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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

WALTER J. ROSALES, LOUIS AYHULE) Civ. No.
GOMEZ, ESTATE OF KAREN TOGGERY,)
ESTATE OF HELEN CUERRO, ESTATE)
OF WALTER ROSALES' UNNAMED) COMPLAINT DEMANDING TRIAL BY
BROTHER, ESTATE OF DEAN ROSALES,) JURY
ESTATE OF MARIE TOGGERY, ESTATE)
OF MATTHEW TOGGERY, APRIL)
LOUISE PALMER, and ELISA WELMAS)

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF)
INTERIOR; DAVID BERNHARDT,)
Secretary of the Interior; AMY DUTSCHKE,)
Regional Director, BIA; JOHN RYDZIK,)
Chief, Environmental Division, BIA; AND)
DOES 1-10,)

Defendants.

NATURE OF THE ACTION

1. Defendants jointly facilitated the unconstitutional and illegal disinterment and removal of Plaintiffs, WALTER ROSALES and KAREN TOGGERY families' human remains and funerary objects from property owned and controlled by the federal government in Jamul, and the dumping of those remains in a land fill, without Plaintiffs' consent and just compensation. The Rosales and Toggery families are lineal descendants of the Native American families that have lived, died, and been interred on the property now owned and controlled by the federal government in Jamul, California, for more than 100 years. During that time, their ancestors have inhumed, interred and deposited hundreds of their deceased family members' human remains, and items associated with their human remains, including, but not limited to grave goods, cultural items, associated funerary

objects, sacred objects, and objects of cultural patrimony, as defined in the Native American Grave Protection Act ("NAGPRA"), 25 U.S.C. 3001-2, 43 C.F.R. 10.1 et seq., Cal. Pub. Res. C. 5097-5097.994, and Health & Safety C. 7000 et seq., in burial sites below, on and above the property now owned and controlled by the federal government in Jamul. These burial sites include full bodily inhumations and the deposit of cremated human remains and funerary objects, including the decedents' hair, clothing and personal property, according to their long held religious beliefs as to the proper disposition of their families' remains.

PARTIES

2. Plaintiff, WALTER J. ROSALES, is a Native American resident of San Diego County of one-half or more degree of California Indian blood, whose families had lived on the property owned and controlled by the federal government in Jamul, since the late 1800's.

3. Plaintiff, WALTER J. ROSALES, is also a lineal descendant and son of Native American, Helen Cuero, the personal representative of his mother's estate, the ESTATE OF HELEN CUERRO, his son's estate, the ESTATE OF DEAN ROSALES, his unnamed brother's estate, the ESTATE OF WALTER ROSALES' UNNAMED BROTHER, and owns and controls their human remains and Native American cultural items, that were interred in burial sites below, on, and above the property owned and controlled by the federal government, as provided for in NAGPRA, 25 U.S.C. §3001 et seq., Cal. Pub. Res. C.(P.R.C.) §§5097.9-5097.99 and Cal.Health & Safety C. (H.S.C.) §§7001 and 7100.

4. Plaintiff, LOUIS AYHULE GOMEZ is the son and lineal descendant of Native American, KAREN TOGGERY, and the personal representative of his mother's estate, the ESTATE OF KAREN TOGGERY, and her mother's estate, the ESTATE OF MARIE TOGGERY, as well as the personal representative of his brother's estate, the ESTATE OF MATTHEW TOGGERY, and owns and controls their human remains and Native American cultural items, that were interred in burial sites below, on, and above the property owned and controlled by the federal government, as provided for in NAGPRA, P.R.C. 5097.9-5097.99 and Health & Safety C. 7001 and 7100.

5. Plaintiff APRIL LOUISE PALMER, is the sister of DEAN ROSALES, and the daughter of WALTER ROSALES, and the granddaughter of HELEN CUERO, and a resident of Riverside

County.

6. Plaintiff ELISA WELMAS is the mother of DEAN ROSALES, and owns his human remains and funerary objects, and is the former wife of WALTER ROSALES, and the daughter-in-law of HELEN CUERO, and a resident of Riverside County.

7. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR “conserves and manages the Nation’s natural resources and cultural heritage for the benefit and enjoyment of the American people... and honors the Nation’s trust responsibilities and special commitments to American Indians.”

