

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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MARK B. GOULD,  
3419 Via Lido,  
Newport Beach, California 92663; and

Docket. No:  
10 CV \_\_\_\_\_

BURTON BERNSTEIN,  
P.O. Box 238,  
Bridgewater, Connecticut 06752,

individually, and as next friends on behalf of their  
relatives murdered as a result of the Defendant's  
actions: Yisroel; Yudis; Tsile; Moyshe; Freydl;  
Moyshe (the blacksmith); Khasye; Shlomo; Reyzl;  
Mindl; Shmuel; Osher-Leyb; Mindl; Pesye;  
Menukhe; Kobke; Tove; Osef; Nisn; Shayke;  
Khaye-Feyge; Froym; the three children of Khaye-  
Feyge and Froym; Zlate; and Dvosil,

Plaintiffs,

-against-

BERNHARD FRANK,  
AM Weissen Berg 6  
61389 Schmitten, Germany

Defendant.

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**COMPLAINT**

The plaintiffs, MARK B. GOULD and BURTON BERNSTEIN, by their  
attorneys, allege the following based on information and belief:

## NATURE OF ACTION

1. This is an action for compensatory, punitive and exemplary damages brought by the survivors, estates and the heirs of those murdered in the course of the genocide program perpetrated by Germany's National Socialist Party (hereinafter "Nazis") against the Jewish population of Europe between 1941 and 1945, against the defendant, BERNHARD FRANK, a former senior official of the Nazi elite *Schutzstaffe* ("SS") and a former Nazi Party member and current resident of Frankfurt, Germany, state of Hessen. The defendant has managed to evade detection until this time of his role as a central administrator in the Nazi's genocide program. The defendant, who has never been previously identified as such, was a pivotal figure in the Nazis' extrajudicial killing of approximately six million Jewish civilians in Europe.

2. Moreover, the defendant has never been criminally prosecuted for his role in the crimes against humanity carried out by the Nazis. In addition, although the defendant has published two books and appeared on German and British TV, having been interviewed for his accounts of his roles and relationships to such notorious Nazi figures as Adolf Hitler, Heinrich Himmler, and Hermann Goering, he has deceptively managed to conceal his own criminal involvement.

3. Prior to the filing of this civil action, the defendant has avoided any notoriety regarding the Nazi crimes which he participated in by concealing his role in the mass murder of defenseless civilians during World War II.

4. The defendant's actions violated international law and constituted genocide, war crimes, and crimes against humanity. The SS was deemed by the International Military Tribunal as a criminal organization.

5. Upon information and belief, the defendant, BERNHARD FRANK is the last senior member of Himmler's personal staff within the Nazi regime openly living in Germany today.

### JURISDICTION

6. This Court has jurisdiction over international law actions, including for genocide, war crimes, and crimes against humanity, pursuant to 28 U.S.C. §§ 1331 and/or 1350. Section 1331 grants this Court broad authority to determine rights arising under international law. It provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

7. Jurisdiction is also premised on Section 1350, which is commonly known as the Alien Tort Statute ("ATS"). It provides that "[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

8. The defendant BERNHARD FRANK is currently a resident of Frankfurt, Germany.

9. This Court has jurisdiction over the defendant pursuant to FED. R. CIV. P. 4(k)(2), which grants jurisdiction if plaintiffs' claims arise under federal law, the

defendant has been served with a summons and is not subject to jurisdiction in any state, and “exercising jurisdiction is consistent with the United States Constitution and laws.”

### **THE PARTIES**

10. Plaintiff MARK B. GOULD is a historical scholar, documentary film maker and author who resides in Los Angeles, California. He is the relative of Jewish individuals who had been murdered in the course of the genocide program perpetrated by the Nazis against the Jewish population of Eastern Europe. The plaintiffs’ family members perished as a direct result of the defendant BERNHARD FRANK’s actions.

11. Plaintiff BURTON BERNSTEIN is an author, a retired staff writer for The New Yorker Magazine, and a resident of Connecticut. He is the relative of the same Jewish individuals murdered in the course of the genocide program perpetrated by the Nazis against the Jewish population of Eastern Europe as plaintiff MARK B. GOULD.

12. While engaging in family research and the Holocaust for his book *Family Matters*, Mr. BERNSTEIN discovered the large number of his and plaintiff MARK B. GOULD’s family members who had perished in Ukraine as a result of the Nazi genocide program. With the assistance of the YIVO Institute for Jewish Research in New York City (Lucjan Dobroszycki head researcher), he was able to compile a list of the murdered men, women, and children as listed below.

