

STEVEN H. GURNEE, ESQ. SB# 66056  
TOBY M. MAGARIAN, ESQ. SB# 132907  
GURNEE & DANIELS LLP  
2240 Douglas Boulevard, Suite 150  
Roseville, California 95661-3805  
Telephone (916) 797-3100  
Facsimile (916) 797-3131

Attorneys for Defendants  
The Evergreen Cemetery Association,  
Buck Kamphausen, and Ron Haulman

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

GUYANA TRIBUTE FOUNDATION, a	)	CASE NO. RG11575036
California non-profit corporation; and	)	
JYNONA NORWOOD, an individual,	)	<b>DEFENDANTS EVERGREEN</b>
	)	<b>CEMETERY ASSOCIATION, BUCK</b>
Plaintiffs,	)	<b>KAMPHAUSEN AND RON HAULMAN'S</b>
vs.	)	<b>NOTICE OF DEMURRER TO</b>
	)	<b>COMPLAINT; DEMURRER;</b>
THE EVERGREEN CEMETERY	)	<b>MEMORANDUM OF POINTS AND</b>
ASSOCIATION, a California corporation;	)	<b>AUTHORITIES AND DECLARATION IN</b>
BUCK KAMPHAUSEN, an individual; RON	)	<b>SUPPORT</b>
HAULMAN, an individual; and DOES 1-10	)	
	)	<b>(Reservation No. 1188626)</b>
Defendants.	)	
	)	Date: October 18, 2011
	)	Time: 3:00 p.m.
	)	Dept.: 22
	)	Hon. Robert McGuiness
	)	Complaint filed: May 10, 2011

**TO PLAINTIFFS GUYANA TRIBUTE FOUNDATION AND JYNONA NORWOOD AND  
TO THEIR ATTORNEY OF RECORD:**

PLEASE TAKE NOTICE that on October 18, 2011 at 3:00 p.m., or as soon  
thereafter as the matter may be heard, in Department 22 of the above-entitled court,

1 located at 1221 Oak Street, Oakland, California, Defendants THE EVERGREEN  
2 CEMETERY ASSOCIATION, BUCK KAMPHAUSEN and RON HAULMAN (hereinafter  
3 collectively referred to as "Evergreen") will, and hereby do demur to the first, second,  
4 third, fourth, fifth, sixth and seventh causes of action of Plaintiffs' Complaint on the  
5 grounds set forth more fully in the demurrer attached hereto and filed herewith. This  
6 demurrer shall be based on this Notice, the following Demurrer, the memorandum of  
7 points of authorities and declaration attached hereto, on all papers, pleadings on file  
8 herein including Plaintiffs' verified complaint for damages, and on such oral and  
9 documentary evidence as may be presented at the time of the hearing of this matter.

#### 10 DEMURRER

11 Defendants Evergreen do hereby demur to Plaintiffs' Complaint on file herein as  
12 follows:

- 13 1. As to the *First Cause of Action* (Breach of Oral Contract), Plaintiffs fail to state  
14 facts sufficient to constitute a cause of action against Defendants Evergreen in  
15 that Plaintiff Guyana Tribute Foundation lacks standing to sue for breach of  
16 contract, the alleged oral contract is barred by the Statute of Frauds, is  
17 uncertain and unenforceable as to its terms, duration and lack of consideration.
- 18 2. As to the *Second Cause of Action* (Breach of Covenant of Good Faith and Fair  
19 Dealing), Plaintiff Guyana Tribute Foundation lacks standing to sue for breach  
20 of the covenant of good faith and fair dealing and Plaintiffs fail to state facts  
21 sufficient to constitute a cause of action against Defendants Evergreen as no  
22 contract was ever formed so no covenant was created.
- 23 3. As to the *Third Cause of Action* (Intentional Misrepresentation of Fact),  
24 Plaintiffs fail to state facts sufficient to constitute a cause of action against  
25 Defendants Evergreen as plaintiffs have alleged no representation of fact  
26 made to Plaintiff which could be the basis for such cause of action.
- 27 4. As to the *Fourth Cause of Action* (Negligent Misrepresentation of Fact),  
28

1 Plaintiffs fail to state facts sufficient to constitute a cause of action against  
2 Defendants Evergreen as Plaintiffs have alleged no representation of fact  
3 made to Plaintiff which could be the basis for such cause of action.

4 5. As to the *Fifth Cause of Action* (Fraud), Plaintiffs fail to state facts sufficient to  
5 constitute a cause of action against Defendants Evergreen as Plaintiffs have  
6 alleged no actions or representation of fact made to Plaintiff which could be the  
7 basis for such cause of action.

8 6. As to the *Sixth Cause of Action* (Injunctive Relief), Plaintiffs fail to state facts  
9 sufficient to constitute a cause of action against Defendants Evergreen as the  
10 Court has already determined Plaintiffs are not entitled to the injunctive relief  
11 sought as the "rival memorial" already is completed.

12 7. As to the *Seventh Cause of Action* (Declaratory Relief), Plaintiffs fail to state  
13 facts sufficient to constitute a cause of action against Defendants Evergreen as  
14 no contract exists upon which to base such cause of action.

15 Wherefore, Defendants Evergreen pray that this demurrer be sustained as to each  
16 cause of action without leave to amend.

17 This demurrer is based upon this Notice of Demurrer and Demurrer, the attached  
18 Memorandum of Points and Authorities and declaration served and filed herewith, on the  
19 Court files and records in this matter, and on such other and further oral or written  
20 evidence or argument as may be presented at the hearing on this matter.

21  
22 Dated: June 24, 2011

GURNEE & DANIELS LLP

23  
24 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**

3  
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  
6 accept 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 the Evergreen Cemetery Board of Directors as required by its rules and  
21 regulations. Mr. Kamphausen's conditional offer is reflected in his letter to Plaintiff  
22 Jynona Norwood dated September 24, 2002, attached as Exhibit "A" to Plaintiffs'  
23 complaint. (For the Court's convenience, a true and correct copy of Plaintiffs' Complaint  
24 is attached as Exhibit "A" to the declaration of Toby M. Magarian). That letter refers to  
25 verbal discussions between Mr. Kamphausen and Ms. Norwood that occurred 5 years  
26 previously (1997) and makes clear the requirement that the design and specifications for  
27 any memorial had to first be approved by Evergreen's Board of Directors. Significantly,  
28 as set forth in Plaintiffs' verified complaint, Plaintiff Guyana Tribute Foundation was not

1 even formed until November of 1998, after the alleged verbal contract was made with  
2 Jynona Norwood, so Guyana Tribute Foundation as a non-party, lacks standing to  
3 enforce the alleged oral contract.

4 The claimed scope and design of the "memorial wall" has changed and evolved  
5 over the years. Significantly, Plaintiffs never submitted a clear and detailed design to  
6 Evergreen for evaluation and approval and the scale has increased over time,  
7 significantly increasing the cost, engineering and labor that would be entailed even were  
8 such a design feasible for the site. None of the writings to which Plaintiffs refer as  
9 memorialization of an alleged contract contain the necessary terms or exhibit any  
10 consideration to constitute a binding contract. Moreover, Plaintiffs have been attempting  
11 to raise funds for a memorial at the site for well more than a decade and have failed to  
12 raise most of the funds necessary to complete the memorial itself.

13 Apparently, certain donors and relatives of the decedents have become  
14 disenchanted with Plaintiffs and doubt their ability to ever complete a memorial so they  
15 pursued construction of a more modest memorial. Plaintiffs were aware of that  
16 alternative memorial since at least no later than November 18, 2010 but failed to take any  
17 action. That memorial has been completed at Evergreen. Defendants Evergreen demur  
18 to Plaintiffs' complaint and each cause of action therein as each fails to allege facts  
19 sufficient to constitute a cause of action as any "contract" was lacking in certainty,  
20 consideration, is barred by the Statute of Frauds and is unenforceable. Plaintiffs' claims  
21 of misrepresentation and fraud also lack certainty and fail to constitute a cause of action  
22 against Defendants.

