

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
THE MUSEUM OF FINE ARTS, BOSTON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 08-10097-RWZ
)	
DR. CLAUDIA SEGER-THOMSCHITZ,)	
)	
Defendant.)	
_____)	
AND RELATED COUNTERCLAIM.)	
_____)	

**DECLARATION OF VICTORIA REED IN SUPPORT OF
MUSEUM OF FINE ARTS, BOSTON'S
MOTION FOR SUMMARY JUDGMENT BASED ON STATUTE OF LIMITATIONS**

DECLARATION OF VICTORIA REED

I, Victoria S. Reed, hereby declare as follows:

1. I am a resident of Massachusetts and an employee of the Museum of Fine Arts, Boston, where I am the Monica S. Sadler Assistant Curator for Provenance, Art of Europe. I make this affidavit in support of Plaintiff's motion for summary judgment filed in the above-captioned matter. Except where otherwise noted, I have personal knowledge of the following facts and, if called to testify, could and would testify competently thereto.
2. I received M.A. and Ph.D. degrees in Art History from Rutgers, the State University of New Jersey. From 2001 to 2003, I was the Friends Curatorial Research Associate at the Princeton University Art Museum in Princeton, New Jersey, where I conducted provenance research. Since 2003, I have been employed by the Museum of Fine Arts ("Museum"). During my time at the Museum I have been a full-time provenance researcher, performing research and writing concerning the ownership history of works of art in the collection in the Museum. In the course of my work as a provenance researcher over the past seven years, including the work described below, I have visited at least twenty museum and government archives and spent many hundreds of hours examining archival documents concerning the ownership history of works of art. I am familiar with archival practices with respect to such documents. I am also a reader of German, Italian, and French, as well as English. (I have not provided the certified translations that are attached to some of the exhibits hereto, but where a portion of a document is translated from German in this declaration, I have provided what I believe to be a true and accurate translation of the relevant portions.) A true and correct copy of my Curriculum Vitae is attached hereto as Exhibit 1.

3. One of the works in the collection of the Museum with which I am familiar is a large oil painting by the important Austrian expressionist Oskar Kokoschka, *Dancing Couple (Two Nudes)* (the "Painting"), Museum Accession Number 1973.196. The Painting, over five feet tall and over three feet wide, is generally recognized by art scholars to be a self-portrait of Kokoschka with Alma Mahler, with whom he was having an affair at the time the work was painted in Vienna (approximately 1913). The Painting is currently on display in the Museum's Lorna and Robert Rosenberg Gallery and has been on display for substantially all the time I have worked at the Museum. A true and correct copy of a photograph of the Painting is attached hereto as Exhibit 2.

4. I have reviewed records concerning the Painting that were made and kept by the Museum in its ordinary course of business, and those contemporaneous records show that the Painting was acquired by the Museum in 1973 through a bequest of Sarah Reed Platt (formerly Mrs. Sarah Blodgett), who died in 1972.

5. In March 2007, the Museum received a letter from counsel for Claudia Seger-Thomschitz, asserting that she owned the Painting because she was the heir to Raimund Reichel, the last surviving child of Oskar Reichel, a Jewish doctor and art collector who lived in Vienna and who had owned the Painting prior to World War II. Following receipt of this letter, the Museum undertook an exhaustive effort to research and document the provenance of the Painting in order to ascertain whether the claim asserted by Claudia Seger-Thomschitz appeared valid or not. On behalf of the Museum, I led this provenance research effort. Working closely with the provenance researcher Laurie A. Stein, of L. Stein Art Research, LLC, I have spent over half of my time over the past eighteen months researching the ownership and exhibition history of the Painting, including the history of the Reichel family during the Twentieth Century. This

research included visits to approximately ten museum and governmental archives in Boston, New York, Zurich, Basel, and Bern. In addition, I have consulted through correspondence with (and obtained documents from) numerous other museums and archives in several other locations. The information and documents set out below are based on and reflect the research that I carried out with Ms. Stein during this period.

6. As noted above, the Painting was painted in approximately 1913. Prior to being brought to the United States in 1939 (as discussed below), the Painting was known under various German names, including *Skizze (Doppelakt)* (Sketch (Two Nudes)), *Tanzpaar* (Dancing Couple), and *Liebespaar* (Two Lovers). Since being in the United States, it has been referred to, among other titles, as *Dancers (Self-Portrait)*, *Dancing Couple*, *Adam and Eve*, *The Couple*, as well as *Two Nudes (Lovers)*. Available scholarly resources suggest that Kokoschka sold the Painting in approximately 1914 to Oskar Reichel. Reichel was an active collector of Austrian Expressionism at that time, and in particular was a patron and collector of Kokoschka. Based on my scholarly research, it appears that Reichel owned at least eleven paintings by Kokoschka during the early decades of the Twentieth Century, not including works on paper.

7. As early as 1917, the Painting is mentioned in published literature as belonging to Reichel. An article on Kokoschka by Paul Westheim in the periodical *Das Kunstblatt* listed the Painting ("*Skizze (Doppelakt)*") as being owned by Dr. Oskar Reichel in Vienna. A true and correct copy of pages of this 1917 article are attached hereto as Exhibit 3.

8. As reflected in Exhibit 3, as of 1917, Reichel was known to own at least eight paintings by Kokoschka. One of the other Kokoschka paintings owned by Reichel at the time was a portrait of Reichel's son Hans, which is variously known (in English) as "Portrait of a Boy," "Portrait of a Youth (Hans Reichel)," or "Blue Boy." As set out in the accompanying

Declaration of Peter H. Selz, this painting is believed to have been painted in approximately 1908-1910, while Kokoschka was at the Reichel home in Vienna, and it also appears as owned by Reichel in Exhibit 3, where it is listed as *Porträt eines Knaben* (Portrait of a Youth).

9. In 1918, the Painting was again mentioned as belonging to Reichel in Arthur Roessler's book *Kritische Fragmente*, published that year in Vienna. This work included photographs of both the Painting and the Hans Reichel portrait, and listed both as belonging to "Dr. Oskar Reichel, Wien." A true and correct copy of relevant pages of Roessler's book is attached hereto as Exhibit 4.