13. The following is a list of family members of plaintiffs MARK B. GOULD and BURTON BERNSTEIN who perished in Eastern Europe as a result of the Nazi genocide program beginning in 1941:

Yisroel	Brother	Killed in Korets, Ukraine
Yudis	His wife	Killed in Korets, Ukraine
Tsile	Their daughter	Killed in Korets, Ukraine
Moyshe	Their son	Killed in Korets, Ukraine
Freydl	Sister	Killed in Mezheritsh, Ukraine
Moyshe (the blacksmith)	Uncle of Altshteyn	Killed in Korets, Ukraine
Khasye	His wife	Killed in Korets, Ukraine
Shlomo	Their son	Killed in Korets, Ukraine
Reyzl	Their daughter-in-law	Killed in Korets, Ukraine
Mindl	Their granddaughter	Killed in Korets, Ukraine
Shmuel	Their grandson	Killed in Korets, Ukraine
Osher-Leyb	Their son	Killed in Korets, Ukraine
Mindl	Their daughter-in-law	Killed in Korets, Ukraine
Pesye	Their granddaughter	Killed in Korets, Ukraine
Menukhe	Their grandson	Killed in Korets, Ukraine
Kobke	Their son	Killed in Korets, Ukraine
Tove	Their daughter-in-law	Killed in Korets, Ukraine
Osef	Their grandson	Killed in Korets, Ukraine
Nisn	Their grandson	Killed in Korets, Ukraine
Shayke	Their grandson	Killed in Korets, Ukraine
Khaye-Feyge	Their daughter	Killed in Korets, Ukraine
Froym	Her husband	Killed in Korets, Ukraine
And their three children		Killed in Korets, Ukraine
Zlate	Their daughter	Killed in Korets, Ukraine
Dvosil	Their daughter	Killed in Korets, Ukraine

14. In the course of his research on the Holocaust, the plaintiff MARK B. GOULD uncovered the identity of the defendant BERNHARD FRANK, the most senior Nazi officer at large today. The plaintiff's investigation of the defendant's

wartime activities led him to discover that the defendant BERNHARD FRANK had played a decisive role in the implementation of the Nazi program to exterminate the Jews of Europe (hereinafter “genocide program”). The plaintiff’s research provided him the location of the defendant who was currently living openly in Frankfurt, Germany.

15. Over the course of four years MARK B. GOULD video recorded more than 100 hours of interviews with the defendant’s full consent and cooperation.

16. In these interviews the defendant willingly describes his role and deeds in the SS and his involvement in perpetrating the destruction of European Jewry. During his research the plaintiff MARK B. GOULD collected an extraordinary array of wartime orders and reports, which verify the defendant’s central role in orchestrating the Nazi genocide program.

17. Defendant BERNHARD FRANK was a senior official of the Nazi *Kommandostab Reichsfuhrer SS (“RFSS”)*, an executive administrative staff which was situated at the personal headquarters of SS (“*Reichsfuhrer*”) Heinrich Himmler (hereinafter “Himmler”).

18. The *Kommandostab RFSS* operated special forces units under the direct control of Himmler and were charged with identifying and shooting to death in open-air mass executions men, women, children and the elderly as well as all those who had been military, ideological, intelligentsia, or political officials of Eastern European nations. The *Kommandostab RFSS’* duties included the mass murder of Jewish communities in all areas conquered by the German army.

19. The defendant achieved the rank of SS *Hauptsturmfuehrer* (Captain) in November of 1940 and was later promoted to rank of the *Obersturmbannfuhrer* (Lieutenant Colonel) in the *Kommandostab RFSS* and reported directly to Himmler, and later to Hitler.

## THE UNDERLYING FACTS

### I. Relevant Background

20. Upon information and belief, the defendant was born in Frankfurt, Germany on July 15, 1913.

21. Upon information and belief, in 1933 the defendant was inducted into the SS and was given SS Identification Number: 105.013. In 1938, the defendant joined the Nazi Party and was assigned Membership Number: 4,442,198.

22. During the Summer of 1934 the defendant was hand selected by Himmler and asked, "If we wanted to become an officer in the Waffen SS." The defendant replied in the affirmative.

23. Upon information and belief, in December 1935, the defendant was assigned to Wewelsburg Castle, the Nazi SS Leadership School established by Himmler, which was intended to provide the leading cadre of the SS with a uniform ideological orientation with courses in history, mythology, archaeology, science, and astronomy, as well as the racial theories of Aryan supremacy that lay at the core of the Nazi philosophy.

24. Upon information and belief, the defendant served on the Wewelsburg's elite staff, in the Historical Research Department, as a scholar assisting in developing and disseminating the SS ideology.

25. Upon information and belief, during his assignment at Wewelsburg, the defendant completed a doctorate degree in German folklore studies and the Nazi "Blood and Soil" ideology which emphasized the racial superiority of the Germanic people and the sanctity of their native homeland.

26. The defendant concentrated his studies on the core Nazi belief of the superiority of the Nordic Aryan Man and the sub-human lesser races of Jews and Negroes.

27. The ideology and vernacular that the defendant acquired during his studies would influence him greatly and play an important role in his later career and in the atrocities he would perpetrate.

28. During his tenure at the new SS academy, the defendant became one of Himmler's premier Wewelsburg scholars. He was the only SS "Blood and Soil" doctoral laureate to be graduated from the Wewelsburg School.

