

whose tribal reservation is located in Hoopa California. At the time of the negligent acts and omissions that resulted in bodily injuries to Matthew Mitchell, the Hoopa Valley Tribe was engaging in activities in Texas through the operation of its program known as the AMERICORPS HOOPA TRIBAL CIVILIAN COMMUNITY CORPS.

II.

Jurisdiction

2.1. This lawsuit encompasses claims for bodily injuries brought by a citizen of the State of Texas, Matthew Mitchell, against a citizen of the State of California, Orico Bailey. The amount in controversy is well in excess of Seventy-Five Thousand Dollars (\$75,000.00). Jurisdiction of the Plaintiff's action against Orico Bailey is conferred on this Court by 28 U.S.C. § 1332.

2.2 The Hoopa Valley Tribe is located in the State of California, but said Hoopa Valley Tribe is not a citizen of any State. Jurisdiction of the Plaintiff's action against the Hoopa Valley Tribe is conferred on this Court by 28 U.S.C. § 1367. This Court has supplemental jurisdiction over the claims Plaintiff is asserting against the Hoopa Valley Tribe because those claims are so related to the bodily injury claims Plaintiff is asserting against Orico Bailey that they clearly form part of the same case or controversy under Article III of the United States Constitution. The claims Matthew Mitchell is asserting against the Hoopa Valley Tribe do not predominate over the claims Plaintiff is asserting against Orico Bailey.

2.3 The claims Plaintiff is asserting against Orico Bailey and the Hoopa Valley Tribe are part of the same controversy and should be tried together in a single forum.

III.

Service of Process

3.1 Defendant **ORICO BAILEY** may be served with process at his residence, **1062 Shoemaker Rd., Hoopa, CA 95546.**

3.2 Defendant **HOOPA VALLEY TRIBE** may be served with process by serving copies of the Summons and Plaintiff's Original Complaint on the Hoopa Valley Tribe's **Chairman, RYAN JACKSON**, at the Hoopa Valley Tribe's headquarters, **11860 State Highway 96, Hoopa, California 95546.**

IV.

Venue

4.1 Venue of this action is proper in the United States District Court for the Western District of Texas pursuant to 28 U.S.C. § 1391(b)(2) since a substantial part of the events giving rise to Plaintiff's claims occurred in the Western District of Texas.

V.

Facts and General Allegations

5.1 Matthew Mitchell is a fireman employed by the City of San Antonio Fire Department.

5.2 On June 20, 2015, Matthew Mitchell and two fellow firemen traveled to Wimberley, Texas to assist with disaster relief efforts following massive flooding of the Blanco River that had occurred on May 25 and 26, 2015. The flooding uprooted trees along the riverbank of the Blanco River; it carried entire houses, automobiles, and debris downstream; and it destroyed bridges and other infrastructure.

5.3 On the morning of June 20, 2015, Matthew Mitchell and his two fellow firemen went to the Volunteer Response Center, in Wimberley, and they were directed to proceed to the property located at 1200 Flite Acres, in Wimberley, where they were to report to an AmeriCorps

supervisor who was in charge of the disaster relief efforts at that worksite.

5.4 Matthew Mitchell and one of his fellow firemen brought chainsaws with them that were to be used in connection with the removal of uprooted trees and tree limbs.

5.5 Among the persons present at 1200 Flite Acres on June 20, 2015, was a group of individuals who were members of the AmeriCorps Hoopa Tribal Civilian Community Corps.

5.6 The AmeriCorps Hoopa Tribal Civilian Community Corps (hereinafter referred to as the “Hoopa Tribal CCC”) is a service program of the Hoopa Valley Tribe.

5.7 The Hoopa Tribal CCC was established by the Hoopa Valley Tribe with a grant of money from the Corporation for National and Community Service (“CNCS”), a federal agency.

5.8 The Hoopa Tribal CCC was dispatched to Wimberley, Texas by the CNCS pursuant to a Disaster Response Cooperative Agreement that had been entered into between the CNCS and the Hoopa Tribal CCC (hereinafter referred to as the “Disaster Response Agreement”).

5.9 Defendant Orico Bailey was a member of the Hoopa Tribal CCC on June 20, 2015, and he was present at 1200 Flite Acres as a member of that AmeriCorps program of the Hoopa Valley Tribe.