## 23 II. LEGAL ARGUMENT

### 24 FIRST CAUSE OF ACTION – BREACH OF ORAL CONTRACT

#### 25 A. Plaintiff Guyana Tribute Foundation is not a Party to Any Contract

26 Plaintiffs Guyana Tribute Foundation and Jynona Norwood filed their verified  
27 complaint on May 11, 2011. Paragraph 17 of the complaint states: "In or around  
28

1 November 1992, Defendants orally agreed that they would be agreeable to, and willing to  
2 assist in, the building of a memorial wall honoring the victims of the Jonestown  
3 Massacre-Suicides." Plaintiffs go on to allege that "based on this agreement, in or about  
4 1993, Plaintiff Norwood, by and through other local non-profits, began raising funds for  
5 the construction of the memorial wall...Later, in or about November 1998, Norwood  
6 formed Guyana Tribute Foundation to continue raising funds for the construction of the  
7 memorial wall." (Plaintiffs' Complaint at paragraph 18). Paragraph 19 of the complaint  
8 alleges that on or about September 24, 2002, Defendant Evergreen sent Norwood a  
9 letter stating that in September 1997, Defendants committed to providing the base and  
10 setting for a memorial wall. That letter is attached as Exhibit A to Plaintiffs' complaint.

11 As alleged and verified by Plaintiff Norwood, the alleged oral agreement and  
12 "commitment" by Defendants was made in 1992 and in September of 1997. However,  
13 Plaintiff Guyana Tribute Foundation was not formed until November of 1998 according to  
14 the verified allegations of paragraph 18 of Plaintiffs' complaint. Therefore, Plaintiff  
15 Guyana Tribute Foundation clearly was not a party to the oral contract Plaintiffs claim  
16 was formed in 1992 and 1997 and lacks standing to sue for breach of such oral contract.

#### 17 **B. The Oral Contract Violates the Statute of Frauds**

18 As noted above, Plaintiffs' complaint alleges that an oral contract was made in  
19 1992 and again in 1997. California Civil Code §1624(a)(1) makes invalid any contract not  
20 in writing "(1) An agreement that by its terms is not to be performed within a year from the  
21 making thereof." Plaintiffs seek by their complaint to obtain damages from Defendants  
22 for alleged breach of an oral agreement made well more than ten years ago. Plaintiffs  
23 claim to have been raising funds for the "memorial wall" for almost two decades with no  
24 end in sight. Although the oral contract is undefined as to time for performance, it is clear  
25 that Plaintiffs had no ability to perform it within the year the alleged oral agreement was  
26 made.

27 Plaintiffs admit in their verified complaint that they only entered into a contract with  
28 a monument company to manufacture the "memorial wall" in November of 2007. (See

1 paragraph 23 and Exhibit D to Plaintiffs' Complaint). By Plaintiffs' own admission they  
2 failed to make even the initial payment set forth in that contract and never made a further  
3 payment beyond the first approximately \$30,000 of the total \$97,800 contract price. (See  
4 paragraphs 23-24 of Plaintiffs' Complaint).

### 5 **C. The Alleged Contract is Unenforceable**

6 Plaintiffs claim the oral contract is enforceable based on the "oral agreements"  
7 made in 1992 and 1997 and the letter of September 24, 2002 from Buck Kamphausen  
8 attached as Exhibit A to Plaintiffs' Complaint. However, it is clear that any alleged  
9 memorialization of such agreement was so vague and uncertain as to be unenforceable  
10 and that it contains a condition precedent which was never satisfied. As alleged in  
11 Plaintiffs' Complaint at paragraph 34 of the First Cause of Action: "In or about 1992, and  
12 again in January 1997 and September 2002, Defendants promised to assist Plaintiffs in  
13 erecting a wall to honor the victims of the Jonestown Massacre-Suicides, including but  
14 not limited to providing the base and setting for the memorial wall." Even as alleged in  
15 Plaintiffs' Complaint, the alleged contract has none of the terms necessary to make it  
16 enforceable.

17 Judicial Council of California, Civil Jury Instructions, CACI 302 provides the  
18 essential factual elements to establish formation of a contract:

19 "...To prove that a contract was created, [name of plaintiff] must prove all of the  
20 following:

- 21 1. That the contract terms were clear enough that the parties could understand  
22 what each was required to do:
- 23 2. That the parties agreed to give each other something of value....;and
- 24 3. That the parties agreed to the terms of the contract."

25 Plaintiffs' complaint fails to satisfy **any** of the three elements. Even as alleged by  
26 Plaintiffs, the terms are so vague as to exactly what Defendants are to perform that the  
27 contract cannot be enforced. As noted above, Plaintiffs claim the contract includes "but  
28

1 not limited to providing the base and setting for the memorial wall.” Without any  
2 parameters for what the foundation entails or the time, expense and extent of the setting  
3 of the memorial wall, there can be no enforceable agreement. As noted above, Plaintiffs  
4 changed the concept and design of the “memorial wall” and in March of 2007 wanted a  
5 “simple seating garden area as part of the Memorial...” (See Exhibit C to Plaintiffs’  
6 Complaint).

7 Even if the agreement as set forth in the letter of September 24, 2002 were  
8 enforceable, the agreement by its terms contains a clear condition precedent to  
9 performance by Defendants Evergreen: “This [providing the base and setting for a  
10 monument memorial] is subject to approval by the Evergreen Cemetery Association  
11 Board of Directors as to the design, size, style, and height of the memorial.” (See Exhibit  
12 A to Plaintiffs’ Complaint). Plaintiffs do not allege that they ever satisfied this condition  
13 precedent or that the Board of Directors ever approved the design, size, style and height.  
14 In fact, although Plaintiff’s letter of March 22, 2007 (Exhibit C to Plaintiffs’ complaint)  
15 contains a brief description of the memorial, it does not specify the size or weight of the  
16 wall or even how many panels it comprises. While it states the wall will be “7 feet above  
17 ground”, it is unclear if the base is to be seven feet high so the panels will be seven feet  
18 above ground or does that the wall itself is seven feet tall. The answer to these  
19 questions will drastically change the engineering, expense and labor the foundation and  
20 installation for such a memorial wall would require.

21 Equally significant is any allegation satisfying the element that the parties to the  
22 contract “agreed to give each other something of value” as required under CACI 302.  
23 While it is clear that Plaintiffs have alleged Defendants were to incur the expense of  
24 locating and installing the memorial, completely absent is anything of value Guyana  
25 Tribute Foundation or Jynona Norwood agreed to give to Defendants. In simple terms,  
26 there is absolutely no consideration given by Plaintiffs in this alleged contract to render it  
27 binding or enforceable.



1 Lastly, there are no facts alleged that the parties ever agreed to any certain  
2 contractual terms. Plaintiffs' Complaint and the attached exhibits show that no "meeting  
3 of the minds" was ever achieved.

4 "[T]here is no contract until there has been a meeting of the  
5 minds on *all* material points." (*Banner Entertainment, Inc. v.*  
6 *Superior Court* (1998) 62 Cal.App.4<sup>th</sup> 348, 358, 72  
7 Cal.Rptr.2d 598.) "Mutual intent is determinative of contract  
8 formation because there is no contract unless the parties  
9 thereto assent, and they must assent to the same thing, in  
10 the same sense.... Thus, the failure to reach a meeting of  
11 the minds on all material points prevents the formation of a  
contract *even though the parties have orally agreed upon  
some of the terms, or have taken some action related to the  
contract.*" (*Id.* at pp. 358-359, 72 Cal.Rptr.2d 598.)  
*American Employers Group, Inc. v. Employment  
Development Department* (2007) 154 Cal.App.4<sup>th</sup> 836, 846-  
847. (emphasis in original)

12 For these reasons, Defendants' demurrer to Plaintiffs' First Cause of Action should be  
13 sustained without leave to amend. Leave to amend should be denied as plaintiffs'  
14 complaint is verified and absent a re-invention of the facts, the defects in that cause of  
15 action cannot be corrected.

## 16 **SECOND CAUSE OF ACTION – BREACH OF COVENANT OF 17 GOOD FAITH AND FAIR DEALING**

18 Plaintiffs' second cause of action for breach of the covenant of good faith and fair  
19 dealing fails as the first requirement necessary to establish this cause of action is that the  
20 parties entered into a contract. (CACI 325; *Racine & Laramie, Ltd. v. Department of  
21 Parks & Recreation* (1992) 11 Cal.App.4<sup>th</sup> 1026, 1031-1032) As set forth above, no  
22 contract was ever created as there was no consideration given and no meeting of the  
23 minds. Further, it is an essential element of this cause of action that plaintiffs perform all  
24 or substantially all of the significant things that the contract required it to do and all  
conditions required for defendant's performance had occurred. (CACI 325)

25 As admitted by the verified allegations of Plaintiffs' Complaint, Plaintiffs failed to ever  
26 perform their contract with Amador Memorial Company by having the memorial  
27 completed for installation and never raised sufficient funds to pay for its completion.