29. Upon information and belief, on October 21, 1939 the defendant was assigned to a *Totenkopf Standarten* (SS Death's Head Division), part of the Waffen SS, as an instructor in the Nazi ideology.

30. Afterwards, he was placed in an SS infantry reserve battalion, based in Breslau and Brunn, where he was responsible for the ideological training of Waffen SS forces. (many of these very men went on to SS killing units in the East)

31. Upon information and belief, in April 1941, the defendant was transferred by Himmler to the *RFSS Einsatzstab*, the SS's operational staff (later renamed the *Kommandostab RFSS*) and was assigned to the planning of SS operations prior to the Nazi invasion of the Soviet Union.

32. Upon information and belief, the defendant reported directly to Himmler and later to Hitler.

33. The defendant's official duties within Himmler's personal field staff included: troop leadership (operational orders and special directives), organization (without rear services), ideological training, engineering matters, transports, aerial defense, gas defense, situation maps, and recording entries in the War Diary, War files and Map Center.

34. Upon information and belief, the defendant's assignment, by Himmler, to record entries in the War Diary was one of serious responsibility and influence. The officer given this duty had to be a trusted and proven individual who possessed "the necessary tactical understanding to write" it. He additionally had to be well versed in the use of the Nazi vernacular. Being placed in this position evidences that the defendant had to have in-depth knowledge of the enemy and had to review all situation reports, all decisions, all orders and all measures taken. Moreover, all additional requisite documents had to have been officially made available to him. To fulfill this duty the defendant had to be informed, in real time, of all events in order to capture the feeling and spirit of the day. The entries in the War Diary had to provide real time analysis, criticism, and opinions on the operational circumstances and why

decisions were being taken. Even unfavorable estimations had to be recorded by the defendant. As such, the defendant in being assigned this duty was placed directly at the epicenter of the *Kommandostab RFSS* activities.

35. The duty of recording the War Diary also included the responsibility of cleansing the entries of any references to genocidal actions, such as the numbers of unarmed, innocent Jewish civilians killed. The defendant's developed linguistics skills made him highly qualified to undertake this responsibility of sanitizing the official record by removing and/or manipulating the documentation of the Nazi regime's initial genocidal actions during his tenure as War Diary correspondent in the summer and fall of 1941.

36. Upon information and belief, during this period the defendant was also tasked by Himmler with further developing and disseminating the Nazis' "Blood and Soil" ideology.

37. Upon information and belief, while serving in this central position in the *Kommandostab RFSS*, the defendant was entrusted to review incoming and outgoing orders and reports from field officers, making comments about them, certifying them, and tracking/recording events during the critical period of Holocaust history, summer and fall of 1941.

38. Upon information and belief, from this key vantage point, the defendant was provided with clear and real time information concerning all the activities of the SS as the German army advanced into Eastern Europe.

## II. *f.d.R. - Für die Richtigkeit*

39. Upon information and belief, in his senior position, the defendant signed some of the most historic Nazi documents recording the commencement of the genocide program against the Jewish population and also putting these murderous campaigns into action.

40. In his official capacity the defendant signed and reviewed documents "*für die Richtigkeit*" ("for the correctness") (hereinafter referred to as "*f.d.R.*").

41. The notation *f.d.R.* certified the correctness of a copy of a document after it had been transcribed or taken by dictation/radio. Signing *f.d.R.* on a document also involved certifying both the accuracy of the content and whether the person who signed the order had proper authority to issue such a command.

42. Eli Rosenbaum, director of the U.S. Department of Justice Office of Special Investigations (OSI) wrote in his book *Betrayal* about Kurt Waldheim that *f.d.R.*, *fuer die Richtigkeit*, after a signature attested to the accuracy of a document (not to be confused with *F.d.R.[d.]A.*, which denoted "certified true copy").

43. The individual authorized to sign *f.d.R.* was determined by his rank and the importance in the military hierarchy.

44. Only a high ranking officer was authorized to sign a document, such as in the case of a special order from Reichsführer-SS Himmler.

45. The signer of *f.d.R.* was, therefore, required to thoroughly read and understand the document in order to approve it.

46. The defendant's administrative actions led directly to the development of the policy of genocide as of July 1941, and spurred the program of war crimes as carried out by units of the *Waffen S.S.*, Cavalry and Infantry, *Ordnungspolizei* (regular German police), *Sicherpolizei* (Security Police, or Sipo) and the *Einsatzgruppen* (the SS paramilitary death squads) in Eastern Europe.

### **III Events leading to the Final Solution to the Jewish Question**

47. The so-called "Final Solution" was the Nazis' euphemism for the plan and execution of systematic genocide program against the European Jewish community. Himmler, along with Hitler, possessed an obsessive hatred of the Jews and was the chief architect of the program. As such, in the midst of the largest military operation in modern history, Himmler was allowed to utilize massive amounts of Germany's manpower and material resources to the goal of murdering all the Jews of Europe.

