

MARY JO WHITE
United States Attorney
Southern District of New York
Attorney for Plaintiff
United States of America
By: Serene K. Nakano (SN-9556)
Assistant United States Attorney
100 Church Street - 19th Floor
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :

Plaintiff, : 96 Civ. 8307 (DC)
- against - : SECOND AMENDED

COMPLAINT

JEFFREY E. EPSTEIN, IVAN S. FISHER, :
ELLYN BANK, DEBRA ELISA COHEN,
DIANE FISHER d/b/a THE FISHER GROUP, :
FISHER & SOFFER a/k/a FISHER & SOPHIR,
LAWRENCE D. GERZOG, ROBERT HEILBRUN, :
SUZANNE McDERMOTT, CHRISTOPHER
H. MARTIN, JESSIE SIEGEL a/k/a :
JESSE SIEGEL, SIEGEL, MARTIN
& HEILBRUN, RON SOFFER, CARMEN TALSIG, :
JOHN DOES 1 through 10 and
X CORPORATIONS 1 through 10, :
Defendants. :

-----X

The United States of America, by its attorney, Mary Jo White, United States Attorney for the Southern District of New York, for its second amended complaint alleges upon information and belief as follows:

NATURE OF THE ACTION

This is an action by plaintiff United States of America (the "Government") on behalf of the Office of Foreign Missions ("OFM") of the United States Department of State (the "State Department") against defendants Jeffrey E. Epstein ("Epstein"), Ivan S. Fisher ("Fisher"), Ellyn Bank, Debra Elisa Cohen, Diane Fisher d/b/a The Fisher Group, Fisher & Soffer a/k/a Fisher & Sophir, Lawrence D. Gerzog, Robert Heilbrun, Suzanne McDermott, Christopher H. Martin, Jessie Siegel a/k/a Jesse Siegel, Siegel, Martin & Heilbrun, Ron Soffer, Carmen Talsig, John Does 1 through 10 and X Corporations 1 through 10 (collectively, the "Defendants") in connection with certain premises located at 34 East 69th Street, New York, New York (the "Premises").

This action arises from Defendants' unlawful uses of the benefits of a foreign mission, namely, property of the government of Iran ("Iran"), in violation of the Foreign Missions Act of 1982, 22 U.S.C. § 4301 *et seq.* ("FMA"). The Government took custody of the Premises on behalf of Iran following the

severance of diplomatic ties with Iran in 1980 and has maintained, managed, protected and preserved the Premises at all times relevant to this suit pursuant to the Vienna Convention on Consular Relations ("VCCR"), the FMA, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq. ("IEEPA"), and authorities thereunder.

PARTIES

The plaintiff is the United States of America on behalf of its agency, the United States Department of State, Office of Foreign Missions, which is the trustee-landlord for the Premises.

Defendant Epstein is a resident of the State of New York and has been a tenant of the Premises. Epstein has availed himself of the use and benefits of the Premises and has failed to surrender possession of the Premises to the Government.

Defendant Fisher is a resident of the State of New York and is an unapproved subtenant of the Premises. Fisher has availed himself of the use and benefits of the Premises and has failed to surrender possession of the Premises to the Government. Defendant Ellyn Bank ("Bank") is a resident of the State of New York with a business address at 34 East 69th Street, New York, New York. Bank is named as a defendant because she has been an unapproved occupant of the Premises; has availed herself of the use and benefits of the Premises; and has or may claim to have an interest in the Premises.

Debra Elisa Cohen ("Cohen") is a resident of the State of New York with a business address at 34 East 69th Street, New York, New York. Cohen is named as a defendant because she has been an unapproved occupant of the Premises; has availed herself of the use and benefits of the Premises; and has or may claim to have an interest in the Premises.

Diane Fisher ("Ms. Fisher"), doing real estate business as The Fisher Group, is a resident of the State of New York with both a home and business address at 34 East 69th Street, New York, New York. Ms. Fisher is named as a defendant because she is an unapproved occupant of the Premises; has availed herself of the use and benefits of the Premises; and has or may claim to have an interest in the Premises.