10. By around 1917, Reichel apparently began—or at least considered—selling some works by Kokoschka from his own collection. In a letter of March 31, 1917 to Leo Kestenberg, who worked for his dealer Paul Cassirer (Berlin), Kokoschka recommended that, translated from the German, he "[t]ry to acquire the O.K. [Oskar Kokoschka] collection of Dr. Oskar Reichel, Chimanistrasse 11, 19th district, Vienna. He has at least one characteristic work from each year (the collection will be illustrated soon in "Kunstblatt", Kiepenheuer, Weimar) and P[aul] C[assirer] would do well to be able to obtain these pictures at a reasonable price, through a middle man, naturally!" This letter is reproduced in *Oskar Kokoschka: Briefe*, vol. 1, 1905-1919 (Düsseldorf: Claassen, 1984), pp. 264-266. A true and correct copy of these pages are attached hereto as Exhibit 5.

11. By 1922, Reichel was certainly selling some of his Kokoschka paintings. In that year, he sold one painting to the Österreichische Galerie, Vienna, and two paintings to the Galerie Caspari in Munich. This is discussed in Tobias Natter, ed., *Kokoschka und Wien* (exhibition catalogue, Österreichische Galerie Belvedere, Vienna, 1996), p. 50, and Werner J. Schweiger's book *Der Junge Kokoschka: Leben und Werk, 1904-1914* (Christian Brandstätter, Vienna and

Munich 1983), p. 152. A true and correct copy of relevant pages of the latter book is attached hereto as Exhibit 6. The passage at issue states that in 1922 Reichel sold particular paintings to the Österreichische Galerie and to the Galerie Caspari, Munich.

12. In May 1924, Reichel lent the Painting (along with several others) to Otto Nirenstein, owner of the Neue Galerie in Vienna, for exhibition. This is substantiated by a series of letters between Reichel and Nirenstein at that time, which were obtained from the Neue Galerie archive, which is housed at the Österreichische Galerie Belvedere in Vienna. I have reviewed these letters and, based on my knowledge of historical events and archival practice, am confident of their authenticity. In a May 14, 1924 letter, Reichel wrote to Nirenstein listing four paintings by Kokoschka that were being lent to the Neue Galerie, including *Tanzpaar*, a reference to the Painting. A true and correct copy of this May 14, 1924 letter, obtained from the Neue Galerie archive, is attached hereto as Exhibit 7.

13. A May 16, 1924 letter from Nirenstein to Reichel asked if the paintings could be sold if someone was interested in purchasing them, and whether Reichel would consider lending the portrait of his son. In a May 23, 1924 letter to Nirenstein, Reichel responded that the paintings could be offered for sale. This letter was also obtained from the Neue Galerie archive. True and correct copies of these May 16, 1924 and May 23, 1924 letters, obtained from the Neue Galerie archive, are attached hereto as Exhibit 8 and Exhibit 9, respectively. Based on their contents and where they were found, I am confident of the authenticity of these documents.

14. In a May 25, 1924 letter to Nirenstein concerning the same loan of paintings, Reichel stated that he has turned over to his son Raimund the responsibility for the transfer of the paintings to Nirenstein's gallery for exhibition and sale. The letter notes that Raimund can be reached during the day to arrange for pick-up of the artworks. This letter was also obtained from

the Neue Galerie archive. A true and correct copy of this May 25, 1924 letter, obtained from the Neue Galerie archive, along with a certified translation of the document, is attached hereto as Exhibit 10. Based on its contents and where it was found, I am confident of the authenticity of this document.

15. In an October 7, 1924 letter to Oskar Reichel, Nirenstein confirmed Reichel's loan of five paintings by Kokoschka, including the Painting and the Hans Reichel portrait, for exhibition and sale at the Neue Galerie, and set out a specific price at which Nirenstein could sell the Painting. A true and correct copy of this October 7, 1924 letter, also obtained from the Neue Galerie archive, along with a certified translation of the document, is attached hereto as Exhibit 11. Based on its contents and where it was found, I am confident of the authenticity of this document.

16. After the close of this October 1924 exhibition at the Neue Galerie, the Painting (along with the four other loans, including the Hans Reichel portrait) was returned to Oskar Reichel. When these works were delivered, Reichel's wife, Malvine Reichel, signed the Neue Galerie's receipt for them. A true and correct copy of this November 3, 1924 receipt, along with a certified translation of this document, is attached hereto as Exhibit 12. This document was obtained from the archives of the Neue Galerie, which are at the Österreichische Galerie Belvedere, Vienna, which is where one would expect to find such a document. Based on its contents and where it was found, I am confident of the authenticity of this document.

17. Correspondence from 1925 indicates that in that year Nirenstein was again offering the Painting for sale through his gallery. In an April 6, 1925 letter to Nirenstein, the dealer M. Goldschmidt of the Galerie M. Goldschmidt and Co., in Frankfurt, wrote that, translated into English, "we would be interested in the paintings 'Dancing Couple' [the Painting] and 'The

Knight Errant' and would be grateful if you could send us photographs of the paintings, quoting for us their lowest prices." A true and correct copy of this April 6, 1925 letter is attached hereto as Exhibit 13. This letter was obtained from the Neue Galerie archive, which would appropriately have such a document because it is a matter of business correspondence with the Neue Galerie, and, based on its content and where it was found, I am confident of the authenticity of this letter.

18. In an April 8, 1925 letter to M. Goldschmidt which, from its contents and location I conclude was from Nirenstein, Nirenstein wrote that, translated into English, he would inform the gallery about the paintings "in the coming days." A true and correct copy of this April 8, 1925 letter is attached hereto as Exhibit 14. This letter was obtained from the Neue Galerie archive, which would appropriately have such a document because it is a matter of business correspondence with the Neue Galerie, and, based on its contents and where it was found, I am confident of the authenticity of this letter.

19. Based on an extensive review of correspondence from the 1930s and other historical sources I have learned that in or about 1933 Otto Nirenstein legally adopted his great-grandfather's name, Kallir. Apparently because he was known professionally as Nirenstein, however, he continued to use a hyphenated last name of "Kallir-Nirenstein" until approximately 1938, when he shortened his name to Kallir. In June 1933, Oskar Reichel again lent the Painting (along with four other Kokoschka works, including the Hans Reichel portrait) to Kallir-Nirenstein, for sale on commission with set prices. In a letter to Reichel dated June 12, 1933 that, from its content and location I conclude was from Kallir-Nirenstein, Kallir-Nirenstein confirmed this loan and the agreed-upon sale prices. A true and correct copy of this June 12, 1933 letter, which was obtained from the Neue Galerie archive, along with a certified translation

of this document, is attached hereto as Exhibit 15. Based on its contents and where it was found, I am confident of the authenticity of this document.

