

**TWENTY-THIRD JUDICIAL DISTRICT COURT
PARISH OF ST. JAMES
STATE OF LOUISIANA**

RISE ST. JAMES and SHARON LAVIGNE,
Plaintiffs

Civil Action:

v.

Division:

FG LA, LLC, a/k/a Formosa Plastics,
Defendant.

Filed: _____

Deputy Clerk: _____

**VERIFIED PETITION FOR TEMPORARY RESTRAINING ORDER
AND INJUNCTIVE RELIEF**

Plaintiffs RISE ST. JAMES and SHARON LAVIGNE request an order from this Court allowing them to conduct a one-hour prayer service on a cemetery recently discovered on Defendant’s property to commemorate the lives of people enslaved on the plantation that once operated there on Juneteenth, the day that celebrates their ancestors’ liberation from formal chattel slavery.

Plaintiffs make this request pursuant to La. Code of Civ. Proc. Art. 3601, *et seq.*, in fulfillment of their rights under Louisiana cemetery dedication law and Art. XII, sec. 4 of the Louisiana Constitution to preserve, foster, and promote their cultural origins, and the First Amendment of the United States Constitution and Art. I sec. 8, of the Louisiana Constitution to the freely exercise their religion.

PRELIMINARY STATEMENT

1. Cemetery dedication law in Louisiana prohibits landowners from unreasonably and categorically denying access to cemeteries on their property by descendants and friends.¹ It is a recognition that “cemeteries are considered by most cultures to be sacred spaces” and that we have “moral duties to the wishes of the dead” and that there is a “generally held sanctity for cemeteries.”²

¹ Attorney General Opinion No. 07-0183, available at <http://www.lcb.state.la.us/ago/ago07-0183.pdf>.

² *Id.*

2. After a representative of Defendant informed Plaintiff Sharon Lavigne, founder and president of RISE St. James, that she could not go on to its property to visit the recently-discovered cemetery and failed to provide a reasonable explanation for restricting access, Plaintiffs made several amicable requests to conduct a short prayer service on the gravesite on Juneteenth (June 19, 2020), and have received no response.

3. Juneteenth is a deeply significant holiday for Plaintiffs, who are African American residents of the Fourth and Fifth Districts of St. James Parish. It is the oldest day of celebration of the end of formal slavery and marks the day that people enslaved in Texas learned of their emancipation more than two years after it had been effectuated.

4. Juneteenth is especially important for Plaintiffs this year as communities around the state and the country struggle through the COVID-19 crisis which has had a disproportionate impact on Black communities, and through the collective upheaval in this country necessitated by more killings of Black people, tragically underscoring the enduring failure to fully reckon with and account for the traumatic history of slavery and its modern vestiges.

5. The discovery of the burial site on a former plantation has had a significant and meaningful impact on Plaintiffs and African American members of the communities in St. James and descendants of people enslaved on what was called the Buena Vista Plantation.

6. Plaintiffs are deeply concerned about exercising their rights to access the property as there is a pipeline running through the cemetery, which renders it a form of critical infrastructure under La. R.S. 14:61, which carries a sentence of imprisonment of up to five years for entering or remaining on such property without authorization. The existence of the pipeline was confirmed through the records obtained in response to RISE's public records request to the Division of Archaeology.

7. Plaintiffs have been threatened with arrest by local law enforcement if they continue to go on to the property without landowner permission.

8. Plaintiffs thus seek a temporary restraining order prohibiting Defendant FG LA, LLC, from preventing their access to the cemetery for prayer and reflection as is their right under cemetery dedication law and Art. XII, sec. 4, of the Louisiana Constitution to preserve, foster, and promote their cultural origins, and the First Amendment to the United States Constitution and Art. I, sec. 8, of the Louisiana to the free exercise of their religion.

9. Defendant would not be harmed if the Court grants Plaintiffs' request for a one-hour prayer service on the cemetery.

PARTIES

10. Plaintiff RISE ST. JAMES is a grassroots, faith-based organization comprised primarily of residents of the Fourth and Fifth Districts of St. James, which are majority Black communities, surrounded by petrochemical facilities on land where sugarcane plantations once operated along the Mississippi River. RISE members have visited the cemetery after it was discovered on Defendant's property to pray, sing, and report on why such sites are so significant for their community. With a pipeline running through the cemetery, RISE members are concerned that they could be charged with a felony punishable by up to five years even though there is no construction on the site and no structures, except for a 3-sided fence surrounding the graves. RISE members wish to conduct prayer and reflection the gravesite on Juneteenth.

11. SHARON LAVIGNE is a resident of the Fifth District of St. James Parish, who lives and owns property near the cemetery and Defendant's property. Lavigne is also founder and president of RISE St. James. In that capacity, she has organized visitations to the cemetery, prayer, and reporting from the site in the past. Lavigne recently sought and was denied permission to access the site by FG LA, LLC. Lavigne is also concerned about exercising her right to access the site with the possibility of being charged with commission of a felony, since there is a pipeline running through the cemetery. Lavigne wishes to hold a prayer service and commemoration on the site on Juneteenth.

12. Defendant FG LA, LLC, is a member of Formosa Plastics Group, a Taiwanese-based conglomerate, that owns the property located in St. James Parish where the cemetery to which Plaintiffs seek access was recently discovered, and has denied Plaintiff Lavigne access to the site, and has failed to respond to subsequent requests for access.

JURISDICTION AND VENUE

13. This Court has subject-matter jurisdiction pursuant to La. Code of Civ. Proc. Art. 2 to adjudicate matters arising under Louisiana's cemetery dedication law, as well as Art. I, sec. 8 and Art. XII, sec. 4 of the Louisiana Constitution and the First Amendment of the United States Constitution. Jurisdiction is also found in La. Code of Civ. Proc. Art. 8 to enforce a right to access property located in this state.

14. Venue is proper in this Court under La. Code of Civ. Proc. Art. 80(A)(1) as the property at issue is located in this district and Plaintiffs are asserting a right to access it.

NATURE OF THIS ACTION

15. This is an action to enforce rights of access to a cemetery under the cemetery dedication law in Louisiana as well as the right to preserve, foster, and promote Plaintiff's cultural origins under La. Const. Art. XII, sec. 4, and the rights to free exercise of religion under the United States and Louisiana constitutions.

FACTS

16. St. James Parish, like other parishes along the Mississippi River, was home to numerous plantations where people were enslaved. At the beginning of the Civil War, enslaved people formed a considerable majority of the population in St. James Parish, according to a report completed by a consultant employed by Defendant and obtained through a public records request to the Louisiana Division of Archaeology.³

17. Burials of people who were enslaved on plantations in the United States were not routinely recorded, marked, or venerated. Many have been lost to history – and to descendants of those who suffered under the system of slavery.⁴

18. In late November 2019, Plaintiff RISE St. James learned through a public records request to the Louisiana Division of Archaeology that a cemetery had been discovered by archaeological consultants employed by Defendant on a portion of the property owned by Defendant where the Buena Vista Plantation once operated.

