

Goins & Associates PLC
1330 Broadway, Suite 1530, Oakland, California 94612
Tel. (510) 893-9465; Fax (510) 893-4228

1 VERNON C. GOINS II (SBN 195461)
2 YASMIN GILANI (SBN 240830)
3 GOINS & ASSOCIATES
4 A Professional Law Corporation
5 1330 Broadway, Suite 1530
6 Oakland, CA 94612
7 Telephone: (510) 893-9465
8 Facsimile: (510) 893-4228

9 Attorneys for Plaintiff
10 GUYANA TRIBUTE FOUNDATION
11 and JYNONA NORWOOD

12
13 SUPERIOR COURT OF CALIFORNIA
14 COUNTY OF ALAMEDA
15 UNLIMITED CIVIL JURISDICTION

16 GUYANA TRIBUTE FOUNDATION, a) Case No. RG11575036
17 California non-profit corporation; and)
18 JYNONA NORWOOD, an individual;) MEMORANDUM OF POINTS AND
19) AUTHORITIES IN SUPPORT OF
20 Plaintiffs,) PRELIMINARY INJUNCTION.
21)
22 vs.) Date: May 25, 2011
23) Time: 9:00 a.m.
24) Dept: 25
25 THE EVERGREEN CEMETERY)
26 ASSOCIATION, a California corporation;)
27 BUCK KAMPHAUSEN, an individual; RON) ASSIGNED FOR ALL PURPOSES TO
28 HAULMAN, an individual; and DOES 1-50,) JUDGE ROBERT MCGUINESS OF
inclusive,) DEPARTMENT 25.
Defendants.)
)
)
)

29 I. INTRODUCTION

30 Plaintiffs GUYANA TRIBUTE FOUNDATION and JYNONA NORWOOD hereby
31 requests for preliminary injunction to be issued enjoining Defendants, EVERGREEN
32 CEMETERY ASSOCIATION, BUCK KAMPHAUSEN, Defendants and their principals,
33 officers, agents, servants, employees, attorneys, and those persons under their control, or in

1 active concert or participation with them, from permitting the New People’s Temple or any other
2 person or entity from using, including but not limited to public celebrations, transferring, selling,
3 assigning, altering, infringing any memorial upon the mass grave site of the victims of
4 Jonestown until the instant action is adjudicated.

5
6 II. STATEMENT OF FACTS

7 The instant action arises from a long-term relationship and agreements between the
8 parties with respect to the construction of a memorial wall that was proposed and sponsored by
9 plaintiffs Jynona Norwood (“Norwood”) and her non-profit organization Guyana Tribute
10 Foundation (collectively, “Plaintiffs”).

11 On or about November 18, 1978, 918 people lost their lives in Jonestown, Guyana in a
12 massacre led by Jim Jones, who forced these victims into a mass murder-suicide pact.
13 Declaration of Jynona Norwood in Support of Plaintiffs’ Ex Parte Application for Temporary
14 Restraining Order and Order to Show Cause re: Preliminary Injunction (“Norwood Decl.”), ¶ 2.
15 This tragedy is historically referred to as the “Jonestown Massacre-Suicides”.

16 Since the tragedy, Norwood has been holding memorial services to honor the victims of
17 the Jonestown Massacre-Suicides, and since 1980, the memorial services have been held
18 annually at Defendants’ cemetery, located at 6450 Camden Street, Oakland, CA 94605, as 406
19 bodies are buried in a mass grave at the cemetery, most of whom are children. Norwood Decl., ¶
20 2.

21 In November 1992, Defendants orally agreed that they would assist in the building of a
22 memorial wall to honor the victims of the Jonestown Massacre-Suicides at the mass grave site
23 (“Jonestown Memorial Wall”). *Id.*, ¶ 6. Further this agreement, Defendants insisted that
24 Plaintiffs utilize their monument vendor, Marin Monument Company and Amador Memorial
25 Company, in order to ensure that the monument was constructed by a company that best knew
26 the grounds of the cemetery and what size granite would fit at the mass grave site. *Id.* at ¶ 7-8;
27 Complaint, ¶ 21. Plaintiffs complied with this request, and soon thereafter, Marin Monument
28 Company circulated plans and specifications for the Jonestown Memorial Wall to Defendants.