48. Upon information and belief, throughout the winter and spring of 1941, as the Nazis' plans were being readied for the invasion of the Soviet Union, Himmler and his staff, continuously met with other senior Nazi officials to promote the SS plans to operate behind German lines, in the areas that would be conquered, to carry out the extermination of the Jewish population. The plan was sanctioned by the direct order of Hitler. In a series of agreements, Hitler gave Himmler complete authority to use his SS and police formations to act in a military capacity.

49. On March 13, 1941, Chief of the *Overkommandos der Wehrmacht* (Supreme War Command) Wilhelm Keitel authored a memo stating: "In order to prepare the political and administrative organization the *Reichsfuehrer SS* has been given by the *Fuehrer* certain special tasks within the operations zone of the Army; these stem from the necessity finally to settle the conflict between two opposing political systems." These "special tasks" were a direct reference to the planned genocidal actions against European Jewry, here claimed to be an "opposing political system," a euphemistic term for ideological warfare and genocide.

50. Upon information and belief, Himmler advocated establishing special SS units in these areas, under the guise of maintaining order and mopping up pockets of resistance, serving as the German army's rear-theater guard.

51. Upon information and belief, these SS units would secure the rear theater areas from potential military threats and maintaining supply lines.

52. This rear-guard guise succeeded as *Reichsfuehrer* Himmler's justification to requisition men and equipment that would already be earmarked for the German Army. Hitler would personally intervene to ensure that the SS units performing the upcoming "special tasks" would receive the equipment Himmler requested.

53. This framework would also provide Himmler a free hand to act independently, as he was not subordinated to the German Army command.

54. On April 7, 1941, Himmler established the *Einsatzstab*, later renamed the *Kommandostab RFSS*, to organize and operate his new SS units.

55. Upon information and belief, shortly after negotiations between Hitler, Himmler, Heydrich and the German Army, the defendant arrived in Berlin on April 25th, 1941 to assist Himmler in creating the new SS formations.

56. As Himmler's premier *Wewelsburg* scholar, the defendant was deemed by the *Reichsfuhrer* to be a reliable and loyal advocate who had been groomed for the job that lay ahead.

57. Even though the defendant had no substantial military training, he was nevertheless rewarded with a senior staff position in the *Kommandostab RFSS*. In fact, the defendant was one of the first SS officers chosen to help build and lead the *Kommandostab RFSS*.

58. Shortly, after the June 1941 German invasion of the Soviet Union, the *Kommandostab RFSS* had its opportunity to begin its massive killing operations aimed at entire Jewish communities.

#### **IV. The Defendant's Role in the Nazi Genocide Program**

59. While serving in his position as a senior official in the *Kommandostab RFSS*, the defendant stood at the epicenter of the organization responsible for the vast amount of war crimes perpetrated by the Nazi regime in 1941.

60. Upon information and belief, the defendant, a professed anti-Semite and prominent ideologue of the Nazi regime wanted Germany to be victorious on the military front over the European armies they were combating and in the rear

area against the civilian population being targeted for destruction by the SS. Thus, the defendant willingly advanced the *Kommandostab's* genocide program.

61. Upon information and belief, the *Kommandostab RFSS* was cautious not to leave any details to chance.

62. Himmler only entrusted these duties to the most qualified and loyal officers he personally handpicked to serve on his command staff.

63. The defendant, with his advanced Nazi education, proven competency, patriotism, and specialized command of the SS vernacular was well qualified to be assigned by Himmler to play a bureaucratic role in carrying out the *Kommandostab RFSS's* "special tasks."

64. Upon information and belief, while the SS field commanders placed in charge of the actual killing squads might not initially have understood the full extent of the genocide program, the defendant was assigned to Himmler's personal staff since 1935, where he was a leading force in building the field staff of *Kommandostab*.

65. As such, the defendant fully understood Himmler's true intentions and was thoroughly knowledgeable of the genocidal goals of the *Kommandostab RFSS* Field Staff in 1941.

66. Moreover, the geographic location where the defendant carried out his military service, his proximity to senior personalities in the Nazi hierarchy, his rank and resume all qualified the defendant to merit *Geheimnistraeger*, (literally translated: "bearer of secrets") high level security clearance.

67. Upon information and belief, in the course of his duties, the defendant engaged in signing *f.d.R* on the orders and reviewing the reports that set the genocide program into action.

#### **V. The July 28th 1941 Order**

68. Upon information and belief, on July 28, 1941 the defendant signed *f.d.R.* on a special order of the *Kommandostab RFSS*, officially titled "The Guidelines for SS Cavalry Units to Mop-Up/Combing-Through Swamp Regions." (Exhibit A).

69. This order, targeting the Jewish population of the Prypiat Marshes region in Southern Belarus, was effectively the first attempt by the Nazi Regime making use of the *Kommandostab* units to formally perpetrate a genocide operation against all the Jewish population in a designated area.

70. Tens of thousands of SS troops and police battalions, who had trained for months just for this moment, moved into positions and were on standby, ready to receive this order.

