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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
BY YASMIN SINGH, Deputy

6 Attorneys for Plaintiff
7 GUYANA TRIBUTE FOUNDATION
8 and JYNONA NORWOOD

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION

12
13 GUYANA TRIBUTE FOUNDATION, a) Case No. RG11575036
14 California non-profit corporation; and)
15 JYNONA NORWOOD, an individual;) MEMORANDUM OF POINTS AND
16) AUTHORITIES IN SUPPORT OF
17 Plaintiffs,) PLAINTIFFS' APPLICATION FOR
18) TEMPORARY RESTRAINING ORDER
19 vs.) AND ORDER TO SHOW CAUSE WHY
20) PRELIMINARY INJUNCTION SHOULD
21 THE EVERGREEN CEMETERY) NOT ISSUE
22 ASSOCIATION, a California corporation;)
23 BUCK KAMPHAUSEN, an individual; RON) Date: May 12, 2011
24 HAULMAN, an individual; and DOES 1-50,) Time: 11:00 a.m.
25 inclusive,) Dept: 31
26) Res. No.: R-1179749
27 Defendants.)
28)

24 I. INTRODUCTION

25 Plaintiffs GUYANA TRIBUTE FOUNDATION and JYNONA NORWOOD hereby
26 apply *ex parte* for a temporary restraining order and an order to show cause why a preliminary
27 injunction should not issue to enjoining Defendants, EVERGREEN CEMETERY
28 ASSOCIATION, BUCK KAMPHAUSEN, Defendants and their principals, officers, agents,

1 servants, employees, attorneys, and those persons under their control, or in active concert or
2 participation with them, from permitting the New People's Temple or any other person or entity
3 from constructing any memorial upon the mass grave site of the victims of Jonestown until the
4 instant action is adjudicated.

5 II. STATEMENT OF FACTS

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

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

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

20 In November 1992, Defendants orally agreed that they would assist in the building of a
21 memorial wall to honor the victims of the Jonestown Massacre-Suicides at the mass grave site
22 ("Jonestown Memorial Wall"). *Id.*, ¶ 6. Further this agreement, Defendants insisted that
23 Plaintiffs utilize their monument vendor, Marin Monument Company and Amador Memorial
24 Company, in order to ensure that the monument was constructed by a company that best knew
25 the grounds of the cemetery and what size granite would fit at the mass grave site. *Id.* at ¶ 7-8;
26 Complaint, ¶ 21. Plaintiffs complied with this request, and soon thereafter, Marin Monument
27 Company circulated plans and specifications for the Jonestown Memorial Wall to Defendants.
28 Norwood Decl., ¶ 12. The parties' agreements were formalized in multiple writings, including a

1 writing from Defendant Kamphausen in 2002 and a writing from Plaintiff Norwood to
2 Defendants in 2007. Norwood Decl., ¶¶ 8, 10.

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

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

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

23 III. LEGAL ARGUMENT

24 1. Legal Standard on Temporary Restraining Order

25 The Court will grant a temporary restraining order if it appears that the moving party is
26 entitled to the relief granted, by weighing the following factors: (1) the likelihood that the
27 plaintiff will prevail on the merits of its case at trial; and (2) the interim harm that the plaintiff is
28 likely to sustain if the injunction is denied compared to the harm the defendant is likely to suffer

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

4 A temporary restraining order will be granted when it appears by the verified complaint
5 or affidavits that the commission or continuance of some act during the litigation would produce
6 waste, or great or irreparable injury, to a party in the action. Code Civ. Proc. § 526(a)(2).

7 A court will issue a TRO only for a limited period of time, which is usually pending its
8 consideration whether to order a preliminary injunction. *San Diego Water Co. v. Pacific Coast*
9 *S.S. Co.* (1894) 101 Cal. 216, 218; *see also* Code Civ. Proc. § 527. A TRO terminates
10 automatically when a preliminary injunction is issued or denied. *Landmark Holding Group, Inc.*
11 *v. Superior Court* (1987) 193 Cal.App.3d 525, 529.

12 Temporary restraining orders may be granted *ex parte* if it appears from the facts set forth
13 in affidavits, declarations or the verified complaint that great or irreparable injury would result to
14 the applicants before the matter can be heard on noticed motion. Code Civ. Proc. § 527(c)(1).