1 (Plaintiffs' complaint at paragraphs 23-24). It was never possible for Defendants to  
2 "assist Plaintiffs in erecting a wall," provide "the base and setting for the memorial wall" or  
3 "do whatever was necessary to help install the memorial wall" as there has never been a  
4 finished product to erect or install. (Plaintiffs' Complaint at paragraph 41). In addition,  
5 Plaintiffs never submitted the design or received approval by the Evergreen Cemetery  
6 Association Board of Directors. Therefore, Defendants were never required to perform.

### 7 **THIRD CAUSE OF ACTION – INTENTIONAL MISREPRESENTATION OF FACT**

8 Plaintiffs' third cause of action for intentional misrepresentation of fact claims that  
9 Defendants on or about January 29, 1997 "committed to providing the base and setting  
10 for a memorial to be placed at the mass grave site of the victims of the Jonestown  
11 Massacre-Suicides." Despite being a verified complaint, Plaintiffs also allege on  
12 information and belief (See paragraph 26) that in April of 2008:

13 Kamphausen, on behalf of Evergreen, went personally to  
14 Amador Memorial Company, observed the size and weight  
15 of the granite panels that had been ordered by Amador  
16 Memorial Company for the memorial wall, and not only did  
17 *not* object to the size of the panels, but stated that he would  
18 do whatever was necessary to help install the memorial  
19 wall." (Plaintiffs' Complaint at paragraphs 26, 47-48,  
20 emphasis in original).

21 Plaintiffs' third cause of action alleges these statements were false and misleading.  
22 Firstly, the commitment to provide a base and setting for a memorial was neither false  
23 nor misleading. In fact, Defendants have actually provided a base and setting for a  
24 memorial which was placed at the mass gravesite, thereby fulfilling that commitment.  
25 (See Plaintiffs' Complaint at paragraph 68).

26 Secondly, Plaintiffs allege that Defendant Kamphausen "did not object to the size  
27 and weight of the panels," and stated that he would do whatever was necessary to help  
28 install the memorial wall. Accepting for purposes of this demurrer that these allegations  
are true, not objecting to the size of the panels does not constitute a "misrepresentation  
of fact" but rather no representation at all. Further, the first essential element to  
establishing a cause of action for intentional misrepresentation is "1. That [name of

1 defendant] represented to [name of plaintiff] that an important fact was true;”. (CACI  
2 1900)

3 It is clear due to the fact that Plaintiffs’ allegation that the statement of defendant  
4 Kamphausen is based on information and belief, that the claimed statement was made to  
5 someone at Amador Memorial Company and that Plaintiffs were not present in or about  
6 April 2008. Therefore, even if Kamphausen made this statement, it was not to Plaintiffs  
7 so no claim for intentional misrepresentation can be made based on this hearsay  
8 statement to a third person.

9 Lastly, Plaintiffs must show some reliance on that statement that caused harm.  
10 Plaintiffs claim that “In reliance on the promises and misrepresentations of Defendants,  
11 Plaintiffs paid \$30,371 to commence construction on the memorial wall, Marin Memorial  
12 Company ordered all of the granite panels and completed two of the panels, all because  
13 of Defendants’ misrepresentations.” (Plaintiffs’ Complaint at paragraph 51). However,  
14 Plaintiffs’ verified allegations state that they paid the \$30,371 on November 18, 2007 and  
15 January of 2008 but Kamphausen did not see the panels and allegedly state that “he  
16 would do whatever was necessary to help install the memorial wall” until April of 2008.  
17 Clearly no reliance can be established when the claimed misrepresentation occurs after  
18 the alleged harm. The demurrer to the third cause of action should be sustained without  
19 leave to amend.

#### 20 **FOURTH CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION OF FACT**

21 Plaintiffs’ fourth cause of action for negligent misrepresentation is based on the  
22 same alleged representations as those in the third cause of action for intentional  
23 misrepresentation and for the same reasons this cause of action is deficient and the  
24 demurrer as to it should be sustained without leave to amend.

#### 25 **FIFTH CAUSE OF ACTION - FRAUD**

26 Plaintiffs’ fifth cause of action for fraud contains no specific allegations as to any  
27 specific promises and representations this cause of action is based on but is pled as a  
28 “catch-all.” As noted above, the representations Plaintiffs have alleged do not support a

1 cause of action for fraud and none of the claimed agreements meet the criteria for being  
2 a binding contract upon which Plaintiffs' fraud claims can rest. It is clear that Plaintiffs  
3 are trying to force Defendants to pay some unknown and ever increasing amount to  
4 install a memorial wall that has never been adequately defined, designed or approved to  
5 make the commitment of Evergreen binding. It would be fundamentally inequitable and  
6 unfair to require Defendants to be perpetually bound to incur whatever the expense may  
7 be and obligated to install whatever size memorial wall Plaintiffs eventually create  
8 regardless of its practicability or feasibility. Yet that is exactly what Plaintiffs expect and  
9 now accuse Defendants of fraud and seek punitive damages.

10 As noted in Plaintiffs' verified allegations, Plaintiff Jynona Norwood began  
11 fundraising for the construction of the memorial in 1993 and has continued to fundraise  
12 ever since. (Plaintiffs' Complaint at paragraph 18) Despite almost two decades of  
13 fundraising, Plaintiffs have not accumulated even one third of the cost of the manufacture  
14 of the "memorial wall" as contracted in 2007 and as Marin Monument Company which  
15 was manufacturing the panels is out of business, it is questionable if the cost to complete  
16 the panels has not increased since that time. Defendants' obligation to perform their  
17 alleged promises has never occurred as Plaintiffs have never had a completed memorial  
18 even if it had been approved as required as a condition precedent.

#### 18 **SIXTH CAUSE OF ACTION – INJUNCTIVE RELIEF**

19 Plaintiffs' sixth cause of action for injunctive relief is moot as this Court has already  
20 determined that the injunctive relief requested is not appropriate for a number of reasons  
21 which need not be repeated here. (See Court's Order of May 26, 2011 attached as  
22 Exhibit "B" to the declaration of Toby M. Magarian) Therefore, the demurrer to this cause  
23 of action should be sustained without leave to amend.

#### 24 **SEVENTH CAUSE OF ACTION – DECLARATORY RELIEF**

25 For the reasons set forth above, there is no binding agreement between the  
26 parties for which declaratory relief is necessary and this cause of action fails to allege  
27 sufficient facts to support this cause of action. (CCP §1060). On that basis, Defendants  
28

1 request that the Court sustain the demurrer to this cause of action without leave to  
2 amend.

### 3 III. CONCLUSION

4 Based on the foregoing, each of Plaintiffs' causes of action in their verified  
5 complaint is defective as a matter of law and demurrer to each should be sustained  
6 without leave to amend as only through pleading around the verified facts set forth in the  
7 complaint can Plaintiffs seek to avoid the defects in their claims. Defendants Evergreen  
8 Cemetery Association, Buck Kamphausen and Ron Haulman respectfully request that  
9 the Court sustain their demurrers to each of Plaintiffs' causes of action and render  
10 judgment for Defendants in this matter.

11 Dated: June 24, 2011

Respectfully submitted,

GURNEE & DANIELS LLP

13 By 

14 STEVEN H. GURNEE, ESQ.

15 TOBY M. MAGARIAN, ESQ.

16 Attorneys for Defendants The Evergreen  
17 Cemetery Association, Buck  
18 Kamphausen and Ron Haulman

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. I am an attorney duly licensed to practice law and am an associate in the law firm of Gurnee & Daniels LLP, attorneys of record for Defendants. This declaration is submitted in support of Defendants' demurrer to Plaintiffs' Complaint.

3. Attached hereto as **Exhibit “B”** is a true and correct copy of the Court’s Order denying injunctive relief dated May 26, 2011.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 23<sup>rd</sup> day of June 2011, at Roseville, California.