20. At the completion of this 1933 exhibition, the Painting was returned to Reichel. The Neue Galerie's November 7, 1933 return receipt for the Painting (referred to as "Tanzpaar"), along with the Hans Reichel portrait (referred to as "Knabenbildnis"), was signed by Malvine Reichel. A true and correct copy of this receipt, obtained from the Neue Galerie archive, is attached hereto as Exhibit 16. Based on its contents and where it was found, I am confident of the authenticity of this document.

21. In 1937, the director of the Museum für Kunst und Industrie in Vienna (known today as the Museum für angewandte Kunst, or "MAK") corresponded with both Oskar Reichel and his son Hans to arrange the loan of six Kokoschka works, including the Painting and the portrait of Hans, for a Kokoschka exhibition. In an April 22, 1937 letter, Siegfried Troll of the Museum für Kunst und Industrie wrote to Hans Reichel at Chimanistrasse 11 in Vienna, confirming the receipt of five works (three oil paintings, one watercolor, and one drawing) by Kokoschka. A true and correct copy of this April 22, 1937 letter, obtained from the archives of MAK in Vienna (with a cover sheet from that archive), is attached hereto as Exhibit 17. Based on its contents and where it was found, I am confident of the authenticity of this document.

22. In a May 3, 1937 letter to the Donau insurance company, Siegfried Troll confirmed that Hans Reichel was lending an additional Kokoschka painting, *Liebespaar*—that is, the Painting. A true and correct copy of this May 3, 1937 letter, obtained from the archives of MAK (with a cover sheet from that archive), is attached hereto as Exhibit 18. Based on its contents and where it was found, I am confident of the authenticity of this document.

23. In a May 9, 1937 letter to Siegfried Troll, Oskar Reichel wrote that the Painting (*Liebespaar*) had been sent to the Museum für Kunst und Industrie, in addition to the other paintings, and asked for confirmation of this fact from Troll. A true and correct copy of this May 9, 1937 letter, obtained from the archives of MAK, is attached hereto as Exhibit 19. Based on its contents and where it was found, I am confident of the authenticity of this document.

24. In a May 11, 1937 letter back to Oskar Reichel, Troll confirmed that the museum had received the Painting in good condition. A true and correct copy of this May 11, 1937 letter, obtained from the archives of MAK (with a cover sheet from that archive), is attached hereto as Exhibit 20. Based on its contents and where it was found, I am confident of the authenticity of this document.

25. This exhibition ran in May and June 1937, according to the exhibition catalogue, a copy of which was obtained from the Frick Art Reference Library in New York. This exhibition catalogue lists four oil paintings by Kokoschka, including the Painting and the Hans Reichel portrait, as lent by Hans Reichel. A true and correct copy of pages of this exhibition catalogue is attached hereto as Exhibit 21.

26. A true and correct copy of the mandatory asset declaration filed by Raimund Reichel with the Nazi authorities in Vienna on June 28, 1938, listing his address as Chimanistrasse 11, Vienna, is attached hereto as Exhibit 22. This document was obtained from the Österreichisches Staatsarchiv (Austrian State Archive) in Vienna.

27. A true and correct copy of the mandatory asset declaration filed by Oskar Reichel with the Nazi authorities in Vienna on June 30, 1938, also listing his address as Chimanistrasse 11, is attached hereto as Exhibit 23. This document was obtained from Österreichisches Staatsarchiv. The document attaches an appraisal of Oskar Reichel's art collection, and the

Painting (*Tanzpaar*) is listed on the appraisal. The appraisal includes four other Kokoschka oil paintings, including the Hans Reichel portrait, along with some Kokoschka works on paper.

28. In the course of my provenance research concerning the Painting, I obtained copies of several documents that are from the archives of the Galerie St. Etienne in New York and that evidence Oskar Reichel's transfer of five Kokoschka paintings, including the Painting, to Otto Kallir on or about February 1, 1939. (Based on my research, I have learned that by this time Kallir used only that name, and was no longer using "Kallir-Nirenstein.") By this point in time, Kallir had left Austria and had opened the Galerie St. Etienne in Paris. A true and correct copy of a February 1, 1939 letter to "Dr. O. Reichel" at Chimanistrasse 11 in Vienna, which we obtained from the Galerie St. Etienne in New York, along with a certified translation of the document, is attached hereto as Exhibit 24. (I understand that a copy of this document is attached as an exhibit to the Declaration of Jane Kallir, as well.) This document is a copy of an unsigned typed letter to Oskar Reichel at the address in Vienna where he lived with his family until 1939. Based on my historical knowledge, I conclude that the letter was an authorization for the shipping company Scholz (which I understand from my historical research Kallir used for shipping art) to pick up from Reichel numerous works of art, and, given the context and contents of the letter, it appears that the letter (or the original, of which this would be a typed copy, in the days before any kind of photocopying) is from Kallir or his representative, probably through the agency of the Neue Galerie in Vienna. Translated from the German, it reads:

The bearer of this letter, who is also here by order of the shipping company Scholz, is authorized to accept the pictures listed below. I confirm with you that you entrust the Kokoschka pictures to me at the value of 800 Swiss francs. The prices listed next to the other pictures are your net prices in the event of a sale.