19. A report prepared by Defendant's archaeologists, obtained through RISE's public records request, found that despite significant disturbances at the site, "numerous intact burials and grave shafts indicate much of the cemetery remains intact."⁵ The report further noted that the

³ See *Phase I Cultural Resources Survey and Archeological Inventory of the Proposed Boardwalk Louisiana Midstream, LLC, 56.2 KM (34.9 mi) Formosa Pipeline Project in Iberville, Ascension, and St. James Parishes*, R. Christopher Goodwin & Associates, Inc., June 2019.

⁴ See Terry L. Jones, *Researcher maps hidden graveyards of slaves who once tilled Louisiana sugar cane fields*, The Advocate, Feb. 5, 2017, ("The state of the cemeteries further underscores how those buried in them over the years have been denied their dignity even in death.") available at https://www.theadvocate.com/baton_rouge/news/communities/westside/article_7f0fd2e8-e966-11e6-91bd7b5708a1dc45.html; See also, Evan Nicole Brown, *The Hidden-History of African-American Burial Sites in the Antebellum South: Enslaved people used codes to mark graves on plantation grounds*, Atlas Obscura, Oct. 25, 2018, available at <https://www.atlasobscura.com/articles/africanamerican-grave-markers>; *African American Slave Cemeteries: Where Are They Now?*, Slave Cemeteries, available at <https://slavecemeteries.wordpress.com/2015/04/17/african-american-slave-cemeteries-where-are-they-now/>; Ted Oberg, *A grave mistake: Possible slave cemeteries not investigated*, Feb. 5, 2016, available at <https://abc13.com/a-grave-mistake-possible-slave-cemeteries-in-harris-county-cypress/1188133/>; Karen Roberts, *Uncovering a painful past for African Americans, one headstone at a time*, Feb. 18, 2016, available at <https://www.usatoday.com/story/news/nation-now/2016/02/18/slave-burial-grounds-african-americans/78773156/>

⁵ TerraXplorations, Inc., Final Report: Archaeological Monitoring and Mechanical Stripping of the Acadia and Buena Vista Cemeteries, St. James Parish, Louisiana, June 2019, p. 55, (Attachment D annexed to Letter from

“absence of verifiable indications (headstones or through archival research) of who was buried in the cemetery leads us to believe it could have been a slave cemetery associated with the Buena Vista Plantation.”⁶

20. Defendant’s archaeologists’ report also confirmed that the owner of the plantation, Benjamin Winchester, owned “dozens of slaves.” U.S. Census data from 1830 through 1860, some with “slave schedules” attached, show that Winchester “owned” over 200 people by 1860. According to the 1860 census, they ranged in age from 10 months to 60 years.

21. Defendant’s archaeologists were able to trace the burial of the Buena Vista Plantation owners to cemeteries in other parishes because their deaths were honored, and records of their burials were routinely kept and are now traceable. By contrast, people enslaved on the Buena Vista Plantation had no choice in where they were lived, or where they were buried, and their deaths were not routinely recorded.

22. Moved by the connection to their long-severed past, Plaintiff Lavigne and members of RISE St. James began visiting the site to pray, sing, and call attention to the cemetery and its meaning and significance for the African American community in St. James and beyond. Plaintiffs believe they and members of their families are descendants of people who were forced to live, work, and die on plantations in the area. Members of RISE who are in their 60s and 70s have brought flowers to the graves on the former Buena Vista Plantation, held hands, sang and prayed. They believe their ancestors are calling out for respect and acknowledgment and are determined to honor their memories and the collective experience of those who suffered under slavery.

23. During several of these visits, St. James Parish Sheriff’s deputies have arrived within minutes. On Plaintiff Lavigne’s last visit, Sheriff’s deputies advised Plaintiff Lavigne that the owner did not authorize her presence there and she could not visit the gravesite.

24. On another occasion, on February 1, 2020, Lavigne was visited at her home by a deputy who advised her that if she visited the property again, she could be subject to arrest. Undersigned counsel then sent a letter to the Sheriff of St. James Parish advising him of Plaintiffs’ rights under the law and that landowners cannot categorically deny access to

Center for Constitutional Rights to St. James Parish Council, December 23, 2019) available at <https://ccrjustice.org/sites/default/files/attach/2019/12/RISE%20St.%20James%20DEQ%20Comments%20Dec.%2018%20%20w%20attachments.pdf>.

⁶ *Id.*

cemeteries. *See* Letter from P. Spees to Sheriff Willie Martin, Feb. 10, 2020, annexed hereto as Exhibit A.

25. The property owned by Defendant is comprised of 2,375 acres of open field. The only structure on the property is a 3-sided chain link fence around the Buena Vista Plantation Cemetery.

26. There is no construction activity on the site, though it is the location of a planned plastics facility which is being challenged in federal and state court.

27. On May 1, 2020, Defendant's spokesperson Janile Parks sent a letter to Plaintiff Lavigne in which she denied Lavigne's request for access to the cemetery and advised her that access was restricted "due to safety concerns." *See* Letter from J. Parks to Sharon Lavigne, May 1, 2020, annexed hereto as Exhibit B.

28. Plaintiffs cancelled plans for a visit to the site on Friday, May 22, 2020, for Memorial Day weekend, in the wake of Parks' letter denying them access.

29. On May 22, 2020, undersigned counsel Pamela Spees sent a letter to Formosa's attorney via email and fax clarifying the rights of access under Louisiana's cemetery dedication law and inquiring whether Defendant would agree to RISE's plans for a prayer ceremony on Juneteenth, conducted in a safe, socially-distanced manner. Letter from P. Spees to M. McKeithen, May 22, 2020, annexed hereto as Exhibit C.

30. Undersigned counsel pointed out that landowners may not categorically and unreasonably deny access to cemeteries on their property and noted that Parks' letter did not specify how prayer, singing, and visitation at the cemetery in a socially-distanced manner would raise safety concerns. *Id.*

31. When counsel for Plaintiffs did not receive a response from Formosa's counsel, undersigned sent a follow-up letter via fax and email on June 5, 2020, again requesting agreement to allow RISE St. James to visit the cemetery to commemorate Juneteenth, and notification either way by close of business Tuesday, June 9, 2020. Letter from P. Spees to M. McKeithen, June 5, 2020, annexed hereto as Exhibit D.

32. Receiving no response, co-counsel for Plaintiffs, William Quigley, called Formosa's counsel, Marjorie McKeithen, on Thursday, June 11, in an effort to resolve the matter without having to involve this Court. McKeithen advised Quigley that they were working on a response and should have an answer soon. By close of business Friday, June 12, 2020, Plaintiffs

still had not received an answer from Defendant as to whether they can visit the cemetery for an hour on Juneteenth to pray and commemorate those who had been enslaved on the Buena Vista Plantation.

33. Plaintiffs thus bring this action to enforce their lawful right to access the cemetery. There is no harm to Defendant from this Court's allowance of Plaintiffs' prayer and ceremony commemorating Juneteenth on a burial ground in an open, empty field.

