Case 1:05-cv-01548-RCL Document 1-2 Filed 07/29/05 Page 119 of 139 ALSCHULER GROSSMAN STEIN & KAHAN LLP 1 Marshall B. Grossman (035958) 2 Seth M. Gerber (202813) Jonathan E. Stern (222192) 1620 26th Street 3 Fourth Floor, North Tower Santa Monica, CA 90404-4060 4 Telephone: 310-907-1000 5 Facsimile: 310-907-2000 6 Attorneys for Plaintiff AGUDAS CHASIDEI CHABAD 7 OF UNITED STATES 8 9 UNITED STATES DISTRICT COURT 10 CENTRAL DISTRICT OF CALIFORNIA 11 12 CV04-9233 PA (PLAX) 13 AGUDAS CHASIDEI CHABAD OF CASE NO. UNITED STATES, a non-profit 14 religious corporation, COMPLAINT FOR: (1) VIOLATIONS OF INTERNATIONAL 15 Plaintiff, LAW; (2) DECLARATORY RELIEF; AND 16 (3) INJUNCTIVE RELIEF vs. 17 RUSSIAN FEDERATION, a foreign state; RUSSIAN MINISTRY OF 18 CULTURE AND MASS COMMUNICATION; RUSSIAN STATE 19 LIBRARY, and RUSSIAN STATE MILITARY ARCHIVE, each 20 agencies or instrumentalities of the RUSSIAN FEDERATION; 21 and DOES 1 through 10, DOCKETED ON CM inclusive, Defendants. NOV 1 5 2004 BY 26 27 28 ALSCHULER GROSSMAN

STEIN & KAHAN LLP Plaintiff AGUDAS CHASIDEI CHABAD OF UNITED STATES

("CHABAD") complains of defendants RUSSIAN FEDERATION, RUSSIAN

MINISTRY OF CULTURE AND MASS COMMUNICATION ("RUSSIAN MINISTRY OF

CULTURE"), RUSSIAN STATE LIBRARY, and RUSSIAN STATE MILITARY

ARCHIVE ("RUSSIAN MILITARY ARCHIVE"), and Does 1 through 10

(collectively, the "Defendants"), inclusive, as follows:

## PARTIES TO THE ACTION

- 1. Plaintiff CHABAD is a non-profit religious corporation organized and existing under the laws of the State of New York. CHABAD is a senior policy-making and umbrella entity of the worldwide CHABAD religious organization in over 65 countries. CHABAD was incorporated on July 25, 1940. CHABAD's headquarters and central library are located at 770 Eastern Parkway, Brooklyn, New York. There are approximately 2,500 CHABAD centers throughout the world, with over 200 programs in California alone where the public comes to worship, study, and obtain social welfare services. Many of CHABAD's services are non-sectarian and non-denominational. Prior to its incorporation, CHABAD was frequently referred to as a "movement" or "organization."
- 2. Defendant RUSSIAN FEDERATION is a foreign state, as defined in 28 U.S.C. § 1603(a). The RUSSIAN FEDERATION is the "continuing state" of the former Union of Soviet Socialist Republics ("USSR"), which was founded by the communists after World War I. Under the constitution of the RUSSIAN FEDERATION:

  (a) the executive branch consists of the President, the Chairman of Government (Premier), the Deputy Chairman, and the Ministries;

  (b) the legislative branch consists of the Federation Council and

the State Duma (450 Representatives); and (c) the judicial branch includes the Supreme Court of Arbitration. The Supreme Court of Arbitration of the RUSSIAN FEDERATION (the "Russian Supreme Court") is the supreme judicial body with respect to economic disputes and matters relating to arbitration. Defendant RUSSIAN FEDERATION's Embassy is located in Washington, D.C. It also has consulate general offices located in San Francisco, California; Seattle, Washington; and New York, New York. Defendant RUSSIAN FEDERATION has interactive websites located at <a href="https://www.gov.ru">www.gov.ru</a> and <a href="https://www.gov.ru">www.gov.ru</a> and elsewhere, it solicits business, trade and travel to and within the RUSSIAN FEDERATION.