5.10 The Hoopa Tribal CCC members who were present at 1200 Flite Acres on June 20, 2015, were working under the supervision of two Hoopa Tribal CCC supervisors, Bishop Pagoy Littlefeather-Rivas (“Rivas”) and Tyler Breu.

5.11 After Matthew Mitchell and his two fellow firemen checked in with the AmeriCorps supervisor at 1200 Flite Acres on the morning of June 20, 2015, they were instructed by the supervisor to proceed to the riverbank of the nearby Blanco River to assist with the removal of uprooted trees, tree limbs, and other debris that littered the riverbank.

5.12 On the morning of June 20, 2015, Orico Bailey and a few other Hoopa Tribal CCC members were working on the riverbank of the Blanco River and were assisting with the removal of uprooted trees, tree limbs, and other debris that littered the riverbank. Orico Bailey and his fellow Hoopa Tribal CCC members were being supervised by Rivas.

5.13 The Hoopa Tribal CCC provided Orico Bailey with a chainsaw that was to be used by him to assist with the removal of uprooted trees and tree limbs that littered the riverbank.

5.14 In the course of their debris removal efforts along the riverbank, Matthew Mitchell, Orico Bailey, Rivas, and the other workers came to an area where a large uprooted Live Oak tree was draped over several smaller trees that were still rooted in the ground. When the flood waters had receded, this large uprooted Live Oak tree had been deposited at this location and had come to rest draped over a stand of smaller trees, which were rooted in the ground and were bent over from the weight of this large uprooted Live Oak tree that they were supporting.

5.15 Littering the ground in the general vicinity of this large uprooted Live Oak tree were a number of fallen trees that had been uprooted by the floodwaters and subsequently deposited along the riverbank by the receding floodwaters along with a quantity of tree limbs and other debris.

5.16 As the workers were considering the best way to proceed with the removal of the debris in this area, Matthew Mitchell spoke with Hoopa Tribal CCC member Orico Bailey, who had a chainsaw. Matthew Mitchell expressed his opinion that the workers' efforts initially should be directed at removal of the fallen trees, tree limbs, and other debris that already were located on the ground at that location before any efforts were directed at using the chainsaws to bring down the large uprooted Live Oak tree that was draped over the stand of smaller trees.

Matthew Mitchell discussed with Orico Bailey his opinion that they should not disturb the large uprooted Live Oak tree or any of the trees that were supporting it until they had removed the fallen trees, tree limbs, and other debris already on the ground at that location so that the fallen trees, tree limbs, and other debris littering the ground would not end up beneath the large uprooted Live Oak tree when it was brought down to the ground.

5.17 Orico Bailey expressed his agreement with this plan of action.

5.18 Orico Bailey and his supervisor, Rivas, observed the large uprooted Live Oak tree and they knew or should have known that it was being supported by the group of smaller trees that it was draped over.

5.19 Shortly after the aforesaid discussion took place between Matthew Mitchell and Orico Bailey concerning the manner in which the workers would proceed to remove the fallen trees, tree limbs and other debris already located on the ground, Matthew Mitchell undertook to use his chainsaw to cut into sections a fallen tree that was lying on the ground. With his back facing the location where the large uprooted Live Oak Tree was draped over the stand of smaller rooted trees, Matthew Mitchell undertook to cut this fallen tree into smaller sections that could be manually lifted and removed to a nearby stack of wood that was to be a burn pile.

5.20 As Matthew Mitchell was in the process of cutting the fallen tree with his chainsaw; unknown to Mr. Mitchell, Orico Bailey undertook to use his chainsaw to fell a rooted Hackberry tree that was one of the rooted trees that were supporting the aforementioned large uprooted Live Oak tree. Orico Bailey undertook to fell this Hackberry tree in direct contravention of the aforesaid conversation and understanding between Mathew Mitchell and Orico Bailey concerning the fact that there would be no cutting of any of the trees that were supporting the large uprooted Live Oak tree until the fallen trees and tree limbs that were

littering the ground in that vicinity had been removed.

5.21 Using a chainsaw, Orico Bailey felled the rooted Hackberry tree that was one of the rooted trees that were supporting the large uprooted Live Oak tree.