TOBY M. MAGARIAN

**EXHIBIT A**

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) 663-3700  
8 Facsimile: (510) 663-3710

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

ENDORSED  
FILED  
ALAMEDA COUNTY  
MAY 10 2011  
CLERK OF THE SUPERIOR COURT  
By S. McMurphy

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

16 GUYANA TRIBUTE FOUNDATION, a ) No. **RG11575036**  
17 California non-profit corporation; and )  
18 JYNONA NORWOOD, an individual; ) **COMPLAINT FOR DAMAGES,**  
19 ) **DECLARATORY RELIEF, AND**  
20 Plaintiffs, ) **INJUNCTIVE RELIEF**  
21 vs. )  
22 THE EVERGREEN CEMETERY )  
23 ASSOCIATION, a California corporation; )  
24 BUCK KAMPHAUSEN, an individual; RON )  
25 HAULMAN, an individual; and DOES 1-50, )  
26 inclusive, )  
27 Defendants. )

28  
29 COME NOW Plaintiffs GUYANA TRIBUTE FOUNDATION, a California non-profit  
30 corporation and JYNONA NORWOOD, an individual (hereinafter collectively referred to as  
31 "Plaintiffs"), and complain and allege against THE EVERGREEN CEMETERY  
32 ASSOCIATION, a California corporation; BUCK KAMPHAUSEN, an individual; RON



1 HAULMAN, an individual and DOES 1-50, inclusive, and each of them (hereinafter collectively  
2 referred to as "Defendants"), as follows:

3 GENERAL ALLEGATIONS

4 1. Plaintiff JYNONA NORWOOD (hereinafter "Norwood") is an individual who  
5 resides in Los Angeles, California. Norwood is, and at all times mentioned herein was, the  
6 executive director of the Guyana Tribute Foundation.

7 2. Plaintiff GUYANA TRIBUTE FOUNDATION (hereinafter "Guyana") is a non-  
8 profit corporation duly organized and existing under the laws of the State of California and with  
9 its principal place of business in Los Angeles County, California.

10 3. Plaintiffs are informed and believe and thereon allege that, at all times mentioned  
11 herein, defendant THE EVERGREEN CEMETERY ASSOCIATION (hereinafter "Evergreen")  
12 is a corporation duly organized and existing under the laws of the State of California and with its  
13 principal place of business in the City of Oakland, Alameda County, California.

14 4. Plaintiffs are informed and believe and thereon allege that, at all times mentioned  
15 herein, BUCK KAMPHAUSEN (hereinafter "Kamphausen") is an individual residing in Marin  
16 County, California and the President of Evergreen Cemetery.

17 5. Plaintiffs are informed and believe and thereon allege that, at all times mentioned  
18 herein, RON HAULMAN (hereinafter "Haulman") is an individual residing in Alameda County,  
19 California and the Executive Director of Evergreen Cemetery.

20 6. The true names and capacities, whether individual, corporate or otherwise, of  
21 DOES 1 through 50 are, at this time, unknown to Plaintiffs, who therefore sue said defendants by  
22 such fictitious names. Plaintiffs will seek leave of Court to amend this Complaint to reflect their  
23 true names and capacities when the same have been ascertained. Plaintiffs are informed and  
24 believe, and thereon allege, that each of said defendants is responsible in some manner for the  
25 events and injuries described herein and caused damages thereby to Plaintiffs as alleged herein.

26 7. Plaintiffs are informed and believe and thereon allege that, at all times mentioned  
27 herein, each and every defendant was the predecessor-in-interest, successor-in-interest, agent,  
28 counselor, employee, servant, partner, franchisee and/or joint venturer of each of its co-

1 defendants, and in doing the actions hereinafter mentioned, was acting within the scope of its  
2 authority within such agency, employment, counseling, service, partnership, franchise and joint  
3 venture and with the permission and consent of each co-defendant.

4 8. Plaintiffs are informed and believe and thereon allege that, at all times mentioned  
5 herein, all of the defendants acted in concert with the other defendants named in this Complaint  
6 in the wrongful and improper activities alleged and, therefore, are responsible for the damages as  
7 alleged by Plaintiffs. Plaintiffs are further informed and believe, and thereon allege, that, at all  
8 times mentioned herein, each defendant named in this Complaint was the agent and/or employee  
9 of each of the remaining defendants, and acted in concert for the purpose of injuring Plaintiffs as  
10 alleged herein.

11 9. Plaintiffs are informed and believe and thereon allege that, at all times mentioned  
12 herein, each of the defendants was the agent and employee of each of the remaining defendants,  
13 and each was acting within the purpose and scope of said agency and employment.

14 10. Plaintiffs are informed and believe and thereon allege that, at all times mentioned  
15 herein, the Defendants have pursued a common course of conduct, acted in concert with, and  
16 conspired with each other, and have aided and abetted one another to accomplish the wrongs  
17 complained of herein.

18 11. On or about November 18, 1978, 918 people lost their lives in Guyana at the  
19 commune known as "Jonestown", led by Jim Jones. This is historically referred to as the  
20 "Jonestown Massacre-Suicides".

21 12. On that same date, Plaintiff Norwood lost twenty-seven members of her family  
22 during the Jonestown Massacre-Suicides.

23 13. On or about November 21, 1978, more than 900 bodies were returned to the  
24 United States, and 406 of the bodies, most of whom were children, were buried in a mass grave  
25 at Evergreen Cemetery, located at 6450 Camden Street, Oakland, CA 94605 and owned by  
26 Defendants. Most of the twenty-seven members of Plaintiff Norwood's family who perished in  
27 the Jonestown tragedy are also buried at this mass grave site.

28

1           14.     On or about May 21, 1979, Plaintiff Norwood held the first Memorial Service in  
2 San Francisco, California at Queen Adah Hall. On or about November 18, 1980, Plaintiff  
3 Norwood began holding public memorials at Evergreen Cemetery to honor the victims,  
4 particularly the children, of the Jonestown Massacre-Suicides.

5           15.     As a result of these annual public memorials held by Plaintiff, Plaintiff Norwood  
6 and Defendants developed a positive relationship.

7           16.     From 1980 until 1992, Plaintiff Norwood and the victims of the family  
8 continuously advocated for the construction of a memorial wall listing 918 names of the victims  
9 of the Jonestown Massacre, excluding Jim Jones.

10          17.     In or around November 1992, Defendants orally agreed that they would be  
11 agreeable to, and willing to assist in, the building of a memorial wall honoring the victims of the  
12 Jonestown Massacre-Suicides.

13          18.     Based upon this agreement, in or about 1993, Plaintiff Norwood, by and through  
14 other local non-profits, began raising funds for the construction of the memorial wall. In or  
15 about June 22, 1996, Reverend Edgar Boyd, Pastor of Bethel AME Church of San Francisco,  
16 began to solicit funds for the memorial by, among other things, organizing a benefit concert.  
17 Later, in or about November 1998, Norwood formed Guyana Tribute Foundation to continue  
18 raising funds for the construction of the memorial wall.

19          19.     On or about September 24, 2002, Defendant Evergreen sent to Plaintiff Norwood  
20 a letter stating that in September 1997, Defendants committed to providing the base and setting  
21 for a memorial to be placed at the mass grave site of the victims of the Jonestown Massacre-  
22 Suicides. A true and correct copy of this letter is attached hereto as Exhibit A and incorporated  
23 herein by reference as if set forth in full.

24          20.     On or about July 23, 2003, Plaintiff sought, and obtained, a proposal from a  
25 company named Willis Granite for the construction of the memorial wall in the amount of  
26 \$59,190. A true and correct copy of this proposal is attached hereto as Exhibit B and  
27 incorporated herein by reference as if set forth in full.  
28

1           21.     Norwood proceeded to notify Defendants of the proposal and its amount. In  
2 response, Defendants notified Plaintiff that they would permit the construction of the memorial  
3 wall only if Plaintiff used their preferred vendor, called Marin Monument Company, Inc.  
4 working through Amador Memorial Company. Defendants further advised Norwood that Marin  
5 Monument Company and Amador Memorial Company would be best suited to construct the  
6 memorial wall, as the companies were familiar with the grounds at the cemetery and would best  
7 know the specifications of the size of granite that would properly fit at the mass grave site. In  
8 addition, Defendants represented that the aforementioned contractors had a longstanding and  
9 exclusive working relationship with the Defendants.

10           22.     On or about March 22, 2007, Norwood sent a letter to Defendants memorializing  
11 the discussions regarding the memorial wall, including the dimensions and general description of  
12 the design of the memorial wall as provided by Marin Monument Company. A true and correct  
13 copy of the March 22, 2007 correspondence is attached hereto as **Exhibit C** and incorporated  
14 herein by reference as if set forth in full.

15           23.     On or about November 18, 2007, Norwood received a letter from Amador  
16 Memorial Company indicating that they would be able to prepare a memorial consisting of seven  
17 granite ledgers for a total price of \$97,800, due in payments as follows: \$30,000 due on or  
18 before November 18, 2007; \$33,935 due in March/April 2008; and \$33,935 due in July/August  
19 2008. A true and correct copy of the November 18, 2007 correspondence is attached hereto as  
20 **Exhibit D** and incorporated herein by reference as if set forth in full.