With best regards and greetings,
[unsigned]

O. Kokoschka:	Lovers	}	[handwritten:] <i>bought</i>
	Annecy		
	Portrait of a boy		
	Portrait of a lady		
	Portrait of a gentleman		
A. Faistauer:	Landscape	Mk	150.00
	Still life	"	80.00
Romako:	Portrait of Schwinder	"	250.00 [handwritten:] <i>sold</i>
	Goddess of Fortune	"	500.00 [handwritten:] <i>sold</i>
	Orpheus not for sale	[handwritten:]	<i>sold</i>

29. A true and correct copy of a second document we obtained from the archives of the Galerie St. Etienne in New York is attached hereto as Exhibit 25. (I understand that a copy of this document is also attached to the Declaration of Jane Kallir.) This document is a page of notes, written on the letterhead of Dr. Hans Reichel, listing his office address ("Ord.") at Börsegasse 12, and his home address ("Wohng.") at Chimanistr. (that is, Chimanistrasse) 11. Based on my extensive research in numerous archives and review of many documents written by Oskar Reichel, I can conclude that this document, written on the letterhead of his son Hans, is in fact in the handwriting of Oskar Reichel. Translated from the German, the handwritten notes read:

O.K.	<i>Two Lovers</i>	
	<i>Annecy</i>	
	<i>Portrait of a Youth</i>	[collectively:] 800 Sw[iss] Fr[ancs]
	<i>Portrait of a Woman</i>	
	<i>Portrait of a Man</i>	
Faistauer	<i>Landscape</i>	Mk. 250
"	<i>Still Life</i>	Mk. 80
Romako	<i>Portrait of Sch[winder?]</i>	Mk. 250 sold
"	<i>Goddess of Fortune</i>	Mk. 500 sold

Based on my review, this document appears to list the exact same artworks as included in Exhibit 24 hereto, with the exception of Romako's *Orpheus* (which was marked "not for sale" on Exhibit 24).

30. In addition, we obtained from the files of the Galerie St. Etienne its inventory card for the Painting, also referring to the February 1, 1939 sale by Reichel to Kallir. A true and correct copy of that inventory card is attached hereto as Exhibit 26. (I understand that a copy of this document is also attached to and discussed in the Declaration of Jane Kallir.)

31. From our provenance research, it is apparent that the Painting was shown in a Kokoschka exhibition at the Galerie St. Etienne in Paris in April and May 1939. This is evidenced by several contemporary Paris newspaper reviews that discussed the exhibition and specifically mentioned that the Painting (referred to as "*Nackte Tanzpaar*" and "*Zwei Akte*," or "Nude Dancing Couple" and "Two Nudes"), as well as the Hans Reichel portrait (referred to as *Bildnis eines Knaben*), were in the exhibition. A true and correct copy of these newspaper articles are attached hereto as Exhibit 27.

32. In January and February 1940, after Otto Kallir had left France in August 1939 and opened the Galerie St. Etienne in New York, the Painting was exhibited in an Oskar Kokoschka exhibition held at the Galerie St. Etienne in New York. A true and correct copy of pages from the catalogue for this exhibition, which was obtained from the Library of the Museum of Modern Art in New York, is attached hereto as Exhibit 28. The Painting is referred to as "Dancers (Self-portrait)" in the catalogue. The exhibition was reviewed in an article entitled "Kokoschka: A Review of a Powerful Painter," *Art News* 38, no. 16 (January 20, 1940), which referred to the Painting as *Dancers* and described it as "blue and grey, subdued in tone." A true and correct copy of this article is attached hereto as Exhibit 29.

33. In January 1941, Otto Kallir lent the Painting to a Kokoschka exhibition at the Arts Club of Chicago. A true and correct copy of pages of the catalogue for this show, obtained from the MFA curatorial files, is attached hereto as Exhibit 30. A review of this exhibition by Fritz Weisenborn, entitled “Three men and their work...” in the *Chicago Sunday Times* newspaper on January 19, 1941 refers to the Painting as “Dancing Couple.” A true and correct copy of this newspaper article is attached hereto as Exhibit 31.

34. In March and April 1943, the Painting was included in the show “Oskar Kokoschka: Aspects of His Art” at the Galerie St. Etienne in New York. True and correct copies of two reviews of this exhibition, both of which mention the Painting (referred to as “Dancing Couple”)—“Kokoschka: New View of a Visionary,” *Art News* 42, no. 5 (April 15-30, 1943), p. 23, and Howard Devree, “A Reviewer’s Notebook,” *New York Times* April 4, 1943, p. X8—are attached hereto as Exhibit 32.

35. The Painting was included in an Oskar Kokoschka exhibition at the San Francisco Museum of Art in 1945. This is evidenced by a portion of a checklist for this exhibition, which was located in the Museum’s regularly maintained curatorial files, and which was most likely provided to the Museum years ago by the Galerie St. Etienne in New York, which lists the Painting as *Dancing Couple*. A true and correct copy of this checklist is attached hereto as Exhibit 33. Based on its contents and where it was found, I am confident of the authenticity of this document.

36. From October 1945 to January 1946, the Painting was included in an exhibition entitled “Forbidden Art in the Third Reich: Paintings by German Artists Whose Work was banned from Museums and Forbidden to Exhibit,” which was sponsored by the Nierendorf Gallery, New York (at that time the owner of the Painting) and which was shown at the

Nierendorf Gallery in New York, the Institute of Modern Art in Boston (now the Institute of Contemporary Art, or “ICA”), and the Worcester Art Museum in Worcester, Massachusetts. An installation shot published in Anja Walter-Ris, *Kunstleidenschaft im Dienst der Moderne: Die Geschichte der Galerie Nierendorf Berlin/New York 1920-1955* (Zurich, 2003), figure 34, confirms the inclusion of the Painting at the exhibition at the Nierendorf Gallery venue. A true and correct copy of relevant pages of this work is attached hereto as Exhibit 34. The show was reviewed by Ben Wolf, “They Dared to Speak in the Third Reich,” *Art Digest* 20, no. 2 (October 15, 1945), which mentions the Painting as *Adam and Eve* and describes it as balancing “blues and violets.” A true and correct copy of this article is attached hereto as Exhibit 35. Documents obtained from the Institute of Contemporary Art in Boston, which I have discerned, based on their context and where they were found, are authentic checklists and insurance lists drawn up for this exhibition, confirm that the Painting (referred to as *Adam and Eve*) was included in the Boston venue of the exhibition. A true and correct copy of these lists from the ICA are attached hereto as Exhibit 36. This exhibition also traveled to the Worcester Art Museum, as reflected in the *Worcester Art Museum News Bulletin and Calendar* 11, no. 4 (January 1946), pp. 1-2, a true and correct copy of which is attached hereto as Exhibit 37.