5.22 When Orico Bailey felled the Hackberry tree, the large uprooted Live Oak tree lost a key element of its support and it fell/rolled to the ground striking Matthew Mitchell and pinning him to the ground.

5.23 Matthew Mitchel suffered a crush injury to his pelvis and severe bodily injuries as a result of Orico Bailey's felling the Hackberry tree and thereby causing the large uprooted Live Oak tree to fall/roll to the ground and strike Matthew Mitchell.

VI.

Cause of Action Against Orico Bailey

6.1 The factual statements set forth in paragraphs 5.1 to 5.23, *supra*, are incorporated herein by reference.

6.2 Orico Bailey was negligent in the following respects:

a) Using a chainsaw to fell the Hackberry tree when he knew or should have known that it was one of the trees that were supporting the large uprooted Live Oak tree;

b) Felling the Hackberry tree after his discussion with Matt Mitchell and his expressed agreement that there would be no cutting on any of the rooted trees that were supporting the large uprooted Live Oak tree until the fallen trees, tree limbs, and other debris already on the ground in that vicinity had been removed;

c) Felling the Hackberry tree when he knew or should have known that Matthew Mitchell and other individuals were located in the fall zone of the large uprooted Live Oak tree and actively were working to remove fallen trees, tree limbs, and other debris already

on the ground in that vicinity; and

d) Failing to warn Matthew Mitchell and others that he was going to use the chainsaw to fell the Hackberry tree contrary to his previous conversation with Matthew Mitchell wherein it was agreed there would be no cutting of any of the rooted trees that were supporting the large uprooted Live Oak tree until the fallen trees, tree limbs, and other debris already on the ground in that vicinity had been removed.

6.3 The negligent acts and omissions of Orico Bailey were a proximate cause of the large uprooted Live Oak tree's falling/rolling to the ground and striking Matt Mitchell.

6.4 The negligent acts and omissions of Orico Bailey were a proximate cause of Matt Mitchell's sustaining severe bodily injuries.

VII.

Causes of Action Against Hoopa Valley Tribe, d/b/a

Americorps Hoopa Tribal Civilian Community Corps

Negligence

7.1 The factual statements set forth in paragraphs 5.1 to 5.23 and in paragraphs 6.1 to 6.4 are incorporated herein by reference.

7.2 Since Orico Bailey was acting in the course and scope of his membership in the Hoopa Tribal CCC when he negligently caused Matt Mitchell to sustain severe bodily injuries, the Hoopa Valley Tribe is vicariously liable for his negligent acts and omissions.

7.3 Since the Hoopa Tribal CCC had the right and responsibility to supervise Orico Bailey and to control the details of his work as a member of the Hoopa Tribal CCC, the Hoopa Valley Tribe is vicariously liable for Orico Bailey's negligent acts and omissions.

7.4 Acting by and through its program, the Hoopa Tribal CCC, and acting by and

through the Hoopa Tribal CCC's supervisors, the Hoopa Valley Tribe was negligent in the following respects:

- a) Providing Orico Bailey with a chainsaw when his supervisors knew or should have known that he lacked the requisite training regarding the safe use and operation of a chainsaw;
- b) Failing to provide Orico Bailey with adequate training regarding the safe use and operation of a chainsaw;
- c) Failing to provide adequate supervision of Orico Bailey with respect to his use of a chainsaw;
- d) Failing to restrict Orico Bailey's use of the chainsaw;
- e) Allowing Orico Bailey to use the chainsaw to cut on the rooted trees that were supporting the large uprooted Live Oak tree;
- f) Allowing Orico Bailey to fell the Hackberry tree when Matthew Mitchell and others were located in the fall zone of the large uprooted Live Oak tree;
- g) Failing to warn Matthew Mitchell and the other individuals in the area that Orico Bailey was using the chainsaw to cut on one of the trees that were supporting the large uprooted Live Oak tree;
- h) Failing to adopt and implement safeguards for the use of chainsaws by members of the Hoopa Tribal CCC;
- i) Failing to adopt and implement safeguards for the Hoopa Tribal CCC's removal of fallen trees, tree limbs, and other debris; and
- j) Failing to adopt and implement procedures to identify and safeguard dangerous conditions such as the large uprooted Live Oak tree that was draped over the stand of

rooted trees.