21           24.     On or about November 18 2007, Plaintiffs provided one check to Amador  
22 Memorial Company, in the amount of \$13,371 and one in January 29, 2008 in the amount of  
23 \$17,000, a total of \$30,371.

24           25.     Representatives of Amador Memorial Company advised Norwood that they met  
25 with John Duley (hereinafter "Duley"), the head of construction at Evergreen, and provided  
26 Duley with the sketch of the memorial wall as well as the weight of the foundation of the wall.

27           26.     Plaintiffs are informed and believe and thereon allege that, in or about April 2008,  
28 Kamphausen, on behalf of Evergreen, went personally to Marin Monument Company, observed

1 the size and weight of the granite panels that had been ordered by Amador Memorial Company  
2 for the memorial wall, and not only did *not* object to the size of the panels, but stated that he  
3 would do whatever was necessary to help install the memorial wall.

4 27. On or about November 18, 2008, at the thirty-year anniversary of the Jonestown  
5 Massacre-Suicides, Plaintiffs unveiled two of the panels of the memorial wall, upon which some  
6 of the victims' names were inscribed, by having the panels delivered to Evergreen for an annual  
7 public memorial held by Plaintiffs. Kampahusen, Haulman and John Cortez, owner of Marin  
8 Monument Company, Inc. and Amador Memorial Company, were present at the unveiling.

9 28. At no point in time did Kamphausen or any representative of Evergreen ever  
10 express any concern or reservation regarding the size or design of the memorial wall, either  
11 while visiting Marin Monument Company or at the thirty-year anniversary unveiling, or at any  
12 other point in time prior to December 15, 2009.

13 29. On or about December 15, 2009, Defendants wrote a letter to Norwood wherein  
14 they alleged, among other things, that the memorial wall had never been approved and that it was  
15 too large. A true and correct copy of the December 15, 2009 correspondence is attached hereto  
16 as **Exhibit E** and incorporated herein by reference as if set forth in full. This was the first time  
17 that any objection was made by Defendants to the size and general specifications of the  
18 memorial wall, despite having actually seen the written plans and size of the granite panels at  
19 Marin Monument Company in April 2008 and again at Evergreen in November 2008.

20 30. On or about March 1, 2011, Plaintiffs discovered by reading a news article, that  
21 Defendants had approved plans for another monument to be erected on the base and setting  
22 originally approved for Plaintiffs' memorial wall. This monument is proposed by the surviving  
23 People's Church, led by Jim Jones, Jr., and proposes to include the name of *Jim Jones himself*  
24 as a victim of the Jonestown Massacre-Suicides.

25 31. Plaintiffs are informed and believe and thereon allege that grading and foundation  
26 work has already been completed for the rival monument, and it will be erected imminently once  
27 the rainy season in the Bay Area ceases and permits the ground at the cemetery to dry, so time is  
28 of the essence.

VENUE

32. Venue is proper in this Court pursuant to California Code of Civil Procedure §§ 395 *et seq.* because all Defendants reside in this county and because the acts complained of took place in this county.

FIRST CAUSE OF ACTION

(Breach of Oral Contract)

33. Plaintiffs hereby reallege, replead, and incorporate herein by reference paragraphs 1 through 32, above, as if the same were set forth at length herein.

34. In or about 1992, and again in January 1997 and September 2002, Defendants promised to assist Plaintiffs in erecting a wall to honor the victims of the Jonestown Massacre-Suicides, including but not limited to providing the base and setting for the memorial wall. Further, in or about April 2008, Kamphausen, on behalf of Evergreen, reaffirmed that he would do whatever was necessary to help install the memorial wall. Kamphausen never said that he needed written approval in the 1997 or 2002 letter.

35. On or about November 18, 2007, Plaintiffs paid \$13,371 toward the construction of the memorial wall and \$17,000 in January 2008, and Marin Monument Company ordered the granite panels for the wall. Since then, two panels have been completed. Kamphausen, on behalf of Evergreen, went to Marin Memorial Company and saw all of the granite that are set to comprise the memorial wall, as well as the two completed panels of the memorial wall, and never objected to the size, weight, or specifications of the memorial wall.

36. On or about December 15, 2009 and again in March, 2011, Defendants breached the parties' agreement by repudiating the existence of the contract, stating that the memorial wall had never been approved, was too large, and by accepting plans for the construction of a memorial from a rival group, headed by Fielding McGehee III and Jim Jones, Jr., which proposes to include the name of Jim Jones himself as a victim of the Jonestown Massacre-Suicides.

1 37. Plaintiffs have performed all conditions, covenants and promises required to be  
2 performed on their part in accordance with the terms and conditions of the contract. Any  
3 conditions required to be performed by Plaintiffs, if any, were not performed because they were  
4 excused as a result of Defendants' initial breach of the contract.

5 38. As a direct and proximate result of Defendants' breach of contract, Plaintiffs have  
6 been damaged in sums not yet fully ascertained. Plaintiffs will amend the Complaint when the  
7 full amount of their damages are ascertained.

8 SECOND CAUSE OF ACTION

9 (Breach of Covenant of Good Faith and Fair Dealing)

10 39. Plaintiffs hereby reallege, replead, and incorporate herein by reference paragraphs  
11 1 through 38, above, as if the same were set forth at length herein.

12 40. A special relationship exists between Plaintiffs and Defendants by virtue of the  
13 contract. Plaintiffs relied upon the implied covenant of good faith and fair dealing in the  
14 contractual relationship with Defendants.

15 41. Plaintiffs' contract with Defendants provided that Defendants would assist  
16 Plaintiffs in erecting a wall to honor the victims of the Jonestown Massacre-Suicides, including,  
17 but not limited to, providing the base and setting for the memorial wall, and to do whatever was  
18 necessary to help install the memorial wall. In reliance upon these promises, Plaintiffs paid  
19 \$30,371 to commence construction of the memorial wall.

20 42. The contract contained an implied covenant of good faith and fair dealing that  
21 prevented either party from doing anything that would deprive the other of the benefits of the  
22 contract. This covenant also imposed an obligation on each contracting party not to do anything  
23 that would render performance of the contract impossible and to do everything the contract  
24 presupposes that each will do to accomplish the contract's purpose.

25 43. Defendants were obligated to perform their duties as required by the  
26 contract. Specifically, under the contract, Defendants were required to provide the base and  
27 setting for the memorial wall, and to do whatever was necessary to help install the memorial  
28 wall.

1 44. By not performing as specified in the contract, and by accepting the proposal of  
2 the New People's Temple to build a rival memorial honoring *Jim Jones himself*, Defendants  
3 breached the implied covenant of good faith and fair dealing.

4 45. As a proximate result of Defendants' breach of implied covenant of good faith  
5 and fair dealing, Plaintiffs have been damaged in sums not yet fully ascertained. Plaintiffs will  
6 amend this Complaint when the full amount of damages has been ascertained.

7 **THIRD CAUSE OF ACTION**

8 **(Intentional Misrepresentation of Fact)**

9 46. Plaintiffs hereby reallege, replead, and incorporate herein by reference paragraphs  
10 1 through 45, above, as if the same were set forth at length herein.

11 47. On or about January 29, 1997, Defendants committed to providing the base and  
12 setting for a memorial to be placed at the mass grave site of the victims of the Jonestown  
13 Massacre-Suicides.

14 48. In or about April 2008, Kamphausen, on behalf of Evergreen, went personally to  
15 Amador Memorial Company, observed the size and weight of the granite panels that had been  
16 ordered by Amador Memorial Company for the memorial wall, and not only did *not* object to the  
17 size of the panels, but stated that he would do whatever was necessary to help install the  
18 memorial wall.

19 49. All these statements alleged above were false and misleading and Defendants  
20 were aware that they were false.

21 50. At the time these representations were made, Plaintiffs were ignorant of the falsity  
22 of these statements and could not, in the exercise of reasonable diligence, have discovered the  
23 falsity of the statements. Plaintiffs did not discover the existence of the falsity of the statements  
24 until on or about December 15, 2009, when Defendants wrote a letter to Norwood stating,  
25 among other things, that the memorial wall had never been approved and that it was too large,  
26 and again in March 2011 when Defendants accepted plans for the construction of a memorial  
27 wall from a rival group, headed by Fielding McGehee III and Jim Jones, Jr. which proposes to  
28 include the name of *Jim Jones himself* as a victim of the Jonestown Massacre-Suicides.



