

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

<p>INCLUSIVE LOUISIANA and THE DESCENDANTS PROJECT, <i>Plaintiffs,</i> <i>vs.</i> FG LA, LLC, a/k/a FORMOSA PLASTICS, <i>Defendant.</i></p>	<p>Case No: 2:25-CV-1398 J(3) District Judge: Barbier Magistrate Judge: Dossier</p>
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PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

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STATEMENT OF THE CASE

This case is about a community that established familial, cultural, and religious practices under the ire of slavery, a defining feature of which was the refusal to recognize any meaningful kinship ties among enslaved people. This was accomplished, in part, through law and custom that sought to deny reverence for the enslaved even in death. In the face of this, the descendant community of which Plaintiffs are a part established cultural and religious practices to affirm their significance to each other and to honor their deceased kin.

Like their ancestors, descendants of the enslaved, including Plaintiffs and their members, have been denied permission to visit, mark, protect, and maintain the final resting places of their ancestors, including the Buena Vista Cemetery (“Cemetery”), to honor and dignify their dead. Compl. ¶ 15. Despite this, they have carried forward cultural practices of kinship and reverence, in hopes of one day reclaiming the burial sites, *id.* ¶ 192, and known cemeteries are treasured and carry deep religious, cultural, and historical significance. *See id.* ¶ 193.

When Defendant Formosa purchased the property in St. James Parish to develop the largest new plastics facility in North America, it also purchased the bodies of the people enslaved on the Buena Vista Plantation during slavery. *Id.* ¶ 4. Since the confirmation of Buena Vista Cemetery’s location on the property, Plaintiffs have sought to treat it as what it is: sacred ground. *Id.* ¶ 11. For six years, Formosa has met them with refusals, insistence that they have no legal rights to assert, threats of arrest, *id.* ¶¶ 12-14, 132-135, requirements to obtain court orders, *id.* 136-142, and disruptions of their sacred ceremonies, *id.* ¶¶ 143-145, 147-161, 162-178. Formosa has not and does not intend to consider, maintain, or protect the Cemetery as the burial grounds of people enslaved on Buena Vista Plantation. *Id.* ¶¶ 109-131 (Formosa’s failure to disclose its knowledge of the Cemetery and its initial plans to move Buena Vista Cemetery and another cemetery on its

property). As a result, Plaintiffs initiated this lawsuit seeking declaratory and injunctive relief to assert their rightful claim to the sacred remains and resting place of enslaved ancestors.

In response, Defendant Formosa now seeks to dismiss Plaintiffs once again – advancing arguments meant to undermine the family and extended family ties that connect Plaintiffs to the Buena Vista Cemetery – for lack of subject matter jurisdiction,¹ failure to state a claim under the Thirteenth Amendment and Louisiana cemetery law, and failure to include indispensable parties. Def. Br. at 2. In doing so, Formosa asks this court to ignore the historical realities of Louisiana plantation cemeteries and kinship connections of deep cultural significance to Plaintiffs that are shaped by a history of denied rights and protections as it relates to cemeteries of the enslaved.

But the facts Formosa points to clarify rather than distort the deep connection that Plaintiffs have to the Buena Vista Cemetery and their attendant legal rights. That there are no headstones in the Buena Vista Cemetery does not raise questions – it answers them. Through archaeological investigation, oral history, genealogical research, and the ingenuity of the enslaved in circumventing burial rites prohibitions by marking graves with trees, Plaintiffs and their communities have achieved a remarkable story of cemetery preservation: a sacred plot of land on a former plantation, with all the telltale signs of a dedicated cemetery where their beloved ancestors, relatives, and friends lie, and which they now seek to visit, protect, maintain, and claim. In asserting their legal rights under the Thirteenth Amendment and Louisiana cemetery law, Plaintiffs seek to be freed from this last vestige of ownership of their ancestors and the cemetery and to honor and bring dignity to this final resting place of the deceased enslaved.

Defendant's Motion to Dismiss must be denied.

¹ Defendant's brief does not clarify whether Plaintiffs' standing is challenged as to their Thirteenth Amendment claims, Louisiana cemetery law claims, or both. In light of this, Plaintiffs address their standing to bring both claims.