7.5 Acting by and through the Hoopa Tribal CCC and acting by and through its supervisors in the Hoopa Tribal CCC, the negligent acts and omissions of the Hoopa Valley Tribe were a proximate cause of Matt Mitchell's sustaining severe bodily injuries.

Breach of Contract

7.6 Acting by and through the Hoopa Tribal CCC, the Hoopa Valley Tribe entered into the typewritten Disaster Response Agreement with the CNCS, and said agreement was in effect on June 20, 2015.

7.7 The Disaster Response Agreement provided that the Hoopa Tribal CCC would be dispatched by CNCS to respond to disaster mission assignments from the Federal Emergency Management Agency (FEMA). The Disaster Response Agreement provided the Hoopa Tribal CCC would be deployed by CNCS to the sites of natural disasters where the Hoopa Tribal CCC would perform assigned functions during the recovery phase of disaster operations.

7.8 The Disaster Response Agreement provided that the Hoopa Tribal CCC would receive money from CNCS to cover its expenses incurred in connection with its deployments to the sites of natural disasters.

7.9 In the Disaster Response Agreement, the Hoopa Tribal CCC agreed that it would provide an adequate safety training program for all of its members and personnel who were to engage in disaster relief activities.

7.10 In the Disaster Response Agreement, the Hoopa Tribal CCC agreed it would be responsible for the operational decisions involved in each disaster relief deployment and that it would make sound judgments regarding those operational decisions.

7.11 In the Disaster Response Agreement, the Hoopa Tribal CCC agreed that it would

obtain liability insurance coverage for the Hoopa Tribal CCC, its staff, and all program members and participants of the Hoopa Tribal CCC who engaged in disaster relief activities. The Disaster Response Agreement provided that the Hoopa Tribal CCC's obtaining the requisite liability insurance coverage was a pre-condition to the Hoopa Tribal CCC's being eligible for deployment by CNCS to FEMA disaster sites.

7.12 When the Hoopa Tribal CCC was deployed by CNCS to Wimberley, Texas, in June of 2015 to assist with disaster relief efforts, the Hoopa Valley Tribe and the Hoopa Tribal CCC knew or should have known that Orico Bailey was 21 years of age and that he and the other Hoopa Tribal CCC members and participants lacked the personal financial resources that would be necessary for them to respond in damages for any harm or damage they might cause through their negligent acts and/or omissions.

7.13 On or about February 13, 2017, Plaintiff's legal counsel provided the Hoopa Tribal CCC with formal written notice that Matthew Mitchell had sustained severe bodily injuries on June 20, 2015, due to the negligence of Orico Bailey, and that he intended to assert claims for the negligent acts and omissions of Orico Bailey. No response was received from the Hoopa Valley Tribe, the Hoopa Tribal CCC, or any liability insurance company regarding this written notice from Plaintiff's legal counsel.

7.14 On or about March 27, 2017, Plaintiff's legal counsel sent a formal written request to the Hoopa Tribal CCC that it provide Plaintiff's legal counsel with the full name and address of the insurance company that provided the Hoopa Tribal CCC with the liability insurance coverage required by the aforementioned Disaster Response Agreement with CNCS and with a copy of the declarations page(s) of the liability insurance policy. No response was received from the Hoopa Valley Tribe or the Hoopa Tribal CCC to this written request.

7.15 Due to the failures of the Hoopa Valley tribe and the Hoopa Tribal CCC to respond to written notification of Matthew Mitchell's claim and due to their failures to respond to his legal counsel's request for information regarding the Hoopa Tribal CCC's liability insurance coverage; Plaintiff believes and hereby contends that the Hoopa Tribal CCC and the Hoopa Valley Tribe breached the Disaster Response Agreement with the CNCS (their contract with the United States of America) by failing to obtain the liability insurance coverage mandated by the Disaster Response Agreement.

7.16 Matthew Mitchell is a third party beneficiary of the Disaster Response Agreement.

7.17 Matthew Mitchell was and is among the class of persons who were intended to be protected by the Disaster Response Agreement's requirement that the Hoopa Tribal CCC obtain liability insurance coverage for all individuals who were to engage in disaster relief activities as participants and members of the Hoopa Tribal CCC.