- 3. Defendant RUSSIAN MINISTRY OF CULTURE is, and at all times material hereto was, a political subdivision of the RUSSIAN FEDERATION, as defined in 28 U.S.C. § 1603(a). Defendant RUSSIAN MINISTRY OF CULTURE is located in Moscow, Russia and maintains a website located at <a href="https://www.mincultrf.ru">www.mincultrf.ru</a>.
- 4. Defendant RUSSIAN STATE LIBRARY is, and at all times material hereto was, an agency and instrumentality of the RUSSIAN FEDERATION, as defined in 28 U.S.C. § 1603(b). The RUSSIAN STATE LIBRARY was formerly known as the Rumyantsev Library and the Lenin Library. The RUSSIAN STATE LIBRARY is located in Moscow, Russia, and has an interactive website located at <a href="https://www.rsl.ru/defengl.asp">www.rsl.ru/defengl.asp</a>, through which, in this District and elsewhere in the United States, items are offered for sale. CHABAD is informed and believes and thereon alleges that the RUSSIAN STATE LIBRARY distributes and sells books and related goods in this District and elsewhere in the United States.

- 5. Defendant RUSSIAN MILITARY ARCHIVE is, and at all times material hereto was, an agency and instrumentality of the RUSSIAN FEDERATION, as defined in 28 U.S.C. §1603(b). The RUSSIAN MILITARY ARCHIVE was formerly known as the Archive of the Red Army, the Central Archive of the Red Army, the Central State Archive of the Red Army, and the Central State Archive of the Soviet Army. The RUSSIAN MILITARY ARCHIVE is located in Moscow, Russia, and has an interactive website located at <a href="https://www.rusarchives.ru/federal/rgva/">www.rusarchives.ru/federal/rgva/</a>, through which, in this District and elsewhere in the United States, items are offered for sale.
- 6. The true names and capacities, whether individual, corporate, governmental, agency, instrumentality or otherwise, of defendants named herein as Does 1-10 are presently unknown to CHABAD, who therefore sues such defendants by fictitious names. CHABAD will seek leave to amend this complaint to allege the true names and capacities of these defendants when they have been ascertained. CHABAD is informed and believes and thereon alleges that the fictitiously named defendants actively participated in the acts and omissions alleged herein, and as a direct and proximate result thereof incurred legal liability to CHABAD as alleged in this complaint.
- 7. CHABAD is informed and believes and thereon alleges that at all times material hereto, Defendants, and each of them, were the agents or instrumentalities, representatives, owners, successors, or affiliates of the other Defendants, and as such, were acting in the course and scope of such agency, affiliation, or ownership relationship.

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BACKGROUND FACTS

## The Establishment Of The Collection

- 8. This lawsuit is filed to recover religious writings which are owned by plaintiff CHABAD for the benefit of the worldwide CHABAD community (i.e., those of the Jewish faith who follow and study the teachings of CHABAD's spiritual leaders and the CHABAD Chassidic philosophy). CHABAD is an over 200-year-old Jewish organization (and now non-profit religious corporation) which follows and teaches the spiritual tenets and religious directives of Rabbi Israel Baal Shem Tov and seven successive generations of spiritual leaders referred to as Rebbes (or Rabbis).
- 9. The religious writings consist of a collection of rare and irreplaceable rabbinic books, archives, and manuscripts on CHABAD Chassidic philosophy, Jewish religious law, prayer, and tradition (the "Collection"). Its value is priceless and under any measure greatly exceeds any jurisdictional requirement of this Court.
- v. Gourary, 833 F.2d 431 (2d Cir. 1987), the Collection is and has historically been recognized as held in charitable trust by CHABAD for the benefit of the worldwide CHABAD community. Many of the books and manuscripts that comprise the Collection were received as gifts from supporters of CHABAD in the form of ma'amad ("support" or "dues"). Unlike a personal gift donated for the benefit of an individual, ma'amad functions as membership dues allocated for the benefit of the entire CHABAD community, the Rebbe, and the related community institutions. Ma'amad and

other funds used for the purchase of books and manuscripts for the Collection were principally donated by American donors. The Collection is not personal to any individual; it is held in trust by CHABAD for the benefit of the worldwide CHABAD community.