15 **1. Plaintiffs Are Likely To Prevail On the Merits**

16 The underlying action is one for Breach of Oral Contract, Breach of the Covenant of
17 Good Faith and Fair Dealing, Intentional Misrepresentation of Fact, Negligent Misrepresentation
18 of Fact, Fraud, Injunctive Relief, and Declaratory Relief. Plaintiffs have, and will, provide
19 evidence that Defendants agreed to permit Plaintiffs to construct the Jonestown Memorial Wall
20 upon the mass grave site of the victims of the Jonestown Massacre-Suicides. Plaintiffs paid
21 more than \$30,000 to commence the process, and two of the nine memorial plaques are
22 completed. Instead of complying with their end of the bargain, Defendants repudiated their
23 agreement and all promises that they made with Plaintiffs, despite the fact that two plaques had
24 been finished, and have since allowed the surviving People's Church to erect the Jim Jones
25 Memorial wall and honor Jim Jones, the individual who was himself responsible for the
26 Jonestown Massacre-Suicides. As a result, Plaintiffs are likely to prevail on their claims of
27 breach of contract and the fraudulent misrepresentations as stated in the Complaint, and the
28 temporary restraining order should be granted.

1 2. Plaintiffs Will Suffer Immediate Irreparable Harm Absent an Order
2 Enjoining Defendants; Thus, Issuance of a TRO Ex Parte is Appropriate

3 If it is shown that the threatened injury forming the basis for seeking a TRO cannot be
4 compensated for by an ordinary damage award, the damage is considered irreparable thus
5 forming the basis for the issuance of the TRO. *Brownfield v. Daniel Freeman Marina Hospital*
6 (1989) 208 Cal.App.3d 405, 410; *see also Helms Bakeries v. St. Bd. Equalization* (1942) 53
7 Cal.App.2d 417, 425.

8 Plaintiffs can easily demonstrate that they will suffer immediate irreparable injury absent
9 preliminary relief. Grading and foundation work, as well as extensive renovations have already
10 been completed at the mass grave site to permit the construction of the rival monument, and it is
11 set to be constructed in order to be unveiled by no later than Memorial Day weekend. Grading
12 and foundation work is ongoing, and must be stopped to ensure that the Jim Jones Memorial is
13 not installed while the lawsuit is pending. It would be far more costly to resolve this dispute
14 once the Jim Jones Memorial has been installed, so not only is time of the essence, the issuance
15 of a temporary restraining order would prevent the unnecessary and further incurring of costs
16 while the dispute, upon which Plaintiffs are likely to prevail, is adjudicated. Given that the
17 memorial is set to be unveiled on Memorial Day Weekend, time is of the essence in stopping the
18 work that is ongoing at Evergreen Cemetery, thus creating a basis for the immediate issuance of
19 a TRO before a noticed motion can be heard.

20 In repudiating their agreement to Plaintiffs that Plaintiffs were permitted to erect their
21 own memorial on the mass grave site, one that did *not* include the name of Jim Jones,
22 Defendants have already caused excessive damage to Plaintiffs, who have ongoing relationships
23 with donees who have provided thousands of dollars to Plaintiffs' cause, damaging Plaintiffs'
24 reputation in a manner that cannot be compensated for by money damages. Defendants have
25 made it apparent that they do not intend to comply with the parties' agreement, and thus a
26 temporary restraining order against Defendants should be issued *ex parte*.

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28 ///

1 3. The Balance of Hardships Tips Decidedly in Plaintiffs' Favor

2 As for the balance of hardships, Defendants have maliciously permitted a rival memorial
3 to be erected on the mass grave site promised to Plaintiffs. Additionally, Plaintiffs have been put
4 to a substantial burden and expense of hiring lawyers to enjoin Defendants' violation. Plaintiffs
5 have repeatedly notified Defendants of their objections to the violations, yet Defendants have
6 refused to voluntarily stop the violative conduct. Finally, the difficulty of calculating and
7 quantifying Plaintiffs' loss, including but not limited to the unique mass grave site and reputation
8 as a non-profit entity accepting donations for the Jonestown Memorial Wall has resulted, and
9 will continue to result from Defendants' violative conduct, makes monetary damages alone
10 insufficient, and causes the balance of hardships to tip decidedly in Plaintiffs' favor. The
11 equities could hardly weigh more heavily toward issuance of a temporary restraining order and a
12 preliminary injunction.

13 V. CONCLUSION

14 As demonstrated above, Defendants' conduct has caused Plaintiffs immediate irreparable
15 harm, and all the factors tip decidedly in favor of awarding immediate injunctive relief in the
16 form of a temporary restraining order *ex parte*. As a result of the foregoing, Plaintiffs'
17 application for a temporary restraining order should be granted to enjoin Defendants from
18 construction, or permitting the construction of any memorial upon the mass grave site of the
19 victims of Jonestown until the instant action is adjudicated.

20 Dated: May 9, 2011

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