7.18 Matthew Mitchell has been damaged by the Hoopa Tribal CCC's breaches of the Disaster Response Agreement because Orico Bailey lacks the financial resources requisite to his responding in damages for Matthew Mitchell's bodily injuries and resulting damages.

7.19 Matthew Mitchell hereby asserts a breach of contract claim against Defendant Hoopa Valley Tribe for the Hoopa Tribal CCC's failure to obtain the liability insurance coverage mandated by the Disaster Response Agreement.

7.20 Matthew Mitchell hereby sues the Hoopa Valley Tribe for his damages occasioned by the Hoopa Valley Tribe's failure to obtain the liability insurance coverage mandated by the Disaster Response Agreement.

VIII.

Damages

8.1 As a direct and proximate result of the negligent acts and omissions of Orico Bailey, the Hoopa Valley Tribe, and the Hoopa Tribal CCC, as aforesaid; Matthew Mitchell suffered severe injuries to his body and person that necessitated Matthew Mitchell's incurring expenses for emergency medical transportation, for his hospitalization, for treatment by physicians and surgeons, for nursing care, for medications, for special medical equipment, and for physical therapy and rehabilitation services.

8.2 Due to the nature and extent of his bodily injuries, which were proximately caused by the Defendants' negligence, it will be necessary for Matthew Mitchell to remain under the care of one or more physicians with respect to his obtaining on-going evaluation, care, and treatment of his injuries for the remainder of his life. It will be necessary that Matthew Mitchell incur future medical expenses for additional medical and surgical care and treatment, for hospitalizations, for medications, and for special medical equipment for which Plaintiff hereby sues the Defendants and asks judgment.

8.3 By reason of his injuries, Matthew Mitchell has suffered marked physical impairment and disability, other than the ability to earn money, which has damaged Matthew in the past, for which he hereby sues the Defendants and asks judgment.

8.4 Matthew Mitchell's physical impairment and disability is permanent, as a result of which he will suffer damages in the future, for which Matthew Mitchell hereby sues the Defendants and asks judgment.

8.5 Due to his severe bodily injuries, it was necessary that Matthew Mitchell be absent from work for a protracted period of time. Matthew Mitchell has suffered a loss of earning capacity in the past for which he hereby sues the Defendants and asks judgment.

8.6 Due to the nature of his injuries and his resulting physical impairment, Matthew Mitchell has suffered a permanent loss of and impairment to his future earning capacity, all to his further damage, for which Plaintiff hereby sues the Defendants and asks judgment.

8.7 As a direct and proximate result of the Defendants' negligence, Matthew Mitchell has suffered great pain and anguish, both physical and mental, in the past, for which Plaintiff hereby sues the Defendants and asks judgment.

8.8 As a result of the nature of his injuries, Matthew Mitchell will suffer for the remainder of his life great pain and anguish, both physical and mental, for which Plaintiff hereby sues the Defendants and asks judgment.

8.9 As a further direct and proximate result of the Defendants' negligence, Matthew Mitchell has suffered disfigurement to his body and person, which disfigurement is permanent and has damaged Plaintiff, for which he hereby sues the Defendants and asks judgment.

8.10 Plaintiff hereby sues the Defendants for all damages and elements of damage cognizable under Texas law and proximately caused by the Defendants' negligent acts and omissions.

8.11 Plaintiff hereby sues the Hoopa Valley Tribe for the damages he has sustained by reason of said Defendant's breaches of the Disaster Response Agreement.

8.12 Matthew Mitchell has been damaged in the amount of at least \$5,000,000, for which he hereby sues the Defendants and asks judgment.

IX.

Demand for Jury Trial

9.1 Plaintiff demands a trial by jury with respect to the causes of action asserted herein.

Prayer

WHEREFORE, PREMISES CONSIDERED, Matthew Mitchell prays that the Defendants be cited to appear and answer herein and, on a trial hereof, that Plaintiff have judgment against the Defendants for such sums as will fully and fairly compensate Matthew Mitchell for his injuries, damages, and losses; for pre-judgment and post-judgment interest at the applicable legal rates; for all Court costs incurred in this litigation; and for such other and further relief, general and special, at law or in equity, to which Matthew Mitchell may show himself to be justly entitled.

Respectfully submitted,



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