Ron Soffer ("Soffer") is a resident of both the State of New York and France, with a business address at 34 East 69th Street, New York, New York. Soffer is named as a defendant because he is an unapproved occupant of the Premises; has availed himself of the use and benefits of the Premises; and has or may claim to have an interest in the Premises.

Fisher & Soffer a/k/a Fisher & Sophir ("Fisher & Soffer") is a general partnership with a business address at 34 East 69th Street, New York, New York. Defendants Fisher and Soffer are partners in

Fisher & Soffer. Fisher & Soffer is named as a defendant because it is an unapproved occupant of the Premises; has availed itself of the use and benefits of the Premises; and has or may claim to have an interest in the Premises.

Lawrence D. Gerzog ("Gerzog") is a resident of the State of New York with a business address at 34 East 69th Street, New York, New York. Gerzog is named as a defendant because he is an unapproved occupant of the Premises; has availed himself of the use and benefits of the Premises; and has or may claim to have an interest in the Premises.

Jessie Siegel a/k/a Jesse Siegel ("Siegel") is a resident of the State of New York with a business address at 34 East 69th Street, New York, New York. Siegel is named as a defendant because he is an unapproved occupant of the Premises; has availed himself of the use and benefits of the Premises; and has or may claim to have an interest in the Premises.

Robert Heilbrun ("Heilbrun") is a resident of the State of New York with a business address at 34 East 69th Street, New York, New York. Heilbrun is named as a defendant because he is an unapproved occupant of the Premises; has availed himself of the use and benefits of the Premises; and has or may claim to have an interest in the Premises.

Christopher H. Martin ("Martin") is a resident of the State of New York, who, at various times pertinent to this lawsuit, has had a business address at 34 East 69th Street, New York, New York. Martin is named as a defendant because, at various times pertinent to this lawsuit, he has been an unapproved occupant of the Premises; has availed himself of the use and benefits of the Premises; and has or may claim to have an interest in the Premises. Although Martin may not currently occupy the Premises, he is named as a defendant because he is a partner of the law firm of defendant Siegel, Martin & Heilbrun.

Siegel, Martin & Heilbrun ("SM&H") is a general partnership with a business address at 34 East 69th Street, New York, New York. Defendants Siegel, Martin and Heilbrun are partners in SM&H, which, as of the date of this second amended complaint, is conducting business under the name SM&H. SM&H is named as a defendant because it is an unapproved occupant of the Premises; has availed itself of the use and benefits of the Premises; and has or may claim to have an interest in the Premises.

Suzanne McDermott ("McDermott") is a resident of the State of New York with a business address at 34 East 69th Street, New York, New York. McDermott is named as a defendant because she is an unapproved occupant of the Premises; has availed herself of the use and benefits of the Premises; and has or may claim to have an interest in the Premises.

Carmen Talsig ("Talsig") is a resident of the State of New York with a business address at 34 East 69th Street, New York, New York. Talsig is named as a defendant because she is an unapproved occupant of the Premises; has availed herself of the use and benefits of the Premises; and has or may claim to have an interest in the Premises.

John Does 1 through 10 (the "John Does") and X Corporations 1 through 10 (the "X Corporations") are persons or entities whose identities are presently unknown to the Government but who may be using the Premises as their business address. John Does and X Corporations are named as defendants because they are unapproved occupants of the Premises; have availed themselves of the use and benefits of the Premises; and have or may claim to have an interest in the Premises.

JURISDICTION AND VENUE

This Court has jurisdiction over this action by virtue of 28 U.S.C. § 1345 because the United States is the plaintiff in this action and by virtue of the FMA. See 22 U.S.C. §§ 4301(a), 4311.

Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) because this is the district in which the defendants reside and because this is the district in which the claims arose.

THE INTERNATIONAL TREATIES AND STATUTORY SCHEMES

A. The Foreign Missions Act of 1982

Pursuant to the FMA, 22 U.S.C. § 4301 et seq., "the operation in the United States of foreign missions ... is a proper subject for the exercise of Federal jurisdiction." Id. § 4301(a). The FMA provides, inter alia, that "it is the policy of the United States ... to facilitate the secure and efficient operation in the United States of foreign missions ... and to assist in obtaining appropriate benefits, privileges, and immunities for those missions ... in accordance with international law." Id. § 4301(b). The State Department's actions pursuant to the FMA are grounded in national security and foreign policy concerns and issues of reciprocity among nations. See id.