1 Norwood Decl., ¶ 12. The parties' agreements were formalized in multiple writings, including a
2 writing from Defendant Kamphausen in 2002 and a writing from Plaintiff Norwood to
3 Defendants in 2007. Norwood Decl., ¶¶ 8, 10.

4 Plaintiffs raised tens of thousands of dollars for the Jonestown Memorial Wall, and paid
5 to Marin Memorial Company more than \$30,000 for the memorial as well. All of the granite
6 panels have been ordered, and two of the nine panels have been completed. *Id.*, ¶¶ 11, 13.
7 Defendants have seen the granite panels, as well as the two completed granite panels, and at no
8 point in time objected to the size or any of the other specifications of the Jonestown Memorial
9 Wall. *Id.* ¶ 12.

10 In December, 2009, Defendants wrote a letter to Plaintiffs alleging that the Jonestown
11 Memorial Wall had never been approved by Defendants and it was too large. *Id.*, ¶ 15. Prior to
12 this, Defendants had never objected to the size or general specifications of the Jonestown
13 Memorial Wall. Plaintiffs attempted to contact Defendants to confer about the content of the
14 letter, to no avail.

15 On March 1, 2011, Plaintiffs discovered, to their horror, that Defendants reneged on the
16 parties' agreement and, instead, decided to permit the new People's Temple Church, led by
17 Fielding McGehee and Jim Jones, Jr. to erect their *own* memorial, which is set to include the
18 name of *Jim Jones himself* as a victim of the Jonestown Massacre-Suicides. This travesty has,
19 and will cause, the families of victims of the Jonestown Massacre-Suicides to be adversely
20 affected by the tragedy which occurred in the loss of all of the individuals in the mass grave site
21 at the hands of Jim Jones. Norwood Decl., ¶ 19. Plaintiffs are informed and believe and thereon
22 allege that grading and foundation work has already been completed, and that the monument will
23 be erected in time to be unveiled on Memorial Day.

24 III. LEGAL ARGUMENT

25 A. Legal Standard on Preliminary Injunction.

26 The Court will grant a Preliminary Injunction if it appears that the moving party is
27 entitled to the relief granted, by weighing the following factors: (1) the likelihood that the
28 plaintiff will prevail on the merits of its case at trial; and (2) the interim harm that the plaintiff is

1 likely to sustain if the injunction is denied compared to the harm the defendant is likely to suffer
2 if the court grants the preliminary injunction. *Right Site Coalition v. Los Angeles Unified School*
3 *Dist.* (2008) 160 Cal.App.4th 336, 341-342, *see also O'Connell v. Superior Court* (2006) 141
4 Cal.App.4th 1452, 1467-1468.

5 **B. PLAINTIFFS WILL PREVAIL ON THE MERITS**

6 **1. Defendants Entered Into A Unilateral Agreement With Plaintiffs To**
7 **Provide them With A Base and Foundation. A**

8 The law is well settled in California, that the deed is the final and exclusive memorial of
9 the intention and rights of the parties. California Health and Safety Code Sections 8500 et sec.,
10 governs the property rights of property owners, interment rights, descent and inalienability of
11 property interments. Specifically California Health and Safety 8500 states that

12
13 Cemetery authorities may take by purchase, donation or devise, property
14 consisting of lands, mausoleums, crematories, and columbariums, or other
property within which the interment of the dead may be authorized by law.

15 A contract is an agreement to do or not to do a certain thing. Civil Code § 1549. It is
16 essential to the existence of a contract that there should be: (1) Parties capable of contracting (2)
17 Their consent (3) A lawful object; and (4) a sufficient cause or consideration. Civil Code § 1550.

18
19 The manifestation of mutual assent is usually accomplished through the medium of an
20 offer communicated to the offeree and an acceptance communicated to the offeror. (American
21 Bldg. Maintenance v. Indemnity Ins. Co. (1932) 214 C 608, 615, 7 P 2d 305) An offer must be
22 sufficiently definite, or must call for such definite terms in the acceptance, that the performance
23 promised is reasonably certain. Restatement 2nd of Contracts, §33. A contract that leaves an
24 essential element for future agreement of the parties is usually held fatally uncertain and
25 unenforceable. "California law is clear that there is no contract until there has been a meeting of
26 the minds on all material points." *Banner Entertainment v. Sup Ct* (1998) 62 Cal.App.4th 348,
27 357, 72 Cal.Rptr.2d 598.