- 11. The Collection consists of two parts:
- a. There is the "Library," also known as the Schneersohn Library and the Lubavitch Library. The Library was established, maintained and augmented by the first five CHABAD Rebbes dating back to 1772. It contains over 12,000 books and 381 manuscripts. The Library is presently in the physical possession of defendants RUSSIAN STATE LIBRARY, RUSSIAN MINISTRY OF CULTURE, and RUSSIAN FEDERATION.
- b. There is the "Archive." The Archive is the historical repository of the handwritten teachings of a succession of Chabad Rebbes, including their correspondence and records. The Archive contains over 25,000 handwritten pages, and the vast majority of it is presently in the physical possession of defendants RUSSIAN MILITARY ARCHIVE, RUSSIAN MINISTRY OF CULTURE, and RUSSIAN FEDERATION. The balance of it is in the possession of CHABAD in its central library in New York.
- 12. Rabbi Menachem Mendel Schneersohn (the "Seventh Rebbe") was the most recent of the seven Rebbes to serve and lead CHABAD as its spiritual leader. He physically passed away in 1994. In or about December 1990, the Seventh Rebbe designated Rabbi Yosef I. Aronov, Rabbi Boruch Shlomo Cunin, Professor Veronika Irina, Rabbi Isaac I. Kogan and Rabbi Shalom Dovber Levinson, (collectively, the "CHABAD Delegation"), to obtain the return of the Library to CHABAD in New York.

The Capture Of The Collection

German army was approaching Lubavitch, Russia, Rabbi Shalom Dov
Baer (the "Fifth Rebbe") fled with his family and followers, took
with him those Library books and manuscripts which he could
carry, and sent the rest of the Library for safe keeping to
storerooms belonging to the Persits family in Moscow. The
Bolshevik revolution and the Civil War that followed prevented
the Fifth Rebbe from again having access to the Library.

- 14. In 1924, the RUSSIAN FEDERATION (then the USSR) took possession of the Library and stored it at the RUSSIAN STATE LIBRARY, where it remains to this day. The Library has never been nationalized.
- Rebbe" and he maintained and augmented the Archive for the benefit of CHABAD. In 1927, the Soviets arrested the Sixth Rebbe, and incarcerated him at Spalerno prison in Leningrad. There, he was interrogated, tortured, and sentenced to death. Under pressure from Western governments, the Sixth Rebbe was permitted to leave the USSR in 1927 and settle in Riga, Latvia, where he became a citizen. In 1933, the Sixth Rebbe moved to Warsaw, Poland. The Sixth Rebbe took the Archive with him when he settled in Latvia and then again when he eventually settled in Poland. The USSR provided the Sixth Rebbe with documentation permitting him to take the Archive with him, thus disclaiming any ownership by the USSR.
- 16. On September 1, 1939, World War II began in Europe when Nazi Germany attacked Poland from the West. On September

17, 1939, the Soviets attacked Poland from the East. The Sixth Rebbe remained in Warsaw, Poland during its bombardment and fall to Nazi Germany. With the intercession of the United States Department of State and others, the Sixth Rebbe was eventually given safe passage back to Riga, Latvia. He then went to Stockholm, Sweden, and finally arrived in the United States on March 19, 1940, and later became a United States citizen.

- 17. When the Sixth Rebbe was rescued from Poland, he was unable to take the Archive with him; it remained in Poland throughout World War II. The Soviet Army occupied eastern Poland from September 1939 until June 1941, when Nazi Germany attacked the USSR. The Soviet Army captured Warsaw from Nazi Germany on or about January 17, 1945.
- During Nazi Germany's occupation of Poland, the Nazis pursued their diabolic plan to achieve a "final solution of ethnic cleansing." The Nazis looted the assets of the very peoples they sought to liquidate. The Holocaust and the fate of European Jewry are episodic, well known and documented. extermination was preceded, accompanied, and followed by methodical and systematic confiscation of properties, including through the enactment of illegal statutes, forcible-taking of property, extortion, blackmail, confiscations, and murder. this end, the Nazis misappropriated the property owned by the Jews in Poland, most of whom were never to return.
- In the wake of the ensuing death, destruction, and dislocation caused by the Holocaust and World War II, the fate of the Archive remained a mystery and unknown to CHABAD for decades. In the 1970s, a portion of the Archive was found in Poland and