The FMA defines a "foreign mission" as "any mission to or agency or entity in the United States which is involved in the diplomatic, consular, or other activities of, or which is substantially owned or effectively controlled by ... a foreign government ... including any real property of such a mission" and "any right, title, or interest in or to, or the beneficial use of, any real property in the United States ... or other building." Id. §§ 4302(a)(3), (4).

Under the FMA, "the United States, acting on its own behalf or on behalf of a foreign mission, has standing to bring ... an action to obtain compliance" with the FMA, including any action for

injunctive or other equitable relief. Id. § 4311(a).

The Secretary of State (the "Secretary") is empowered under the FMA to determine the treatment to be accorded to a foreign mission in the United States. Id. § 4301(c); see § 4302(a)(6). The FMA provides that "a denial by the Secretary involving a benefit of a foreign mission within the jurisdiction of a particular State or local government shall be controlling." Id. § 4307.

OFM was established under the FMA pursuant to the Secretary's authority. Id. § 4303. OFM, inter alia, carries out the purposes of the FMA, as determined by the Secretary, and provides and assists in the provision of benefits for or on behalf of a foreign mission under the FMA. See id. § 4303(4). OFM also performs such other functions as the Secretary determines are in furtherance of the policy of the FMA.

B. The Vienna Convention on Consular Relations

And The Bilateral Treaty With Iran

The VCCR, 21 U.S.T. 77, 596 U.N.T.S. 261, TIAS 6820, is a multilateral treaty to which the United States and Iran (and numerous other nations) are parties. The VCCR governs the conduct of consular relations, consular posts and their property and personnel. Article 27(1)(a) of the VCCR provides as follows:

Protection of consular premises and archives and of the interests of the sending State in exceptional circumstances

1. In the event of the severance of consular relations between two States:

- (a) the receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives

VCCR art. 27(1)(a).

In addition to the VCCR, the United States and Iran have entered into a bilateral treaty known as the 1955 Treaty of Amity, Economic Relations and Consular Rights Between the United States of America and Iran (the "Bilateral Treaty"). See 8 U.S.T. 899, TIAS 3853. Accordingly, the Premises also enjoy privileges and exemptions accorded under the Bilateral Treaty.

C. The International Emergency Economic Powers Act

In 1980, the Government severed diplomatic ties with Iran and pursuant to Article 27(1)(a) of the VCCR and the IEEPA, 50 U.S.C. § 1701 et seq. and applicable executive orders, respectively, took custody of the Premises and froze the assets of Iran located in the United States, including its diplomatic and consular properties (collectively, the "Iranian Diplomatic Properties").

Under IEEPA, 50 U.S.C. § 1701 et seq., and regulations promulgated thereunder, control and preservation of the Iranian Diplomatic Properties are licensed by the United States Department of Treasury (the "Treasury Department") to OFM. See 31 C.F.R. § 535.203(e) (1980).

At all times pertinent to this suit, OFM has controlled, protected, managed and leased the Premises pursuant to the FMA, the VCCR, IEEPA and the terms of a license granted to OFM by the Treasury Department, Office of Foreign Assets Control (the "License").

Under the FMA, the Secretary is empowered to "protect and preserve" and assume responsibility for the maintenance of the Iranian Diplomatic Properties, including the Premises licensed under IEEPA. See 22 U.S.C. § 4305(c)(1). Acting under the FMA, the Secretary has continued United States custody, control and protection of the Premises.

Under the License, OFM accounts periodically to the Treasury Department, inter alia , as to the income stream generated by each of the Iranian Diplomatic Properties, including the Premises. The License states, inter alia , that "all income generated by or other use of the referenced properties would itself constitute blocked Iranian property" (License § 1.4).

In addition, under the FMA, "[a]ssets of or under the control of the Department of State, wherever situated, which are used by or held for the use of a foreign mission shall not be subject to attachment, execution, injunction, or similar process, whether intermediate or final." 22 U.S.C. § 4308(f).