REASONS FOR INJUNCTIVE RELIEF

34. Without injunctive relief, Plaintiffs will suffer irreparable damage because their rights under Louisiana law, and the United States and Louisiana constitutions will be denied.

35. Conversely, Defendant will not be harmed by allowing Plaintiffs to visit the burial site in the middle of an empty, open field for one hour of prayer and ceremony commemorating Juneteenth.

36. Louisiana law is clear that when cemeteries or burial grounds are discovered on private property, the landowner may not categorically and unreasonably prevent access to those sites. *In re St. James Methodist Church of Hahnville*, 95-410 (La. App. 5 Cir. 12/27/95) 666 So. 2d 1206 citing *Vidrine v. Vidrine*, 225 So.2d 691, 697-698 (La. App. 3rd Cir. 1969). The Louisiana Attorney General has referred to such sites as "isolated cemeteries," which that office defined as "cemeteries that have become separated from easy access due to property transfers and the like, typically causing them to lie wholly within the property of someone unrelated to the descendants of those interred in the cemetery." La. Attorney Gen. Op. 08-0186.

37. Article XII, Sec. 4 of the Louisiana Constitution protects the "right of the people to preserve, foster, and promote their respective historic... and cultural origins." The cultural origins of African American residents of St. James whose families have resided there for generations are undoubtedly rooted in the history of slavery. Historic burial sites, dating from that era, once believed lost to history are meaningful connections to and reminders of that past.

38. The Louisiana Attorney General has recognized the sanctity and profound cultural significance of burial sites which contain the "history of their respective communities" and "lead us to a better understanding of our own culture: who we are, where we have come from, and where we are going... We, the living, are custodians of the dead and the stories that they can tell, and we must strive to protect those stories."⁷ In seeking access to this cemetery on the site of the

⁷ Attorney General Opinion No. 07-0183, available at <http://www.lcb.state.la.us/ago/ago07-0183.pdf>.

former Buena Vista Plantation, Plaintiffs assert their right under the Louisiana Constitution to acknowledge, consecrate, preserve and foster their cultural origins.

39. The First Amendment to the United States Constitution and Article I, Section 8, of the Louisiana Constitution protect the free exercise of religion. Prayerful consecration of a burial site is unquestionably a religious or spiritual exercise.

RELIEF SOUGHT:

WHEREFORE, Plaintiffs respectfully request that, after due proceedings had, this Court enter judgment, and:

a. Enter a temporary restraining order, without bond, and later, if necessary, a preliminary and permanent injunction, enjoining and stopping Defendant from interfering with the rights of Plaintiffs to access the Buena Vista Plantation cemetery to conduct prayer and commemoration from 11 a.m. to noon on Friday, June 19, 2020, in violation of the rights of Plaintiffs under Louisiana's cemetery dedication law, as well as Art. XII, sec. 4, of the Louisiana Constitution, the First Amendment to the United States Constitution, and Art. I, Sec. 8, of the Louisiana Constitution.

b. Grant any other and further relief as the Court deems just and proper.

Dated: June 15, 2020

Respectfully submitted,



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**TWENTY-THIRD JUDICIAL DISTRICT COURT
PARISH OF ST. JAMES
STATE OF LOUISIANA**

RISE ST. JAMES and SHARON LAVIGNE,

Civil Action:

Plaintiffs

v.

Division:

FG LA, LLC, a/k/a Formosa Plastics,

Defendant.

Filed: _____

Deputy Clerk: _____

VERIFICATION

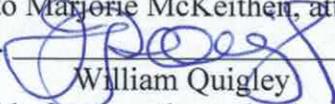
Before me, the undersigned Notary Public, personally came and appeared:

William Quigley

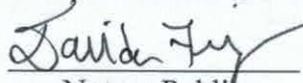
who, after being duly sworn, did depose and say that he is attorney for the Plaintiffs in the above-captioned civil action, that he has read the foregoing Petition and that all of the allegations contained therein are true and correct to the best of his knowledge and belief.

Quigley further affirms that all exhibits annexed to the Petition are true and correct copies of the documents referenced.

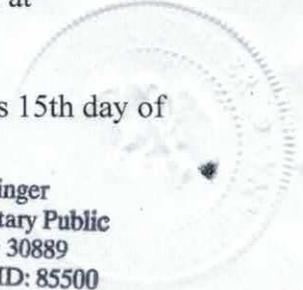
Further, Quigley affirmed that counsel for Plaintiffs have reached out by email to counsel for Defendant, advising them that this matter is being filed and providing them a copy of the pleadings. Messages were sent to Marjorie McKeithen, attorney for FG LA, LLC, at mmckeithen@joneswalker.com.


William Quigley

Sworn to and subscribed before me, the undersigned Notary Public, on this 15th day of June, 2020.


Notary Public

Davida Finger
Attorney & Notary Public
La Bar No.: 30889
Notary Public ID: 85500
State of Louisiana



Sheriff Please Serve: FG LA, LLC, via Registered Agent for Service of Process, 3867 Plaza Tower Dr., Baton Rouge, LA 70816

Exhibit A



666 Broadway, 7th Floor
New York, New York 10012
212-614-6464
ccrjustice.org

February 10, 2020

Via Email and Federal Express

Sheriff Willy J. Martin
St. James Parish Sheriff's Office
5800 Louisiana Hwy. 44
Convent, LA 70723
Email: sheriff@stjamessheriff.com

Re: Cemeteries on Site of Proposed Plastics Facility

Dear Sheriff Martin:

We represent Ms. Sharon Lavigne and RISE St. James, a faith-based organization she founded to advocate for racial, social, and environmental justice. We met last year when you and your deputies worked with us and RISE to ensure the march along River Road proceeded safely. We write now to seek your assistance in making sure a different situation does not lead to unnecessary conflict.

Ms. Lavigne was visited by one of your deputies on Saturday, February 1, 2020, who indicated that the property owned by FG LA, LLC, also known as Formosa, was off-limits, and she could be subject to arrest if she visited the site again. We have also heard from other members of the community that local law enforcement has warned against visits to the site.

We write to apprise your office that cemeteries have been discovered on that site. These cemeteries are believed to be home to the graves of people who were enslaved on the plantations that once existed there. Many African Americans in St. James are likely descended from the people who were enslaved there as well as those who later worked as freedmen after slavery was formally ended. We have good reason to believe that the Louisiana Division of Archaeology is requiring further investigation of the site for additional cemeteries that independent archeologists believe also exist there.

Louisiana law is clear that when cemeteries or burial grounds are discovered on private property, the landowner may not prevent access to those sites by descendants or friends. *In re St. James Methodist Church of Hahnville*, 95-410 (La.App. 5 Cir. 12/27/95) 666 So. 2d 1206 citing *Vidrine v. Vidrine*, 225 So.2d 691, 697-698 (La. App. 3rd Cir. 1969). The Louisiana Attorney General has referred to such sites as "isolated cemeteries," which that office defined as "cemeteries that have become separated from easy access due to property transfers and the like, typically causing them to lie wholly within the property of someone unrelated to the descendants of those interred in the cemetery." La. Attorney Gen. Op. 08-0186.