1 In or about January 1997 and again on or about September 24, 2002, the Defendants
2 confirmed in writing Evergreen Cemetery's promise to provide GTF with a base and setting for
3 the Jonestown Memorial Wall. Exhibit B to the Complaint. Relying on the previous oral
4 representations and the promises represented in January 1997 and again in September 24, 2002
5 Commitment Letter and countless verbal assurances, the Plaintiffs took steps to bring the vision
6 of the Jonestown Memorial Wall through fundraising, hosting memorials and entering into an
7 agreement with Marin Monument, Inc. to construct the Jonestown Memorial Wall.

8 A material term of the agreement was that Defendant Evergreen promised to provide the
9 base and the foundation to the Wall. Defendant Evergreen breached this agreement by giving the
10 site for the Jonestown Memorial Wall to the People's Temple to erect their wall.

11 **2. Defendants Made Negligent And Intentional Misrepresentations To**
12 **Plaintiffs To Induce Them To Construct The Jonestown Memorial Wall.**

13 Negligent misrepresentation is a form of deceit, the elements of which consist of (1) a
14 misrepresentation of a past or existing material fact, (2) without reasonable grounds for believing
15 it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) ignorance
16 of the truth and justifiable reliance thereon by the party to whom the misrepresentation was
17 directed, and (5) damages. Fox v. Pollack (1986) 181 Cal.App.3d 954, 962.

18 Here, Plaintiffs, at the direction and mandate of defendant Evergreen Cemetery, entered
19 into an agreement with Amador Memorial Company ("Amador") for the construction of the
20 Jonestown Memorial Wall to be erected at a cost of \$97,800. The agreement required this
21 amount to be paid in three installments. Per this agreement, the Jonestown Memorial Wall
22 would consist of seven granite ledgers; of which six would be black pieces five feet by seven
23 feet in size, with a center piece designed to have a red granite five-foot-six by five-foot-five
24 heart, and two hundred and seventy names would be placed in the heart. These Specifications
25 were approved by the Defendants. Relying on Defendants representations, Plaintiffs proceeded
26 forward with the construction and spent approximately \$30,000.

1 Defendants conduct is actionable deceit, as the representations made regarding the
2 donation of the foundation were made with knowledge of actual falsity, but at a minimum, was
3 “assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing
4 it to be true” and made “with intent to induce [the recipient] to alter his position to his injury or
5 his risk...” B.L.M. v. Sabo & Deitsch (1997) 55 Cal.App.4th 823, 834. The elements of
6 negligent misrepresentation also include justifiable reliance on the representation, and resulting
7 damage. *Id.*

8 To prove fraud, the following is required: a misrepresentation (a false representation or
9 concealment), knowledge of its falsity (scienter), intent to induce reliance, justifiable reliance,
10 and resulting damage. See, e.g., *Zinn v. Ex-Cell O-Corp.* (1957) 148 Cal.App.2d 56; see also
11 *Anderson v. Handley* (1957) 149 Cal.App.2d 184. In other words, in order to prove fraud, a
12 material representation was made, it was false, and Defendants either knew it to be untrue or did
13 not have sufficient knowledge to warrant belief that it was true, that it was made with intent to
14 induce Plaintiff to act in reliance thereon, that Plaintiffs reasonably believed it to be true and did
15 in fact rely thereon, and that they suffered damage thereby. *Sixta v. Ochsner* (1960) 187
16 Cal.App.2d 485.

17 Additionally, California Civil Code § 1572 defines actual fraud as any of the following:

- 18 (1.) The suggestion, as a fact, of that which is not true, by one who does not
19 believe it to be true; (2.) The positive assertion, in a manner not warranted by the
20 information of the person making it, of that which is not true, though he believes
21 it to be true; (3.) The suppression of that which is true, by one having knowledge
22 or belief of the fact; (4.) A promise made without any intention of performing it;
23 or (5.) Any other act fitted to deceive.