The Premises were the residence of the former Iranian Consul General. Accordingly, the Premises are a foreign mission under the terms of the FMA. Id. §§ 4302(3), (4). The possession, preservation, control, benefits and use of the Premises are governed by the FMA, the VCCR, the Bilateral Treaty and IEEPA under terms and conditions prescribed by OFM.

DEFENDANTS' WRONGFUL ACTS

On or about February 1, 1992, OFM entered into a written lease with Epstein for his use and occupancy of the Premises as a single-family residence. The term of the Lease was from February 1, 1992 through January 31, 1994. A true copy of the Lease is attached hereto as Exhibit A and is incorporated herein by reference.

The Lease contained a use of premises clause, stating:

Use

The Premises will be occupied by (i) Tenant [Epstein], his/her spouse (if any), and his/her children (if any) as their personal residence; (ii) Tenant's personal servants and employees; and/or (iii) approved subtenants or approved assignees and their respective families, and for no other purpose.

(the "Use of Premises Clause") (Exhibit A, page 1). In addition, the Lease contained an assignment and sublet clause, stating:

Assignment, Sublet

Tenant may sublet all or part of the Premises, or assign this lease or permit any other person to use the Premises with the advance written permission of Landlord [OFM] .

(the "Assignment and Sublet Clause") (Exhibit A, page 4) (emphasis added).

On or about August 28, 1992, Epstein and OFM entered into an amendment to the Lease, which, inter alia, extended the term of the Lease through January 31, 1997 (the "Lease Amendment"). A true copy of the Lease Amendment is attached as Exhibit B and is incorporated herein by reference. The Lease Amendment was made retroactively effective to February 1, 1992. The Lease Amendment did not amend either the Use of Premises or Assignment and Sublet Clauses.

On or about February 1, 1992, Epstein took possession of the Premises. On or about January 3, 1996, without OFM's knowledge, Epstein abandoned the personal occupancy of the Premises required by the Use Clause.

By letter dated April 19, 1996, Epstein informed the Government, through his attorney, that he wished to sublet the Premises or to assign the Lease and Lease Agreement to Fisher.

By letter dated April 26, 1996, the Government informed Epstein that it would not approve a sublease or assignment of the Lease and Lease Agreement to Fisher. A true copy of the April 26, 1996 letter is attached as Exhibit C and is incorporated herein by reference.

Despite the Government's decision not to approve Fisher as a subtenant or assignee, Epstein entered into a sublease for the Premises with Fisher on or about May 7, 1996 (the "Unpermitted Sublease"). A true copy of the Unpermitted Sublease (minus attachments referenced in the table of contents thereto) is attached as Exhibit D and is incorporated herein by reference.

On or about May 16, 1996, a Government employee visited the Premises and found that Fisher was occupying and using the Premises. Fisher was not a person permitted to occupy the Premises under the Use Clause.

By letter dated June 3, 1996, sent to Epstein by certified mail, return receipt requested, the Government notified Epstein that he was in default of the Lease and Lease Amendment for not occupying the Premises personally and for permitting an unapproved subtenant to occupy the Premises (the "Notice of Default"). Consistent with the Lease, the Notice of Default granted Epstein thirty days to cure the default. True copies of the Notice of Default and the certified mail receipt are collectively attached as Exhibit E and incorporated herein by reference.

On or about July 19, 1996, a Government employee visited the Premises and confirmed that Fisher continued to occupy the Premises.

By letter dated August 7, 1996, sent to Epstein by certified mail, return receipt requested, the Government notified Epstein that because of his failure to cure the default, the Lease would be terminated as of August 23, 1996 (the "Termination Notice"). The Termination Notice directed Epstein to have the Premises vacated and to return the keys to the OFM by August 20, 1996. True copies of the Termination Notice and the certified mail receipt are collectively attached as Exhibit F and incorporated herein by reference.

Epstein has since refused to return the keys to the Premises to the Government or to have the Premises vacated and thereby holds and continues in possession of the Premises without the Government's permission or consent.

Fisher holds and continues in possession of the Premises without the Government's permission or consent.