8. Defendant DAVID BERNHARDT is the current Secretary of the Interior, and supervisor of the BUREAU OF INDIAN AFFAIRS (BIA), and its Regional Directors.

9. Defendant AMY DUTSCHKE is Regional Director for the Pacific Region of the Bureau of Indian Affairs, (BIA), in Sacramento, California, and is the principle land manager of the property owned and controlled by the federal government in Jamul, responsible for the government’s compliance with the U.S. and California Constitutions, Native American Graves Protection Act (NAGPRA), NEPA, Cal. Public Resources Code (P.R.C.), Cal. Health & Safety Code (H.S.C.). and Penal C., on that property to which the United States holds title.

10. Defendant JOHN RYDZIK is the Chief of the Environmental Division of the BIA in Sacramento, California, and is the principal environmental land manager responsible for the government’s compliance with the U.S. and California Constitutions, NAGPRA, NEPA, P.R.C. H.S.C., and Penal C., on the government’s property to which the United States holds title.

11. These individual federal Defendants are being sued both in their official and personal capacities for final agency actions, decisions and acts which failed to stop the disinterment and removal of Plaintiffs’ families human remains and funerary objects from property owned and controlled by the federal government in Jamul in violation of federal and state law. Each individual Defendant has acted, or threatened to act, under the color of federal governmental authority to the injury of Plaintiffs in violation of federal and state law and in excess of federal limitations upon their power and authority, as allowed in *Bivens v. Six Unknown Named Agents (Bivens)*, 403 U.S. 388 (1971). For any acts causing injury to the Plaintiffs that are within the scope of the individual federal

1 Defendants' authority, the United States is automatically substituted as the Defendant, pursuant to
 2 the Westfall Act, 28 U.S.C. 2679.

3 12. The true names and capacities, whether individual, corporate, associate or otherwise, of
 4 DOES 1-10, are unknown to Plaintiffs at this time, who, therefore, sue said Defendants by said
 5 fictitious names. Plaintiffs are informed and believe, and based thereon allege, that DOES 1-10 are
 6 responsible in some measure for the actions, events and happenings herein alleged, and was the legal
 7 cause of injury and damages to the Plaintiffs as herein alleged, and thereby causing irreparable
 8 damage to Native American human remains and funerary objects, by knowingly and/or willfully
 9 aiding and abetting, mutilating, disinterring, wantonly disturbing, excavating and willfully removing
 10 them to state property without authority of law. When the true names and capacities of said
 11 Defendants are ascertained by Plaintiffs, Plaintiffs will seek leave to amend this complaint to insert
 12 their true names and capacities, and will serve said Doe Defendants when they become known.

13 13. At all times herein mentioned, Defendants, and each of them, were the agent, co-conspirator,
 14 employee and/or joint venturer of their co-defendants, and were acting within the course and scope
 15 of such an association in fact, agency, conspiracy, employment and/or joint venture, with the
 16 permission and consent of their co-defendants and defendants. Furthermore, that at all times herein
 17 mentioned, Defendants, while acting as principals, expressly directed, consented to, approved,
 18 affirmed and ratified each and every action taken by the other herein alleged. Each reference to one
 19 defendant is also a reference to each and every other defendant. Plaintiffs are informed and believe
 20 and thereon allege that the defendants, and each of them, conspired with each other, to engage in acts
 21 in furtherance of a conspiracy to wrongfully and illegally violate the Plaintiffs' rights, rendering each
 22 of the defendants jointly and severally liable for all resulting and irreparable personal injury and
 23 damage to Plaintiffs.

24 **JURISDICTION AND VENUE**

25 14. The federal question, pendent and supplemental jurisdiction of this Court is invoked
 26 pursuant to the U.S. and California Constitutions, 5 U.S.C. §§701 -706, 16 U.S.C. §470aa et seq.,
 27 18 U.S.C. §§ 1151-53, 1162, and 1964, 25 U.S.C. §§3001-13, 5108 et seq., 43 C.F.R. 10.1-17, 28
 28 U.S.C. §§ 1331, 1343, 1346, 1360, 1361, 2201-2202, and 2674, 42 U.S.C. §§1983, 1996, 2000bb-1,

2000cc, and 4321-61, the U.S. “trust relationship” with Indian citizens as held in *U.S. v. Creek Nation*, 295 U.S. 103, 109-10 (1935), *Seminole Nation v. U. S.*, 316 U.S. 286, 295-300 (1942), *Mitchell v. United States*, (*Mitchell II*) 463 U.S. 206 (1983), *Minn. Chippewa Tribe v. U.S.*, 14 Cl. Ct. 116, 130 (1987), *Coast Indian Cmty. v. U.S.*, 550 F2d 639, 652 (Ct. Cl. 1977), and the liability of federal employees acting in their personal capacity as held in *Bivens*.