#### FOURTH CAUSE OF ACTION

(Negligent Misrepresentation of Fact)

55. Plaintiffs hereby reallege, replead, and incorporate herein by reference paragraphs 1 through 54, above, as if the same were set forth at length herein.

56. When Defendants made the representations alleged in paragraphs 46 and 47, above, Defendants had no reasonable ground for believing them to be true in that Defendants were solely responsible for ensuring that the above-mentioned actions took place and were in a position to know of the success of completing the action. Defendants knew, or should have known, that they would not perform their obligations under the contract.

57. As a result of Defendants' negligence in making false representations to Plaintiffs, and Defendants' negligence in failing to perform pursuant to the contract, Plaintiffs have been damaged in sums not yet fully ascertained. Plaintiffs will amend this Complaint when the full amount of damages has been ascertained.

FIFTH CAUSE OF ACTION

(Fraud)

58. Plaintiffs hereby reallege, replead, and incorporate herein by reference paragraphs 1 through 57, above, as if the same were set forth at length herein.

59. During the relevant time period, Defendants, in summary, promised and represented to Plaintiffs that they would provide the base and setting for a memorial to be placed at the mass grave site of the victims of the Jonestown Massacre-Suicides and that they would do whatever was necessary to help install Plaintiffs' memorial wall.

60. At the time Defendants made said promises to Plaintiffs, Defendants had no intention of performing the promises.

61. The promises were made by Defendants with the intent to induce Plaintiffs to solicit more than \$30,000 from donors and pay more than \$30,000 to commence construction on the memorial wall, from which Defendants could gain profits and benefits for themselves.

62. Plaintiffs, at the time these promises and representations and failures to disclose and suppression of facts occurred, and at the time Plaintiffs took the actions herein alleged, were ignorant of the falsity of the promises and representations and the existence of the facts which defendant suppressed and failed to disclose. If Plaintiffs had been aware of the falsity of the promises and representations or the existence of the facts suppressed and not disclosed by defendants, plaintiffs would not have proceeded in the manner set forth above.

63. At the time the Defendants made said promises and representations to Plaintiffs, Defendants had no intention of performing the same.

64. Plaintiffs believed these promises and representations made by Defendants, and each of them, to be true and, in reasonable reliance on those promises and representations, Plaintiffs were induced to complete the transactions as set forth above. Plaintiffs would have never solicited or expended the sums herein alleged if Plaintiffs had not relied on those promises and representations by Defendants, and each of them.

65. Plaintiffs, as a proximate result of Defendants' fraud and the facts alleged in this complaint, have been damaged in sums not yet fully ascertained. Plaintiffs will move this Court to amend this complaint to insert the amount of their damage when it is ascertained.

66. Defendants, in doing the things herein alleged, acted intentionally and with malice, oppression and fraud, and Plaintiffs are therefore entitled to an award of exemplary and punitive damages against Defendants.

### SIXTH CAUSE OF ACTION

(Injunctive Relief Against All Defendants)

67. Plaintiffs hereby reallege, replead, and incorporate herein by reference paragraphs 1 through 66, above, as if the same were set forth at length herein.

68. Plaintiffs have been advised that the Defendants have accepted plans for the construction of a memorial from a rival group, headed by Fielding McGehee III and Jim Jones, Jr. which proposes to include the name of *Jim Jones himself* as a victim of the Jonestown Massacre-Suicides. Plaintiffs are further informed, and believe, and thereon allege that grading and foundation work has already been completed for the rival monument, and it will be erected imminently once the rainy season in the Bay Area ceases and permits the ground at the cemetery to dry, so time is of the essence.

69. Defendants have defrauded Plaintiffs of, and misappropriated funds and monies belonging or due to Plaintiffs, and have defrauded Plaintiffs of the use of a sacred site which Plaintiffs have used for years to honor the victims of the Jonestown Massacre-Suicides.

70. Defendants will continue to permit the construction of this rival memorial wall and, unless and until they are enjoined and restrained by Order of this Court, will cause great and irreparable harm to Plaintiffs in that a memorial wall that honors *Jim Jones himself* will be constructed upon the mass grave site, where most of the 305 children that Jim Jones ordered to be murdered are buried.

71. Plaintiffs have no adequate remedy at law in that Defendants will have successfully and irretrievably destroyed any and all of Plaintiffs' relationships with donors to the cause, many of which Plaintiffs will be unable to recover. Plaintiffs have been involved in

1 acquiring donations and funds for the construction of the memorial wall for years, and these  
2 client relationships are unique and hold more than monetary value to Plaintiffs.

3 72. Furthermore, Plaintiffs have no adequate remedy at law for the injury in that  
4 monetary damages cannot adequately compensate Plaintiffs for the loss of the memorial wall site  
5 at Evergreen Cemetery, which site is unique. This is due to several reasons, most notable of  
6 which is that monetary damages, without a restraining of defendants, will be futile in insuring  
7 that the rival wall is not installed and that Plaintiffs' wall is actually installed at the site.

### 8 SEVENTH CAUSE OF ACTION

#### 9 (Declaratory Relief)

10 73. Plaintiffs hereby reallege, replead, and incorporate herein by reference paragraphs  
11 1 through 72, above, as if the same were set forth at length herein.

12 74. An actual controversy has arisen and now exists between Plaintiffs and  
13 Defendants by reason of the acts and omissions herein alleged in that Plaintiffs contend that:  
14 Defendants have approved Plaintiffs' plans for the construction of their memorial wall on  
15 numerous occasions; Plaintiffs are entitled to construct the memorial wall at the agreed-upon  
16 mass grave site that was approved by Defendants on numerous occasions; Plaintiffs have already  
17 expended more than \$30,000 on the construction of the memorial wall; and that Defendants must  
18 comply with their promises and representations to provide the base and setting for a memorial to  
19 be placed at the mass grave site of the victims of the Jonestown Massacre-Suicides and to do  
20 whatever was necessary to help install the memorial wall.

21 75. By reason of the foregoing, Plaintiffs desire a judicial declaration and declaration  
22 of rights as to all matters referred to above.

23 ///

24 ///

25 ///

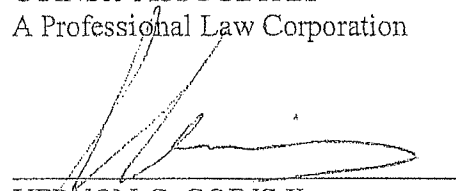
PRAYER FOR RELIEF

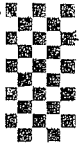
WHEREFORE, Plaintiffs pray for a judgment, relief, decree and order against Defendants, and each of the other defendants named as DOES 1-50, as follows:

1. For special damages in an amount to be proven at trial;
2. For general damages in an amount to be proven at trial;
3. For injunctive relief and orders directed to Defendants, and each of them, requiring them to immediately cease and desist from permitting the New People's Temple from constructing their memorial and requiring Defendants to comply with the terms of their contract with Plaintiffs, and permitting Plaintiffs to construct their memorial wall upon the agreed-upon mass grave site at Evergreen Cemetery;
4. For exemplary and punitive damages in an amount to be proven at trial;
5. For reasonable attorneys' fees incurred in this action;
6. For costs of suit herein incurred; and
7. For such other and further relief that the Court deems reasonable, necessary, and just.

Dated: May 9, 2011

GOINS & ASSOCIATES  
A Professional Law Corporation

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



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**VERIFICATION**

Guyana Tribute Foundation et al. vs. The Evergreen Cemetery Association et al.  
Alameda County Superior Court

I, Jynona Norwood, am an officer, namely the Executive Director, of Guyana Tribute Foundation, a California non-profit corporation. Said corporation is a party in the above entitled proceeding, and I have been authorized to make this verification on its behalf. I have read the foregoing document, COMPLAINT FOR DAMAGES, DECLARATORY AND INJUNCTIVE RELIEF, and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein stated on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and executed on this day in Los Angeles, California.