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returned to CHABAD by the Polish government. This portion of the Archive is now part of CHABAD's central library in New York. CHABAD is informed and believes and thereon alleges that the balance of the Archive portion of the Collection was taken by the Soviets as war booty after World War II and transported for storage at the RUSSIAN MILITARY ARCHIVE, where it remains in storage. Over these many years, the Defendants concealed the existence of the Archive from CHABAD. For example, in 2000, the RUSSIAN MILITARY ARCHIVE refused the request of CHABAD to inspect its contents to determine if the Archive was present. It was not until 2003-2004 that CHABAD was able to confirm the existence and presence of the Archive, as well as the actual written authority and recognition of ownership of the Archive given by the USSR to the Sixth Rebbe. The Archive has never been nationalized.

## Political Efforts to Secure the Return of the Library

- 20. Over the past few decades, CHABAD and many acting on its behalf have sought the return of the Library to CHABAD. For example:
- a. In 1933, then United States Senator Millard

  E. Tydings wrote to then United States Secretary of State Cordell

  Hull asking him to speak with then Soviet Ambassador Maxim

  Litvinov about returning the Library to the Sixth Rebbe.
- b. In 1988, American industrialist Armand Hammer requested that the USSR's then Minister of Culture, Vasily G. Zakharov, consider returning some of the Library to CHABAD in New York as a good faith gesture. Two and half years later, Armand Hammer wrote a similar letter to Nikolai N. Gubenko, the then Minister of Culture of the RUSSIAN FEDERATION.

- On or about February 17, 1992, then RUSSIAN FEDERATION President Boris Yeltsin promised then United States Secretary of State James Baker that the Library would be returned to CHABAD. Over the ensuing years, CHABAD and others acting on its behalf, have engaged in good faith efforts to have the RUSSIAN FEDERATION honor the promise of its President.
- On February 26 and 27, 1992, several United d. States Senators including Bob Dole, Albert Gore Jr., and Joseph I. Lieberman wrote letters to then Supreme Soviet Chairman Ruslan Khasbulatov requesting the return of the Library to CHABAD.
- On or about May 31, 1992, all one hundred e. United States Senators signed a letter adopting a State Department statement asking that President Yeltsin fulfill his promise to Secretary of State Baker and return the Library.
- On or about March 16, 1993, sixteen members of the United States Senate wrote to President Yeltsin reminding him of letters previously sent by every member of the United States Senate and over 130 members of the United States House of These letters called for President Yeltsin to Representatives. fulfill his prior commitment to Secretary of State Baker to return the Library to CHABAD.
- In 1993, then United States President William J. Clinton reiterated his and the Administration's commitment to press President Yeltsin for the return of the Library to CHABAD.

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# Efforts in the Russian Federation to Return the Collection

- 21. On or about November 29, 1990, CHABAD formed the Jewish Community of Lubavitch Chassidim ("CHABAD Community") as its representative in the USSR.
- 22. On or about September 6, 1991, RUSSIAN FEDERATION General Secretary Mikhail Gorbachev, through Alexander Yaakovlev, his special advisor, instructed the RUSSIAN STATE LIBRARY to return the Library to CHABAD.
- 23. On or about September 26, 1991, the CHABAD

  Community petitioned the State Arbitration Tribunal of the

  RUSSIAN FEDERATION (the "Trial Court") for an order directing the

  return of the Library, Case No. 350/13-H.
- Delegation set up a 24-hour information station and began a prayer vigil outside the RUSSIAN STATE LIBRARY that lasted approximately 19 days. Soon after the vigil commenced, a librarian from the RUSSIAN STATE LIBRARY provided the CHABAD Delegation with evidence showing that some of the books in the Library had been destroyed while in its possession. The vigil ended on or about September 26, 1991, when the Russian Court issued an order to the RUSSIAN STATE LIBRARY directing it to sequester the Library.
- 25. On or about October 8, 1991, a three-judge panel of the Trial Court held that the Library belongs to the CHABAD Community. The Trial Court expressly ordered the RUSSIAN STATE LIBRARY to return the Library to the CHABAD Community within one

1 month. The RUSSIAN FEDERATION and the RUSSIAN STATE LIBRARY
2 appealed the Trial Court's order to the Russian Supreme Court.