15. Plaintiffs’ claims also arise under California common and statutory law, as allowed by 18 U.S.C. §§ 1151, 1162, 1964, and 28 U.S.C. 1360, to the same extent that any California court has jurisdiction over other civil and criminal causes of action, and those laws of California that are of general application to private persons or private property shall have the same force and effect, as they have elsewhere within California, pursuant to 25 C.F.R. 1.4(b), and the DOI July 2, 1965 Secretarial Order, 30 F.R. 8722.

16. The Defendants do not have immunity from suit, and remain liable for the violations of the Plaintiffs’ rights under the U.S. and California Constitutions. The United States waived sovereign immunity from suit under 5 U.S.C. §§701-706, 25 U.S.C. 3001 *et seq.*, 42 C.F.R. 10.1-17, 28 U.S.C. §§1346(a)(2), 2201(a), 2674, 42 U.S.C. §§1983, 1996, 2000bb-1, 2000cc, and 4321-61.

17. An actual case and controversy exists among the parties, warranting the Court’s declaration pursuant to 28 U.S.C. § 2201 of the rights, remedies and relations of the parties with respect to the Plaintiffs’ ownership, control and disposition of their families’ human remains and funerary objects in Jamul.

18. All applicable state and federal administrative remedies have been exhausted prior to initiating this lawsuit against the Defendants as required by 5 U.S.C. §704 and 28 U.S.C. §2674 *et seq.*

19. The federal Defendants took final agency action by failing to stop the illegal disinterment and removal of Plaintiffs’ families remains without their consent and failed to complete the required permit process and written plans of action, mediation, consultation and notification of Plaintiffs, and required NEPA review for the disinterment and removal of Plaintiffs’ families’ remains and funerary objects from the property owned and controlled by the federal government. These final agency actions are arbitrary, capricious and otherwise not in accord with the law.

20. Venue is proper in the District Court for the Eastern District of California under 28 U.S.C. §§1391(b) and (e) and 5 U.S.C. § 703, because at least one defendant resides or has an office in this judicial district, and because a substantial portion of the events giving rise to the Plaintiffs' claims occurred in this district.

FIRST CLAIM FOR RELIEF

(Unconstitutional and Illegal Disinterment and Removal of Plaintiffs' Families' Remains against All Defendants)

21. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 20, inclusive, of this complaint as though fully set forth herein.

22. More than twenty eyewitnesses have testified to Plaintiffs' families' interment on the property owned and controlled by the federal government in Jamul, and that during 2014, Plaintiffs' families' human remains and funerary objects were illegally disinterred, removed and dumped in a land fill, without the knowledge and consent of Plaintiffs, and without the notice, permits, written plans, mediation, consultation, and just compensation required by the state and federal NAGPRA laws. This testimony is corroborated by the Counties of San Diego and Riverside Death Certificates, and the Cal. Dept. of Health Permits for Disposition of Human Remains on the property owned and controlled by the federal government in Jamul. 23. Before any excavation of the property owned and controlled by the federal government, Plaintiffs continuously and repeatedly put all persons, including the Defendants, the California Attorney General, the Native American Heritage Commission, the S.D. County Coroner, the Calif. Victim Compensation and Government Claims Board, and the U.S. Department of the Interior and B.I.A., on written notice of:

(A) Plaintiffs' ownership and control, as lineal descendants, of their deceased Native American family members' human remains, and funerary objects that for more than 100 years have been inhumed, interred and deposited in burial sites below, on and above, the property owned and controlled by the federal government in Jamul on which they lived; and

(B) Plaintiffs' religious preference, as lineal descendants, to leave their families' human remains and funerary objects in place, as required by NAGPRA, 25 U.S.C. 3002, and its regulations at 43 C.F.R. 10.1-10.17, P.R.C. 5097.98, and the CEQA Guidelines, 14 C.C. R. 15126.4 (b)(3).