Dated: 5-9-11

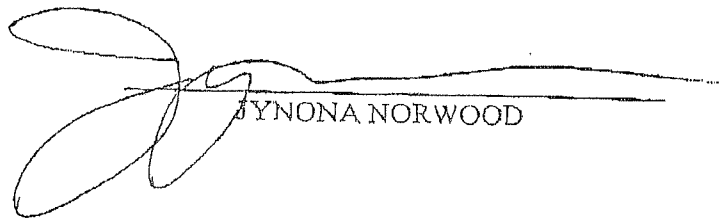
  
JYNONA NORWOOD

EXHIBIT A



# EVERGREEN CEMETERY

CEMETERY • MAUSOLEUM • CREMATORY

6450 CAMDEN • OAKLAND, CALIFORNIA 94605 • (415) 632-1602

September 24, 2002

Guyana Tribute Foundation  
Dr. Jynona M. Norwood, Executive Director  
645 W. Arbor Vitae  
Inglewood, CA 90301

Dear Dr. Norwood:

Evergreen Cemetery Association committed to providing the base and setting for a monument memorial to be set at the site for the victims of the Jonestown massacre, approximately 5 years ago.

This is subject to approval by the Evergreen Cemetery Association Board of Directors as to the design, size, style and height of the memorial.

The Cemetery has to have all monuments, memorials, etc., made of thick enough material so they may be drilled allowing for steel or aluminum rods to prevent tipping or falling and the base of sufficient size to adequately hold the monument/memorial.

Upon submission of the design, length, height, thickness and weight plus the supplier's name, address and phone, we should be able to give rapid approval.

Hopefully, your fund raising campaign will be successful.

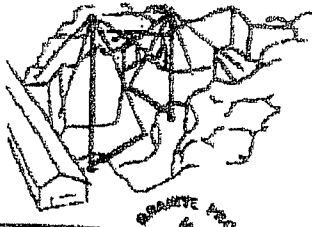
Sincerely,  
EVERGREEN CEMETERY ASSOCIATION

Buck Kamphausen, President

BK:tw



**EXHIBIT B**



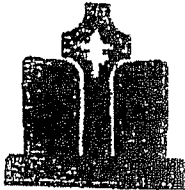
# WHM WILLIS GRANITE PRODUCTS

GRANITE QUARRY - MONUMENT MANUFACTURING  
P.O. BOX 727 900 QUARRY DRIVE  
GRANITE, OKLAHOMA 73547

TELEPHONE: (580)-526-2184 FAX: 580-535-4776 OR TOLL FREE 1-800-522-0119  
WEB SITE [www.willisgranite.com](http://www.willisgranite.com) or E-MAIL [grannet@hprts.net](mailto:grannet@hprts.net)

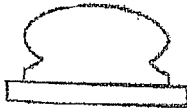
July 25, 2003

Dr. Jynone Norwood  
Mr. Ford  
1-810-458-0599  
810-284-3838 Dr. Norwood's fax  
810-285-8700 Mr. Ford's fax



Price for the JONESTOWN #7 Design.

This design showcases the Heart shaped center by giving a slight dip between the heart and the other monoliths. The text by Maya Angelou would need to go around the heart, this would enable us to place the rest of the names on the wall with just a few names on the panel below the heart. The wall is 26 feet long, with the wall that features the adult names 6 feet. above ground and the heart 7 feet above ground. This is as small as I can go on the heart and still get the childrens names on it. This also limits us to a only 15 inches in length per name line. I would suggest using only first and last names with their age following their name. Example, Morris, Linda-51 yrs. Scarborough, Alex-9 yrs.



The overall cost of the monument with 213 names	\$50,690.00
Crane cost	2,500.00
Installation team/foundation plans/ and misc. expenses	6,000.00
Estimated Total	\$59,190.00

This does not include any cemetery fees, the cost of the foundation or any city work permits. Willis Granite will supply foundation plans for the customer to have the foundation built. Does not include any landscaping or water features or sculptures.

Delivery of the monument will be an additional \$3,000.00 if Willis Granite has to deliver to Oakland, CA.

Sales tax may be added if applicable (a letter of tax exemption would be necessary) and that cost might be \$3,801.75. I will have to ask our accountant on this since it is out of state.

Payments to Willis Granite Products would need to be in 3 phases.

\$28,000.00 Down payment with order.  
\$28,000.00 Pictures of finished work would be sent to customer and payment due before shipping to Oakland, CA  
\$ 3,190.00 Balance due upon delivery and installation.

If you have any questions, please call 1-800-522-0119. We have been having trouble with this line and it is sometimes coming in on our fax line, so if that is not going through please call 1-580-535-2184.

Very truly yours,

Linda Willis Morris, CM, AICA



**EXHIBIT C**

# ***Cherish The Children***

275 Divisadero St. \* San Francisco, CA 94117  
Headquarters: 645 W. Arbor Vitae \* Inglewood, CA 90301 \* (310) 419-3930

## **Founder/President**

Dr. Jynona Norwood  
Guyana Tribute  
Foundation, Cherish the  
Children Project

## **Honorary Committee**

Mayor Willie L. Brown  
Yvonne Brathwaite Burke  
Supervisor

Mayor, Roosevelt Dorn  
Inglewood, CA

Dianne Feinstein  
Senator

Rev. Julius C. Hope  
NAACP Voter Affairs

Rev. Timothy McDonald  
President AAMLC

Rt. Rev. Alexei Smith  
Archdioceses, LA

Mark Ridley Thomas  
Congressman

Diane E. Watson  
Congresswoman

Rev. Mark Whitlock  
FAME Renaissance

## **Advisory Committee**

Bishop H. H. Brooks

Dr. Amos Brown  
SF Housing Commissioner  
Pres. SF, NAACP

Rev. Edgar Boyd  
Bethel AME, SF

Dr. Frank & Hurdis  
Bozeman, Global  
Evangelica Seminary

Senator John Ford

Dick Gregory

Eljihu Harris  
Former Mayor, Oakland

Rev. Arnold W. Howard

Rev. Leonard Jackson,  
Senior Adv. to Mayor L.A.

Rev. Eugene Lumpkin  
Ebenezer Baptist Church

Moses Mayne  
Fmr. Councilman

Rev. James Mc Cray  
Jones United Methodist

Dr. Cecil "Chip" Murray

Gail E. Neira  
S.F. Republican Central  
Committeewoman

Rev. Ed Norwood

Rebecca Pollock

Rev. Dr. Al Sampson

Dr. Aurelious Walker  
True Hope COGIC

Former Speaker Herb J.  
Wesson

Officer Yulanda Williams  
SFPD

March 22, 2007

Jonestown Memorial Wall/Cherishing the  
645 W. Arbor Vitae  
Inglewood, CA. 90301

Evergreen Cemetery  
6450 Camden Ave.  
Oakland, CA. 94612

Dear Mr. Haulman,

It was good to speak with you today and discuss the realization of erecting the Jonestown Memorial Wall to honor the memories of the victims of this horrific tragedy. The families, survivors and loved ones are getting up in age and are passing on and it would be a wonderful and blessed miracle to help us after all of these years memorialize the victims of Jonestown. I will personally be responsible for all future payments and will sign a promissory note on my home in SF to pay off the wall on a payment schedule. These selfless people went to Guyana as pioneers in a new land to build a better world with their children lost their defenseless lives clearly, because of the lies and leadership of Jim Jones.

Our hope is to soon be able to see the names of our loved ones engraved on a permanent memorial and run our fingers across their names in honor of their precious lives. They lived with compassion one for the other and died with dignity. Thank you for all of your help in making this dream become a reality.

## **SUBJECT: JONESTOWN MEMORIAL WALL**

We would like a simple seating garden area as a part of the Memorial at the Oakland Cemetery similar to other memorials. We would like to unveil and dedicate the Jonestown Memorial Wall by November 18, 2007. The design of the wall is on our website. The website address: [www.jones-town.org](http://www.jones-town.org).

## **DESIGN DIMENSIONS:**

This design showcases the Heart shaped center by giving a slight dip between the heart and the other monoliths. The text by Dr. Maya Angelou will go around the heart, with the rest of the names on the Wall with a few names on the panel below the heart. The wall is 36 feet long; with the wall that features the adult names 7 feet above ground and the heart 8 feet above ground. We would like for the names to be readable on black granite. We would like for the date of birth to be next to each name. We do not have all of the DOB's for instance for the babies we will just put 1978. We have approximately 890 names where 276 are children's names to be inscribed on a heart in the center of the wall. It will be 8 inches thick with the heart being made of red granite.

Please call me should you have any additional questions @ 310-459-8599.

Warmest regards,

Dr. Jynona Norwood  
Jonestown Memorial Wall

**EXHIBIT D**

# AMADOR MEMORIAL CO.

Since 1866

4435 Piedmont Ave.  
Oakland, CA 94611  
(510) 652-5147  
FAX (510) 652-5104

Nov. 18, 2007

Dr. Jynona Norwood  
Guyana Tribute Foundation  
Cherish The Children

The memorial will have seven granite ledgers. With all viewable sides polished. Six black pieces five feet by seven feet in size. With one hundred and two adult names per piece. The center piece will be of red granite with a five foot six by five foot tall heart. The heart will have the name of the two hundred and seventy six children.

