

1 Patrick D. Webb, Esq. State Bar No. 82857
2 **WEBB & CAREY**
3 402 West Broadway Ste 400
4 San Diego CA 92101
5 Tel 619-236-1650
6 Fax 619-236-1283

7 Attorneys for Plaintiffs

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 **WALTER ROSALES, ESTATE OF**
11 **KAREN TOGGERY, ESTATE OF LOUIS**
12 **AYHULE GOMEZ, ESTATE OF HELEN**
13 **CUERRO, ESTATE OF WALTER**
14 **ROSALES' UNNAMED BROTHER,**
15 **ESTATE OF DEAN ROSALES, ESTATE**
16 **OF MARIE TOGGERY, ESTATE OF**
17 **MATTHEW TOGGERY, APRIL LOUISE**
18 **PALMER, ELISA WELMAS, AND**
19 **MARCIA SPURGEON,**

20 Plaintiffs,

21 v.

22 **THE ROMAN CATHOLIC BISHOP OF**
23 **SAN DIEGO; CONDON-JOHNSON**
24 **ASSOCIATES INC.; AND DOES 1-10,**

25 Defendants.

26 Case No. 23-908 AGS-JLB

27 **NOTICE OF FILING OF AMENDED**
28 **COMPLAINT**

Without waiving their right to move to remand this action to state court, and in furtherance of such a motion, Plaintiffs, WALTER ROSALES, ESTATE OF HELEN CUERRO, ESTATE OF WALTER ROSALES' UNNAMED BROTHER, ESTATE OF DEAN ROSALES, ESTATE OF KAREN TOGGERY, ESTATE OF MARIE TOGGERY, ESTATE OF MATTHEW TOGGERY, APRIL LOUISE PALMER, ELISA WELMAS, AND MARCIA SPURGEON, hereby provide notice that the attached First Amended Complaint, Exhibit A, was filed in San Diego Superior Court before any notice of removal was filed in the state court's register of actions, and before removal of this action became effective, per the terms of 28 U.S.C. §1446(d).

Dated: May 18, 2023

WEBB & CAREY APC

/S/Patrick D. Webb
Patrick D. Webb

Exhibit A

1 Patrick D. Webb, Esq. State Bar No. 82857
2 **WEBB & CAREY**
3 402 West Broadway Ste 400
4 San Diego CA 92101
5 Tel 619-236-1650
6 Fax 619-236-1283

7 Attorneys for Plaintiffs

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

10 **WALTER ROSALES, ESTATE OF**
11 **KAREN TOGGERY, ESTATE OF LOUIS**
12 **AYHULE GOMEZ, ESTATE OF HELEN**
13 **CUERRO, ESTATE OF WALTER**
14 **ROSALES' UNNAMED BROTHER,**
15 **ESTATE OF DEAN ROSALES, ESTATE**
16 **OF MARIE TOGGERY, ESTATE OF**
17 **MATTHEW TOGGERY, APRIL LOUISE**
18 **PALMER, ELISA WELMAS, AND**
19 **MARCIA SPURGEON,**

20 Plaintiffs,

21 v.

22 **THE ROMAN CATHOLIC BISHOP OF**
23 **SAN DIEGO; CONDON-JOHNSON**
24 **ASSOCIATES, INC.; AND DOES 1-10,**

25 Defendants.

) Case No. 23-20640

) **FIRST AMENDED COMPLAINT**
) **DEMANDING TRIAL BY JURY**

26 **NATURE OF THE ACTION**

27 1. This action arises from the desecration of the Native American Plaintiffs' families'
28 human remains and funerary objects interred at the Jamul cemetery, title to which is owned in fee
simple and operated by the Roman Catholic Bishop of San Diego, a corporation sole. Plaintiffs
are lineal descendants of the Native American families that have lived, died, and been interred at
the cemetery, and therefore own and control their families' human remains and funerary objects,
pursuant to California common law, and California's Health & Safety C. ("HSC") §§7001, 7100;
Cal. Pub. Res. C. ("PRC") §§5097.9-5097.994, and Penal C. §§487 and 622 1/2.

2. Plaintiffs' lineal predecessors have inhumed, interred and deposited more than a
hundred 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,

1 sacred objects, and objects of cultural patrimony, in burial sites below, on and above, the cemetery
2 property, and into which as a part of the death rite or ceremony of their culture, individual
3 human remains were deposited for more than 170 years, as defined in HSC §§7001, 7004,
4 7009, 7013, and 8012, and PRC §§5097-5097.994. These burial sites include full bodily
5 inhumations and the deposit of cremated human remains and funerary objects, including the
6 decedents' hair, clothing and personal property, according to their long held religious beliefs as to
7 the proper disposition of their families' remains.

8 3. As set forth more particularly below, the Defendants owe the Plaintiffs the fiduciary
9 duty and general trust responsibility to protect Plaintiffs' families' remains from unlawful
10 desecration without notice, consent and just compensation. Defendants' *per se* negligence and
11 breach of fiduciary duty in violation of state law, has resulted in the desecration of Plaintiffs'
12 families' remains and funerary objects at the cemetery, without the required permits, consultation,
13 pre-deprivation hearings and repatriation owed to the Plaintiffs.

14 4. The Defendants breached their statutory and common law fiduciary duties to protect
15 the lineal descendant Plaintiffs' families' remains from unlawful desecration and to repatriate
16 those remains for re-interment with the dignity, cultural tradition and religious rites required by
17 law, thereby causing Plaintiffs severe and irreparable personal injury and personal property damage
18 in excess of the jurisdictional limit of this court.

19 5. This is not the first time the lawful interment of human remains and funerary objects
20 have had to be moved to make way for subsequent development. However, as with most things,
21 there is a right way, and a wrong way, in which to move a cemetery. Unfortunately, the Roman
22 Catholic Bishop of San Diego, a corporation sole, breached its fiduciary duties and allowed the
23 intentional and unlawful desecration of Plaintiffs' families' remains and funerary objects, without
24 following the law, so that a hotel can be constructed on the cemetery where the Plaintiffs' families
25 were lawfully interred for more than 170 years.