ARGUMENT

I. PLAINTIFFS HAVE STANDING.

A. Legal Standard

“[A] motion to dismiss for lack of subject matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle plaintiff to relief.” *Ruiz v. Donahoe*, 569 Fed. Appx. 207, 210 (5th Cir. 2014). When reviewing standing “on the basis of the pleadings, [the court] must accept as true all material allegations of the complaint and . . . construe the complaint in favor of the complaining party.” *Ass’n of Am. Physicians & Surgeons, Inc. v. Tex. Med. Bd.*, 627 F.3d 547, 550 (5th Cir. 2010) (quotations and citations omitted).²

B. Both Plaintiffs have established organizational standing.

An organization “can establish standing in its own name if it meets the same standing test that applies to individuals,” *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017), by demonstrating it has suffered an “injury in fact” that is “fairly ... trace[able] to the challenged action of the defendant, and... it must be likely... that the injury will be redressed by a favorable decision.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Organizational plaintiffs may establish injury-in-fact by showing that defendants’ actions have frustrated or otherwise impeded the organization’s ability to carry out its central mission, which can be demonstrated when the organization’s “mission is in direct conflict with a defendant’s conduct” resulting in a “concrete and demonstrable, and redressable, injury as a direct result of the defendant’s allegedly illegal conduct.” *Ass’n of Cnty. Organizations for Reform Now v. Fowler*, 178 F.3d 350, 362 n.7 (5th Cir. 1999).

² Unless otherwise noted, internal quotations and citations in legal cites are omitted.

Formosa only addresses diversion of resources as a basis for organizational standing, ignoring impairment of mission as a cognizable injury. Def. Br. at 8-9. When an organization's mission relies on physical access, denial of access confers standing. *Texas Trib. v. Caldwell Cnty., Texas*, 121 F.4th 520, 526-27 (5th Cir. 2024) (two news outlets and an advocacy organization had standing to bring a First Amendment right of access challenge to a county policy excluding plaintiff organizations and the public from observing pretrial proceedings, because the organizations "relie[d] on access to [the proceedings] to carry out" parts of their mission).³

Plaintiffs' missions require access to Buena Vista Cemetery. Compl. ¶ 24-25 (Inclusive is a faith-based organization with a mission to spread "enlightenment and hope" and with members who tend to cemeteries of ancestors), ¶¶ 28-29 (The Descendants Project's mission is to "preserve, foster, and promote the cultural origins of descendants of the enslaved in the River Parishes" and "protect other cemeteries, burial grounds, and sacred cultural sites under threat in the River Parishes"). Plaintiffs are injured by the "inaccessibility of their ancestors' cemeteries" and "their [in]ability to locate, recover, access, consecrate, commemorate, and visit ancestral cemeteries known to exist." *Inclusive Louisiana v. St. James Par.*, 134 F.4th 297, 309 (5th Cir. 2025).⁴

Plaintiffs also establish injury through Defendant's interfering conduct *during* the Black History Month gathering on February 23, 2025. Compl. ¶¶ 162-178 (Formosa denied permission

³ See also *NYCLU v. New York City Transit Auth.*, 684 F.3d 286, 295 (2d Cir. 2012) (holding NYCLU had organizational standing to challenge restricted access to traffic violation hearings, as its mission required access).

⁴ Defendant attempts to distinguish the Fifth Circuit's finding of standing for Plaintiff Inclusive Louisiana in *Inclusive Louisiana v. St. James Par.*, 134 F.4th 297 (5th Cir. 2025) where it ruled Inclusive and other organizational plaintiffs satisfied Article III standing because St. James Parish's land use practices prevented plaintiffs from accessing plantation cemeteries. Formosa suggests that because that matter involves governmental action, its findings are not instructive in this matter directed at a private entity. However, the fact that the Parish is also responsible for the ways in which its land use decisions deprive Plaintiffs of their rights of access and cemetery protection, does not mean that Formosa cannot be held responsible for its own rights-violating conduct. Plaintiffs have stated facts showing that their missions are injured and impaired as "direct result of [this] defendant's allegedly illegal conduct," i.e., the restricted access to Buena Vista Cemetery, harassment and interference with their legal rights to access, including the denial of the laying headstones. See *Fowler*, 178 F.3d at 362 n.7; see Compl. ¶¶ 2, 24-30 (Plaintiffs' missions).

to place headstones, denied vehicle access to the cemetery, used a private security firm to surveil, interfere, and harass Plaintiffs during the ceremony, and required Plaintiffs to walk the unmaintained access road). Defendant’s threats of arrest and policy of piecemeal litigious access to Buena Vista Cemetery, including litigation initiated by Defendant, *id.* ¶¶ 132-139, as well as its surveillance and interference of Plaintiffs’ activities in the instances where access is granted, *id.* ¶¶ 175-177, are all discrete, redressable injuries caused by Defendant’s conduct.