71. Hitler and Himmler waited to release their field units until July 28, 1941, when the German army had advanced far enough East and was approaching the outskirts of Moscow with the *Einsatzgruppen* units close behind.

72. The First SS Infantry Brigade was one such unit receiving the July 28, 1941 order.

73. A map dated July 28, 1941 (Exhibit B) evidences that the First SS Infantry Brigade was stationed in Korets, the town in which the relatives of the plaintiffs MARK B. GOULD and BURTON BERNSTEIN resided.

74. Upon information and belief the defendant reviewed and confirmed for accuracy, applying his *f.d.R.* signature, upon the July 28, 1941 order:

If the population is, nationally speaking, hostile, racially and biologically inferior, or even, as will often be the case in the swamp areas, consists of re-settled criminals, then all who are suspected of supporting the partisans are to be shot dead; women and children are to be transported away, livestock and produce are to be confiscated and secured. The villages are to be burned to the ground.

75. Upon information and belief, although the language of the July 28, 1941 order describes the operation as a “mopping up exercise” to secure the conquered area and eliminate any insurgents and criminals (“partisans and marauders”), it was understood by SS field commanders as a euphemism for an order to murder the civilian Jewish population.

76. The deliberately and deceptively vague wording of the July 28, 1941 order, requiring only the killing of those supporting the partisans, was designed to allow the officials of the *Kommandostab RFSS*, at this initial stage, a measure of plausible deniability.

77. It was intended that the SS field commanders would understand that they were being ordered to kill all the Jewish population while not having to expressly say so.

78. Similarly, upon information and belief, the language directing that “women and children are to be transported away” was not intended to be actually obeyed by the field commanders. Instead, the order intended that the *Kommandostab* units would murder them as well.

79. Further proof that the July 28, 1941 order intended that Jewish women, children, and elderly be massacred along with Jewish men can be found during Himmler’s subsequent tour on July 31 , 1941 of SS troops in Baranowice, Poland. At that time he expressly urged his soldiers to murder more Jews, specifically Jewish women. This is confirmed by the language from an SS Cavalry Brigade order dated from the next day, August 1, 1941, which states: “Explicit order by RF-SS [Himmler]. All Jews must be shot. Drive the female Jews into the swamps.”

80. The July 28, 1941 order was phrased in this manner out of a fear that at this initial stage, an explicit and undisguised order to kill women and children would have been too difficult to expect the units to obey.

81. The July 28, 1941 order signified the crossing of the threshold of reservation and the abandonment of doubts over the morality of murdering innocent women and children. This order signified the flashpoint of the Nazis’ exploratory effort to enact the “Final Solution.”

82. By August 7, 1941, the death toll in the Prypiat Marshes area was 7,819 men, women, children, and elderly.

83. Subsequent status reports to the *Kommandostab RFSS* provided additional details of the mounting number of civilians being massacred to the defendant who was tasked with recording the events in the SS War Diary.

84. Reports from SS field commanders on August 8 and 9, 1941, stated that the total of those executed in the Prypiat Marsh operation to date was 10,412. These reports were addressed to the defendant, who signed the document *F.d.R.*

85. On August 12, SS *Sturmbannfuhrer* Franz Magill echoed the sentiments of the order, reporting that: "Driving women and children into the swamps did not bring forth the results it should have had, since the swamps were not deep enough for sinking-in to occur. In most cases solid ground (probably sand) was hit after a depth of one meter so that sinking was not possible."

86. A final report dated September 18, 1941 states that 14,178 "plunderers" had been shot along with 1,001 partisans and 699 Red Army deserters. In addition to those killed in the Prypiat Marsh area, an August 7, 1941 report lists that 30,000 individuals had been killed by the SS in the region to date. The defendant signed this report *f.d.R.*

87. These reports were reviewed, redacted and recorded into the SS War Diary by the defendant, who removed all expressed traces of the murderous activities of the units forwarding their reports to the defendant, whose name or title was expressed on each document.

88. Amongst the innocent Jewish civilians murdered by the Nazis in 1941 in the Prypiat Marsh area, were the plaintiffs MARK B. GOULD and BURTON BERNSTEIN's relatives.

89. The success of the genocide operation launched by Himmler's order and signed by the defendant served as a model for the *Kommandostab RFSS'* subsequent massacres of the Jewish populations in other conquered areas.

90. In interviews conducted by the plaintiff MARK B. GOULD with the defendant, the defendant has admitted that the July 28, 1941 order was a pivotal document and confirmed his signature on the document.

91. Moreover, several well respected Holocaust scholars have confirmed that the July 28, 1941 Order was a pivotal document and served as a model for the *Kommandostab RFSS'* subsequent massacres of the Jewish populations in other conquered areas.

92. Dr. Holli Levitsky, Professor and Director of Jewish Studies at Loyola Marymount University, and 2001-02 Fulbright Distinguished Chair in Poland, confirms that from these documents, and historians' reports, the defendant had the necessary tactical understanding, legitimized agency, and rhetorical skills to help move the Nazi plan from eugenics to genocide.