The unexpected discovery of these cemeteries has enormous meaning and significance for Ms. Lavigne and members of RISE as well as other descendants in St. James and beyond. It is possible that Formosa does not know or understand the law in Louisiana regarding cemeteries and wrongly thinks they can bar people from visiting these gravesites. The law is clear though that the property owner may not deny descendants and friends access to these cemeteries and must not be allowed to use your office to effectuate a violation of this law.

We are more than happy to discuss this with you further and provide more information about the sites and the status of archeological investigations if that would be helpful to you.

We can be reached at the numbers below; and thank you in advance for your attention to this matter.

With best regards,



Pamela C. Spees
pspees@ccrjustice.org
(212) 614-6431

William Quigley
quigley77@gmail.com
(504) 710-3074

Exhibit B



P.O. Box 280, Vacherie, LA 70090-9998
www.sunshineprojectla.com

May 1, 2020

Ms. Sharon Lavigne
RISE St. James
8581 Highway 18
Saint James, LA 70086-7570

Dear Ms. Lavigne,

I am writing in response to your April 21, 2020 letter. First and foremost, FG is respectful of the unmarked burial site located on the former agricultural land that The Sunshine Project now owns. Given the ongoing COVID-19 pandemic, high river levels, and for the safety of our workforce and the community, all activities onsite have been paused.

Access to The Sunshine Project property is currently restricted due to safety concerns, some of which you have raised yourself in connection with third-party activities on the property during the COVID-19 pandemic, so we were somewhat surprised by the timing of your request. It is with your safety and others' safety in mind that we must deny your request to visit FG property at this time.

With the oversight of and coordination by the appropriate governmental agencies, FG has respectfully and properly followed all applicable procedures in researching and identifying the unmarked burial site on our property. In coordination with the State Historic Preservation Office (SHPO), archaeologists identified through historic maps only two potential unmarked burial sites on the property: (1) the Buena Vista site, which FG has fenced in and protected within the boundary of its property (the remainder of Buena Vista, which the archaeologists note likely extends onto neighboring agricultural property, which FG does not own, has not been fenced); and (2) the possible Acadia site, on which no evidence of burials has been found.

FG will continue to work with the appropriate governmental agencies to properly address the respectful preservation of the remains at the Buena Vista site, and we hope to be able to learn more about the identities of the deceased persons, if possible, as well as the identities of any living relatives.

With respect to this point, we note that you refer to the unmarked burials at the Buena Vista site as your ancestors; however, as you know, no archaeologist has been able to make any affirmative conclusion about the identity or ethnicity of the remains that FG discovered on the property. There were no grave markers and the various archaeologists have speculated that the remains could be African American or could be from the Civil War. (See TerraXplorations, Inc. Final Report, June 2019 at p. 18.) One archaeologist also reported that Chinese immigrant workers were brought in to work on Buena Vista Plantation. (See CEI report at page 65.) Because of the uncertainty regarding who is buried at the Buena Vista site (or even the ethnicity of the burials), we are unable to identify any living relatives at this time.

If you have any documents or specific information which shows that the unmarked burials at the Buena Vista site are your ancestors, we would really appreciate your sharing it with us.

Lastly, we note that you and your organization are a party in several lawsuits adverse to FG, and we are concerned about continued communication from you outside of the proper channels. You initiated these lawsuits, which include allegations about Buena Vista. In light of these lawsuits, we request that you direct further communication to FG through counsel in the respective lawsuits.

Sincerely,

A handwritten signature in black ink that reads "Janile Parks". The signature is written in a cursive, flowing style.

Janile Parks
Director of Community and Government Relations

Exhibit C



Pam Spees <pspees@ccrjustice.org>

Letter Concerning Burial Sites

Pam Spees <pspees@ccrjustice.org>

Fri, May 22, 2020 at 11:47 AM

To: "McKeithen, Marjorie" <mmckeithen@joneswalker.com>

Cc: Julie Teel Simmonds <jteelsimmonds@biologicaldiversity.org>, "Jacqueline (ENRD)" <Jacqueline.Leonard@usdoj.gov>, "Andrew (ENRD)" <Andrew.Knudsen@usdoj.gov>

Dear counsel,

We represent RISE St. James on certain matters relating to the burial sites on the property.

The attached letter is in response to a communication from Ms. Janile Parks to Ms. Sharon Lavigne.

While we are not involved in the litigation challenging the Army Corps' permit, because it relates to a matter that is currently at issue in that litigation, and out of an abundance of caution, I am forwarding it to parties, through counsel, including counsel for the Army Corps of Engineers/Mr. Gauthier, and for petitioners.

Thank you and best regards,

Pam Spees
Senior Staff Attorney
Center for Constitutional Rights
Tel and Fax (212) 614-6431**RISE Letter re Burial Sites 5.22.20.pdf**

180K



666 Broadway, 7th Floor
New York, New York 10012
212-614-6464
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May 22, 2020

Via Fax to: (504) 589-8420

Marjorie McKeithen
Counsel for FG LA, LLC
Jones Walker
201 St. Charles Ave.
New Orleans, LA 70170-5100

Re: Burial Sites on Formosa Property

Ms. McKeithen:

We represent Ms. Sharon Lavigne and RISE St. James on matters relating to the burial sites on property owned by your client, FG LA, LLC, or Formosa Plastics. I am writing in response to Ms. Janile Parks' letter of May 1, 2020, to Ms. Lavigne, in which she advised that Ms. Lavigne could not visit the Buena Vista Plantation cemetery due to safety concerns.

In her letter Ms. Parks advised Ms. Lavigne that the company's activities have been suspended and access was restricted, including for Ms. Lavigne. Ms. Parks' letter failed to indicate how Ms. Lavigne's safety would be impaired when nothing is even happening on the property, or how she might threaten others' safety by visiting the gravesite and singing, praying, or bringing flowers to honor those buried there in a socially distanced manner. Such mild activities like walking, singing, and praying, hardly compare to the heavy machinery and construction that is banned during high-water levels to protect the levees.