And too, as in *Caldwell*, causation and redressability are satisfied because the “elimination of [Defendant’s] policy would immediately cure the Organizations’ injuries by allowing them to ... carry out their missions and objectives.” 121 F.4th at 527. Namely, a court order granting Plaintiffs the “unrestricted rights” to “visit and care” for the Cemetery guaranteed to descendants under Louisiana cemetery dedication law, *Vidrine v. Vidrine*, 225 So.2d 691, 697 (La. App. 3rd Cir. 1969)), would allow them to freely access, honor, protect, and maintain the Cemetery, which they cannot currently do.⁵ Compl. ¶ 209.

C. Plaintiff Inclusive Louisiana has established associational standing.

Formosa’s challenge to Inclusive Louisiana’s associational standing fails. To establish associational standing, an organizational plaintiff must show three things: “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Save Our Cmtv. v. U.S. E.P.A.*, 971 F.2d 1155, 1160 (5th Cir. 1992). The first and second prongs are “constitutional requirements, while the third prong is solely prudential.” *Ass’n of Am. Physicians & Surgeons, Inc. v. Tex. Med. Bd.*,

⁵ Defendant’s conduct has made clear that “access” is granted only after a court order, Compl. ¶ 137-138, extensive negotiation requiring legal representation, *id.* ¶¶ 130, 135, 146-148, with ongoing threat of arrest, *id.* ¶ 133-134, and that requests to realize Plaintiffs’ rights under Louisiana cemetery law may be met with a lawsuit, *id.* ¶¶ 153-154.

627 F.3d 547, 550 (5th Cir. 2010).

Formosa bases its challenge to Inclusive’s standing on prongs one and three. Def. Br. at 9-10. An organization can satisfy the first prong by showing injury to at least one member of the organization. *See Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020), as revised (Oct. 30, 2020). Formosa claims that no individual member of Inclusive has standing to bring suit because “there are no concrete allegations of verified familial connection between any of [Plaintiff’s] members and any of the individuals buried at the Buena Vista Site.” Def. Br. at 10. But this is not required to show injury for these claims.

Under the Thirteenth Amendment – which Formosa ignores as a basis for establishing standing – what matters is not “verified familial connection,” but an interference with Inclusive members’ right to be free from the vestiges of slavery. Inclusive’s members, including the founders, “are themselves descendants of people enslaved on plantations that operated in St. James Parish,” Compl. ¶ 25, and Formosa seeks to use its ownership of the land, the graves, and thereby, the bodies of the deceased enslaved, to control when, where, and how Inclusive’s members can engage in religious and spiritual practices at the cemetery. *Id.* ¶¶ 129, 132-178, 206-210. These are the vestiges from which Inclusive’s members have a right to be free, and they allege that Formosa’s conduct has deprived them of this right, establishing an injury-in-fact.

And, Louisiana cemetery dedication law is clear that “[r]elatives and friends have unrestricted rights to visit and care for the graves” in dedicated cemeteries. *Vidrine*, 225 So. 2d at 697. An individual is not required to “prove family lineage” or allege “verified familial connection” to bring such a claim. Decades of Louisiana jurisprudence clarify that courts should instead interpret the concept of relationship or friendship broadly. Once a plot of land is set aside for burial purposes, the dedication of that land for cemetery use is considered “to be in respect for

the dead, a provision for the interment of human remains, *and a duty to and for the benefit of the general public.*” La. Stat. Ann. § 8:305 (emphasis added). *See also, Humphreys v. Bennett Oil Corp.*, 195 La. 531, 551 (1940) (plaintiffs had an interest not only in the particular plots where their family members were buried, “but also a sentimental interest, at least, in the cemetery as a whole,” and “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[.]*”) (emphasis added); *Locke v. Lester*, 78 So. 2d 14, 16 (La. App. 2 Cir. 1955) (a “legal right to bring [an action related to encroachment upon a cemetery] . . . can be said to belong to *any citizen of the community.*”) (emphasis added); *Faust v. Mitchell Energy Corp.*, 437 So. 2d 339, 342 (La. App. 2 Cir. 1983) (once a plot of land has been dedicated, “the right of the . . . public generally is a species of title in the nature of a real right and . . . the public generally could maintain a possessory action to protect the enjoyment of the right to use, possess, and maintain the property for cemetery purposes”); *Ass’n of Cemetery Tour Guides Co. L3C v. New Orleans Archdiocesan Cemeteries*, 2024-0044 (La. App. 4 Cir. 9/4/24), 401 So. 3d 797, 805 (“[T]hose bonded to those persons by blood and/or the *mutual affinity* of friendship have a recognized right to visit and care for the graves of the deceased.”) (emphasis added).