93. Dr. Stephen Smith, head of the USC Shoah Foundation, has said:

The killing in Pripyet changed the course of the Holocaust. Firstly, the 28th July Himmler order made clear that women and children were not exempt from deportation, which a

few days later on 1 Aug, he modified by telex, to killing. It was a direct genocide order. Secondly, when reports on the killing were reported on 12 August, attention focused on the fact that drowning women and children in swamps was not an effective means of killing. Finding an efficient means of murdering the Jewish population became an egregious necessity after this point. This action was at the epicenter of the Holocaust in its early stages.

94. Dr. Martin Cüppers, historian at the Research Institute Ludwigsburg of the Stuttgart University and author of "*Wegbereiter der Shoah*" the first and groundbreaking study on the *Kommandostab RFSS*, has stated:

*Kommandostab* delivered a special order by Himmler and signed by the defendant called the "*Guidelines for combing and patrolling of swamp areas by cavalry units*" dated July 28, 1941 which marked a decisive radicalization and signified the beginning of the genocide against the targeted Jewish population. In the mits of the war no references to fighting military targets can be found in the four-page order; however, much evidence can be found that the mass murder of the civilian population would be part of the future tasks of the SS-Cavalry Brigade. The mere wording of this order allowed for a wide range of interpretations. Jews as a target group of the planned measures were not explicitly named at any one point but are spoken of in National Socialist Euphemistic terms such as racially and biologically inferior or re-settled criminals.

95. Martin Dean, author of *Collaboration in the Holocaust – Crimes of Local Police in Belorussia and Ukraine, 1941-44*, wrote:

Himmler laid down detailed guidelines for the forthcoming operation in an order issued on 28 July 1941....These orders document the development of German genocidal policies in response to both real and imagined partisan threats.

96. Dr. Juergen Matthaus, the head of Advanced Holocaust Research at the United States Holocaust Museum and author of *Controlled Escalation: Himmler's Men in the Summer of 1941 and the Holocaust in the Occupied Soviet Territories*, has written:

Of all the crimes committed by Himmler's *Kommandostab* in 1941 and after, the action in the Pripet area in early August undoubtedly had the greatest impact on the course of the Holocaust.

#### **VI. The September 9, 1941 Guidelines**

97. On September 9, 1941, the *Kommandostab* RFSS issued the first general order setting out the directive to annihilate all Jews in range, entitled Guideline No. 8, "the guidelines for action of units under *Kommandostab* RFSS order" (hereinafter "the Guidelines"). (Exhibit C).

98. The three page Guidelines, affixed with an *f.d.R.* by the defendant, were nominally signed (with a typewriter) by SS official Ernst Rode.

99. They were, however, in fact written by the defendant.

100. The Guidelines clearly mandated that all Jews falling into the SS' hands would now be treated as partisans, and be "*ruecksichtslos auszurotten*" – exterminated ruthlessly.

101. The defendant, who was the officer in charge of the *Kommandostab RFSS* on that day, describes the efforts of enemy partisans to hide in remote regions. He alleges that "the best transmitters of messages (to the partisans) are the Jews."

102. Therefore, he instructs: "If there is the slightest suspicion about this, the Jews of the villages in question have to be annihilated ruthlessly."

103. The Guidelines then describes the attitude of the non-Jewish population and their fear of a return of the Soviet Union officials concluding with the recommendation that "neutralization of the Jews shows the best results in this case as well."

104. Thus, the defendant's Guidelines, couching itself in the guise of security precautions, instructed SS units to massacre Jewish civilians.

105. The Guidelines were sent out to all of the *Kommandostab* units, down to the battalion level of the SS Infantry and Cavalry Brigades.

106. The distribution list for the Guidelines included the Reichsfuhrer Himmler, the *SS-FHA* (operational headquarters of the SS), and the *HSSPF Nord, Mitte, Sud* (higher SS police leaders of the North, South and Center units) for distribution to their troops. As such, the Guidelines were received by tens of thousands of troops being utilized in genocide operations throughout the expanse of the Nazi conquered territories in the East.

107. In videotaped interviews conducted between the plaintiff MARK B. GOULD and the defendant, the defendant describes how the Guidelines were developed and his involvement in this formal policy-making process. He explained that the Guidelines established the *Kommandostab RFSS* units' official operating procedures henceforth.

108. Moreover, the Guidelines mark the abandonment of the euphemistic veneer of using the terms "partisans" and "plunderers."

109. The Guidelines identify the Jewish population as a whole—men, women, and children—as an eminent threat and requiring aggressive mass murder.

110. Instead of pretending to only be targeting partisans and plunderers, the defendant's Guidelines authorized, under the guise of security, that any Jew falling into the hands of the SS should be executed.

111. *Kommandostab RFSS* units armed with the Guidelines, drafted and dispersed by the defendant personally, no longer had any confusion concerning what was expected of them.

## **VII. Other Orders and Reports**

112. In the course of his research the plaintiff, MARK B. GOULD, uncovered numerous other reports sent by the SS field commanders to the defendant and the *Kommandostab RFSS* detailing the genocide program as it was being conducted in real time.