24. On March 10, 2014, the California Victim Compensation and Government Claims Board received Plaintiffs claims, and on March 11, 2014, notified Plaintiffs that the Board rejected Plaintiffs' claims and found "that the court system is the appropriate means for resolution of these claims." Similarly, on February 11, 2015, the federal Defendants received Plaintiffs' written claims, and on September 23, 2015, they received Plaintiffs' Standard Form 95, making a \$4 million demand for damages, and which claims remained without final disposition, and were therefore deemed denied, on February 23, 2016, pursuant to the presentment procedures in 28 U.S.C 2675.

25. NAGPRA, 25 U.S.C. §§3009 and 3013, 25 C.F.R. 1.4(b), 43 C.F.R. 10.1(b)(3), 10.15, and 10.17, along with H.S.C. §8012 and P.R.C. §5097.95, provide that all state and federal government agencies shall cooperate and coordinate in carrying out their duties under the U.S. and California Constitutions, NAGPRA, H.S.C. P.R.C., and Penal Codes, and save these remedies to the Plaintiffs without preemption, and create a private right of action in Plaintiffs for their violation.

26. The Defendants owe duties to the Plaintiffs to exercise reasonable care to enforce the coordinated, cumulative and combined protections of Plaintiffs' families' remains in the U.S. Constitution, particularly Amend. 1, 4, 5, and 14, NAGPRA, 25 U.S.C. §§3001-2, 3005, 3009, 3013, 43 C.F.R. 10.1-17, the American Indian Religious Freedom Act ("AIRFA"), 42 U.S.C. §1996, the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. §2000bb-1, the Religious Land Use and Institutionalized Persons Act, ("RLUIPA"), 42 U.S.C. §2000cc, the California Constitution, Article I, Sections 1, 3, 4, 7, 13, 19, 24 and 31, H.S.C. §§7050.5, 7052, 7054, 7054.6, 7054.7, 7055, 7500, 8012, P.R.C. §§5097.9-5097.99, and Penal Code §§487 and 622.5, and owe duties not to violate the Plaintiffs' civil rights, due to their age, ancestry and their political and religious beliefs, all of which compel enforcement of these laws against any third parties who are allowing the mutilation, desecration, disinterment, excavation and removal of Plaintiffs' families' human remains and funerary objects from the property owned and controlled by the federal government in Jamul, without Plaintiffs' consent and just compensation.

27. The federal Defendants also owe Plaintiffs the highest fiduciary and common law trust duty, and general trust responsibility for management of Indian affairs and particularly Native American human remains and funerary objects, based upon the comprehensive nature of Title 25 of

1 the United States Code, particularly NAGPRA and its regulations, and the fact that the federal
 2 Defendants control, supervise and manage the land below, on and above which Plaintiffs' families'
 3 remains were interred, as held in *Creek Nation*, *Seminole Nation*, and *Mitchell II*.

4 28. Defendants both intentionally and negligently breached these duties to Plaintiffs by failing
 5 to protect the interests of, and prevent personal injury to, the Plaintiffs, by:

6 (A) facilitating the intentional excavation, commingling and removal of Plaintiffs' families'
 7 human remains and funerary objects from the property owned and controlled by the federal
 8 government in Jamul to a land fill, without the Plaintiffs' consent, just compensation, required
 9 permits, written plans of action, notice to the coroner, from the land owners and managers, or court
 10 order in violation of 16 U.S.C. §740aa and cc, 18 U.S.C. §§1957, 1962, 25 U.S.C. §3002(c), 43
 11 C.F.R. 10.3(b)(1), H.S.C. §§7050.5, 7052, 7054, 7054.6, 7054.7, 7055, 7500, 8558, 8560, 8580,
 12 103060, P.R.C. §§5097.5, 5097.7, 5097.98, 5097.99, and Penal Code §§457 and 622.5;