Louisiana law is clear that when cemeteries or burial grounds are discovered on private property, the landowner may not prevent access to those sites by descendants or friends. *In re St. James Methodist Church of Hahnville*, 95-410 (La. App. 5 Cir. 12/27/95) 666 So. 2d 1206 citing *Vidrine v. Vidrine*, 225 So.2d 691, 697-698 (La. App. 3rd Cir. 1969). The Louisiana Attorney General has referred to such sites as "isolated cemeteries," which that office defined as "cemeteries that have become separated from easy access due to property transfers and the like, typically causing them to lie wholly within the property of someone unrelated to the descendants of those interred in the cemetery." La. Attorney Gen. Op. 08-0186. A landowner may not place unreasonable limitations or categorically deny access to the descendant communities. *See id.*

In addition to the requirements of Louisiana's cemetery dedication laws, the Louisiana Constitution protects the right of the people to preserve, foster, and promote their respective cultural origins. La. Const. Art. XII, Sec. 4. For RISE, many of whom are themselves proud descendants of enslaved people, such unmarked burial grounds are central to the acknowledgement and preservation of their

cultural origins.¹ The Louisiana Attorney General has observed that cemeteries contain the “history of their respective communities” and “lead us to a better understanding of our own culture: who we are, where we have come from, and where we are going... We, the living, are custodians of the dead and the stories that they can tell, and we must strive to protect those stories.”²

That is true of any cemetery or burial ground. It has even deeper significance when it is a cemetery that is home to people who were supposed to be lost to history. Preservation, promotion, and fostering of these remnants of their cultural origins is critical for the African American community when such sites are discovered; they represent a vital, precious connection through time when there was little hope of ever finding these gravesites because their ancestors’ lives were so devalued that their burials did not merit formal recording by plantation owners or the society around them. The sad, awful fact of this systematic, enforced anonymity is what led Formosa’s own consultants to believe it “could have been a slave cemetery associated with the Buena Vista Plantation.” TerraX at p. 55.

Despite this finding, Formosa’s response, through Ms. Parks, has been to find ways to suggest that it is not people enslaved on those plantations who were buried there and to put the burden on African American members of the community to prove they are among the community of descendants. Ms. Parks also makes a factually inaccurate reference in her letter to a report by an archeological expert when she notes that the report stated, “Chinese immigrant workers were brought in to work on Buena Vista Plantation.” In fact, the report specifically stated, “it is not known if these Chinese laborers ever arrived at Buena Vista, or if they did, how long they stayed.” CEI report at p. 65. Based on the acknowledgement in their own consultant’s report, Ms. Parks and Formosa know full well, if they were not already aware, that the way slavery operated meant there were no burial records for enslaved people like there were for the plantation owners, which were easily located by Formosa’s consultants through “Find a Grave.” TerraX at p. 17-18, 55. People enslaved on plantations could not choose to be buried elsewhere.

Ms. Parks’ reference to the CEI report confirms that Formosa has received it from the Division of Archaeology. That report clearly describes, through a comprehensive analysis, how Formosa’s consultants looked in the wrong place twice for the Acadia Plantation Cemetery, and how there may still be intact burials under the field road. The report also identified four other sites on the project property that could be cemeteries. These findings were made by the same expert who first alerted the Division of Archaeology to the existence of the Buena Vista and Acadia Plantation cemeteries.

Records obtained from the Louisiana Division of Archaeology through a public records request indicate that Formosa plans heavy construction on the site of the Acadia Plantation Cemetery. RISE is concerned that burials may still exist under the field road and could be further destroyed if there is

¹ See Terry L. Jones, *Researcher maps hidden graveyards of slaves who once tilled Louisiana sugar cane fields*, The Advocate, Feb. 5, 2017, (“The state of the cemeteries further underscores how those buried in them over the years have been denied their dignity even in death.) available at https://www.theadvocate.com/baton_rouge/news/communities/westside/article_7f0fd2e8-e966-11e6-91bd-7b5708a1dc45.html; see also, Evan Nicole Brown, *The Hidden-History of African-American Burial Sites in the Antebellum South: Enslaved people used codes to mark graves on plantation grounds*, Atlas Obscura, Oct. 25, 2018, available at <https://www.atlasobscura.com/articles/africanamerican-grave-markers>.

² Attorney General Opinion No. 07-0183, available at <http://www.lcb.state.la.us/ago/ago07-0183.pdf>.

construction there. Similarly, the four new sites are of concern since there has been no confirmation as to whether they have been investigated for burials.

We ask that you please advise whether Formosa plans to search under the field road for burials at the Acadia Plantation Cemetery and investigate the four newly identified sites, or engage in any other archaeological or forensic work on these cemeteries and suspected cemeteries.

I have also been asked to advise you that RISE wishes to commemorate Juneteenth, or Freedom Day, on the burial grounds. I am sure you can appreciate the significance for this community of being able to commemorate the day when enslaved people were informed of their freedom, years after it was granted to them.

We ask that you advise whether Formosa will agree to this commemoration, undertaken with safe, social distancing, on the site.

Best regards,

A handwritten signature in black ink, appearing to read 'Pamela C. Spees', with a long horizontal flourish extending to the right.

Pamela C. Spees
Senior Staff Attorney
(212) 614-6431
pspees@ccrjustice.org

cc: Neil Gauthier, U.S. Army Corps of Engineers

Exhibit D



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June 5, 2020

Via Fax and Email

Marjorie McKeithen
Counsel for FG LA, LLC
Jones Walker
201 St. Charles Ave.
New Orleans, LA 70170-5100

Re: Juneteenth Ceremony on Buena Vista Plantation Cemetery

Ms. McKeithen:

In my May 22, 2020, letter, I advised that RISE St. James wished to conduct a prayer and ceremony on the Buena Vista Plantation cemetery on the property owned by your client FG LA, or Formosa Plastics, to commemorate Juneteenth, and inquired whether this is something your client would agree to.

These are challenging and painful times as the country reels from the effects of our collective failure to truly reckon with the traumatic history of slavery and its aftermath and modern vestiges in the form of systemic oppression, violence, and inequalities faced by Black people. Juneteenth is an especially significant day of remembrance, reflection, and commemoration this year.

I would ask that you confirm with your client whether they will agree to RISE St. James' plans for an hour-long commemoration ceremony, with clergy, on the burial site on June 19th, conducted under safe, socially-distanced conditions.

We sincerely hope that Formosa will agree to this. I would ask that you confirm either way by Tuesday, June 9, 2020, in the event we need to pursue legal recourse.

Thank you, and with best regards,

A handwritten signature in black ink, appearing to read "Pamela C. Spees". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Pamela C. Spees
Senior Staff Attorney
(212) 614-6431
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**TWENTY-THIRD JUDICIAL DISTRICT COURT
PARISH OF ST. JAMES
STATE OF LOUISIANA**

RISE ST. JAMES and SHARON LAVIGNE,

Civil Action:

Plaintiffs

v.

Division:

FG LA, LLC, a/k/a Formosa Plastics,

Defendant.

**PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF TEMPORARY RESTRAINING ORDER**

INTRODUCTION

This action seeks an immediate temporary restraining order against Defendant FG LA, LLC, or Formosa Plastics, to stop it from prohibiting or interfering with Plaintiffs' one-hour prayer service and ceremony on Friday, June 19, 2020 (Juneteenth) on a cemetery recently discovered on the site of a former sugarcane plantation now owned by Defendant.

Under cemetery dedication law in Louisiana, which protects some of the same interests protected by the free exercise clause of the First Amendment to the United States Constitution and Art. I, Sec. 8 of the Louisiana Constitution, Defendant may not categorically and unreasonably deny access to the cemetery on their property. Defendant has failed to respond to Plaintiffs' repeated requests for agreement to the Plaintiffs' simple, hour-long prayer and ceremony in an empty, open field.