113. As an example, in a message sent by radio from a Gestapo (Secret Police) official to the defendant in the *Kommandostab RFSS* headquarters on August 8, 1941, it was requested that the *Waffen SS* provide an execution squad in order to facilitate the murder of "800 civilians." On the top of the message was a handwritten note that the document was to remain with the defendant.

114. Many of the reports received and incorporated in the War Diary by the defendant detailed killing actions in the towns where the family members of plaintiffs MARK B. GOULD and BURTON BERNSTEIN's family resided.

115. For example, on 21 August 1941, a report is sent to the defendant claiming that Police Battalion 45 killed 471 Jews in Sudilkov, a town where members of plaintiffs MARK B. GOULD and BURTON BERNSTEIN's family resided.

116. The war diary entry recorded by the defendant for this day relates the movements of various units and supplies, but does not mention 471 Jews killed.

117. On 22 August 1941, a report was received by the defendant, documenting 537 Jews again shot by Police Battalion 45 in Sudilkov.

118. Again, the War Diary entry for this date, recorded by the defendant, is cleansed of any mention regarding the Jewish civilians killed.

119. On 24 August 1941, Police Battalion 45 reported shooting 61 Jews in Korets and Shepetovka, both central towns of plaintiffs MARK B. GOULD and BURTON BERNSTEIN's family.

120. In the War Diary entry for this day, the defendant reported only the relocation of a command post.

121. On 31 August 1941, Police Regiment South reported that 911 Jews were shot just north of Shepetovka, where members of plaintiffs MARK B. GOULD and BURTON BERNSTEIN's family resided.

122. The war diary entry written by the defendant for this date does not record any action in Shepetovka, despite having received this report addressed to his desk.

123. Again, on 2 September 1941, the defendant received a report that 45 Jews were shot in Shepetovka. The defendant did not record this into the war diary.

#### **THE DEFENDANT'S FRAUDULENT CONCEALMENT**

124. Upon information and belief, the defendant engaged in conduct that was intended to conceal and did conceal the nature of his despicable and heinous acts from the eyes of the world.

125. Upon information and belief, the defendant had knowledge of and was himself involved in planning the mass murder of Jews throughout Europe, and in concealing the genocide program during the critical early phase of the Holocaust, from the months of July to November 1941.

126. The defendant has recently admitted that he realized in the early stages of the Nazi genocide program that secrecy, coded language, and euphuisms for murdering Jews were necessary for the official documents and the official SS war diary that he maintained because even though he was committing what the rest of the world

might call “atrocities” against unarmed Jewish men, women, and children, his activities were necessary to secure the Nazis’ vision of Germany’s future.

127. The 100-plus hours of interviews conducted by the plaintiff MARK B. GOULD reveal the defendant to be an un-repentant and un-remorseful true believer in the Nazi ideology and the righteousness of his past involvement in the genocide program.

128. Because of his efforts to conceal his involvement in the Nazi genocide program, plaintiffs were unaware of his involvement in causing their injuries, even though they diligently sought justice against all those involved in the Nazis’ genocide, war crimes, and crimes against humanity.

**AS AND FOR A FIRST CLAIM FOR RELIEF**

**Committing Acts of Genocide in Violation of International  
Law**

129. Plaintiffs hereby repeat and re-allege the foregoing allegations, with the same force and effect as if more fully set forth herein.

130. The defendant committed acts of genocide against the Jewish community of Europe in violation of international law for which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and/or 1350.

131. Genocide is defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such:

- (a) Killing members of the group;

- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group; and/or
- (e) Forcibly transferring children of the group to another group.

*See Presbyterian Church of Sudan v. Talisman Energy*, 582 F.3d 244, 256 (2d Cir. 2009); *Kadic v. Karadzic*, 70 F. 3d 232, 241 (2d Cir. 1995) (quoting definition of genocide from the Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277 (“Genocide Convention”).

132. As a result of the defendant’s acts the plaintiffs have been grievously harmed.

133. Plaintiffs have exhausted all other remedies for obtaining justice.

134. By reason of the foregoing, the plaintiffs are entitled to recover for all their damages, in an amount to be determined by the jury at trial.

**AS AND FOR A SECOND CLAIM FOR RELIEF**

**Committing War Crimes in Violation of International Law**

135. Plaintiffs hereby repeat and re-allege the foregoing allegations, with the same force and effect as if more fully set forth herein.

136. The defendant committed war crimes in violation of international law for which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and/or 1350.

137. War crimes are defined pursuant to Common Article 3 of the Geneva Convention, which requires each party to a conflict to adhere to the following:

Persons taking no active part in the hostilities...shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court.

*See, Presbyterian Church of Sudan v. Talisman Energy*, 582 F.3d 244, 257 (2d Cir. 2009); *Kadic v. Karadzic*, 70 F. 3d 232, 243 (2d Cir. 1995) (quoting from Convention Relative to the Protection of Civilian Persons in Time of War art. 3, August 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287).