37. The documents attached as Exhibit 36 reflect that during the exhibition “Forbidden Art in the Third Reich” discussed in the previous paragraph, the Painting was sold by the Nierendorf Gallery to E. and A. Silberman Galleries of New York. Handwritten entries next to the checklists in Exhibit 36 refer to “E. and A. Silberman” and “A. Silberman.” In addition, a typed note added at the end of Exhibit 36, which, from the context and content I conclude is a note from the Nierendorf Gallery to the Institute of Modern Art, dated November 8, 1945, states “The Kokoschka painting ‘The couple’ was sold during the exhibition in New York to Mr.

Silbermann of the Silbermann Gallery, New York, who kindly permitted to include it in your show.” Also, a December 11, 1947 memorandum from Frances Keech at the Museum of Modern Art to James Plaut (who I know from my research worked at the Institute of Modern Art in Boston at the time) states that, among other offers, the E. and A. Silberman Galleries of New York had offered to lend the Painting (“Adam and Eve”) to the forthcoming Kokoschka retrospective exhibition, being organized by Mr. Plaut. This exhibition will be discussed below. A true and correct copy of this December 11, 1947 memorandum, obtained from the Institute of Contemporary Art, Boston, is attached hereto as Exhibit 38. Based on its contents and where it was found, I am confident of the authenticity of this document.

38. In 1947, Edith Hoffmann published the first catalogue raisonné of Oskar Kokoschka’s work, *Kokoschka: Life and Work* (London and Boston, 1947). (A catalogue raisonné or “reasoned catalogue” is a monograph giving a comprehensive listing of the artworks by a particular artist, sometimes including for each work a description, a list of published references, and its exhibition and ownership history, or provenance.) Hoffmann’s catalogue raisonné, organized by date, includes for each work its title, medium, dimensions, exhibition history, provenance, and, where relevant, publications that reproduce the work. The entry for the Painting gives its provenance as “Dr. Reichel, Vienna; St. Etienne Gallery, New York”. True and correct copies of relevant pages of the 1947 catalogue raisonné are attached hereto as Exhibit 39.

39. Attached hereto as Exhibit 40 is a true and correct copy of an August 17, 1947 letter from Olda Kokoschka (wife of Oskar Kokoschka), which was obtained from the archives of the Museum of Modern Art, New York. Based on its contents and where it was found, I am confident of the authenticity of this document. This letter reflects that Mrs. Kokoschka is

attempting to compile a list of the current owners of her husband's works in the aftermath of World War II, and is writing to the New York art dealer Curt Valentin for assistance. Translated into English, she writes that, "I have succeeded in putting together a provisional list of Kokoschka's paintings in American collections, and I kindly ask if you would be willing to correct this for us, since Kokoschka would like very much to know which of his works he must still look for in Germany. Nearly a third of his works were lost, and he is very unhappy as a result." A typed list (with the heading, translated into English, "Kokoschka's pictures in America: please complete and correct") accompanies the letter, with fifty-seven painting titles, dates, and presumed owners, including: "14. *Zwei Akte, Grüne V[ersion]*, 1913, St. Etienne Gallery, New York. This translates to "Two Nudes, Green V[ersion]," a reference to the Painting.

40. A true and correct copy of an April 12, 1948 letter from Otto Kallir at the Galerie St. Etienne in New York to James P. Plaut at the Institute of Modern Art, which was obtained from the Institute of Contemporary Art in Boston (formerly the Institute of Modern Art), is attached hereto as Exhibit 41. Based on its contents and where it was found, I am confident of the authenticity of this document. The letter from Kallir lists "the paintings by Kokoschka which we have handled during the last few years" and includes the Painting ("Dancing Couple"), as well as the Hans Reichel Portrait ("Blue Boy"). Both painting are listed as being in a "private collection." However, "Mrs. John Blodgett, Grand Rapids" is handwritten next to these entries.

41. From my research concerning the provenance of the Painting, it is clear that the letter discussed in the preceding paragraph was sent by Kallir in response to efforts by James Plaut at the Institute of Modern (Contemporary) Art to organize a Kokoschka retrospective exhibition. "Oskar Kokoschka: A Retrospective Exhibition" opened at the Institute of Contemporary Art in

Boston in 1948, and traveled to venues at the Museum of Modern Art in New York, the Phillips Memorial Gallery in Washington, D.C., the City Art Museum in St. Louis, and the M. H. De Young Memorial Museum in San Francisco. The duration of the exhibition was from October 1948 until approximately the autumn of 1949. An installation photograph of the exhibition at the Institute of Modern Art, confirming the inclusion of the Painting in the exhibition at its Boston venue, was reproduced in a 1985 publication by the ICA, *Dissent: The Issue of Modern Art in Boston* (Boston: ICA, 1985). A true and correct copy of relevant pages of this publication is attached hereto as Exhibit 42. In addition, true and correct copies of two loan forms (the documents filled out by the lenders of artworks) for this exhibition completed by Sarah Reed Blodgett, one for the Painting (*Dancing Couple (Green Version)*) and another for the Hans Reichel portrait, are attached hereto as Exhibit 43, also reflecting the inclusion of the Painting in this exhibition. These documents were obtained from the Institute of Contemporary Art in Boston, and based on their contents and where they were found, I am confident of the authenticity of these documents. The loan form for the Painting shows that it was to be collected for the exhibition from the “G[rand] R[apids] Art Gallery” and that the place of return was to be determined. The form is signed by Sarah Reed Blodgett, with a handwritten address in Portland, Oregon. From my research, I have learned that Mrs. Blodgett (later, Platt) had homes in both Grand Rapids, Michigan, and Portland, Oregon. True and correct copies of relevant pages of the catalogue for this 1948/1949 exhibition are attached hereto as Exhibit 44. As shown in Exhibit 44, the catalogue for this exhibition illustrated the Painting, and specified that it had been owned by “Dr. Reichel, Vienna,” and the “Galerie St. Etienne” and listed the present owner as “Mrs. John W. Blodgett, Jr., Portland, Oregon.”

42. In 1956, another catalogue raisonné of Kokoschka's works was published: Hans Maria Wingler, *Oskar Kokoschka: Das Werk des Malers* (Salzburg: Galerie Welz, 1956). This catalogue raisonné included the Painting, referred to as *Doppelakt: Liebespaar*. The work was illustrated and listed as being in private hands ("Privatbesitz") in Portland, Oregon. True and correct copies of relevant pages of the 1956 catalogue raisonné are attached hereto as Exhibit 45.