Plaintiffs thus come to this Court to protect their rights to do so.

FACTS IN VERIFIED PETITION

St. James Parish, like other parishes along the Mississippi River, was home to numerous plantations where people were enslaved. Verified Petition at ¶ 16. At the beginning of the Civil War, enslaved people formed a considerable majority of the population in St. James Parish, according to a report completed by a consultant employed by Defendant and obtained through a public records request to the Louisiana Division of Archaeology.¹ *Id.* Burials of people who were enslaved on plantations in the United States were not routinely recorded, marked, or venerated.

¹ See *Phase I Cultural Resources Survey and Archeological Inventory of the Proposed Boardwalk Louisiana Midstream, LLC, 56.2 KM (34.9 mi) Formosa Pipeline Project in Iberville, Ascension, and St. James Parishes*, R. Christopher Goodwin & Associates, Inc., June 2019.

Many have been lost to history – and to descendants of those who suffered under the system of slavery.² *Id.* at ¶ 17.

In late November 2019, Plaintiff RISE St. James learned through a public records request to the Louisiana Division of Archaeology that a cemetery had been discovered on a portion of the property owned by Defendant where the Buena Vista Plantation once operated. *Id.* at ¶ 18. A report prepared by archaeological consultants employed by Defendant, obtained through RISE’s public records request, found that despite significant disturbances at the site, “numerous intact burials and grave shafts indicate much of the cemetery remains intact.”³ *Id.* at ¶ 19. The report further noted that the “absence of verifiable indications (headstones or through archival research) of who was buried in the cemetery leads us to believe it could have been a slave cemetery associated with the Buena Vista Plantation.”⁴ *Id.*

The report also confirmed that the owner of the plantation, Benjamin Winchester, owned “dozens of slaves.” *Id.* at ¶ 20. U.S. Census data from 1830 through 1860, some with “slave schedules” attached, show that Winchester “owned” over 200 people by 1860. According to the 1860 census, they ranged in age from 10 months to 60 years. *Id.* Defendant’s archaeologists were able to trace the burial of the Buena Vista Plantation owners to cemeteries in other parishes because their deaths were honored, and records of their burials were routinely kept and are now traceable. *Id.* at ¶ 21. By contrast, people enslaved on the Buena Vista Plantation had no choice in where they were lived, were forced to work, or where they were buried, and their deaths were not routinely recorded. *Id.*

Moved by the unexpected connection to their long-severed past, Plaintiff Lavigne and members of RISE St. James began visiting the site to pray, sing, and call attention to the

² See Terry L. Jones, *Researcher maps hidden graveyards of slaves who once tilled Louisiana sugar cane fields*, The Advocate, Feb. 5, 2017, (“The state of the cemeteries further underscores how those buried in them over the years have been denied their dignity even in death.”) available at https://www.theadvocate.com/baton_rouge/news/communities/westside/article_7f0fd2e8-e966-11e6-91bd7b5708a1dc45.html; See also, Evan Nicole Brown, *The Hidden-History of African-American Burial Sites in the Antebellum South: Enslaved people used codes to mark graves on plantation grounds*, Atlas Obscura, Oct. 25, 2018, available at <https://www.atlasobscura.com/articles/african-american-grave-markers>; *African American Slave Cemeteries: Where Are They Now?*, Slave Cemeteries, available at <https://slavecemeteries.wordpress.com/2015/04/17/african-american-slave-cemeteries-where-are-they-now/>; Ted Oberg, *A grave mistake: Possible slave cemeteries not investigated*, Feb. 5, 2016, available at <https://abc13.com/a-grave-mistake-possible-slave-cemeteries-in-harris-county-cypress/1188133/>; Karen Roberts, *Uncovering a painful past for African Americans, one headstone at a time*, Feb. 18, 2016, available at <https://www.usatoday.com/story/news/nation-now/2016/02/18/slave-burial-grounds-african-americans/78773156/>

³ TerraXplorations, Inc., Final Report: Archaeological Monitoring and Mechanical Stripping of the Acadia and Buena Vista Cemeteries, St. James Parish, Louisiana, June 2019, p. 55, (Attachment D annexed to Letter from Center for Constitutional Rights to St. James Parish Council, December 23, 2019) available at <https://ccrjustice.org/sites/default/files/attach/2019/12/RISE%20St.%20James%20DEQ%20Comments%20Dec.%2018%20%20w%20attachments.pdf>.

⁴ *Id.*

cemetery and its meaning and significance for the African American community in St. James and beyond. *Id.* at ¶ 23. Plaintiffs believe they and members of their families are descendants of people who were forced to live, work, and die on plantations in the area. *Id.* Members of RISE who are in their 60s and 70s have brought flowers to the graves, held hands, sang and prayed. They believe their ancestors are calling out for respect and acknowledgment and are determined to honor their memories and the collective experience of those who suffered under slavery. *Id.*

During several of these visits, St. James Parish Sheriff's deputies have arrived within minutes. On Plaintiff Lavigne's last visit, deputies advised her that the owner did not authorize her presence there and she could not visit the gravesite. *Id.* at ¶ 24. On another occasion, on February 1, 2020, Lavigne was visited at her home by a deputy who advised her that if she visited the property again, she could be subject to arrest. Undersigned counsel then sent a letter to the Sheriff of St. James Parish advising him of Plaintiffs' rights under the law and that landowners cannot categorically deny access to cemeteries on their property. *Id.* at ¶ 25. *See* Letter from P. Spees to Sheriff Willie Martin, Feb. 10, 2020, annexed to Verified Petition as Exhibit A.

The property owned by Defendant is comprised of 2,375 acres of open field. The only structure on the property is a 3-sided chain link fence around the Buena Vista Plantation Cemetery. There is no construction activity on the site, though it is the location of a planned plastics facility which is being challenged in federal and state court. *Id.* at ¶ 26.

On May 1, 2020, Defendant's spokesperson Janile Parks sent a letter to Plaintiff Lavigne in which she denied Lavigne's request for access to the cemetery and advised her that access was restricted "due to safety concerns." *See* Letter from J. Parks to Sharon Lavigne, May 1, 2020, annexed to Verified Petition as Exhibit B. Plaintiffs cancelled plans for a visit to the site on Friday, May 22, 2020, for Memorial Day weekend, in the wake of Parks' letter denying them access.

On May 22, 2020, undersigned counsel Pamela Spees sent a letter to Formosa's attorney via email and fax clarifying the rights of access under Louisiana's cemetery dedication law and inquiring whether Defendant would agree to RISE's plans for a prayer ceremony on Juneteenth, conducted in a safe, socially-distanced manner. Letter from P. Spees to M. McKeithen, May 22, 2020, annexed to Verified Petition as Exhibit C. Undersigned counsel reminded Defendant that landowners may not categorically and unreasonably deny access to cemeteries on their property

and noted that Parks' letter did not specify how prayer, singing, and visitation at the cemetery in a socially-distanced manner would raise safety concerns. *Id.*

When counsel for Plaintiffs did not receive a response from Formosa's counsel, undersigned sent a follow-up letter via fax and email on June 5, 2020, again requesting agreement to allow RISE St. James to visit the cemetery to commemorate Juneteenth, and notification either way by close of business Tuesday, June 9, 2020. *See* Letter from P. Spees to M. McKeithen, June 5, 2020, annexed to Verified Petition as Exhibit D.