- 26. The RUSSIAN STATE LIBRARY did not comply with the Trial Court's order; it refused to return the Library. On or about October 14, 1991, the Moscow Marshals refused to assist the CHABAD Delegation in obtaining compliance with the court order.
- 27. On or about November 18, 1991, the Russian Supreme Court ruled that the RUSSIAN FEDERATION never nationalized the Library. The Russian Supreme Court also ordered the RUSSIAN STATE LIBRARY to transfer the "disputed collection of books and manuscripts" to a "Jewish National Library," which by ruling dated November 15, 1991, participated in the case as a third party, on behalf of the CHABAD Community.
- 28. On or about November 20, 1991, staff members of the RUSSIAN STATE LIBRARY reacted to the order of the Russian Supreme Court by taunting the CHABAD Delegation with anti-Semitic slurs and threats of violence. That evening, some 30 baton-wielding officers of the library police attacked members of the CHABAD Delegation and its supporters.
- 29. On January 29, 1992, the Deputy Chairman of the RUSSIAN FEDERATION ordered the RUSSIAN STATE LIBRARY to give the Library to the CHABAD Delegation. That same day, a group of hooligans confronted members of the CHABAD Delegation with signs containing anti-Semitic slogans. The director of the manuscript department of the RUSSIAN STATE LIBRARY joined with them and incited the crowd by shouting death threats through a bullhorn. The hooligans also distributed a newspaper accusing Jews of ritual murder. The next day a larger crowd assembled near the

RUSSIAN STATE LIBRARY shouting anti-Semitic slogans and carrying signs condemning CHABAD Delegation member Rabbi Kogan to death.

Once again, the RUSSIAN STATE LIBRARY did not return the Library.

- 30. On or about February 14, 1992, B.I. Puginsky, the assistant to the Deputy Chief Arbitrator of the Russian Supreme Court purported to nullify the Trial Court's orders dated September 26 and October 8 and the Russian Supreme Court's order dated November 18, 1991. His conduct was without legal justification and lacked any legal or binding effect under Russian law. Under Russian law, an assistant cannot abrogate a decision of the Russian Supreme Court. Only a higher court can overrule a lower court under Russian law, and there is no higher court than the Russian Supreme Court.
- 31. On or about February 19, 1992, the RUSSIAN FEDERATION issued a decree purporting to cancel the orders of the Trial Court and Russian Supreme Court, and prohibiting the return of the Library. This decree constitutes the first time that the RUSSIAN FEDERATION, the RUSSIAN MINISTRY OF CULTURE, or the RUSSIAN STATE LIBRARY purported to assert actual ownership of the Library and reject CHABAD's ownership.
- 32. On or about October 24, 1992, the United States Congress enacted the Freedom Support Act. Section 202 of the Freedom Support Act prohibits the provision of assistance other than humanitarian assistance to a governmental entity in certain situations in which there has been a failure to comply with a final court judgment that the entity is unlawfully withholding books or other documents of historical significance that are the property of United States persons.

34. Thereafter, President Yeltsin and President Putin, and officials in their Government, have repeatedly assured CHABAD that the conflicting positions taken within the RUSSIAN FEDERATION would be resolved to CHABAD's satisfaction, and as evidence of their good faith have, on diverse occasions, returned selected volumes from the Collection to CHABAD. However, for the past two years, CHABAD has been met with a lack of success in making any progress with the Defendants in recovering the Collection.

35. The lack of success and need to obtain legal redress in the courts of the United States was made clear over the past few months. On or about June 10, 2004, CHABAD sent a letter to President Vladimir Putin, the Minister of Foreign Affairs, and the Minister of Culture of the RUSSIAN FEDERATION. It requested the release the Archive to CHABAD. Defendants RUSSIAN FEDERATION, RUSSIAN MINISTRY OF CULTURE, and RUSSIAN MILITARY ARCHIVE did not respond to the letter.

#### JURISDICTION AND VENUE

36. This Court has subject-matter jurisdiction and personal jurisdiction over each of the Defendants under 28 U.S.C.

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state and its agencies and instrumentalities.