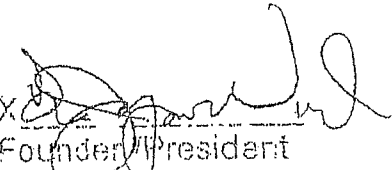
The contract for the Jones Town memorial wall will be \$97,800.00. The first payment due of Nov. 18 will be \$30,000.00. <sup>2007</sup>

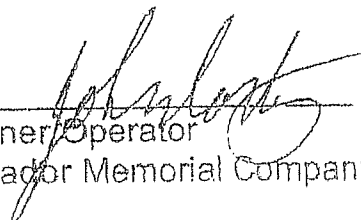
The second payment will be due March/April 2008 for \$33,935.00 when the granite is delivered to our shop. <sup>500</sup>

The third and final payment will be due July/August 2008 when the stone is delivered to Evergreen Cemetery for \$33,935.00.

Dr. Jynona Norwood

John Cortez

X   
\_\_\_\_\_  
Founder/President  
Jones Town Memorial Wall

X   
\_\_\_\_\_  
Owner/Operator  
Amador Memorial Company

**EXHIBIT E**



# EVERGREEN CEMETERY

CEMETERY • MAUSOLEUM • CREMATORY

8450 CAMDEN • OAKLAND, CALIFORNIA 94605 • (510) 882-1602

December 15, 2009

Dr. Lynne Norwood  
P.O. Box 3338  
Hollywood, CA 90078

Dear Dr. Norwood,

In your email of December 2, 2009 there were 3 points which I wish to address directly to clear up any confusion.

- Plans for a future monument wall
- Committees, foundations and/or organizations
- Memorial Services and cemetery visitors

Let me start by addressing the last point first. It is the policies of Evergreen Cemetery Association that the family and friends of persons buried in Evergreen Cemetery all have the equal ability and access to remember and memorialize each loss in their own way. Jonestown survivors may not be unified in the approach, but *all* are welcome to come and pay respects regardless of association, affiliation, or perceived intent.

Further, Evergreen Cemetery has never recognized, nor is it our intention to recognize any particular committee, foundation and/or organization with respects to the Jonestown Peoples Temple grave site within Evergreen Cemetery. If groups of family members and their friends choose to organize for mutual comfort and solidarity in their intention to pay respects to those buried in Evergreen Cemetery that is of course their individual choice. We will make every effort to respect any reasonable request made to us to accommodate the needs of all our guests.

Lastly there is the matter of any proposed memorial wall plans. It has been my position from the very onset of memorial wall conversations, and planning that I would need to approve the design and final concept before green lighting the project. Last year 2 granite panels were unveiled at Evergreen Cemetery bearing the names of some of those victims of the Jonestown Massacre. As they were presented the panels were too large to be placed on or near the current grave site, nor would the expenses be inconsiderable. Any design must be approved in advance, and in writing.

To date no design has received the approval of the Evergreen Cemetery ownership. The obligation of paying for the extensive foundation work, and installation required for any wall has not been agreed upon, while making a pledge of financial support for the memorial wall is not our intent to incur massive and open ended expenses involved in the erecting of such a wall.

Any plans then for a wall should take in to account these basic facts

- Placement (the current marker can not be moved)
- Size (the area must be able to accommodate the wall)
- Expense (foundation, installation, and future use restrictions)
- Consensus (a majority of family members with loved one's buried in Evergreen Cemetery's Jonestown site should be in agreement)

As always I wish to provide a safe, clean and peaceful location to all the families who have entrusted Evergreen Cemetery with the great honor of lying in rest their loved ones. In pursuit of that goal I will continue to work with all parties involved to try and build consensus for a Jonestown Memorial Wall; however my part can only move forward after a unified, funded and practical proposal is presented and approved.

Sincerely

Buck Kamphausen  
President  
Evergreen Cemetery Association



**EXHIBIT B**

1  
2  
3 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
4 IN AND FOR THE COUNTY OF ALAMEDA  
5

6 Guyana Tribute Foundation

7 Plaintiff

Case No: RG11-575036

8 vs.

9 The Evergreen Cemetery Assn, et al  
10 Defendant  
11

12  
13 This Court wishes to comment at the outset that he regrets the "pinpoint" nature of the  
14 decision making process here being necessarily limited only to specific facts and specific legal  
15 conclusions between these two parties while otherwise indirectly dealing with the interests of  
16 hundreds of others not before the Court whose lives were forever changed on that fateful and  
17 tragic day more than thirty two years ago.  
18

19 The Court also wishes to acknowledge what he perceives to be the sincerity, legitimate  
20 concern about and dedication to the cause of establishing a tangible, symbolic memorial to the  
21 hundreds of victims involved, demonstrated by each party here, notwithstanding their  
22 disagreements about the effect of the path to, the style and content of and what to do with the  
23 now completed Jonestown Memorial at Evergreen Cemetery.  
24

25 As related in open court, this Court was impressed both with Dr. Norwood's passionate  
26 and tireless efforts on behalf of the victims of Jonestown and Evergreen Cemetery's decades

5/26/11

1 long willingness to consider a memorial on its property in memory of them.

2       The fundamental problem here is that plaintiff presents this court with the Hobson's  
3 choice of further delaying any symbolic memorial dedicated to these victims or preventing the  
4 public from gathering to view the now completed Jonestown Memorial monument. Either result  
5 would continue to expose the victims and families of Jonestown to a continuing paralytic state of  
6 inaction. The Court notes that it has taken more than thirty two years to produce the memorial  
7 now under consideration and for which an unveiling is scheduled this upcoming weekend.

8       In deciding whether to issue injunctive relief, a Court necessarily weighs two interrelated  
9 factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the  
10 relative harm to the parties from the issuance or non issuance of the injunction requested.  
11

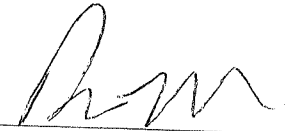
12       Based upon the factual record here, there are significant questions as to whether there was  
13 a meeting of the minds here as to the formation of a contract between these parties; whether there  
14 could be any detrimental reliance by Dr. Norwood based upon the lack of success of her  
15 fundraising efforts largely occasioned by the nature of our national economy (from 2007 forward)  
16 and as a matter of equitable principles, the extended period of time and delay in bringing forth  
17 her vision of an appropriate memorial while others pursued and perfected their vision of the  
18 same.  
19

20       The Court also believes that in weighing the effects of the injunctive relief requested at  
21 this time substantial harm would inure to the defendant and others relative to the cost of the  
22 memorial already constructed and more importantly, to the sacrifice of the rights of those who  
23 would gather to remember and honor the victims of Jonestown this Memorial Day weekend and  
24 other days, pending completion of this litigation.  
25  
26

1 The Motion of plaintiff for Injunctive Relief is denied.

2 A Settlement Conference in this matter will be set at 4p.m. in May 31, 2011. Counsel  
3 are to contact the Court by telephone at that time.  
4  
5  
6

7  
8 Dated: 5/26/11



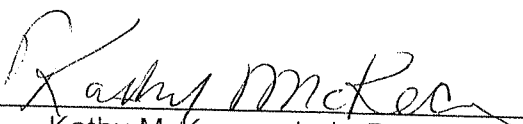
Robert D. McGuinness  
Judge of the Superior Court

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct. I am the clerk in Dept. 22 of the Superior Court of California, County of Alameda and not a party to this cause. I served the attached Order in Case Number RG11-575036, by faxing to the numbers stated below, and by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Dated: 5/26/11

Pat Sweeten  
Executive Officer/Clerk of the Superior Court

By   
Kathy McKean, clerk, Dept. 22

Vernon C. Goins II  
Goins & Associates  
1330 Broadway, #1530  
Oakland, CA 94612  
Fax: (510) 893-4228

Steven H. Gurnee  
Gurnee & Daniels, LLP  
2240 Douglas Blvd., #150  
Roseville, CA 95661  
(916) 797-3131

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 EVERGREEN CEMETERY ASSOCIATION, BUCK KAMPHAUSEN AND  
RON HAULMAN'S NOTICE OF DEMURRER TO COMPLAINT; DEMURRER;  
MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION IN SUPPORT**

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 June 24, 2011, at Roseville, California.

  
CANDACE NELSON