26 6. Plaintiffs' personal injury and personal property damage claims arise from the
27 Defendants' *per se* negligence and breaches of fiduciary duties in violation of HSC §§7050.5,
28 7052, 7054, 7054.6, 7054.7, 7055, 7500, 8011-12, 8015-16, 8102, 8301.5, 8553, 8558, 8560, 8580,

1 103060, PRC §§5097.9-5097.99, and the Cal. Penal Code §§487 and 622 1/2, and California
2 common law.

3 The right to bury a corpse and to preserve its remains, is a legal right, which the
4 courts of law will recognize and protect. Such rights belong exclusively to the next
5 of kin. H. Bernard, *The Law of Death and Disposal of the Dead*, 15 (2d ed. 1979);¹
6 see also, *National Archives and Records Admin. v. Favish*, 541 U.S. 157, 167-68
7 (2004); *White v. Univ. of Cal.*, 765 F.3d 1010, 1019 (9th Cir. 2014).

8 While actual practices and religious beliefs may vary widely between cultures, and
9 even with ethnic groups, the concern for the dead and the sensibilities of the living
10 is a universal value held by all societies in all ages. The sepulture of the dead has,
11 in all ages of the world, been regarded as a religious rite. The place where the dead
12 are deposited, in all civilized nations and many barbarous ones is regarded in some
13 measure at least, as consecrated ground... Consequently, the normal treatment of a
14 corpse, once it is decently buried, is to let it lie. This idea is so deeply woven into
15 our legal and cultural fabric that it is commonplace to hear it spoken of as a 'right.
16 Thomas, *Indian Burial Rights Issues: Preservation or Desecration*, Spring 1991, 59
17 U.M.K.C. Law Review 747; Annotation, *Liability for Desecration of Graves and*
18 *Tombstones*, 77 A.L.R.4th 108 (1990).

19 Burial rites or their counterparts have been respected in almost all civilizations from
20 time immemorial... They are a sign of the respect a society shows for the deceased
21 and for the surviving family members. ...In addition this well-established cultural
22 tradition acknowledging a family's control over the body and death images of the
23 deceased has long been recognized at common law. *National Archives and Records*
24 *Admin. v. Favish*, 541 U.S. 157, 167-68 (2004).

25 The property rights that California affords to next of kin to the body of their
26 deceased relatives serve the premium value our society has historically placed on
27 protecting the dignity of the human body in its final disposition. There, [as here, the
28 Defendants] infringed the dignity of the bodies of the [dead] when they [allowed
the desecration of] those bodies without the consent of the [lineal descendants]."
Newman v. Sathyavaglswaran (Newman), 287 F.3d 786, 798 (9th Cir. 2002).

The local Kumeyaay avow a deep sense of personal and communal responsibility
for the recovery and proper reburial of all human remains... *White v. Univ. of Cal.*,
765 F.3d 1010, 1019 (9th Cir. 2014).

The infringement of "alleged spiritual beliefs...concerning disinterred bodies of
tribal members," is a "significant hardship." *Fallon Paiute-Shoshone Tribe v.*
USBLM ("Fallon"), 455 F.Supp.2d 1207, 1216 (D. Nev. 2006).

It is the intent of the Legislature to do all of the following: (a) Provide a seamless
and consistent state policy to ensure that all California Indian human remains and
cultural items be treated with dignity and respect. (b) Apply the state's repatriation
policy consistently with the provisions of the Native American Graves Protection

¹ Quoting the Hon. Samuel B. Ruggles Report, as it has come to be known, which is the
foundation for modern American burial law and is frequently referred to, or quoted from, by almost
every opinion concerning the issues of control over deceased remains. Annotation, *Liability for*
Desecration of Graves and Tombstones, 77 A.L.R.4th 108 (1990).

1 and Repatriation Act...which was enacted in 1990...(e) Provide a mechanism
2 whereby lineal descendants... [may] file repatriation claims for human remains and
cultural items...or under this chapter with California state agencies. HSC §8011.

3 7. The California Supreme Court, holds that a Native American's religious burial
4 rights are also protected by many:

5 [S]tatutes [that] reflect a policy of respecting the religious, ethical and emotional
6 concerns of close relatives and others having an interest in assuring that the
disposition of human remains is accomplished in a dignified and respectful manner.
7 Of particular significance is HSC §7050.5 prohibiting desecration of human buried
remains...The Legislature's findings include express recognition of Native
8 American 'concerns regarding the need for sensitive treatment and disposition' of
such remains." *Christensen v. Superior Court (Christensen)*, 54 Cal.3d 868, 890,
9 897 (1991); see also HSC § §8011, 8012, and PRC §§5097.5(d)(2)(vii), 5097.9,
5097.98, and 5097.991.

10 8. These "statutes governing the disposition of human remains exist not only to ensure
11 removal of dead bodies and protect public health, but also to prevent invasion of the religious,
12 moral, and esthetic sensibilities of the survivors. These laws were enacted to prevent the type of
13 harm alleged here to the statutory rights holders, and create a duty to those persons...[such]
14 conduct may be found to be negligent per se," These statutes "reflect a policy of respecting the
15 religious, ethical, and emotional concerns of close relatives and others having an interest in
16 assuring that the disposition of human remains is accomplished in a dignified and respectful
17 manner." "A policy of respecting religious beliefs with regard to the disposition of human remains
18 is manifest." as held in *Christensen* at 893-94, 896, 897,. and *Quechan Indian Tribe v. United*
19 *States* ("*Quechan*"), 535 F.Supp.2d 1072, 1100-08, 1117-23 (S.D. Cal. 2008).

20 9. Defendants' statutory and common law violations have unlawfully denied the lineal
21 descendant Plaintiffs: (1) ownership and control of their families' remains and funerary objects,
22 (2) free exercise of their religious burial rights, and (3) their personal property rights in their
23 families' remains, when they were illegally desecrated, without due process, notice, consent, or just
24 compensation. Plaintiffs properly state claims for damages and declaratory relief, remedying their
25 personal injuries, personal property damage, and injuries-in-fact, which are actual, and for which
26 they have standing to allege were caused by the Defendants. *Troyk v. Farmers Group, Inc.*, 171
27 Cal.App.4th 1305, 1345 (Cal. Ct. App. 2009), citing *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560
28 (1992).