13 (B) failing to compel the landowner to cease all activity in the area of the identification of
 14 Plaintiffs' families' human remains and funerary objects in any state of inhumation, cremation,
 15 decomposition or skeletal completeness on property owned and controlled by the federal government
 16 in Jamul, and failing to make a reasonable effort to certify, protect "in place," stabilize and cover the
 17 items identified before resuming such activity, and failing to provide notice to, consultation and
 18 mediation with, and a written plan of action for disposition and repatriation to, and obtain written
 19 consent from, the lineal descendants, including the generally accepted cultural standards, traditional
 20 treatment, care, and handling, place and manner of delivery of Plaintiffs' families' human remains
 21 and funerary objects, as required by 25 U.S.C. 3002(d) and 43 C.F.R. 10.2(f), 10.2(g)(4), 10.3(b),
 22 10.4(b), 10.4(c), (d) and (e), 10.5, 10.6 and 10.10, P.R.C. §§5097.94, 5097.98, 5097.99, 5097.993,
 23 21083, 14 Cal. Code Regs. 15064.5(e) and 15126.4(b)(3) ;

24 (C) failing to obtain the required permits from the Deputy Commissioner of Indian Affairs
 25 at the BIA, the County coroner, and Superior Court, as required by 16 U.S.C. 470aa and cc, 43
 26 C.F.R. 10.3(b) and 10.4(d)(1)(v), H.S.C. §§7054.6, 7055, 7500, 8580, and 103060, and P.R.C.
 27 §§5097.98-.99;

(D) failing to transfer physical custody of the human remains and funerary objects, to the lineal descendants, following traditional customs and practices, and failing to publish the required notices of the proposed disposition in a newspaper of general circulation in the area in which they were identified, and send a copy of the notice to the Manager of the National NAGPRA Program, as required by 43 C.F.R. 10.6; (e) failing to follow the directives of the National Center for Cultural Resources and the National NAGPRA Program and the lineal descendants' preferences to preserve the Native American human remains and funerary objects "in place;"

(F) failing to reinter Plaintiffs' families' remains with appropriate dignity in a location not subject to further and future subsurface disturbance, as required by P.R.C. §5097.98(e) and (f);

(G) failing to repatriate the lineal descendants' human remains and funerary objects as they have requested, as required by 25 U.S.C. §3005, 43 C.F.R. 10.10, and H.S.C. §§8011, 8015-16, P.R.C. §5097.991, and failing to publish notice of such repatriation, as is regularly published in the Federal Register, see for e.g., 64 Fed. Reg. 56,219, 69 Fed. Reg. 4315, 69 Fed. Reg. 4316.

29. The federal Defendants have taken the following final agency actions, which are beyond the scope of the Secretary's authority, unsupported by substantial evidence, an abuse of discretion, arbitrary, capricious, null and void, and otherwise not in accord with the law: they failed to take action, and breached their fiduciary trust duty, to prevent the illegal disinterment and removal of Plaintiffs' families' human remains and funerary objects from the property owned and controlled by the federal government in Jamul, without complying with the NAGPRA regulations, the NEPA required Supplemental Environmental Impact Statement (SEIS) and Plaintiffs' consent.

30. The federal Defendants thereby also violated Plaintiffs' Constitutional rights to the ownership, control and free exercise of the right to bury their families' remains according to their religion, which requires that their dead not be disinterred, trucked and dumped in a land fill. Defendants thereby interfered with the Plaintiffs' ability to observe the commands and practices of their faith, when these Defendants allowed the disinterment of Plaintiffs' families' remains in violation of the commands of their religion not to allow them to be so desecrated. Defendants thereby gave a forbidden preference to the religious belief of those individuals who believed in the disinterment and removal of Plaintiffs' remains and funerary objects without the Plaintiffs' consent.

31. These acts also substantially burdened Plaintiffs' exercise of religion in violation of AIRFA, 42 U.S.C. §1966, RFRA, 42 U.S.C. §2000bb-1, and RLUIPA, 42 U.S.C. §2000cc, without furtherance of a compelling governmental interest in the least restrictive means of furthering any compelling governmental interest. They also violated H.S.C. §§8558, 8560, 8580, and P.R.C. §§5097.9, 5097.94, 5097.97, by interfering with the free expression and exercise of Native American religion, failing to investigate Plaintiffs' claims that a sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property has been irreparably damaged, and violated H.S.C. 8301.5(d), by not keeping the graves and surrounding grounds tended, adorned, and embellished according to the desires and beliefs of the decedent's family. There is no clear and convincing evidence that the public interest and necessity require otherwise.