24 Here, Defendants were aware of the Plaintiffs efforts in constructing the Jonestown
25 Memorial Wall. By November 2008, two of the seven granite pieces were completed in time to
26 celebrate the 30th anniversary of the Jonestown Massacre. At the November 2008 memorial,
27 USA TODAY published a feature regarding the 30th anniversary of the Jonestown Massacre and
28 the Jonestown Memorial Wall. The cover of the newspaper USA TODAY was featured John
Cortez, Kamphausen, Haulman, Officer Yulanda Williams, survivors, family, Plaintiffs,
Reverend Amos Brown and Reverend Eugene Lumpkin.

1 From December 2009 until the present, Plaintiffs along with its supporters, political
2 leaders and the California Lawyers For The Arts have made numerous phone calls to Defendants
3 Haulman and Kamphausen. Over this two-year span, mediators, political leaders left many
4 voicemail messages asking for a return call so that we could discuss the content of the letter and
5 complete the project. Neither one of them have returned any phone calls.

6 Instead of complying with their end of the bargain, Defendants repudiated their
7 agreement and all promises that they made with Plaintiffs, despite the fact that two plaques had
8 been finished, and have since allowed the surviving People's Church to erect the Jim Jones
9 Memorial wall and honor Jim Jones, the individual who was himself responsible for the
10 Jonestown Massacre-Suicides. As a result, Plaintiffs are likely to prevail on their claims of
11 breach of contract and the fraudulent misrepresentations as stated in the Complaint, and the
12 preliminary injunction should be granted.

13 C. **PLAINTIFFS WILL SUFFER IMMEDIATE IRREPARABLE HARM**
14 **ABSENT AN ORDER ENJOINING DEFENDANTS FROM USE; THUS,**
15 **ISSUANCE OF A PRELIMINARY INJUNCTION IS APPROPRIATE.**

16 If it is shown that the threatened injury forming the basis for seeking a Preliminary
17 Injunction cannot be compensated for by an ordinary damage award, the damage is considered
18 irreparable thus forming the basis for the issuance of the Preliminary Injunction. *Brownfield v.*
19 *Daniel Freeman Marina Hospital* (1989) 208 Cal.App.3d 405, 410; *see also Helms Bakeries v.*
20 *St. Bd. Equalization* (1942) 53 Cal.App.2d 417, 425.

21 Plaintiffs can easily demonstrate that they will suffer immediate irreparable injury absent
22 preliminary injunctive relief. Grading and foundation work, as well as extensive renovations
23 have already been completed at the mass grave site to permit the construction of the rival
24 monument, and it is set to be constructed in order to be unveiled by no later than Memorial Day
25 weekend. Given that the memorial is set to be unveiled on Memorial Day Weekend, time is of
26 the essence in stopping the work that is ongoing at Evergreen Cemetery, thus creating a basis for
27 the immediate issuance of a Preliminary Injunction.

28 In repudiating their agreement to Plaintiffs that Plaintiffs were permitted to erect their
own memorial on the mass grave site, one that did *not* include the name of Jim Jones,

1 Defendants have already caused excessive damage to Plaintiffs, who have ongoing relationships
2 with donees who have provided thousands of dollars to Plaintiffs' cause, damaging Plaintiffs'
3 reputation in a manner that cannot be compensated for by money damages. Defendants have
4 made it apparent that they do not intend to comply with the parties' agreement, and thus a
5 preliminary injunction against Defendants should be issued.

6 **D. THE BALANCE OF HARDSHIPS TIPS DECIDELY IN PLAINTIFFS**
7 **FAVOR.**

8 As for the balance of hardships, Defendants have maliciously permitted a rival memorial
9 to be erected on the mass grave site promised to Plaintiffs. Additionally, Plaintiffs have been put
10 to a substantial burden and expense of hiring lawyers to enjoin Defendants' violation.

11 In 1998, GTF was formally established as a public benefit non-profit organization. Its
12 primary objective was to develop ideas for the scope and design of the Jonestown Memorial
13 Wall, and determine ways and means of financial support for the project. The purpose of GTF is
14 also to provide assistance, comfort and support to the family members of the victims who were
15 killed in the Jonestown Massacre.