PARTIES

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10. Plaintiff, WALTER J. ROSALES, is a Native American, whose families have lived on the cemetery property since the late 1800's. He is also a lineal descendant of those interred at the Jamul cemetery, and son of Native American, Helen Cuero, the personal representative of the ESTATE OF HELEN CUERRO, the ESTATE OF DEAN ROSALES, the ESTATE OF WALTER ROSALES' UNNAMED BROTHER, and owns and controls their human remains and Native American cultural items.

11. Plaintiffs, WALTER J. ROSALES, and MARCIA SPURGEON, are the personal representatives of: the ESTATE OF KAREN TOGGERY, the ESTATE OF LOUIS AYHULE GOMEZ, the son and lineal descendant of Native American, KAREN TOGGERY, and the ESTATE OF MARIE TOGGERY, the Native American mother of KAREN TOGGERY, and the ESTATE OF MATTHEW TOGGERY, the son and lineal descendant of Native American, KAREN TOGGERY, and own and control their human remains and Native American cultural items that were interred at the cemetery in Jamul.

12. Plaintiff APRIL LOUISE PALMER, is DEAN ROSALES' sister, WALTER ROSALES, daughter and HELEN CUERO's granddaughter, a lineal descendant of those interred at the Jamul cemetery, and a resident of Riverside County.

13. Plaintiff ELISA WELMAS is DEAN ROSALES' mother, WALTER ROSALES' former wife, and HELEN CUERO's daughter-in-law, a resident of Riverside County, and owns and controls her son's human remains and Native American cultural items.

14. Defendant THE ROMAN CATHOLIC BISHOP OF SAN DIEGO, a corporation sole, has been the equitable and beneficial owner of the .84 acre cemetery parcel known as 597-080-06 in Jamul, California, within the Diocese of San Diego, since March 27, 1937. This parcel was publicly dedicated as a cemetery, and has never been made part of any Native American reservation. The Bishop was put on notice as to the potential desecration of Plaintiffs' families' human remains during construction adjacent to the cemetery in 2008 and 2014.

15. Defendant CONDON-JOHNSON ASSOCIATES, INC. is the agent of the corporation sole, and a geotechnical and engineering contractor, whose place of business is in

1 Lemon Grove, California, and who has contracted to install, and began installing in March of 2023,
2 120 soil nails, 35 feet long, and 4 inches in diameter to be driven into the .84 acre cemetery fee
3 parcel known as 597-080-06.

4 16. The true names and capacities, whether individual, corporate, associate or otherwise,
5 of DOES 1-10, are unknown to Plaintiffs at this time, who, therefore, sue said Defendants by said
6 fictitious names. DOES 1-10 are responsible in some measure for the actions alleged herein, and
7 were the legal cause of injury and damages to the Plaintiffs, which caused irreparable damage to
8 Plaintiffs’ remains and funerary objects, by knowingly, willfully and/or negligently aiding and
9 abetting, the desecration of the cemetery without authority of law. When the true names and
10 capacities of said Defendants are ascertained, Plaintiffs will seek leave to amend this complaint to
11 insert their true names and capacities, and serve said Doe Defendants.

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

21 **FIRST CLAIM FOR RELIEF**

22 (Negligence Claims for Illegal Desecration of Plaintiffs’ Families’ Remains and Funerary
23 Objects- against All Defendants)

24 18. Plaintiffs incorporate by reference each and every allegation contained in paragraphs
25 1-17, inclusive, of this complaint as though fully set forth herein.

26 19. During February 2023, the Defendants began, and now continue, drilling channels
27 and installing 120 soil nails, which are threaded steel nails, 35 feet long and 4 inches in diameter,
28 where 20,000 cubic yards of soil will be removed from the cemetery, so that a hotel may be

1 constructed on the neighboring property line, instead of east of the property line, thereby illegally
2 desecrating the families' remains at the cemetery, without complying with the Construction General
3 Permit requirements identified in Acorn Environmental's September 2022 Environmental Impact
4 Report, p. 2-12 to 2-15, and called for in the Defendants' contracts, and in violation of the
5 following Health & Safety Code and Public Resources Code and Penal Code sections:

6 (a) HSC §§7050.5, 7052, prohibiting desecration, mutilation, unlawful excavation and
7 removal of remains;

8 (b) HSC §7054, requiring proper disposition of remains in a cemetery;

9 (c) HSC §§7054.6, 7054.7, 7055, and 103060 prohibiting removal without the descendants'
10 consent and proper permits;

11 (d) HSC §7054.7, prohibiting commingling of remains;

12 (e) HSC §7500, prohibiting removal of remains without an order from the superior court
13 or the public health department;

14 (f) HSC §§8011, 8015-16, when Plaintiffs' remains and objects were not repatriated upon
15 Plaintiffs' demand;

16 (g) HSC §8012, when Plaintiffs were not paid all damages arising from violation of the
17 HSC;

18 (h) HSC §8301.5, by allowing graves not to be kept, tended, adorned, and embellished,
19 according to the beliefs of the decedents' families;

20 (i) HSC §8580, when property dedicated to cemetery purposes is not used exclusively for
21 cemetery purposes, and there has been no removal of the dedication by the Superior Court;

22 (j) PRC §5097.5, when remains and objects are wrongfully excavated from their historic
23 burial grounds;

24 (k) PRC §5097.7, when vehicles and equipment used to unlawfully excavate remains from
25 their historic burial grounds are not forfeited;

26 (l) PRC §5097.9, when the descendants free exercise of their religious burial rights are
27 interfered with, and their sanctified cemetery, place of worship, religious and ceremonial site is
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1 damaged, and there is no compelling government interest therefore, nor the use of the least
2 restrictive means of furthering such an interest;

