class representatives. Plaintiffs have no conflict of interest with the proposed class members with respect to this action or the claims for relief. Plaintiffs' attorneys have sufficient experience to conduct the litigation, and can and will vigorously pursue the interests of the plaintiffs and the class.

92. The class satisfies the requirements of Rule 23(b)(1)(A) in that the prosecution of separate actions by individual plaintiffs may result in inconsistent and varying adjudications and could establish incompatible standards of conduct for IBM USA if multiple courts order IBM USA to provide different and incompatible types of data and/or accounting, or to provide other inconsistent types of injunctive and/or equitable relief.

93. The class satisfies the requirements of Rule 23(b)(1)(B) in that the prosecution of separate actions by individual plaintiffs may be dispositive of the interests of the other proposed class members not party to the adjudications, or may substantially impair or impede their ability to protect their interests.

94. The class satisfies the requirements of Rule 23(b)(2) in that IBM USA has acted and/or refused to act on grounds generally applicable to the proposed class, making final injunctive relief and corresponding declaratory relief appropriate with respect to the class as a whole. IBM USA's conduct described herein entitles the class to injunctive and equitable relief in the form of an accounting order requiring IBM USA to release any data acquired through the Hollerith technology which forms the basis of this action.

95. Certification of the plaintiff class is appropriate under Fed. R. Civ. P. 23(a) and under 23(b)(1) and/or 23(b)(2).

COUNT I
VIOLATIONS OF INTERNATIONAL LAW

96. Plaintiffs repeat and reallege the above allegations as if fully set forth herein.

97. Defendant violated customary international law enforceable in this Court as federal common law and the law of nations, as evidenced by various sources, including but not limited to the Nuremberg Principles, the Hague Convention of 1907, the Geneva Convention of 1929, the supplemental Geneva Convention of the Treatment of Non-Combatants during War Time, the Slavery Convention of 1926, the Supplementary Convention of the Abolition of Slavery, the International Labor Convention and Recommendations, the Genocide Convention,

the United Nations Charter, the Universal Declaration of Human Rights, by aiding and abetting the Nazi regime in the implementation and execution of its systematic scheme of enslavement and genocide. IBM USA knowingly and actively facilitated the transport of concentration camp inmates, the registering and tracking of concentration camp prisoners, and thereby the enslavement and murder of millions of persons throughout Europe.

98. In the alternative, IBM USA knew or should have known that its Hollerith machines were being used by the Nazi regime to administer its plan of enslavement, torture and genocide, yet continued to provide its products and support in order to profit thereby. IBM knew or should have known that such profits were being obtained unjustly and in the course of the commission of genocide and violations of international law and human rights law.

99. Plaintiffs and the members of the plaintiff class have suffered as a result of IBM USA's wrongful violations of international law and its facilitation and promotion of the Nazi regime's violations of international law, for which they demand injunctive, declaratory and equitable relief and other relief available to them under the applicable principles of international law, together with attorney fees and the costs of this action.

COUNT II
UNJUST ENRICHMENT

100. Plaintiffs repeat and reallege the above allegations as fully set forth herein.

101. During the Nazi regime, the IBM USA facilitated the enslavement and murder of Holocaust victims and profited from the enslavement and murder of Holocaust victims through the conduct alleged herein.

102. IBM USA actively marketed and provided its Hollerith technology to the

Nazi regime, knowing that such technology was being used to further the Nazi regime's plan of ethnic cleansing, all to increase its profits.

103. As a result of IBM USA's wrongful acts and omissions as described above, IBM USA has been unjustly enriched.

104. IBM USA has been unjustly enriched at the expense of plaintiffs and the plaintiffs class members. Plaintiffs and the plaintiffs class, therefore, demand restitution and judgment against the defendant, together with attorney fees and the costs of this action.

105. Moreover, IBM USA's violations of customary international law continued after World War II by the following actions:

- unjustly refusing to disgorge the profits made through its violations of international law, and enriching itself with the derivative profits of such assets;
- intentionally and wrongfully concealing from the plaintiffs and the other class members information about the data it administered; and
- investing and otherwise profiting from its wrongfully-obtained profits.

EQUITABLE TOLLING AND ESTOPPEL

106. No statute of limitations has yet begun to run on plaintiffs' causes of action because plaintiffs and members of the class and the general public have been kept in ignorance of information essential to the pursuit of these claims, without any fault or lack of diligence on their part. The defendant has caused plaintiffs to delay in bringing an action by misrepresenting and failing to disclose in a timely manner their role in the Holocaust and the existence of records supporting this. Moreover, the defendant has engaged in a policy of

systematic and historical denial and misrepresentation to the public, including members of the class regarding the custody and existence of information.

107. IBM USA had a duty to disclose its knowledge regarding its conduct to plaintiffs and members of the class by virtue of (a) IBM USA's superior knowledge of its conduct and activities, and (b) IBM USA's partial and misleading statements regarding its conduct and the availability of information on its conduct, which, once uttered publicly, required full disclosure so that they would not be misleading and mask the existence of plaintiffs' claims.

108. Plaintiffs justifiably relied on IBM USA's concealment of information, and claims of ignorance regarding the conduct of its officers and agents during the Holocaust.

109. In reliance upon the facts omitted by IBM USA, and because of IBM USA's aforementioned concealment, plaintiffs did not institute this action sooner, having no knowledge of IBM USA's role.

110. It was only upon recently learning of the conduct of IBM USA that plaintiffs learned of the existence of their claims, and filed suit.

111. The defendant provided false information to the public, and to plaintiffs and the class.

112. Moreover, defendant's misconduct is continuing. Thus, the statute of limitations has not yet accrued. Defendant's actions, in failing to disclose and/or make public the data gathered during the Nazi era, and through repeated denials as to the existence of such information to plaintiffs and class members, constitutes deliberate, continuous and ongoing violations of international law and other law which span the last fifty years.

113. Additionally, the Holocaust, World War II and the persecution and

genocide of Jews and others are extraordinary circumstances which warrant application of the doctrine of equitable estoppel.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that the Court:

1. certify this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

2. adjudge and decree that defendant's conduct as described herein was and is in violation of customary international law, federal common law and the laws of the State of New York;

3. order a disgorgement and restitution of any and all profits earned by defendant in the course of the conduct alleged herein, including all interest accrued thereon and all profits derived therefrom;

4. order the defendant to release and provide to plaintiffs any and all data related to the Holocaust, including opening its archives;

5. enjoin defendant from destroying any documentation or any other evidence relating to defendant's role in the Holocaust;

6. award plaintiffs the costs of bringing this action, including the payment of reasonable attorneys' fees; and

7. grant such other and further relief as the Court deems just and proper.

Dated: February __, 2001

Respectfully submitted,

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