16 The Jonestown Memorial Wall was envisioned to serve as a strong link between the child
17 victims and their surviving family members, a collective gravestone, and a place where
18 individuals could prominently see the name of a loved one carved in granite forever. It was
19 planned that the hundreds of names of the children who perished at the Jonestown Massacre
20 would be etched and engraved into the wall. Further, the Jonestown Memorial Wall was to be
21 constructed in the spirit of those who honored the tragic passing of their loved ones in events
22 such as the Jewish Holocaust, the Columbine shooting, the Vietnam War and, most recently, the
23 tragedy of 9/11.

24 Plaintiffs have repeatedly notified Defendants of their objections to the violations, yet
25 Defendants have refused to voluntarily stop the violative conduct. Finally, the difficulty of
26 calculating and quantifying Plaintiffs' loss, including but not limited to the unique mass grave
27 site and reputation as a non-profit entity accepting donations for the Jonestown Memorial Wall
28 has resulted, and will continue to result from Defendants' violative conduct, makes monetary
damages alone insufficient, and causes the balance of hardships to tip decidedly in Plaintiffs'

1 favor. The equities could hardly weigh more heavily toward issuance of a preliminary
2 injunction.

3 E. THE PEOPLE'S TEMPLE MEMORIAL CAUSES HARM, DISGRACE
4 AND ADDITIONAL DISTRESS TO THE RELATIVES, SUPPORTERS
5 FAMILY AND FRIENDS OF THE VICTIMS

6 Over 60 declarations of relatives, friends and supporters of the victims have been filed in
7 this matter. All have attested to the fact that the People's Temple Memorial Wall desecrates the
8 victims of the Jonestown Massacre which was initiated by Jim Jones himself. Specifically, the
9 name "Jim Jones" is etched on the Jim Jones Memorial is repulsive and insulting to the names,
10 honor and memory of the victims.

11 F. NO PREJUDICE WILL RESULT TO THE DEFENDANTS IF THE
12 INJUNCTION ISSUES.

13 While the unveiling of the Jim Jones Wall has been publicized, it has not been unveiled.
14 Additionally, Defendants have no authority or right to use the names of the victims, specifically
15 the family of Dr. Norwood.

16 V. CONCLUSION

17 As demonstrated above, Defendants' conduct has caused Plaintiffs immediate irreparable
18 harm, and all the factors tip decidedly in favor of awarding immediate injunctive relief in the
19 form of a preliminary injunction. As a result of the foregoing, Plaintiffs' Motion For Temporary
20 Restraining Order should be granted to enjoin Defendants from construction, or permitting the
21 construction of any memorial upon the mass grave site of the victims of Jonestown until the
22 instant action is adjudicated.

23 Dated: May 20, 2011

GOINS & ASSOCIATES
A Professional Law Corporation



VERNON C. GOINS II
YASMIN GILANI
Attorneys for Defendants
GUYANA TRIBUTE FOUNDATION and
JYNONA NORWOOD

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PROOF OF SERVICE

I, the undersigned, declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is 1330 Broadway, Suite 1530, Oakland, California, 94612.

On May 20, 2011, I served the following:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PRELIMINARY INJUNCTION; PROPOSED ORDER GRANTING
PRELIMINARY INJUNCTION**

VIA U.S. MAIL by placing for collection and processing a true copy thereof enclosed in a sealed envelope addressed as shown below, with postage thereon fully prepaid, for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service at Oakland, California.

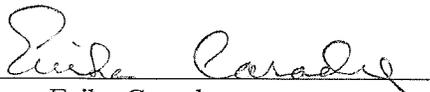
VIA HAND DELIVERY by causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

VIA FACSIMILE TRANSMISSION by transmitting a true copy thereof by facsimile transmission from the facsimile number (510) 663-3710 to the interested parties to said action at the facsimile number(s) shown below.

VIA OVERNIGHT DELIVERY by placing a true copy thereof, enclosed in a sealed envelope, with delivery charges fully paid, to be delivered via overnight delivery to the address(es) shown below.

**Steven H. Gurnee
Gurnee & Daniels, LLP
2240 Douglas Blvd., Ste. 150
Roseville CA 95661**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 20th day of May 2011, at Oakland, California.



Erika Casady