3 (m) PRC §5097.94(k), when failing to mediate the treatment and disposition of the
4 families' remains, and failing to protect them from destruction and provide for their sensitive
5 treatment and disposition;

6 (n) PRC §5097.97, when failing to investigate claims that the sanctified cemetery, place of
7 worship, religious and ceremonial site, is being irreparably damaged;

8 (o) PRC §5097.98, and 14 C.C.R. §15064.5, when (1) failing to treat remains with generally
9 accepted cultural or archaeological standards and practices, and (2) failing to confer with the lineal
10 descendants as to the disposition of the remains, as required by the National Center for Cultural
11 Resources;

12 (p) PRC §5097.98(e)(f), when failing to contact the coroner and the N.A.H.C., and
13 remains are not re-interred with proper dignity;

14 (q) P.R.C. §5097.99, when remains were removed from their graves without an
15 agreement for proper disposition with dignity;

16 (r) PRC §5097.993-.994, when Appellants' remains were unlawfully injured and excavated
17 from their burial sites without paying a \$50,000 fine for each violation;

18 (s) PRC §§5097.9-5097.99, and Cal. Penal Code §622 1/2, when the remains are unlawfully
19 and willfully injured, disfigured, and destroyed.

20 (t) Penal Code §487, which provides that excavation of remains without consent is grand
21 theft; and

22 (u) Penal Code §622 1/2, which provides that it is unlawful to willfully injure, disfigure,
23 deface, or destroy Plaintiff's remains and objects.

24 20. The Defendants also negligently violated Plaintiffs' rights to the free exercise of
25 religion under the California Const., Article I, §§1,3, 4, 7, 13, 19, 24 and 31. Defendants
26 impermissibly burdened the Plaintiffs' free exercise of religion when they prevented the Plaintiffs'
27 ownership, control and free exercise of their right to bury their families' remains according to the
28 commands of their religion, which does not allow their dead to be desecrated once they have been

1 interred. Here, the Defendants have caused Plaintiffs' damages by substantially burdening
2 Plaintiffs' exercise of religion, without a compelling governmental interest, and having not
3 employed the least restrictive means of furthering any compelling governmental interest in
4 violation of Cal. Const. Art. 1.

5 21. Defendants also negligently failed to: (1) abide by California's permit and pre-
6 hearing deprivation requirements, when remains are to be intentionally excavated to make way for
7 subsequent development, (2) prevent any one from desecrating Plaintiffs' remains, (3) obtain
8 Plaintiffs' consent for the ultimate disposition of their families' remains, as required by, the HSC,
9 PRC, and common law regarding burial rights, all of which have created a private right of action
10 in Plaintiffs for *per se* negligence for their violation, where, as here, these statutes and common law
11 create a standard of care and a fiduciary duty that was breached.

12 22. More than twenty eyewitnesses have testified, and the Counties of San Diego and
13 Riverside Death Certificates, and the Cal. Dept. of Health Permits for Disposition of Human
14 Remains corroborate, that Plaintiffs' families' were interred within the cemetery. Commencing
15 during December 2022, Plaintiffs' families' human remains and funerary objects were illegally
16 desecrated, without the consent of Plaintiffs, and without the notice, permits, written plans,
17 mediation, consultation, due process, and just compensation required by the HSC, PRC, Penal
18 Codes and common law.

19 23. Defendants failed to consult with the lineal descendant Plaintiffs and provide a
20 written plan of action as to the treatment and disposition of their families' remains, when the
21 Defendants were first put on notice of the lineal descendant Plaintiffs' ownership of the remains
22 and objects.

23 24. Defendants failed to obtain any of the required information, and failed to prepare
24 a written plan of action, which had they been obtained and provided, would have permitted proper
25 custody and disposition of Plaintiffs' families remains with the appropriate dignity, traditional
26 customs and religious rites, required by PRC §5097.98(e) and (f).

27 25. Defendants failed to repatriate Plaintiffs' remains in violation of HSC §§7055,
28 8011-12, 8015-16, since they have been on notice of Plaintiffs' demand for repatriation should their

1 remains be intentionally excavated, since well before the Defendants allowed the installation of soil
2 nails in the cemetery.

3 26. Defendants also failed to abide by the lineal descendant Plaintiffs' rights to custody
4 of their families' desecrated and excavated remains and objects, violating HSC §§7100, 7500,
5 7054, 7055, 7054.6, 7054.7, 7052, and 7050.5.

6 27. By these acts the Defendants thereby have deprived Plaintiffs of their exclusive
7 personal property rights to possess, control, dispose, and prevent the desecration, disinterment,
8 excavation, removal and violation of their families' remains, without due process of law required
9 by the California Constitution, when they were unlawfully desecrated, excavated and removed
10 without Plaintiffs' consent, a pre-deprivation trial, due process and just compensation.

11 28. Plaintiffs' claims are based on the denial of their state constitutional, personal
12 injury and personal property rights in their families' remains. The complaint seeks no remedy
13 affecting any interest of the Jamul Indian Village in those remains, since it has no claim to right,
14 title, interest in, or control over, the Plaintiffs' families' remains, since Plaintiffs are the living
15 lineal descendants. Moreover, all others than the Plaintiffs irrevocably waived any right to make
16 a claim for repatriation or disposition of Plaintiffs' families remains by failing to file such a claim
17 prior to the time Plaintiffs' remains were disposed of.

18 29. Defendants' acts have proximately caused and resulted in the illegal desecration,
19 disinterment, excavation, and removal of the Plaintiffs' families' human remains and funerary
20 objects, without Plaintiffs' knowledge and consent, and interference with, the Plaintiffs' rights to
21 free expression and exercise of their religious burial rights, thereby causing severe personal,
22 physical and bodily injury, including severe emotional distress, akin to torture of the living, and
23 irreparable damage to the Plaintiffs and their personal property in their human remains and funerary
24 objects. Plaintiffs have therefore suffered general and consequential damages proximately caused
25 by the Defendants in an amount in excess of the \$25,000, jurisdictional limit of this court, subject
26 to proof at the time of trial. Plaintiffs are also entitled to have civil penalties of \$6 million awarded
27 against the Defendants as a result of the installation of 120 soil nails at the cemetery, per PRC
28 §5097.994.