32. The federal Defendants thereby also deprived Plaintiffs of their exclusive personal property rights to possess, control, dispose, and prevent the disinterment, removal and violation of their families' remains, without due process of law required by the U.S. and California Constitutions, when the federal Defendants allowed them to be dug up, trucked and dumped in a land fill without Plaintiffs' consent, a pre-deprivation trial, and just compensation.

33. These acts and final agency actions have caused and resulted in the illegal desecration, disinterment, excavation, and removal of the Plaintiffs' families' human remains and funerary objects from the property owned and controlled by the federal government in Jamul and dumping them in a land fill without Plaintiffs' knowledge and consent, thereby causing severe personal, physical and bodily injury, including severe emotional distress, and irreparable damage to the Plaintiffs and their personal property and Native American human remains and funerary objects, each in an amount in excess of \$4 million, subject to further proof at trial.

34. These acts have also caused substantial emotional distress and personal injury and irreparable damage to, and interference with, the Plaintiffs' rights to free expression and exercise of Native American religion as provided in the United States and the California Constitutions, and has caused and shall further cause severe and irreparable damage to the Plaintiffs' Native American sanctified cemetery, place of worship, religious or ceremonial site, and sacred shrines, in an amount in excess of \$4 million, subject to further proof at trial.

35. Such acts will also unduly interfere with the Plaintiffs' civil rights to due process and equal protection of the laws. Plaintiffs will be greatly and irreparably damaged by reason of Defendants' infringement and violation of these civil rights, and unless Defendants are enjoined by this court, said acts will further violate Plaintiffs' civil rights, and further irreparably harm the Plaintiffs. Plaintiffs have therefore suffered general and consequential damages proximately caused by the Defendants' in an amount in excess of \$4 million, subject to proof at the time of trial.

SECOND CLAIM FOR RELIEF

(Conversion against All Defendants)

36. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 35, inclusive, of this complaint as though fully set forth herein.

37. Defendants have, while in custody and control of Plaintiffs' personal property, negligently and/or intentionally, and unlawfully allowed the disinterment, removal, possession and conversion to others own use, personal property which Plaintiffs own and have a right to use, occupy and quietly enjoy, without the knowledge, permission or consent of the Plaintiffs, including, but not limited to, the Plaintiffs' families' human remains and funerary objects.

38. Plaintiffs have demanded that Defendants stop the conversion of said personal property of Plaintiffs, but Defendants and each of them, have refused and continue to refuse to stop the conversion of said personal property.

39. As a result of Defendants' wrongful conversion of Plaintiffs' property, Plaintiffs have suffered both general and consequential damages in an amount in excess of the jurisdiction of this court, subject to proof at trial, believed to be in excess of \$4 million, including but not limited to the damage to reputation, property, business, trade, profession and occupation, physical and bodily injury, including but not limited to, anxiety, humiliation, shock, emotional distress, mental anguish and related mental and physical injury, and any and all attorneys' fees, costs and expenses incurred in prosecuting this action.

THIRD CLAIM FOR RELIEF

(For Declaratory and Injunctive Relief against all Defendants)

40. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 39, inclusive, of this complaint as though fully set forth herein.

41. Plaintiffs are the lineal descendants' with ownership and control of their families' human remains and funerary objects and cultural items, as set forth in NAGPRA, 25 U.S.C. §3001 et seq., 43 C.F.R. 10.1-17, P.R.C. §§5097.9-5097.99, and H.S.C. §7100.

42. Plaintiffs' preferences are to preserve their families' Native American human remains and associated cultural items "in place," as required by, NAGPRA, 25 U.S.C. §3001 et seq., 43 C.F.R. 10.1-17, P.R.C. §§5097.9-5097.99, and the CEQA Guidelines, 14 Cal. Code Regs. 15126.4 (b)(3).

