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7
8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 UNLIMITED JURISDICTION

11
12 GUYANA TRIBUTE FOUNDATION, a) CASE NO. RG11575036
13 California non-profit corporation; and)
14 JYNONA NORWOOD, an individual,) **DEFENDANTS' OPPOSITION TO**
15) **PLAINTIFFS' APPLICATION FOR**
Plaintiffs,) **TEMPORARY RESTRAINING ORDER**
16 vs.)
17) Date: May 25, 2011
THE EVERGREEN CEMETERY) Time: 9:00 a.m.
18 ASSOCIATION, a California corporation;) Dept.: 22
BUCK KAMPHAUSEN, an individual; RON) Hon. Robert McGuiness
19 HAULMAN, an individual; and DOES 1-10)
20 Defendants.)
Complaint filed: May 10, 2011


21 Defendants THE EVERGREEN CEMETERY ASSOCIATION, BUCK
22 KAMPHAUSEN and RON HAULMAN (hereinafter collectively referred to as "Evergreen")
23 submit this Opposition to plaintiffs GUYANA TRIBUTE FOUNDATION and JYNONA
24 NORWOOD's (hereinafter referred to as "Plaintiffs") application for temporary restraining
25 order and order to show cause re: preliminary injunction in this action. This Opposition is
26 made on the following grounds:
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1. The application is moot as the relief requested cannot be granted because the subject memorial is completed.
2. There is no immediate risk of irreparable harm as the memorial is completed and any order preventing further construction is unnecessary. Further plaintiffs' claims are compensable by award of monetary damages.
3. Plaintiffs appear unlikely to prevail on the merits of their case, and a balancing of the respective harms an injunction would impose on the respective parties does not support a finding in Plaintiffs' favor.

This opposition is based on the attached Memorandum of Points and Authorities, the attached Declaration of Ronald Haulman, filed and served concurrently herewith, all exhibits referenced herein and attached hereto, all papers currently in the Court's file and the additional evidence to be presented at the hearing of this Motion

Dated: May 19, 2011

GURNEE & DANIELS LLP
By 
STEVEN H. GURNEE, ESQ.
TOBY M. MAGARIAN, ESQ.
Attorneys for Defendants The Evergreen
Cemetery Association, Buck
Kamphausen and Ron Haulman

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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4 Following the tragic events involving the People's Temple in 1978 in which 918
5 people perished, defendant Buck Kamphausen, on behalf of Evergreen, offered to accept
6 the remains of hundreds of unidentified decedents from Jonestown that no other
7 cemetery in the country was willing to accept. Evergreen is a private, non-profit cemetery
8 located in Oakland, California. The receiver appointed by the court following the
9 Jonestown incident purchased an appropriate site at Evergreen for the common burial of
10 the remains of 387 unidentified victims. As requested by the receiver, those remains
11 were interred in a single mass grave at Evergreen in 1979. Twenty-two other victims
12 whose remains were identified and claimed by their family members were also buried at
13 Evergreen in the common burial site. As such, there are a total of 409 Jonestown
14 decedents presently interred at the cemetery. The receiver also arranged for the
15 installation a simple monument to mark the common grave which was installed in 1979.

16 Since 1979, there have been various and sundry inquiries and proposals from
17 relatives of the victims about erecting a more elaborate memorial at the site. Mr.
18 Kamphausen has, in the past, offered to donate the cost of a foundation and installation
19 of a memorial but on the condition that its design and specifications first be submitted to
20 and approved by Evergreen as required by its rules and regulations. Mr. Kamphausen's
21 conditional offer is reflected in his letter to plaintiff Jynona Norwood dated September 24,
22 2002, attached as Exhibit "B" to her declaration filed in support of her application for a
23 temporary restraining order (hereafter referred to as the "Norwood declaration"). That
24 letter refers to verbal discussions between Mr. Kamphausen and Ms. Norwood that
25 occurred 5 years previously and makes clear the requirement that the design and
26 specifications of any memorial had to first be approved by Evergreen. Mr. Kamphausen
27 made the same offer to other interested parties.

28 The claimed scope and design of the "memorial wall" has changed and evolved

1 over the years. Significantly, as set forth in the attached Declaration of Ronald Haulman,
2 plaintiffs never submitted a clear and detailed design to Evergreen for evaluation and
3 approval and the scale has increased over time, significantly increasing the cost and
4 labor that would be entailed even were such a design feasible for the site. Moreover
5 plaintiffs have been attempting to raise funds for a memorial at the site for well more than
6 a decade and have failed to raise most of the funds necessary to complete the memorial
7 itself.

8 Apparently certain donors and relatives of the decedents have become
9 disenchanted with plaintiffs and doubt their ability to ever complete a memorial so they
10 pursued construction of a more modest memorial. Plaintiffs were aware of that
11 alternative memorial since at least no later than November 18, 2010 but failed to take any
12 action. That memorial has been completed at Evergreen.