SECOND CLAIM FOR RELIEF

(Breach of Fiduciary Duty, Common Law Trust Duty and Violation of Civil Code § 3439.04-
Against The Roman Catholic Bishop of San Diego, a corporation sole)

30. Plaintiffs incorporate by reference paragraphs 1 through 29 of this complaint as though fully set forth herein.

31. As reiterated in the December 19, 2005 Amendment to the Articles of Incorporation of Defendant, The Roman Catholic Bishop of San Diego, a corporation sole, since its incorporation in 1937, has held and does hold all real property, personal property, and funds in its name in the capacity of a trustee, in trust for the benefit of the individual parishes, schools, cemeteries, and laity of the Diocese of San Diego. The original Articles of Incorporation of The Roman Catholic Bishop of San Diego, a corporation sole, as amended and endorsed, were filed with the Office of the Secretary of State of the State of California on March 29, 1937, and amended on January 4, 1967 and February 24, 1976, and expressly state the rights of the parishes, schools, cemeteries, and laity of the Diocese of San Diego, including the Plaintiffs, as the beneficiaries of the trusts for all of the real property, personal property, and funds now and previously held in the name of the corporation sole.

32. This Defendant corporation sole was formed for the purpose of administering and managing the affairs, property, and temporalities of the Roman Catholic Diocese of San Diego, and holding in trust and managing in accord with the powers set forth in § 10007 of the California Corporations Code, Canon Law, and the other rules, regulations, laws, ordinances, and discipline of the Roman Catholic Church, all of the real property, personal property, and funds of the Roman Catholic Diocese of San Diego in the name of The Roman Catholic Bishop of San Diego, a corporation sole, as trustee, in trust for specific beneficiaries, which are the parishes, schools, cemeteries, and laity of the Roman Catholic Diocese of San Diego as those juridic persons and entities are defined by Canon Law and the established structure, rules, regulations, laws, ordinances, and discipline of the Roman Catholic Church, as may be amended or restated from time to time, and ensuring to said beneficiaries all of the use, benefits, rights and obligations of said

1 property, conferred on them by Canon Law and the establishment, rules, regulations, laws,
2 ordinances, and discipline of the Roman Catholic Church and in accord with applicable provisions
3 of the Corporations Code of the State of California.

4 33. This Defendant corporation sole thereby has a fiduciary duty as a trustee, to hold
5 for the parishes, schools, cemeteries and laity of the Roman Catholic Diocese of San Diego, all of
6 the real property, personal property, and funds of the Roman Catholic Diocese of San Diego.

7 34. This Defendant corporation sole violated its fiduciary duty, general trust
8 responsibility, and common law trust duty to Plaintiffs for management of their Native American
9 families' human remains and funerary objects, by violating the state laws referenced above, and
10 are therefore liable for all damages resulting from a breach of that trust, since the substantive law
11 has been fairly interpreted as mandating compensation for the damages sustained by allowing
12 desecration and misappropriation of such property.

13 35. On July 11, 1912, J.D. Spreckels' Coronado Beach Company recorded a grant deed
14 dedicating the property a part of which is now known as 597-080-06 as a cemetery to Defendant
15 corporation sole's predecessor, who later became the Roman Catholic Archbishop of Los Angeles,
16 a corporation sole.

17 36. On or about March 29, 1937, the Roman Catholic Archbishop of Los Angeles
18 conveyed the cemetery property now known as 597-080-06 to The Roman Catholic Bishop of San
19 Diego, a corporation sole.

20 37. On September 7, 2017, The Roman Catholic Bishop of San Diego, a corporation
21 sole, purported to record a void deed of the cemetery property now known as 597-080-06 to the
22 Jamul Indian Village for no consideration, as reflected in Doc. No. 2017-0410384 recorded with
23 the San Diego County Recorder.

24 38. Plaintiffs believe and allege that on the date of the purported transfer of the cemetery
25 property now known as 597-080-06, creditors, including Plaintiffs, had outstanding claims against
26 the Roman Catholic Bishop of San Diego, a corporation sole, for which it was indebted, and that
27 the transfer of the cemetery property was made with the actual intent to hinder, delay, or defraud
28 the creditors of the Defendant corporation sole in violation of Civil Code §3439.04(a)(1).

1 39. Plaintiffs believe and allege that the transfer of the cemetery property now known
2 as 597-080-06 was done as part of a scheme created and designed by the Defendant corporation
3 sole to transfer the cemetery property to a third party so that the Defendant corporation sole may
4 attempt to avoid liability for desecration, mutilation, disinterment, disturbance, excavation, and
5 removal of remains and funerary objects interred at the cemetery, and so that the assets of the
6 Defendant corporation sole are not reachable by its creditors, particularly not reachable by Plaintiffs
7 to satisfy Plaintiffs' claims herein against the Defendant corporation sole; just as the Defendant has
8 been alleged to have done with over 582 other transfers in violation of Civil C. §3439.04(a)(1). See,
9 related SDSC Case No. 23-0007391.

10 40. Plaintiffs seek to set aside the transfer of the cemetery property now known as 597-
11 080-06, and to have the court recognize The Roman Catholic Bishop of San Diego, a corporation
12 sole, the true titled owner of that property.

13 41. As a result of Defendants' breach of fiduciary duty and general trust responsibility,
14 Plaintiffs have suffered both general and consequential damages in an amount in excess of \$25,000
15 and within the jurisdiction of this court, subject to proof at trial, including but not limited to the
16 damage to reputation, property, business, trade, profession and occupation, physical and bodily
17 injury, including but not limited to, anxiety, humiliation, shock, emotional distress, mental anguish
18 and related mental and physical injury, and any and all attorneys' fees, costs and expenses incurred
19 in prosecuting this action. Plaintiffs are also entitled to have civil penalties of \$6 million awarded
20 against the Bishop as a result of the installation of 120 soil nails at the cemetery, per PRC
21 §5097.994.