43. Plaintiffs are therefore entitled to:

(A) a written plan of action specifically including Plaintiffs' ownership, custody and control of, and the kind of traditional and planned treatment, care and handling of, and the disposition and repatriation of, any of their human remains and funerary objects as required by 25 U.S.C. 3002(d) and 43 C.F.R. 10.2(f), 10.2(g)(4), 10.3(b), 10.4(b), 10.4(c), (d) and (e), 10.5, 10.6 and 10.10, P.R.C. §§5097.94, 5097.98, 5097.99, 5097.993, 21803, and 14 Cal. Code Regs. 15064.5(e) and 15126.4(b)(3);

(B) transfer of custody to Plaintiffs any of their Native American human remains and funerary objects that have been disturbed, excavated and otherwise removed from where they were originally interred, as required by NAGPRA, 25 U.S.C. §3001 et seq., and 43 C.F.R. 10.6, and P.R.C. §5097.98;

(C) repatriation of Plaintiffs' families' Native American human remains and funerary objects that have been disturbed, excavated and otherwise removed from where they were originally interred, as required by 25 U.S.C. §3005, 43 C.F.R. 10.10, and H.S.C. §§8011, 8015-16, P.R.C. §§5097.98, 5097.991; and

(D) prevention of further disturbance of Plaintiffs' human remains and funerary objects until the Plaintiffs' Native American human remains and funerary objects are preserved "in place," and that any items associated with the human remains that are placed or buried with the Native

American human remains are to be treated in the same manner as the remains, as required by 25 U.S.C. §3002(d) and 43 C.F.R. 10.2(f), 10.2(g)(4), 10.3(b), 10.4(b), 10.4(c), (d) and (e), 10.5, 10.6 and 10.10, H.S.C. §7050.5, P.R.C. §§5097.9, 5097.94, 5097.98, 5097.99, 5097.993, 21803, and 14 Cal. Code Regs. 15064.5(e) and 15126.4(b)(3).

44. An actual controversy has arisen and now exists between Plaintiffs and Defendants, within the meaning of 28 U.S.C. §2201, and an actual case and controversy under Article III of the United States Constitution, regarding their respective rights, duties and obligations in that Plaintiffs contend that Defendants are liable to Plaintiffs for the Constitutional, statutory, contractual, and tortious personal injuries and deprivations of their civil rights alleged herein, and defendants deny such liability to Plaintiffs.

45. Plaintiffs desire a judicial determination of the respective rights of Plaintiffs and Defendants.

46. Such a declaration is necessary and proper at this time so that the parties may ascertain their rights and duties with respect to each other.

WHEREFORE Plaintiffs pray for judgment as follows:

1. General, compensatory, actual and treble damages according to proof;

2. That the Defendants, and their officers, agents, servants, employees and all persons in active concert with them, or any of them, be ordered, as follows:

(A) Defendants shall provide a written plan of action to Plaintiffs specifically including Plaintiffs' ownership, custody and control of, and the kind of traditional and planned treatment, care and handling of, and the disposition and repatriation of, any of their human remains and funerary objects, as required by 25 U.S.C. 3002(d) and 43 C.F.R. 10.2-10.10, P.R.C. §§5097.94, 5097.98, 5097.99, 5097.993, 21803, and 14 Cal. Code Regs. 15064.5(e) and 15126.4(b)(3);

(B) Defendants shall transfer to Plaintiffs, custody of Plaintiffs' Native American human remains and funerary objects, that have been disinterred, disturbed, excavated and otherwise removed from where they were originally interred, as required by NAGPRA, 25 U.S.C. 3001 et seq., 43 C.F.R. 10.6, and P.R.C. §5097.98;

(C) Defendants to the extent practical, shall repatriate Plaintiffs' families' Native American human remains and funerary objects that have been disinterred, disturbed, excavated and

1 otherwise removed from where they were originally interred, as practically as possible and as
2 required by 25 U.S.C. §3005, 43 C.F.R. 10.10, and H.S.C. §§8011, 8015-16, P.R.C. §§5097.98,
3 5097.991;

4 3. That Plaintiffs be awarded punitive damages;

5 4. That Plaintiffs be awarded their reasonable attorneys' fees, costs, and expenses in this
6 action under Code of Civil Procedure section 1021.5 and 18 U.S.C. 1964;

7 5. That Plaintiffs be awarded their costs and such other and further equitable and legal
8 relief as this court may deem just and proper.

9 **JURY DEMAND**

10 Plaintiffs hereby demand trial by jury.

11 Dated: March 6, 2020

WEBB & CAREY

12 /s/Patrick D. Webb
13 Patrick D. Webb
14 Attorneys for Plaintiffs
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