At times pertinent to this lawsuit, Fisher has permitted defendants Ellyn Bank, Debra Elisa Cohen, Diane Fisher d/b/a The Fisher Group, Fisher & Soffer, Lawrence D. Gerzog, Robert Heilbrun, Suzanne McDermott, Christopher H. Martin, Jessie Siegel a/k/a Jesse Siegel, SM&H, Ron Soffer, Carmen Talsig, John Does 1 through 10 and X Corporations 1 through 10 (collectively, "Fisher's Subtenants") to occupy the Premises.

The Government did not consent to any occupancy of the Premises by Fisher's Subtenants. Moreover, even under the Unpermitted Sublease, the validity of which the Government disputes, Epstein did not consent to the use and occupancy of the Premises by Fisher's Subtenants.

Fisher's Subtenants hold and continue in possession of the Premises without the Government's permission or consent.

On or about November 18, 1997, the Government sent a series of letters by Federal Express to all of Fisher's known Subtenants except for Ms. Fisher (who is Fisher's spouse), Martin (for whom the Government had no current address) and McDermott (who is apparently associated with or a member of Fisher's law firm), requesting, inter alia, that each of them confirm to the Government by November 28, 1997, whether or not they had understandings with Fisher concerning their use and benefit of the Premises and, if so, their plans to vacate the Premises. As of the date of this second amended complaint, none of Fisher's Subtenants who were contacted by the Government has denied to the Government that they occupy the Premises or has agreed to leave without a Court order.

The Government has an immediate right to exclusive possession of the Premises.

Under the FMA (see 22 U.S.C. § 4305(c)(1)), article 27 of the VCCR and IEEPA, the Secretary protects and preserves the Premises on behalf of Iran. Defendants' actions seriously curtail the

authority of the Secretary to preserve and execute control over the Premises. Defendants' wrongful possession of the Premises, which are the property of Iran, and of which the United States is custodian, violates the FMA and interferes with the Government's obligations under the VCCR.

FIRST CLAIM

Pursuant To The FMA, 22 U.S.C. § 4301
et seq ., Against Epstein And Fisher
For Ejection From The Premises

The Government repeats and realleges paragraphs 1 through 53 of the second amended complaint as if fully set forth herein.

Epstein and Fisher have unlawfully availed themselves of the benefits of the Premises in violation of the FMA as follows:

After the termination of the Lease and Lease Agreement, Epstein wrongfully has withheld possession of the Premises and has refused to have the Premises vacated and to return the keys thereto to the Government.

Epstein wrongfully entered into the Unpermitted Sublease with Fisher and transferred possession of the Premises to Fisher.

Fisher has maintained possession of the Premises and has refused to return exclusive possession of the Premises to OFM.

By reason of the actions of Epstein and Fisher, the Government is entitled to a judgment declaring that it is entitled to exclusive possession of the Premises, awarding it exclusive possession of the premises and ejecting Fisher and Epstein from the Premises.

SECOND CLAIM

Pursuant To The FMA, 22 U.S.C. § 4301
et seq ., Against Defendants Ellyn Bank,
Debra Elisa Cohen, Diane Fisher d/b/a
The Fisher Group, Fisher & Soffer a/k/a
Fisher & Sophir, Lawrence D. Gerzog,
Robert Heilbrun, Suzanne McDermott,
Christopher H. Martin, Jessie Siegel
a/k/a Jesse Siegel, Siegel, Martin
& Heilbrun, Ron Soffer, Carmen Talsig,
John Does 1 through 10 and X Corporations
1 through 10 For Ejection From The Premises

The Government repeats and realleges paragraphs 1 through 56 of the second amended complaint as if fully set forth herein.

Fisher's Subtenants have unlawfully availed themselves of the benefits of the Premises in violation of the FMA by occupying the Premises without the Government's permission and consent and by refusing to return exclusive possession of the Premises to the Government.

By reason of the actions of Fisher's Subtenants, the Government is entitled to a judgment declaring that Fisher's Subtenants are not entitled to occupy the Premises, awarding the Government exclusive possession of the Premises and ejecting Fisher's Subtenants from the Premises.

THIRD CLAIM

Pursuant To The FMA, 22 U.S.C.
§ 4301 et seq. , Against Epstein
For Unjust Enrichment

The Government repeats and realleges paragraphs 1 through 59 of the second amended complaint as if fully set forth herein.