22 42. Plaintiffs are entitled to recover from The Roman Catholic Bishop of San Diego,
23 a corporation sole the full amount owed or awarded to Plaintiffs on their Claims herein, including
24 any judgments awarded or entered, and Plaintiffs are entitled to injunctive relief against said
25 Defendant corporation sole, as owner of the cemetery property now known as 597-080-06.

26 43. In doing the wrongful things alleged herein, the Defendant corporation sole, acted
27 despicably, was malicious, fraudulent and oppressive, as defined under Civil Code Section 3294,
28 and with wilful intent in conscious disregard of Plaintiffs' rights under the law, thereby justifying

1 an award of punitive and exemplary damages in an amount appropriate to deter others from
2 engaging in similar misconduct. Plaintiffs are therefore entitled to recover punitive damages and
3 attorneys' fees and costs against Defendant corporation sole in an amount subject to proof at trial.

4 **THIRD CLAIM FOR RELIEF**

5 (Conversion-against All Defendants)

6 44. Plaintiffs incorporate by reference each and every allegation contained in
7 paragraphs 1-43 inclusive, of this complaint as though fully set forth herein.

8 45. Lineal descendant Plaintiffs exclusively own, control and have immediate right to
9 posses their personal property rights in their families' remains, as a matter of law, pursuant to
10 HSC. §7001, §7100; and PRC §§5097.9-5097.994 and the common law; which rights are subject
11 to being taken and converted without due process and just compensation. Plaintiffs' personal
12 property rights in their families' remains are not part of any real property, and are not rights shared
13 with their community at large. Even though Plaintiffs have legal title and absolute ownership of
14 this property, their immediate right to possession is all that is required to sue for conversion.

15 46. The Defendants deprived Plaintiffs of their personal property rights in their families'
16 remains, and their immediate right to possession thereof, without due process of law and just
17 compensation, when they converted Plaintiffs' personal property in their families' remains and
18 funerary objects, by denying Plaintiffs' immediate rights to exclusively own, use, possess, quietly
19 enjoy and control the disposition of that property, and by denying Plaintiffs' on-going demand for
20 surrender of that property, while it was in Defendants' custody and control, when they negligently
21 and/or intentionally, and unlawfully allowed the desecration, excavation, removal, possession and
22 conversion of that property to others own use, without the knowledge, permission, consent, and
23 pre-deprivation hearing, due process and just compensation due the Plaintiffs.

24 47. Defendants further converted Plaintiffs' families' remains by breaching their
25 statutory obligation under state law to protect that property from unlawful desecration, excavation
26 and removal, over which the Defendants then exercised dominion and control. Defendants further
27 converted Plaintiffs' property by merely exercising control over the property, like a bailee, without
28 Plaintiffs' consent and having failed to return Plaintiffs' property on demand. After coming into

1 custody and control of Plaintiffs' families' remains, these Defendants converted Plaintiffs' property
2 by failing to prevent further loss and deterioration, as required by Civ. Code, §§ 1928, and 1852.

3 48. As a result of the Defendants' wrongful conversion of Plaintiffs' property, Plaintiffs
4 have suffered both general and consequential damages in an amount in excess of the jurisdiction
5 of this court, subject to proof at trial, believed to be in excess of \$25,000, including but not limited
6 to the damage to reputation, property, business, trade, profession and occupation, physical and
7 bodily injury, including but not limited to, anxiety, humiliation, shock, emotional distress, mental
8 anguish and related mental and physical injury, and any and all attorneys' fees, costs and expenses
9 incurred in prosecuting this action. Plaintiffs are also entitled to have civil penalties of \$6 million
10 awarded against the Defendants as a result of the installation of 120 soil nails at the cemetery, per
11 PRC §5097.994.

12 49. In doing the wrongful things alleged herein, the Defendants acted despicably, were
13 malicious, fraudulent and oppressive, as defined under Civil Code Section 3294, and willfully
14 intended in conscious disregard of Plaintiffs' rights under the law, thereby justifying an award of
15 punitive and exemplary damages in an amount appropriate to deter others from engaging in similar
16 misconduct. Plaintiffs are therefore entitled to recover punitive damages and attorneys' fees and
17 costs against Defendants in an amount subject to proof at trial.

18 **FOURTH CLAIM FOR RELIEF**

19 (For Declaratory and Injunctive Relief against all Defendants)

20 50. Plaintiffs incorporate by reference each and every allegation contained in paragraphs
21 1 through 49, inclusive, of this complaint as though fully set forth herein.

22 51. Plaintiffs are the lineal descendants' with ownership and control of their families'
23 human remains and funerary objects, as set forth above.

24 52. An actual controversy has arisen and now exists between Plaintiffs and Defendants,
25 within the meaning of the stand alone cause of action for declaratory and injunctive relief under
26 California C.C.P. §1060. An actual case and controversy now exists, in that Plaintiffs contend that
27 Defendants are liable to Plaintiffs for the statutory, and tortious personal injuries, property damage
28 and deprivations of their civil rights alleged herein, and defendants deny such liability to Plaintiffs.

1 53. Plaintiffs desire a judicial determination of the respective rights of Plaintiffs and
2 Defendants going forward.

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

5 55. PRC §5097.94 provides that where the court finds that severe and irreparable
6 damage will occur, or that appropriate access will be denied, to a sanctified cemetery, place of
7 worship, religious or ceremonial site, or sacred shrine, and appropriate mitigation measures are not
8 available, the court shall issue an injunction to prevent such irreparable damage and assure access
9 to the sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine, where,
10 as here, there is no clear and convincing evidence that the public interest and necessity require
11 otherwise.