43. The Painting was also included in a 1965 exhibition at the Portland (Oregon) Art Museum entitled "Collection of Sarah Reed Blodgett of Portland: European and American Paintings, Sculptures, Drawings, and Prints." A true and correct copy of relevant pages of the catalogue for this exhibition is attached hereto as Exhibit 46.

44. Since the Painting was acquired by the Museum in 1973, the Museum, in the ordinary course of its operations, has kept records of all exhibitions to which the Painting has been lent. Based on an examination of these records, I have found that, in addition to the regular public display of the Painting as part of the Museum's collection, the Painting has been included in the following exhibitions:

November 1975-January 1976: "German and Austrian Expressionism,"
New Orleans Museum of Art, New Orleans,
Louisiana.

April-May 1977: "Festival of Arts: Austrian Art Between 1890
and World War I," Birmingham Museum of Art,
Birmingham, Alabama.

April-September 1978: "Citizens of the World," National Museum of
Western Art, Tokyo, Japan; Kyoto National
Museum, Kyoto, Japan; Nagoya City Art
Museum, Nagoya, Japan.

April-May 1981: "Austria's Expressionism," Galerie St. Etienne,
New York, New York.

- May-September 1983: "Oskar Kokoschka, 1886-1980," Musée des Beaux-Arts, Bordeaux, France.
- December 1985-February 1986: "Dissent: The Issue of Modern Art in Boston (The Expressionist Challenge)," Institute of Contemporary Art, Boston, Massachusetts.
- June-August 1986, December 1986-February 1987: "Oskar Kokoschka, 1886-1980," Tate Gallery, London; England; Guggenheim Museum, New York, New York.
- March-June 1991: "Oskar Kokoschka," Kunstforum Länderbank, Vienna, Austria.
- March-May 1992: "Richard Gerstl and Oskar Kokoschka," Galerie St. Etienne, New York, New York.
- August-October 1992: "Oskar Kokoschka und Alma Mahler: Die Puppe. Epilog einer Passion," Städtisches Kunstinstitut and Städtische Galerie, Frankfurt, Germany.
- March-September 2002: "Oskar Kokoschka: Early Portraits from Vienna and Berlin, 1909-1914," Neue Galerie, New York, New York; Hamburger Kunsthalle, Hamburg, Germany.
- March-September 2005: "Masterworks from the MFA, Boston: Celebrating the Human Form in Art," Nagoya/Boston Museum of Fine Arts
- October 2005-January 2006: "Klimt, Schiele, Moser, Kokoschka: Vienne 1900," Galeries Nationales du Grand Palais, Paris, France.
- January-June 2006: "Degas to Picasso: Modern Masters," Museum of Fine Arts, Boston, Massachusetts.

True and correct copies of relevant pages of the catalogues for each of these exhibitions (except for the 1986 Boston exhibition, which is part of Exhibit 42, and the 2006 exhibition organized by the Museum, which did not have a catalogue) are attached hereto as Exhibit 47.

45. In addition, since 1972 publications including but not limited to those listed below (two of which are catalogues for exhibitions listed in paragraph 44 above) have shown the Painting as owned by the Museum and listed Oskar Reichel as a previous owner:

Oskar Kokoschka, 1886-1980 (exh. cat. Musée des Beaux-Arts, Bordeaux, 1983). (A true and correct copy of relevant pages of this work is attached hereto as Exhibit 48.)

Tobias G. Natter, ed., *Oskar Kokoschka: Early Portraits from Vienna and Berlin, 1909-1914* (exh. cat. Neue Galerie, New York and Hamburger Kunsthalle, 2002). (A true and correct copy of relevant pages of this work is attached hereto as Exhibit 49.)

Sophie Lillie, *Was einmal war: Handbuch der enteigneten Kunstsammlungen Wiens* (Vienna: Czernin, 2003). (A true and correct copy of relevant pages of this work is attached hereto as Exhibit 50.)

Tobias Natter, *Die Welt von Klimt, Schiele und Kokoschka: Sammler und Mäzene* (Cologne: Dumont, 2003). (A true and correct copy of relevant pages of this work is attached hereto as Exhibit 51.)

46. The 2003 book by Sophie Lillie, noted in the preceding paragraph (and portions of which are attached as Exhibit 50), was widely publicized at the time of its publication, and it transcribes the major portion of the 1938 appraisal of Oskar Reichel's art collection attached to his property declaration (pages 940-942), illustrates the Painting, and traces its provenance from Reichel to the Museum (page 941). On page 938 of Exhibit 50, the book refers to, translated from the German, "the sale [by Reichel] of several pictures to Otto Kallir-Nirenstein, among which were Oskar Kokoschka's portrait of Reichel's son Hans and the "Dancing Couple", which Reichel rescued in the USA and presented at the first American Kokoschka exhibition in January 1940 at the Galerie St. Etienne." The full provenance of the Painting, set out on page 941 of the book under a reproduction of the work, states, translated from the German:

Oskar Kokoschka (1886 Pöchlarn – 1980 Villeneuve)

Dancing Couple, about 1912/13
Oil on canvas, 163.2 x 97.5 cm.

Collection of Dr. Oskar Reichel, Vienna, until 1938 (June-November 1933 on consignment to the Neue Galerie, Vienna)

Dr. Otto Kallir-Nirenstein, Vienna, 1938, later New York

Nierendorf Gallery, New York, 1945

Sarah Reed Blodgett Platt, Portland, Oregon; later Santa Barbara, California, from 1947

Museum of Fine Arts, Boston, Bequest of Mrs. Sarah Reed Platt, 1973

Exh.: Galerie St. Etienne, Paris, 1939; *Oskar Kokoschka*, Galerie St. Etienne, New York, 1940, Nr. 8; *Oskar Kokoschka: Aspects of His Art*, Galerie St. Etienne, New York, 1943, Nr. 10.

Lit: Roessler (1918), ill.; Winkler and Erling, WV [Werkverzeichnis, or catalogue raisonné] 91; Kallir (1999), pl. 37.

47. The book by Tobias Natter noted in paragraph 45 above, excerpts of which are attached hereto as Exhibit 51, states on page 262, translated from the German, that Oskar Reichel “sold the Kokoschka paintings in 1939 to the Vienna gallery owner Otto Kallir-Nirenstein, who himself had to leave the country shortly thereafter.” An endnote on page 292 suggests that this information came from (translated from the German) “an interview that the author led with Raimund Reichel on January 28, 1996.”