Under the Lease Agreement, Epstein was to pay OFM monthly rent in the sum of \$15,000 per month during the period, February 1, 1996 through January 31, 1997 (Exhibit B, page 2). Under the Unpermitted Sublease, Epstein has been receiving from Fisher monthly rent in the amount of \$20,000 commencing with June 1, 1996 to a date unknown to the Government (Exhibit D ¶ 5).

The total amount of the monies paid to Epstein by Fisher for the use and benefit of the premises is unknown to the Government.

Through his unlawful use and benefit of the Premises, Epstein has unjustly enriched himself in an amount to be determined at trial. The circumstances of Epstein's unjust enrichment are such that in equity and good conscience, Epstein should not retain such payments.

FOURTH CLAIM

Pursuant To The FMA, 22 U.S.C.
§ 4301 et seq. , Against Fisher
For Unjust Enrichment

The Government repeats and realleges paragraphs 1 through 63 of the second amended complaint as if fully set forth herein.

Fisher has unlawfully availed himself of the use and benefit of the Premises from a date unknown to the Government through the present and has paid no monies to the Government. Fisher has refused to surrender possession of the Premises to the Government, thereby preventing the Government from leasing the Premises. Moreover, Fisher may have profited in amounts and ways presently unknown to the Government through the receipt of monies or other forms of consideration from Fisher's Subtenants.

Through his unlawful use and benefit of the Premises, Fisher has unjustly enriched himself in an amount to be determined at trial. The circumstances of Fisher's unjust enrichment are such that in equity and good conscience, Fisher should not retain such benefits.

FIFTH CLAIM

Pursuant To The FMA, 22 U.S.C. §
4301 et seq ., Against Defendants
Ellyn Bank, Debra Elisa Cohen, Diane Fisher
d/b/a The Fisher Group, Fisher & Soffer a/k/a Fisher & Sophir, Lawrence D. Gerzog,
Robert Heilbrun, Suzanne McDermott, Christopher H. Martin, Jessie Siegel a/k/a Jesse
Siegel,
Siegel, Martin & Heilbrun, Ron Soffer,
Carmen Talsig, John Does 1 through 10 and
X Corporations 1 through 10 For Unjust Enrichment

The Government repeats and realleges paragraphs 1 through 66 of the second amended complaint as if fully set forth herein.

Fisher's Subtenants have unlawfully availed themselves of the use and benefit of the Premises from dates unknown to the Government through the present and have paid no monies to the Government. Fisher's Subtenants have refused to surrender possession of the Premises to the Government, thereby preventing the Government from leasing the Premises.

Through their unlawful use and benefit of the Premises, Fisher's Subtenants have unjustly enriched themselves as against the Government in amounts to be determined at trial. The circumstances of Fisher's Subtenants' unjust enrichment as against the Government are such that in equity and good conscience, Fisher's Subtenants should not retain such benefits as against the Government.

SIXTH CLAIM

Pursuant To The FMA, 22 U.S.C.
§ 4301 et seq ., For Injunctive Relief
Against Epstein Directing Him
To Return Fixtures To The Government

The Government repeats and realleges paragraphs 1 through 69 of the second amended complaint as if fully set forth herein.

The Lease provides in pertinent part that "[a]ll improvements done by a previous tenant indicated on the attached list entitled 'Chandeliers, Sconces, Mirrors,' (the "Fixtures") have become the sole property of Landlord [OFM] and may not be disposed of without the Landlord's written consent" (Exhibit A, page 3; List entitled "Chandeliers, Sconces, Mirrors" (the "Fixtures Clause").

Iran is the prior tenant who installed the Fixtures on the Premises. The Government is the proprietor of the Fixtures and protects and preserves the Fixtures on behalf of Iran pursuant to the FMA, VCCR

and IEEPA.

The Government has not consented to any disposal of any Fixtures by Epstein. Epstein has not returned the Fixtures to the Government. Pursuant to the FMA, an injunction should issue requiring Epstein to return the Fixtures to the Government.

SEVENTH CLAIM

Against Epstein -
Common Law Breach Of Contract

The Government repeats and realleges paragraphs 1 through 73 of the second amended complaint as if fully set forth herein.