- 37. This Court has jurisdiction over the subject matter of this action pursuant to Section 1605(a)(3) of the Foreign Sovereign Immunities Act because this is an action in which rights in property taken in violation of international law are in issue and that property is operated (in the possession of and claimed) by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in commercial activity in the United States.
- 38. Defendants retain and refuse to return the Collection in violation of international law. The Collection is in the physical possession of one or more than one or all of the Defendants.
- 39. Defendants are engaged in commercial activity in the United States and in the Central District of California, including:
- a. Defendant RUSSIAN FEDERATION has consular offices in California, Washington and New York, which promote business and cultural interests in the United States and in the Central District of California.
- b. In 1994, the California Legislature passed resolution Ch. 87 (SCR 49 Rosenthal), which establishes a sister-state relationship between the State of California and the Khanty-Mansisyk Autonomous District in the RUSSIAN FEDERATION.

  In 1995, the California Legislature passed resolution Ch. 45 (SCR

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- 11 Johnston), which establishes a sister-state relationship between the State of California and the Altai Republic in the RUSSIAN FEDERATION. A sister state relationship is a formal declaration of friendship between two regions, states, or nations. Such an agreement is a symbol of mutual goodwill and intended to encourage and facilitate mutually beneficial social, economic, trade, educational, and cultural exchange.
- c. On or about November 1, 2004, the state-run RUSSIAN FEDERATION company that claims the rights to Stolichnaya vodka filed a lawsuit against Allied Domecq in the United States District Court for the Southern District of New York.

  Stolichnaya is the world's best-selling vodka, with approximately \$500 million in consumer retail sales in export markets, including the United States and the Central District of California.
- d. Defendant RUSSIAN MINISTRY OF CULTURE has funded and continues to fund and receive commercial benefit from Russian entertainers, including actors, dancers and singers who solicit and obtain American guests and American endorsements at Los Angeles cultural events, specifically, the Los Angeles Film Festival, the Performing Arts Center in Los Angeles, and the Walt Disney Concert Hall.
- e. Defendant RUSSIAN MINISTRY OF CULTURE sponsors exhibitions in the United States including at the Los Angeles County Museum of Art ("LACMA"). The Ministry of Culture provided LACMA paintings from the Pushkin Museum in Moscow, Russia for public viewing in exchange for compensation. LACMA charged admission and advertised the exhibit to its members and

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## FIRST CAUSE OF ACTION

Defendants have violated and are now violating

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# VIOLATIONS OF INTERNATIONAL LAW AGAINST ALL DEFENDANTS

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CHABAD realleges and incorporates by reference paragraphs 1 through 40 of this complaint.

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international law (including customary international law) by

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ignoring or violating the orders of the Trial Court and Russian

taking and withholding the Collection by, among other things,

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Supreme Court mandating the return of the Library to CHABAD, and

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by refusing to return the Collection to CHABAD. The "taking" of

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the Library occurred when the Defendants first claimed title to

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it in 1992. The "taking" of the Archive occurred in 2004 when

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defendants RUSSIAN FEDERATION, RUSSIAN MINISTRY OF CULTURE, and

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RUSSIAN MILITARY ARCHIVE ceased all dialogue with Chabad

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limitations to this claim, it has been tolled as a result of the

concerning the Archive. If there is any applicable statute of

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combination of concealment and lulling on the part of the

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Defendants, as alleged herein.

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Collection was not for a public purpose. The Collection has been

Defendants' taking and withholding of the

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deliberately neglected for several decades and has not been made

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readily available throughout the world to anyone, let alone CHABAD, for research, review, study, teaching, or religious

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purposes.

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44. Defendants' taking and withholding of the

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45. Defendants' taking and withholding of the Collection was without just or any compensation.

Collection was for a discriminatory purpose.

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treaties, customary international laws, and fundamental human rights laws prohibiting the wrongful expropriation of personal property or cultural or religious items.