48. In 1995, a new catalogue raisonné of Kokoschka’s paintings was published, Johann Winkler and Katharina Erling, *Oskar Kokoschka: Die Gemalde, 1906 - 1929* (Salzburg: Galerie Welz, 1995). This work included the Painting and traced the work’s ownership history back to Oskar Reichel. A true and correct copy of relevant pages from this 1995 book are attached hereto as Exhibit 52.

49. The Painting has also been included in numerous publications of the Museum since 1973, all of which showed the Painting as owed by the Museum. These include:

The Museum Year 1972-1973: Ninety-Seventh Annual Report of the Museum of Fine Arts, Boston (Boston: MFA, 1973), pp. 22, 61, 64, ill. on p. 23.

Lucretia H. Giese, in *Boston Museum Bulletin* 73, no. 369 (1975), pp. 40-42, ill.

Alexandra R. Murphy, *European Paintings in the Museum of Fine Arts, Boston. An Illustrated Summary Catalogue* (Boston: MFA, 1985), p. 157, ill.

Museum of Fine Arts, *Masterpiece Paintings from the Museum of Fine Arts, Boston* (Boston: MFA, 1986), p. 134, ill.

Gillian Shallcross Wohlaue, *MFA: A Guide to the Collection of the Museum of Fine Arts, Boston* (Boston: MFA, 1999), p. 358, ill.

True and correct copies of relevant pages of these publications are attached hereto as Exhibit 53.

50. The historical research that Laurie Stein and I carried out on the provenance of the Painting included extensive research on the Reichel family members and what happened to their property during and after World War II. This research indicates that Malvine Reichel owned the family home at Chimanistrasse 11 in Vienna, which she sold early in 1939 to her acquaintances Alfred and Herta Karrer. A true and correct copy of the January 27, 1939 transfer of title issued by the Döbling (19th district) court in Vienna for Chimanistrasse 11 from Malvine Reichel to Alfred and Herta Karrer is attached hereto as Exhibit 54. This document was obtained from the Österreichisches Staatsarchiv in Vienna, which is the Austrian State Archive, and, based on the document's contents and where it was found, I am confident of its authenticity.

51. After World War II, the Karrers were required by law to file a "Declaration of Divested Assets" for the property they had purchased from Malvine Reichel. On August 20, 1949, Malvine Reichel, who was then living in Champaign, Illinois with her son Hans, signed a notarized statement specifically relinquishing any claim to restitution or compensation for the property at Chimanistrasse 11. On September 7, 1949, Alfred and Herta Karrer attested in a notarized statement that they were aware of Malvine Reichel's decision to relinquish her rights to compensation for the property. A true and correct copy of this September 7, 1949 statement,

which was obtained from the Wiener Stadt- und Landesarchiv, Vienna is attached hereto as Exhibit 55. Based on its contents and where it was found, I am confident of the authenticity of this document. A true and correct copy of Malvine Reichel's notarized statement of August 20, 1949, which was also obtained from the Wiener Stadt- und Landesarchiv, along with a certified translation of this document, is attached hereto as Exhibit 56. Based on its contents and where it was found, I am confident of the authenticity of this document.

52. Our historical research also found that prior to World War II, Oskar Reichel owned a 3/8 share in a building at Börsegasse 12 in Vienna. In his mandatory asset declaration filed on June 30, 1938 (discussed above and attached hereto as Exhibit 23), Reichel listed his 3/8 ownership of the apartment building at Börsegasse 12, which had a total value of 115,000 Reichmarks. On July 17, 1941, Reichel's 3/8 share of this property, along with a 1/8 share belonging to his sister, Therese Reichel Friedmann, was forcibly sold through local Nazi authorities to an "Aryan" buyer, Moritz von Schlöcht. A true and correct copy of a letter from Dr. Jacksch of the municipal government of Vienna to Moritz von Schlöcht confirming this sale, which was obtained from the Österreichisches Staatsarchiv, is attached hereto as Exhibit 57. Based on its contents and where it was found, I am confident of the authenticity of this document. According to the terms of the sale, Reichel's profit from the sale was to go into a *sperrkonto*, or blocked account, at a bank, and remaining amount, after a sales commission was paid to Josef Polsterer (apparently the caretaker of the property), could be paid into another restricted account for Reichel. A true and correct copy of the February 20, 1941 terms of sale which was obtained from the Österreichisches Staatsarchiv, is attached hereto as Exhibit 58. Based on its contents and where it was found, I am confident of the authenticity of this document.

53. On October 16, 1946, Josef Polsterer, the caretaker for the property at Börsegasse 12, was required by law to file a "Declaration of Divested Assets" for the 4/8 share of the property that had been forcibly sold by Oskar Reichel and his sister, Therese Reichel Friedmann, in 1941. On April 28, 1953, the Restitution Commission in Vienna rendered a judgment regarding restitution for the 3/8 share of Börsegasse 12 owned by Oskar Reichel, awarding Hans Reichel, Raimund Reichel, and the Malvine Reichel estate, as heirs of Oskar Reichel (the estate of Malvine Reichel being represented by Hans and Raimund Reichel), a total of 35,000 Schillings. A true and correct copy of the Restitution Commission's April 28, 1953 decision, which was obtained from the Wiener Stadt- und Landesarchiv, Vienna, along with a certified translation of this document, is attached hereto as Exhibit 59. Based on its contents and where it was found, I am confident of the authenticity of this document.

54. In addition, in June 1957, Raimund Reichel, through a Viennese lawyer named Friedrich Mayerhöfer, submitted two applications to the Austrian authorities of the Fund for Assistance to Political Persecutees (this was a hardship fund, known as the Hilfsfonds, which made one-time payments to political persecutees based on previous suffering and current need). Application number 28067 was submitted on behalf of Raimund Reichel who was listed as living at Ayacucho 2062, Buenos Aires, Argentina. (The application used the name "Raimundo," presumably the variant of Raimund he used in Argentina). A true and correct copy of the June 7, 1957 application to the Hilfsfonds, stamped June 8, 1957 (application number 28067) and other documents from this application file, which were obtained from the Österreichisches Staatsarchiv, is attached hereto as Exhibit 60. Based on their contents and where they were found, I am confident of the authenticity of these documents. The same Viennese attorney also submitted a Hilfsfonds application (number 28068) on behalf of Hans Reichel. A true and

correct copy of the June 7, 1957 application to the Hilfsfonds, stamped June 8, 1957 (application number 28068) and other documents from this application file, which was also obtained from the Österreichisches Staatsarchiv, is attached hereto as Exhibit 61. Based on their contents and where they were found, I am confident of the authenticity of these documents.