Receiving no response, co-counsel for Plaintiffs, William Quigley, called Formosa's counsel, Marjorie McKeithen, on Thursday, June 11, in an effort to resolve the matter without having to involve this Court. McKeithen advised Quigley that they were working on a response and should have an answer soon. By close of business Friday, June 12, 2020, Plaintiffs still had not received an answer from Defendant as to whether they can visit the cemetery for an hour on Juneteenth to pray and commemorate those who had been enslaved on the Buena Vista Plantation.

Plaintiffs thus bring this action to enforce their lawful right to access the cemetery. There is no harm to Defendant from this Court's allowance of Plaintiffs' prayer and ceremony commemorating Juneteenth on a burial ground in an open, empty field.

LAW AND ARGUMENT

I. A Temporary Restraining Order Is Necessary and Appropriate to Prevent the Deprivation of Plaintiffs' Rights Under Cemetery Dedication Law and the United States and Louisiana Constitutions.

The Louisiana Code of Civil Procedure (LCCP) art. 3601, *et seq.*, sets out the standards for issuing a temporary restraining order. Temporary restraining orders are to be issued by courts where "irreparable injury, loss or damage may otherwise result to the applicant." La. Code Civ. Proc. Art. 3601(A). They "shall" be granted without notice, when:

- (1) It clearly appears from specific facts shown by a verified petition or by supporting affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and
- (2) The applicant's attorney certifies to the court in writing the efforts which have been made to give the notice or the reasons supporting his claim that notice should not be required.

La. Code Civ. Proc. 3603(A). La. Code Civ. Proc. art. 3609 provides that the "court may hear an application for a preliminary injunction...upon the verified pleadings or supporting affidavits."

A. Plaintiffs Will Suffer Irreparable Injury if This Court Does Not Issue the Order Restraining Defendant from Preventing Their Access to the Cemetery.

“An injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law.” La. Code Civ. P. art. 3601(A). “Irreparable injury” that would require issuance of an *ex parte* temporary restraining order is injury or loss for which damages cannot be measured by a pecuniary standard or which cannot be adequately compensated in money damages. *Pennington v. Drews*, 209 La. 1, 22; 24 So.2d 156, 163 (1945).

The U.S. Supreme Court has expressly recognized, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). *See also, Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012) (irreparable harm would result to church’s right to free exercise of religion from failure to enjoin enforcement of zoning ordinance) and 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.1 (2d ed. 1995) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”).

Prayer and communion at grave sites are quintessential forms of religious or spiritual experience and practice protected by the free exercise clauses of First Amendment to the United States Constitution and Art. I, sec. 8 of the Louisiana Constitution, as well as cemetery dedication law in Louisiana. As discussed more below, cemetery dedication law accords a special status to cemeteries, recognizing the public interest in the sacred nature of burial places and preserving the right of access to such sites even over the wishes and property rights of private landowners who discover cemeteries after assuming ownership. *See e.g., Vidrine v. Vidrine*, 225 So. 2d 691, 696 (La. Ct. App. 3 Cir. 1969), *writ refused*, 254 La. 853, 227 So. 2d 594 (1969) citing *Humphreys v. Bennett Oil Corp.*, 195 La. 531, 546 (1940).

Plaintiffs will suffer irreparable harm to their constitutional and legal rights to access the gravesites on a deeply significant holiday if the Court does not issue the temporary restraining order they now seek. Conversely, Defendant would not suffer harm, financial or otherwise, by issuance of a temporary restraining order prohibiting it from preventing or interfering with Plaintiffs prayer and ceremony for one hour on the burial site which is located in an open, empty field where there is no construction or any other structure. La. Code Civ. Proc. Art. 3610 provides that the court require an applicant for a temporary restraining order to furnish security

in the amount fixed by the court to indemnify the person wrongfully restrained or enjoined for the payment of costs incurred and damages sustained. Because Defendant would not suffer harm by this Court allowing a one-hour prayer service on a burial site in an open field, Plaintiffs ask that the Court issue the order without requiring a bond; or, if the court deems it necessary, a minimal bond.

B. Plaintiffs Will Prevail on the Merits.

Generally, a party seeking the issuance of a preliminary injunction must show that they will suffer irreparable injury, loss, or damage if the injunction does not issue and must show entitlement to the relief sought; this must be done by a prima facie showing that the party will prevail on the merits of the case. *Sorrento Companies, Inc. v. Honeywell Intern., Inc.*, 2004–1884, p. 9 (La.App. 1 Cir. 9/23/05), 916 So.2d 1156, 1163, *writ denied*, 2005–2326 (La. 3/17/06), 925 So.2d 541; *Adler v Williams*, 2016-0103 (La.App. 1 Cir. 9/16/16); 203 So.3d 504, 512-513.

Plaintiffs will prevail on the merits because “Louisiana jurisprudence clearly permits access to isolated cemeteries,” which are defined by the Louisiana Attorney General as cemeteries, like the Buena Vista Cemetery at issue in this matter, “that have become separated from easy access due to property transfers and the like, typically causing them to lie wholly within the property of someone unrelated to the descendants of those interred in the cemetery.” La. Attorney Gen. Op. 08-0186, available at <https://casetext.com/case/opinion-number-08-0186>. Under cemetery dedication law in Louisiana landowners may not categorically deny access or place unreasonable limitations on access. *Id.* See also, *Humphreys v. Bennett Oil Corp.*, 195 La. 531, 551, 197 So. 222, 229 (1940), and *Vidrine v. Vidrine*, 225 So.2d 691, 697-698 (La. App. 3rd Cir. 1969). The Louisiana Attorney General has also noted that because “the importance of the preservation of historic cemeteries is paramount in Louisiana... the facilitation of access to historic cemeteries, of which most of the isolated cemeteries will be, is extremely important in the interest of preserving these sacred and historically significant sites.” La. Attorney Gen. Op. 08-0186.

The Buena Vista Plantation Cemetery at issue in this matter is subject to the protection and requirements of cemetery dedication law even though it was unmarked and unrecorded. *Vidrine v. Vidrine*, 225 So.2d at 696 (“regardless of the title to the land itself, when a plot of ground is set apart and used for cemetery purposes, it becomes dedicated to use for such

purposes”). Formal dedication is not required. *See, e.g., Thomas v. Mobley*, 118 So. 2d 476, 478 (La. App. 1 Cir. 1960) (there was no formal dedication of cemetery of enslaved people in plantation, but it was dedicated simply by virtue of being set apart and used for cemetery purposes). The Louisiana Supreme Court has recognized the profound meaning and significance of burial sites, and the cemetery law that governs their existence that even supersedes the normal laws governing property ownership:

Regardless of the laws and rules relating to the ownership and control of real property, when a plot of ground is set apart for cemetery purposes, and burials are made in the land, *the ground changes its character in the minds and feelings of the community. It assumes a sacred quality that overrides conveyancers’ precedents and requires freedom from profanation* until, by abandonment and removal of the bodies or by complete disintegration, there remains nothing to appeal to the emotions of the survivors.