13 As discussed in more detail below, the order now sought by plaintiffs is
14 unnecessary. There is no further construction to enjoin. Any order at this point would be
15 harmful to relatives of the decedents laid to rest at Evergreen and will provide no benefit
16 to Plaintiffs other than to cause distress to others that plaintiffs have disagreements with.
17 The requested restraining order is no more than a litigation tactic, and is simply not
18 justified. From a legal perspective, issuance of the requested restraining order or
19 preliminary injunction in this case would be contrary to the equitable principles of
20 California law, and there is NO IMMEDIATE RISK OF IRREPARABLE HARM. Further,
21 as set forth more fully below, Plaintiffs cannot demonstrate a likelihood of success on the
22 merits so as to justify the issuance of a temporary restraining order or preliminary
23 injunction and a balancing of the relative harms establishes that such relief must be
24 denied in this matter.

25 II. GROUNDS FOR GRANT OF INJUNCTIVE RELIEF

26 California Code of Civil Procedure Section 526(a) sets forth in general terms the
27 grounds under which an injunction will be granted. Section 526(a)(1) requires that the
28 relief requested must consist of "restraining the commission or continuance of the act

1 complained of, either for a limited time or perpetually.” Injunctions will only be granted in
2 instances of immediate risk of irreparable harm. (Section 526(a)(2); *Korean Philadelphia*
3 *Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084). Relief is
4 unlikely unless the moving party will be significantly hurt in a way which cannot later be
5 repaired. *People ex rel. Gow v. Mitchell Brothers’ Santa Ana Theater* (1981) 118
6 Cal.App.3d 863, 870-871.

7 In addition, injunctions are only appropriate where there is an inadequacy of the
8 legal remedy. (Section 526(a)(4) and (5)). Injunctions will rarely be granted where a suit
9 for damages provides a clear remedy. *Pacific Decision Sciences Corp. v. Sup. Ct.*
10 *(Maudlin)*(2004) 121 Cal.App.4th 1100, 1110. Moving party must also be able to show a
11 reasonable probability of succeeding on the merits. Section 526(a)(1); *San Francisco*
12 *Newspaper Printing Co., Inc. v. Sup. Ct. (Miller)*(1985) 170 Cal.App.3d 438, 442. Lastly,
13 the court must engage in a balancing of the respective harm to the parties from grant or
14 denial of the injunction. *Robbins v. Sup. Ct. (County of Sacramento)*(1985) 38 Cal.3d
15 199, 205.

16 III. THERE IS NO IMMEDIATE RISK OF IRREPARABLE HARM.

17 It is well settled that the purpose of an injunction is to preserve the status quo
18 pending a trial on the merits. *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.
19 As set forth in plaintiffs’ Ex Parte Application for Restraining Order, the relief plaintiffs
20 seek is to order:

21 “Defendants and their principals, officers, agents, servants, employees,
22 attorneys, and those persons under their control, or in active concert or
23 participation with them, to immediately cease and desist from permitting
24 the New People’s Temple or any other person or entity from constructing
any memorial upon the mass grave site of the victims of Jonestown until
the instant action is adjudicated.”

25 That request for relief is confirmed in plaintiffs’ Memorandum of Points and Authorities in
26 Support where plaintiffs state in their conclusion that:

27 “Plaintiffs’ application for a temporary restraining order should be granted
28 to enjoin Defendants from construction, or permitting the construction of

1 any memorial upon the mass grave site of the victims of Jonestown until
2 the instant action is adjudicated.” (Plaintiffs’ Memorandum at p. 6, lines
3 16-19).

4 The **sole relief requested** is to prevent construction of a memorial on the site where
5 plaintiffs claim they intend to construct their own memorial. Plaintiffs’ requested relief is
6 moot, however, as the construction of a memorial upon the common grave site at
7 Evergreen Cemetery has been completed and there is no construction to enjoin. As the
8 memorial is completed, the status quo has already been preserved and there is nor need
9 to grant any interim relief pending a trial on the merits. As noted above, there is no
10 “commission or continuance of the act complained of” to restrain. CCP Section
11 526(a)(1). Nor is there any “immediacy” which would require the imposition of a
12 temporary restraining order or injunctive relief. CCP Section 526(a)(2).

13 **VI. THERE IS NO BASIS FOR ISSUANCE OF A TEMPORARY RESTRAINING
14 ORDER OR PRELIMINARY INJUNCTION**

15 **A. PLAINTIFFS HAVE DEMONSTRATED NO IRREPARABLE HARM**

16 As discussed above, the construction of a new memorial at Evergreen has already
17 been completed. Plaintiffs’ breach of oral contract, breach of the covenant of good faith
18 and fair dealing, intentional misrepresentation, negligent misrepresentation, and fraud
19 claims, should they be successful at trial, are all compensable by monetary damages.
20 The uncertain nature of the damages are typical of claims that assert loss of good will,
21 and general damages that juries determine in actions throughout the courts.