12 56. Defendants' knowing and wilful installation of soil nails and grading, excavation,
13 demolition, operation of heavy equipment, moving dirt and/or gravel, and other construction
14 activities, have been desecrating, mutilating, disinterring, wantonly disturbing, intentionally
15 excavating, willfully removing Plaintiffs' families' human remains and funerary objects, in breach
16 of their duty of care, have thereby caused, and will continue to cause, unless enjoined, severe and
17 irreparable physical and bodily injury, including severe emotional distress and personal injury
18 damages to Plaintiffs and their families' human remains, along with the items associated therewith,
19 including, but not limited to grave goods, cultural items, associated funerary objects, sacred objects,
20 and objects of cultural patrimony, as defined in, and prohibited by, HSC §§7050.5, 7052, 7054,
21 7054.6, 7054.7, 7055, 7500, 8011, 8015-16, PRC §§5097.9-5097.994, Penal Code §§487 and 622
22 1/2, in an amount in excess of \$25,000, subject to proof at trial.

23 57. Defendants' knowing and wilful installation of soil nails and grading, excavation,
24 demolition, operation of heavy equipment, moving dirt and/or gravel, and other construction
25 activities, have been desecrating, mutilating, disinterring, wantonly disturbing, intentionally
26 excavating, and willfully removing Plaintiffs' families' human remains and funerary objects, in
27 breach of their duty of care, has also caused and will continue to cause, unless enjoined, irreparable
28 damage to, and interference with, the Plaintiffs' free expression and exercise of Native American

1 religion as provided in the California Constitution, and has caused and shall continue to cause,
2 unless enjoined, severe and irreparable damage to the Plaintiffs' Native American sanctified
3 cemetery, place of worship, religious or ceremonial site, and sacred shrines located on said parcels,
4 in violation of Pub. Res. C. 5097.9-5097.994, and in an amount in excess of \$25,000, subject to
5 further proof at trial. Defendants' conduct has also barred and will continue to bar appropriate
6 access by Native Americans to the Native American sanctified cemetery, place of worship,
7 religious and ceremonial sites, sacred shrines, having blocked use of the public easement for such
8 access to the cemetery property, now known as 597-080-06.

9 58. Such acts will also unduly interfere with the Plaintiffs' civil rights to due process
10 and equal protection of the laws. Plaintiffs will be greatly and irreparably damaged by reason of
11 Defendants' infringement and violation of these civil rights, and unless Defendants are enjoined
12 by this court, said acts will further violate Plaintiffs' civil rights, and further irreparably harm the
13 Plaintiffs.

14 59. Defendants' conduct has created what the California Supreme Court describes as
15 "liability for the serious emotional distress caused by such egregious, but clandestine, misconduct,"
16 which caused "Plaintiffs to suffer physical injury, shock, outrage, extreme anxiety, worry,
17 mortification, embarrassment, humiliation, distress, grief and sorrow." *Christensen v. Sup. Ct.*
18 (1991) 54 Cal.3d 868, 887.

19 60. "Similar recognition that the sensibilities of all survivors merit protection is found
20 in...[H.S.C.] Section 7050.5 [which] prohibits desecration of human buried remains, and makes
21 special provision for proper disposition of Native American remains discovered during an
22 excavation. The Legislature's findings include express recognition of Native American 'concerns
23 regarding the need for sensitive treatment and disposition' of such remains. (Stats. 1982, ch. 1492,
24 §1. Subd. (2) p. 5778)." *Christensen v. Sup. Ct.* (1991) 54 Cal.3d 868, 897.

25 61. Breach of these statutory duties "cause[s] mental anguish to the decedent's bereaved
26 relations...in their most difficult and delicate moments...[t]he exhibition of callousness or
27 indifference, the offer of insult and indignity, can of course...visit agony akin to torture on the
28

1 living...The tenderest feelings of the human heart center around the remains of the dead.”
2 *Christensen* at 895, citing *Allen v. Jones*, 104 Cal.App.3d 207, 211 (1980).

3 62. Plaintiffs are entitled to a temporary, preliminary and permanent injunction
4 to prevent such wrongful conduct of the defendants as herein alleged, and to prevent great and
5 irreparable injury resulting from the infringement and violation of these personal and civil rights,
6 from the likelihood that damages cannot properly compensate Plaintiffs for such irreparable
7 personal harm, and that Defendants will be unable to respond in damages, and from the difficulty
8 or impossibility to ascertain the exact amount of personal bodily injury and personal property
9 damage Plaintiffs have sustained, and will in the future sustain, as issued in: *Center for Biological*
10 *Diversity v. Dept. of Fish & Wildlife*, 2014 Cal.App. LEXIS 256 (2014). requiring an immediate
11 cessation of grading and barring the developer from construction activities within the immediate
12 vicinity of the remains, per CEQA *Guidelines*, 14 Cal. Code Regs. §15126.4(b)(3)(A), (b)(3)(B)1
13 and 4, and 15064.5(e), and requiring the preservation of human remains “in place;” *People v. Van*
14 *Horn*, 218 Cal.App.3d 1378, 1391-92, 1398 (4th DCA, Div. 2, 1990), granting summary judgment
15 and a permanent mandatory injunction requiring Defendants to stop violating PRC §5097.99, to
16 protect grave goods and Native American artifacts wrongfully removed from an Indian grave; *Eden*
17 *Mem. Park Assoc. v. Sup. Ct.* (1961) 189 Cal.App.2d 421,424-25, enjoining Cal. Dept. of Public
18 Works from building freeway on dedicated cemetery; *Hornblower v. Masonic Cemetery Assoc.*
19 (1923) 191 Cal. 83, 91, enjoining the abandonment of cemetery or otherwise interfering with
20 remains buried there; *Weisenberg v. Truman* (1881) 58 Cal. 63, 69, finding Los Angeles pueblo
21 lands were impliedly dedicated for a cemetery in 1857, and that the trustees had a duty to protect
22 the bodies from unlawful desecration; *Viejas Band v. Padre Dam Municipal Water District*, SDSC
23 Case No. 2010-93203, enjoining the violation of the HSC and PRC during construction of a \$20
24 million reservoir and pumping station project, despite evidence that relocating the station would
25 cost an additional \$10 million, to prevent severe irreparable damage and desecration to the original
26 Capitan Grande Band’s sacred burial site, NOL Ex. I; *Puyallup, Washington*, where a stop work
27 order was issued for all work by Trammel Crow in front of the Indian Willard Cemetery, which is
28 200 years old, fearing ancestral remains might be disturbed, LaRue, *The News Tribune*, December

1 2, 2013, NOL Ex. J; and *Eberlin v. Polinitza*, SDSC Case No. 670822 (1994), enjoining
2 construction next door to Chancellor’s House at UCSD, where two Native American bodies were
3 ordered reinterred in private confidential sites on the property; Webb Decl. ¶18; and *Cypress Lawn*
4 *v. Lievre*, (1921) 55 Cal.App. 228, 229, enjoining any interference with unimpeded right to
5 visitation and a permanent injunction of flower stands interrupting ingress and egress to the
6 cemetery.