Epstein defaulted under the Lease and Lease Agreement and failed to cure such default within the time demanded in the Termination Notice.

The Lease provides in pertinent part:

Tenant's Defaults and Landlord's Remedies

If the Lease is terminated as [a] result of Tenant's default hereunder beyond all applicable grace and cure periods, Landlord may re-rent the Premises and anything in it for any term Tenant shall be responsible for Landlord's reasonable costs of re-renting.

(Exhibit A, page 5).

The Government has been unable to re-rent the property because Epstein has failed to cure his default by, inter alia , allowing Fisher to have possession of the Premises, thereby preventing the Government from re-renting the Premises.

Epstein is liable to the Government for monetary damages from August 23, 1996, the effective date of the termination of the Lease and Lease Agreement, until exclusive possession of the Premises is returned to the Government.

EIGHTH CLAIM

Against Epstein -
Common Law Breach Of Contract

The Government repeats and realleges paragraphs 1 through 78 of the second amended complaint as if fully set forth herein.

Epstein has not returned the Fixtures to the Government and has accordingly breached the Fixtures Clause. The Government has been damaged by Epstein's breach of the Fixtures Clause in an amount to be determined at trial.

NINTH CLAIM

Against Epstein -
Common Law Conversion

The Government repeats and realleges paragraphs 1 through 81 of the second amended complaint as if fully set forth herein.

In the Unpermitted Sublease, Epstein asserts that he, as "Overtenant" owns all property listed on a schedule attached to the Lease ... which is entitled "Chandeliers, Sconces and Mirrors" (Exhibit D ¶ 10), i.e. , the Fixtures.

The Fixtures, as to which Epstein claims ownership, are not Epstein's property. The Government is the proprietor of the Fixtures on behalf of Iran pursuant to the FMA, VCCR, IEEPA and the License.

The Government did not consent to Epstein's conversion of the Fixtures.

The Government has been damaged by Epstein's conversion of the Fixtures in an amount to be determined at trial.

WHEREFORE, plaintiff United States of America prays for judgment against the Defendants:

(a) On Claim 1 against Epstein and Fisher, pursuant to the FMA, 22 U.S.C. § 4301 et seq. , adjudicating that the Government is entitled to immediate and exclusive possession of the Premises; ejecting Epstein and Fisher from possession of the Premises; and returning exclusive possession of the Premises to the Government;

(b) On Claim 2 against Fisher's Subtenants, pursuant to the FMA, 22 U.S.C. § 4301 et seq. , adjudicating that Fisher's Subtenants are not entitled to occupy the Premises; ejecting Fisher's Subtenants from the Premises; and returning exclusive possession of the Premises to the Government;

(c) On Claim 3 against Epstein, pursuant to the FMA, 22 U.S.C. § 4301 et seq. , awarding the Government the amount by which Epstein was unjustly enriched, a total to be determined at trial;

(d) On Claim 4 against Fisher, pursuant to the FMA, 22 U.S.C. § 4301 et seq. , awarding the Government the amount by which Fisher was unjustly enriched, a total to be determined at trial;

(e) On Claim 5 against Fisher's Subtenants, pursuant to the FMA, 22 U.S.C. § 4301 et seq. , awarding the Government the respective amounts by which Fisher's Subtenants were unjustly enriched as against the Government, in amounts to be determined at trial;

(f) On Claim 6 against Epstein, pursuant to the FMA, 22 U.S.C. § 4301 et seq. , for an injunction directing Epstein to return the Fixtures to the Government;

(g) On Claim 7 against Epstein, damages under the Lease and Lease Agreement, for the Government's cost of re-renting the Premises, a total to be determined at trial;

(h) On Claim 8 against Epstein, damages under the Lease and Lease Agreement, for Epstein's breach of the Fixtures Clause;

(i) On Claim 9 against Epstein, damages for Epstein's conversion of the Fixtures;

(j) The costs and disbursements of this action; and

(k) For such other and further relief as this Court deems just and proper.

Dated: New York, New York
December 17, 1997

MARY JO WHITE
United States Attorney for the
Southern District of New York
Attorney for Plaintiff
United States of America

By: _____

Assistant United States Attorney
100 Church Street, 19th Floor
New York, New York 10007