22 **B. PLAINTIFF CANNOT DEMONSTRATE A LIKELIHOOD OF SUCCESS ON
23 THE MERITS.**

24 Plaintiffs’ claims are based on a variety of unsubstantiated claims of oral
25 agreements which are specifically contradicted by the documentary evidence included in
26 plaintiffs’ application and complaint in this action. Plaintiffs claim an amorphous oral
27 contract to “assist Plaintiffs in erecting a wall to honor the victims of the Jonestown
28 Massacre-Suicides, including but not limited to providing the base and setting for the
memorial wall.” It is basic hornbook law that in order to satisfy the elements of contract

1 formation, plaintiffs must prove:

- 2 1. That the contract terms were clear enough that the parties could understand
3 what each was required to do;
- 4 2. That the parties agreed to give each other something of value; and
- 5 3. That the parties agreed to the terms of the contract. (CACI 302)

6 Plaintiffs have failed to establish any of the three elements of a contract – it is obvious
7 that the terms of any alleged contract were never established. Plaintiff has provided no
8 evidence that the size, shape, configuration, weight, cost, construction commencement
9 or completion dates were ever established. In fact, the evidence shows that plaintiffs
10 never had anything but a conceptual design which repeatedly changed over the years
11 and never provided a written design or obtained approval from Evergreen which was a
12 clear “condition precedent” to any need by Evergreen to perform any alleged contract.

13 In addition, it is equally clear that plaintiffs cannot establish the second element –
14 consideration. Plaintiffs provided no consideration for the purported contract. Plaintiffs
15 fail to allege anything of value that Evergreen was to receive in consideration for its
16 performance under the “contract.” Nor have plaintiffs furnished the Court with any
17 evidence that there was ever an agreement as to the terms of the contract. Any oral
18 contract claim would likely also be barred by the statute of limitations under CCP Section
19 339. Without a contract, there is no covenant of good faith and fair dealing or declaratory
20 relief. Similarly, plaintiffs claims of misrepresentation and fraud are inadequately plead
21 and are based on hearsay, misstatements of fact or rumor and innuendo.

22 **C. A BALANCING OF THE RELATIVE HARMS ESTABLISHES THAT A**
23 **RESTRAINING ORDER OR PRELIMINARY INJUNCTION IN THIS MATTER**
24 **MUST BE DENIED.**

25 In deciding whether to grant a temporary restraining order or preliminary injunction,
26 the Court not only assesses the likelihood that plaintiffs will prevail at trial, but also the
27 interim harm that each party will bear should the injunction be granted. The Court’s
28 discretion should be exercised in favor of the party most likely to be injured. (*O’Connell v.*

1 *Superior Court, supra.*) In making this determination, the Court will evaluate factors such
2 as (1) the inadequacy of legal remedies; (2) the threat and/or degree of irreparable injury;
3 and (3) preservation of the status quo. (*Vo v. City of Garden Grove* (2004) 115 Cal. App.
4 4th 425.)

5 As the subject memorial is already completed, any effort to twist plaintiffs' request
6 for relief into an order preventing relatives from conducting ceremonies at the site or
7 paying their respects to the Jonestown victims will clearly cause significant harm to those
8 relatives and family members as well as the good will and business activities of
9 Evergreen in conducting its business as a cemetery and providing access to families
10 wishing to visit their loved ones or making funeral arrangements. The benefit conferred
11 on plaintiffs by such an order would only be satisfaction at frustrating the efforts of
12 allegedly competing relatives who wish to memorialize their loved ones. Denial of the
13 requested relief will keep the "status quo" until this matter can be resolved by a trial on its
14 merits.

15 V. CONCLUSION

16 Based on the foregoing arguments, evidence and authorities, Defendants
17 respectfully request that this Court deny Plaintiffs application for a temporary restraining
18 order and further deny any request to set briefing or hearing for the issuance of a
19 preliminary injunction.

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21 Dated: May 19, 2011

Respectfully submitted,

GURNEE & DANIELS LLP

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23 By

STEVEN H. GURNEE, ESQ.

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Attorneys for Defendants The Evergreen
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF PLACER:

I am a citizen of the United States. My business address is 2240 Douglas Boulevard, Suite 150, Roseville, California 95661. I am employed in the County of Placer where this mailing occurs. I am over the age of 18 years, and not a party to the within cause. I am readily familiar with my employer's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the date set forth below, following ordinary business practice, I served the foregoing document(s) described as:

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

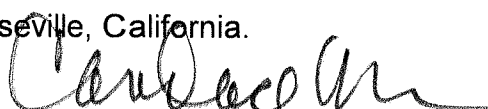
on said date at my place of business, a true copy thereof enclosed in a sealed envelope prepaid for first-class mail for collection and mailing that same day in the ordinary course of business, addressed to the parties as follows:

Vernon C. Goins, II
Taylor, Goins & Stallworth LLP
1330 Broadway, Suite 1701
Oakland CA 94612

Attorney for Plaintiffs

- (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Roseville, California.
- (BY FAX) I caused such document(s) to be sent *via* facsimile to the above named at the fax number(s) indicated on
- (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s).
- (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be served.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 20, 2011, at Roseville, California.


CANDACE NELSON