7 63. These ongoing and continuing injuries sustained by Plaintiffs cannot be fully
8 compensated in damages and Plaintiffs are without an adequate remedy at law without the
9 imposition of the requested equitable injunctive relief.

10 64. Where, as here, adequate and appropriate mitigation is not available, and since there
11 is no clear and convincing evidence that the public interest and necessity require otherwise, the
12 Court is required to issue an injunction, to prevent severe and irreparable damage to, and to assure
13 appropriate access for Native Americans to, the Native American sanctified cemetery, place of
14 worship, religious and ceremonial sites, and sacred shrines, as required by common law and P.R.C.
15 5097.94.

16 65. Plaintiffs are entitled to declaratory and injunctive relief going forward as follows:
17 That the Defendants, and their officers, agents, servants, employees and all persons in active
18 concert with them, or any of them, shall be restrained from:

19 (A) dumping, grading, excavating, operating heavy equipment, moving dirt and/or gravel,
20 or any other construction activities, involving the soils within the cemetery on the parcel known
21 as 597-080-06, and violating the California Constitution, the California Environmental Quality
22 Act, HSC §§7050.5, 7052, 7054, 7054.6, 7054.7, 7055, 7500, 8015-16, 8553, 8558, 8560, 8580,
23 103060, PRC §§5097-5097.994, and Penal Code §§487 and 622 1/2, and otherwise mutilating,
24 disinterring, removing, excavating, and disturbing in any way, any Native American human
25 remains, and the items associated with their human remains, including, but not limited to grave
26 goods, cultural items, associated funerary objects, sacred objects, and objects of cultural patrimony,
27 that have been interred at the cemetery; and that they be further ordered to:
28

1 (B) Provide a written plan of action specifically acknowledging Plaintiffs' ownership,
2 custody and control of, and the kind of traditional and planned treatment, care and handling and
3 disposition of, any of their families' human remains and funerary objects, as required by HSC
4 §§7100, 7500, 8011, 8015-16, 8102, 8301.5, 8553, 8558, 8560, 8580, PRC §§5097.9-994, 21803,
5 and 14 Cal. Code Regs. 15064.5(e) and 15126.4(b)(3);

6 (C) Recognize Plaintiffs' legal custody of their families' human remains and funerary
7 objects, as required by HSC §§7100, 7500, and P.R.C. §5097.98; and

8 (D) Cease and remove the installation of all soil nails in the cemetery property known
9 as 597-080-06, and to cease interfering with appropriate access to the cemetery property known as
10 597-080-06.

11 **WHEREFORE** Plaintiffs pray for judgment as follows:

12 1. General, compensatory, consequential, and actual damages according to
13 proof;

14 2. That the Defendants, and their officers, agents, servants, employees and all persons
15 in active concert with them, or any of them, shall be restrained from:

16 (A) dumping, grading, excavating, operating heavy equipment, moving dirt and/or gravel,
17 or any other construction activities, involving the soils within the cemetery on the parcel known
18 as 597-080-06, and violating the California Constitution, the California Environmental Quality
19 Act, HSC §§7050.5, 7052, 7054, 7054.6, 7054.7, 7055, 7500, 8015-16, 8553, 8558, 8560, 8580,
20 103060, PRC §§5097-5097.994, and Penal Code §§487 and 622 1/2, and otherwise mutilating,
21 disinterring, removing, excavating, and disturbing in any way, any Native American human
22 remains, and the items associated with their human remains, including, but not limited to grave
23 goods, cultural items, associated funerary objects, sacred objects, and objects of cultural patrimony,
24 that have been interred at the cemetery; and that they be further ordered to:

25 (B) Provide a written plan of action specifically acknowledging Plaintiffs' ownership,
26 custody and control of, and the kind of traditional and planned treatment, care and handling and
27 disposition of, any of their families' human remains and funerary objects, as required by HSC
28

1 §§7100, 7500, 8011, 8015-16, 8102, 8301.5, 8553, 8558, 8560, 8580, PRC §§5097.9-994, 21803,
2 and 14 Cal. Code Regs. 15064.5(e) and 15126.4(b)(3);

3 (C) Recognize Plaintiffs’ legal custody of their families’ human remains and funerary
4 objects, as required by HSC §§7100, 7500, and P.R.C. §5097.98; and

5 (D) Cease and remove the installation of all soil nails in the cemetery property known
6 as 597-080-06, and to cease interfering with appropriate access to the cemetery property known as
7 597-080-06.

8 3. That the August 31, 2017 deed by The Roman Catholic Bishop of San Diego, a
9 corporation sole, purporting to convey the cemetery property now known as 597-080-06 to the
10 Jamul Indian Village, as described above, be set aside and declared void so that Plaintiffs can
11 recover on their Claims including recovering on any judgment or award and imposing injunctive
12 relief against the Defendants in this action;

13 4. That Plaintiffs be awarded punitive damages;

14 5. That Plaintiffs be awarded their reasonable attorneys' fees, costs, and expenses in
15 this action pursuant to Code of Civil Procedure section 1021.5.

16 6. That Plaintiffs be awarded their costs and such other and further equitable and legal
17 relief as this court may deem just and proper.

18 **JURY DEMAND**

19 Plaintiffs hereby demand trial by jury.

20 Dated: May 17, 2023

WEBB & CAREY

21
22 /s/Patrick D. Webb
23 Patrick D. Webb
24 Attorneys for Plaintiffs
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