Humphreys v. Bennett Oil Corp., 195 La. 531, 551, 197 So. 222, 229 (1940) (citations omitted) (emphasis added).

Courts in Louisiana have held that “[r]elatives and friends have *unrestricted* rights to visit and care for the graves.” *See In re St. James Methodist Church of Hahnville*, 95-410 (La. App. 5 Cir. 12/27/95) 666 So.2d 1206 citing *Vidrine v. Vidrine*, 225 So.2d 691, 697-698 (La. App. 3rd Cir. 1969) (emphasis added). The Louisiana Attorney General has opined that cemeteries, “being a unique type of property, should be accessible to the descendants and friends of those buried therein, regardless of the current ownership of the surrounding and underlying property.” La. Attorney Gen. Op. 08-0186.

One of the many enduring harms of slavery in the United States was the reduction of human beings to the status of chattel, or property. One of the ways this manifested was in the lack of respect accorded people enslaved in their death and the failure to properly venerate and record their burials.⁵ This dimension of the harm of slavery reaches through to today where it is often difficult for descendants to trace the burial sites of their ancestors. The discovery of a burial site likely containing the graves of people enslaved on the former Buena Vista Plantation is momentous and meaningful, and something that Plaintiffs wish to commemorate on Juneteenth.

The elevated status accorded cemeteries with the recognition that they are sacred spaces with important rights of access protected by cemetery dedication law in Louisiana overlaps with

⁵ *See, e.g.,* TerraX report, *supra* n.4, report of Formosa’s consultant expressing the belief that the site is likely a “slave cemetery” *because* of the lack of “verifiable indications” and records. *See also, Jones, supra* n. 2.

some of the same interests protected by the free exercise clauses of the First Amendment to the United State Constitution and Art. I, Sec. 8 of the Louisiana Constitution. Prayer, and religious and spiritual observances at cemeteries are among the oldest and clearest examples of religious and spiritual practice which Plaintiffs have a right to exercise. *See Satiacum v. Laird*, 475 F.2d 320, 321 (D.C. Cir. 1972) (Regulation prohibiting “ceremonies at [Arlington Memorial] Cemetery if they coincide in point of time with ‘partisan’ activities outside of the Cemetery,” may “unduly trammel freedom of religion, by prohibiting memorial, religious services inside the Cemetery.”).

As an isolated cemetery, the Buena Vista Plantation Cemetery is also likely historic and eligible for Louisiana Historic Cemetery Register because “it is at least fifty years old, or contains the burial of a person or local, state, or national importance by reason of civic, public or military service, cultural achievement, or *historical significance*...” *See* La. Attorney Gen. Op. 08-0186 at n. 8 (emphasis added).

Finally, the Louisiana Constitution protects the right of the people to “preserve, foster, and promote their respective... cultural origins.” La. Const. Art. XII, Sec. 4. One of two courts to address this provision reviewed the legislative history and noted that a leading commentator had observed that this article is “seen as a particularization of those principles protecting the rights of association that have been grafted onto the first amendment [*sic*], encompassing a right to unite and associate for promotion of certain values and causes.” *Monumental Task Comm., Inc. v. Foux*, 157 F.Supp.3d 573, 600 (E.D. La.2016), *aff’d sub nom. Monumental Task Comm., Inc. v. Chao*, 678 Fed.Appx. 250 (5th Cir.2017). Unlike the failed attempt to enjoin the removal of confederate monuments in *Monumental Task*, Plaintiffs here wish to “unite” and “associate” for the promotion of the day that honors the values of freedom from slavery and acknowledges their cultural origins on burial grounds of those they believe to have suffered immeasurably under the long, painful arc of that history.

CONCLUSION

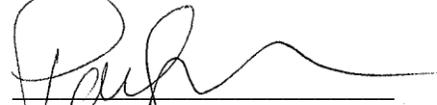
For Plaintiff Lavigne and members of RISE St. James, many of whom are themselves proud descendants of people who have endured through slavery and its aftermaths, such burial grounds like those discovered on the former Buena Vista Plantation are critical to the acknowledgement and preservation of their cultural origins. Juneteenth is a day that celebrates the release of their ancestors from the bondage of formal slavery; and is a day that they wish to

honor those buried in the Buena Vista Plantation Cemetery – for one hour, in an open, empty field.

Cemetery law in Louisiana as well as the First Amendment to the United States Constitution, and Art. I, Sec. 8 and Art. XII, Sec. 4 of the Louisiana Constitution, require that they be allowed to do so.

June 15, 2020

Respectfully submitted,



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Attorneys for the Plaintiffs

**TWENTY-THIRD JUDICIAL DISTRICT COURT
PARISH OF ST. JAMES
STATE OF LOUISIANA**

RISE ST. JAMES and SHARON LAVIGNE,

Civil Action:

Plaintiffs

v.

Division:

FG LA, LLC, a/k/a Formosa Plastics,

Defendant.

Filed: _____

Deputy Clerk: _____

TEMPORARY RESTRAINING ORDER

It appearing from the verified petition in this case and accompanying pleadings that immediate and irreparable injury will occur to the constitutional and legal rights of Plaintiffs by virtue of being prevented by Defendant from accessing the Buena Vista Plantation Cemetery to conduct a prayer and ceremony for one hour on June 19, 2020 (Juneteenth);

IT IS ORDERED that a temporary restraining order be issued against Defendant enjoining and prohibiting them from taking any action to stop Plaintiffs from accessing the Buena Vista Plantation cemetery to hold their one-hour event, which will be held from 11 a.m. until noon on Friday, June 19, 2020;

IT IS ORDERED that Plaintiffs are allowed by this Court to access the Buena Vista Plantation Cemetery located on property owned by Defendant in St. James, Louisiana, to conduct a prayer and ceremony in commemoration and celebration of Juneteenth from 11 a.m. until noon on Friday, June 19, 2020; and that Plaintiffs will be allowed enough time to enter and exit the property before and after the one-hour event;

IT IS FURTHER ORDERED that plaintiffs post a bond in the amount of zero dollars because important constitutional rights are at stake and Defendants will not suffer financial harm or other damages as a result of Plaintiffs' prayer and peaceful ceremony on the cemetery which is in an open, empty field.

IT IS FURTHER ORDERED that if the parties have not resolved all their remaining differences that a hearing on a preliminary injunction be set for hearing on the _____ day of June 2020.

THUS DONE AND SIGNED, this _____ day of _____ 2020.

District Judge

Sheriff Please serve:

FG LA, LLC, via Registered Agent for Service:

C T Corporation System
3867 Plaza Tower Dr.
Baton Rouge, LA 70816