138. As a result of the defendant's acts the plaintiffs were grievously harmed.

139. Plaintiffs have exhausted all other remedies for obtaining justice.

140. By reason of the foregoing, the plaintiffs are entitled to recover for all their damages, in an amount to be determined by the jury at trial.

**AS AND FOR A THIRD CLAIM FOR RELIEF**

**Committing Crimes Against Humanity in Violation of  
International Law**

141. Plaintiffs hereby repeat and re-allege the foregoing allegations, with the same force and effect as if more fully set forth herein.

142. The defendant committed crimes against humanity in violation of international law for which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and/or 1350.

143. Crimes against humanity include murder, enslavement, deportation or forcible transfer, torture, rape, or other inhumane acts, committed as part of a widespread or systematic attack directed against a civilian population. *See Presbyterian Church of Sudan v. Talisman Energy*, 582 F.3d 244, 257 (2d Cir. 2009).

144. As a result of the defendant's acts the plaintiffs were grievously harmed.

145. Plaintiffs have exhausted all other remedies for obtaining justice.

146. By reason of the foregoing, the plaintiffs are entitled to recover for all their damages, in an amount to be determined by the jury at trial.

**AS AND FOR A FOURTH CLAIM FOR RELIEF**

**Committing Acts of Torture in Violation of the Law of Nations Under 28 U.S.C. § 1350**

147. Plaintiffs hereby repeat and re-allege the foregoing allegations, with the same force and effect as if more fully set forth herein.

148. Plaintiffs allege that the kidnapping and systematic torture of the plaintiff's family members by the defendant was a violation of the law of nations, *i.e.*, international law.

149. As a result of the defendant's acts, the plaintiffs have been grievously harmed.

150. Plaintiffs have exhausted all other remedies for obtaining justice.

151. By reason of the foregoing, the plaintiffs are entitled to recover the full extent of their damages, in an amount to be determined by the jury at trial.

**AS AND FOR A FIFTH CLAIM FOR RELIEF**

**Committing an Extrajudicial Killing in Violation of the Law of Nations Under 28 U.S.C. § 1350**

152. Plaintiffs hereby repeat and re-allege the foregoing allegations, with the same force and effect as if more fully set forth herein.

153. Plaintiffs allege that their family members were kidnapped by the Nazi army.

154. The kidnapping and extrajudicial killing of the plaintiffs' family members by the defendant was a violation of the law of nations, *i.e.*, international law.

155. As a result of the Defendant's acts the Plaintiffs have been grievously harmed.

156. Plaintiffs have exhausted all other remedies for obtaining justice.

157. By reason of the foregoing, the plaintiffs are entitled to recover the full extent of their damages, in an amount to be determined by the jury at trial.

**AS AND FOR A SIXTH CLAIM FOR RELIEF**

**Committing Acts of Torture in Violation of the Law of Nations Under 28 U.S.C. § 1331**

158. Plaintiffs repeat and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth herein.

159. Plaintiffs repeat and re-allege each and every allegation of the foregoing paragraphs as if fully set forth herein.

160. Plaintiffs allege that their family members were kidnapped by the Nazi army.

161. The kidnapping and systematic torture of their family members by the defendants was a violation of the law of nations, i.e., international law, and, thus, federal common law.

162. As a result of the Defendants acts the Plaintiffs have been grievously harmed.

163. Plaintiffs have exhausted all other remedies for obtaining justice.

164. By reason of the foregoing, the plaintiffs are entitled to recover the full extent of their damages, in an amount to be determined by the jury at trial

**AS AND FOR A SEVENTH CLAIM FOR RELIEF**

**Committing an Extrajudicial Killing in Violation of the Law  
of Nations Under 28 U.S.C. § 1331**

165. Plaintiffs repeat and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth herein.

166. Plaintiffs repeat and re-allege each and every allegation of the foregoing paragraphs as if fully set forth herein.

167. Plaintiffs allege that their family members were kidnapped by the Nazi army.

168. The kidnapping and extrajudicial killing of the plaintiffs' family members by the defendant was a violation of the law of nations, *i.e.*, international law, and, thus, federal common law.

169. As a result of the defendant's acts the plaintiffs have been grievously harmed.

170. Plaintiffs have exhausted all other remedies for obtaining justice.

171. By reason of the foregoing, the plaintiffs are entitled to recover the full extent of their damages, in an amount to be determined by the jury at trial

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays for judgment against the Defendant as follows:

- a) For compensatory damages according to proof;
- b) For punitive and exemplary damages according to proof;

c) For reasonable attorney's fees and costs of suit, according to proof, and to the extent permitted by law; and

d) For such other and further relief as the court may deem just and proper.

**JURY DEMAND**

A jury trial is demanded on all issues.

Dated: Brooklyn, New York  
December 6, 2010

Respectfully submitted,

THE BERKMAN LAW OFFICE, LLC  
*Counsel for Plaintiffs*

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