55. In a notarized statement submitted in support of both of these Hilfsfonds applications, Raimund sought to substantiate a claim for himself and for Hans, based on hardships suffered as political persecutees. He stated that he had been manager and part owner of the family firm Kunst und Wohnung Lorenz und Reichel, which was forcibly liquidated. As a result, he had to stop work as of November, 1938. He attested that Hans had been a physician in Vienna, and stopped work in March 1938. Further, Raimund's statement declared that, translated into English, "[a] large art collection [owned by my father] was forcibly sold: 47 pictures by the painter Anton Romako, which are today to be found in Austrian museums and private collections. For documentation see the work, and especially the forward by Novotny, *Romako*, Verlag Schroll & Co., Vienna, 1954. A smaller amount was placed in a blocked account." (A true and correct copy of this notarized statement, with a certified translation of it, is included as part of both Exhibits 60 and 61.) The reference in Raimund's notarized statement was to the 1954 catalogue raisonné of Romako's works by Fritz Novotny, and his application listed the Romakos that he asserted his father had owned according to their catalogue numbers in that publication. True and correct copies of relevant pages of Novotny's 1954 catalogue raisonné are attached hereto as Exhibit 62. From my review of the above applications, Romako was the only artist referred to in Raimund Reichel's notarized statement in support of these Hilfsfonds applications. Eventually, in 1961, Raimund Reichel received 5,000 Schillings from the Hilfsfonds for his 1957 application. A true and correct copy of the May 18, 1961 authorization

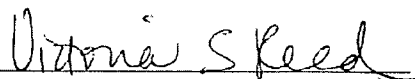
for payment from the Hilfsfonds, which was obtained from the Österreichisches Staatsarchiv, along with a certified translation, is attached hereto as part of Exhibit 60. Based on its contents and where it was found, I am confident of the authenticity of this document. However, the application submitted on behalf of Hans was ultimately denied in November 1958 because no signed power of attorney for Hans Reichel was provided to the Hilfsfonds, despite repeated requests to Raimund Reichel's Viennese lawyer. A true and correct copy of a January 14, 1958 letter from Helmuth Mattis of the Hilfsfonds to Viennese lawyer Friedrich Mayerhöfer, regarding the incomplete nature of the application for Hans Reichel, along with a certified translation, is attached hereto as part of Exhibit 61. A true and correct copy of a letter of June 11, 1958 from the Hilfsfonds to Mayerhöfer, along with a certified translation, is attached hereto as part of Exhibit 61. A true and correct copy of the November 13, 1958 decision by the Hilfsfonds is attached hereto as part of Exhibit 61. This document states that the application submitted on behalf of Hans Reichel (number 28068) is rejected, noting the lack of any signature on the application by Hans Reichel or any signed power of attorney from him.

56. In January 1963, Raimund Reichel submitted an application (number 12804/10) seeking restitution for professional damages to the so-called "New Hilfsfonds," an augmentation of the existing agency. A true and correct copy of this application, which was obtained from the Österreichisches Staatsarchiv is attached hereto as Exhibit 63. Based on its contents and where it was found, I am confident of the authenticity of this document. In November 1969, the New Hilfsfonds issued a payment of 1400 Schillings to Raimund Reichel as compensation for professional damages. A true and correct copy of the authorization for payment, obtained from the Österreichisches Staatsarchiv, is attached hereto as Exhibit 64. Based on its contents and where it was found, I am confident of the authenticity of this document.

57. In July 2008, in the course of my historical research concerning the Painting, I contacted Marie-Agnes von Puttkamer, an art historian and art dealer who lives in Munich. Dr. von Puttkamer had published a 1999 catalogue raisonné for the Austrian Expressionist painter Max Oppenheimer (*Max Oppenheimer—MOPP*). I knew from my research that Oskar Reichel had owned a number of paintings by Oppenheimer, and Dr. von Puttkamer's book refers to interviews with Raimund Reichel regarding his father's art collection, so I contacted her to see if she had any information relevant to the history of the Painting. I learned from Dr. von Puttkamer that she had corresponded with and conducted interviews with Raimund in the early 1980s in connection with her research on Oppenheimer. On July 28, 2008, Dr. von Puttkamer sent me a copy of a November 10, 1982 letter that she had received from Raimund Reichel. A true and correct copy of this letter, along with a certified translation of it, is attached hereto as Exhibit 65. I received the attached copy directly from Dr. von Puttkamer, to whom the letter was addressed, and the contents of the letter also led me to believe that it is an authentic letter from Raimund Reichel directed to Dr. von Puttkamer in 1982. For example, the letter states that the mailing address of Raimund Reichel is Heiligenstädterstrasse 175 in Vienna, which was the last address known for Raimund Reichel at the time of his death in 1997. In addition, the first line of the letter indicates that Raimund has recently emigrated to Austria from Argentina, which is consistent with my historical conclusions as to when Raimund returned to Vienna. The letter also refers to the family house at "Chimanistrasse 11," which is the Vienna address where the Reichel family lived for several decades until 1939, as reflected in numerous documents I have reviewed in the course of my research (many of which are attached as exhibits to this declaration). Finally, in the course of historical research on the Painting, I have reviewed several documents that include the signature of Raimund Reichel, and they are consistent with the

signature on the November 10, 1982 letter sent by Dr. von Puttkamer. The November 10, 1982 letter from Raimund Reichel to Dr. von Puttkamer states, translated from the German, that "in the house on Chimanistrasse 11, my father put all the paintings he had by O.K. [Oskar Kokoschka] in the 'Kokoschka room' on the second floor. . . . Further: in 1938 my father transferred the entire collection of O.K. paintings to the art dealer Dr. Kalier [*sic*], so that he could sell them in the USA"

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on 18 September 2008 at Boston, Massachusetts.


Victoria S. Reed

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Declaration filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on September 19, 2008.

/s/ Courtney A. Clark