47. The conduct of the Defendants is inconsistent with

Collection from CHABAD is in violation of numerous international

Defendants' taking and withholding of the

- the international and federal common law governing the taking of For example, the RUSSIAN FEDERATION is bound by treaty property. provisions that it has signed and ratified, including: Article 46 of the Hague Convention (IV) respecting the Laws and Customs of War on Land (1907); Articles 33, 46, 53, and 147 of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949); Articles 6 and 7 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970); Article 53 of the Additional Protocol to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (1977); and Articles 5 and 6 of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects Title II of the Holocaust Victims Redress Act of 1998 (1995).also expresses the international and federal common law governing the taking of property in urging all governments to "undertake good faith efforts to facilitate the return of private and public property . . . to the rightful owners in cases where assets were confiscated from the claimant during the period of Nazi rule."
- 48. Defendant RUSSIAN FEDERATION has expressed its recognition of its obligation to prevent the expropriation of property under international law by enacting a federal law titled

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ALSCHULER GROSSMAN STEIN & KAHAN LLP "On Cultural Values Displaced as a Result of World War II and Presently Found within the RUSSIAN FEDERATION's Territory (2000)."

49. Defendants' violations of international law have caused CHABAD to suffer injury and damages, including fees and expenses incurred to recover the Collection according to proof at trial.

## SECOND CAUSE OF ACTION

### DECLARATORY RELIEF (28 U.S.C. § 2201) AGAINST ALL DEFENDANTS

- 50. CHABAD realleges and incorporates by reference paragraphs 1 through 48 of this complaint.
- 51. An actual controversy has arisen and now exists between CHABAD and Defendants in that CHABAD contends that it is the rightful owner of the Collection and that Defendants are in the wrongful possession of the Collection. CHABAD is informed and believes that one or more of the Defendants dispute CHABAD's contentions and assert that it or they lawfully possess the Collection and therefore do not need to return it to CHABAD.
- 52. A judicial declaration is necessary and appropriate at this time under the circumstances in order that CHABAD may ascertain whether Defendants must immediately return the Collection to its rightful owner, CHABAD.
- 53. CHABAD is entitled to the imposition of a constructive trust on the Collection obligating Defendants to immediately return the Collection to CHABAD.

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## THIRD CAUSE OF ACTION

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## INJUNCTIVE RELIEF AGAINST ALL DEFENDANTS

CHABAD realleges and incorporates by reference

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paragraphs 1 through 48 of this complaint.

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55. CHABAD seeks injunctive relief (1) enjoining

Defendants and their agents and those acting in concert with them

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from selling, copying, destroying, altering, damaging, and

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disposing any part of the Collection in any manner whatsoever;

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and (2) mandating the immediate return of the Collection to

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CHABAD.

56. The Court should issue the requested injunction

because there is a likelihood of success that CHABAD will prevail

There is a substantial threat that CHABAD will

on the merits of its claims.

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continue to suffer irreparable injury or harm if the requested

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injunction is denied because the Collection contains rare and

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irreplaceable rabbinic libraries, archives and manuscripts on

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CHABAD Chassidic philosophy, Jewish religious law, prayer, and

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tradition. Defendants have stored the Collection at the RUSSIAN STATE LIBRARY and the RUSSIAN MILITARY ARCHIVE and have not made

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the Collection readily available for research, review, study,

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teaching, or various religious purposes.

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58. Damages would be an inadequate legal remedy due to the fragile and irreplaceable nature of the books, documents, and

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manuscripts that make up the Collection.

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59. The threatened injury and harm outweighs any damage the injunction might cause to Defendants, and the public

anyone. 1. returned to CHABAD; 2. return the Collection to CHABAD; 16 3. 18 return the Collection to CHABAD; 19 4. 5. For general relief.

interest favors issuance of the injunction. The hardship to Defendants is minimal. Most of the Collection remains in original crates and is not made readily available to CHABAD or

WHEREFORE CHABAD prays for judgment as follows:

- For a declaration that Defendants are in the wrongful possession of the Collection which should immediately be
- For injunctive relief and an order from this Court (1) enjoining Defendants and their respective agents and those acting in concert with them from selling, copying, destroying, altering, damaging, and disposing of any part of the Collection in any manner whatsoever; and (2) mandating that they immediately
- For the imposition of a constructive trust on the Collection in favor of CHABAD requiring Defendants to immediately
  - For damages according to proof; and

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By

Marshall Attorneys for Plaintiff AGUDAS CHASIDEI CHABAD

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