This broad construction is particularly important to the protection of plantation cemeteries. The brutality of the slavery system – under which people were bought, sold, forcibly relocated, and died a premature death – meant that family ties were routinely disregarded and disrupted. Compl. ¶¶ 191, 218. Faced with this tragedy, enslaved people formed kinship ties to those with whom they were bound together, or had a “mutual affinity” with, because of their shared experience of being enslaved. *Id.* ¶ 192. So, too, are their descendants bound together and have a “mutual affinity” with their common ancestors. No ancestral connection could be more “real” in

defiance of a system designed to brutally erase the possibility of family and history.

Formosa attempts to marshal in support *Ass'n of Cemetery Tour Guides, supra*, equating those with ancestral ties to plantations in St. James Parish, including Buena Vista, with a group of tour guides, many of whom claimed no connection to the people buried in the St. Louis Cemeteries.⁶ Even accepting Formosa's narrow, and incorrect, construction of who can bring an action for access and protection of a cemetery under Louisiana law, Def. Br. at 10, Inclusive amply alleges that: (1) its members have the type of "real connection" as "relatives" or "friends." Compl. ¶ 2 (Inclusive Louisiana's members have ancestral ties to the Buena Vista site), 25 (founders of Inclusive are themselves descendants of people enslaved in St. James), 192 (their unique kinship practices developed as a result of slavery and separation of families means that they are part of a descendant community of those enslaved in the Buena Vista plantation), and (2) at least one of its members has had its unrestricted rights to visit and care for the graves of relatives or friends in the Buena Vista Cemetery violated by Formosa. *Id.* ¶¶ 146-178 (describing how Formosa has interfered with Inclusive's ability to access, visit, protect, and maintain the cemetery), 218-219 (same).

Formosa's argument that Plaintiffs have failed the third prong is similarly unconvincing. "[A] plaintiff is not required to name names in a complaint in order to properly allege injury in fact to its members" and "failure to name any specific members is not fatal to standing." *Am. C.R. Union v. Martinez-Rivera*, No. 2:14-CV-026-AM-CW, 2015 WL 13650011, at *8 (W.D. Tex. Feb. 23, 2015), citing *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1160 (11th

⁶ Formosa also uses this case to argue that adjudicating this case would require [a] member's active participation. Def. Br. at 10. However, "[w]hen the relief sought is injunctive, individual participation of the organization's members is not normally necessary. *Am. C.R. Union v. Martinez-Rivera*, No. 2:14-CV-026-AM-CW, 2015 WL 13650011, at *6 (W.D. Tex. Feb. 23, 2015) (citing *United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 546 (1996)).

Cir. 2008). And, even if Formosa were correct that Inclusive is required to plead that its members have family connections to the Buena Vista site, Inclusive has done so. Compl. ¶¶ 25, 81-84, 91, 121, 132, 187-193, 197.⁷

D. The dispute between the parties is ripe.

Formosa wrongly argues that Plaintiffs' claims are unripe because they are anticipatory and/or hypothetical, while in the same breath citing to Plaintiffs' allegations of ongoing and continuing harm. Def. Br. at 10.

Plaintiffs' claims are not anticipatory in that they rest on "factual allegations of injury resulting from [Formosa's] conduct" and allegations that "their members [have sought access] in the past and will pursue [access] in the future." *Associated Builders & Contractors of Se. Texas, Inc. v. Su*, 771 F. Supp. 3d 879, 898 (E.D. Tex. 2025) (citing *Lujan*, 504 U.S. at 561) ("At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'"); *see also, Bauer v. Texas*, 341 F.3d 352, 358 (5th Cir. 2003) ("To obtain equitable relief for past wrongs, a plaintiff must demonstrate either *continuing harm* or a real and immediate threat of repeated injury in the future. Similar reasoning has been applied to suits for declaratory judgments.") (emphasis added).

Here, in contrast, Plaintiffs have a real problem for which the court can provide relief: as even Formosa acknowledges, Plaintiffs "allege impediments to accessing and caring for the burial sites of their ancestors and continued forced separation" from the grave sites of their loved ones,

⁷ Finally, Formosa asserts, without support, that associational standing is not available because "Louisiana cemetery law provides no right to access for organizations," Def. Br. at 10. This completely misunderstands associational standing. *Ass'n of Am. Physicians & Surgeons, Inc. v. Texas Med. Bd.*, 627 F.3d 547, 550 (5th Cir. 2010), quoting *Warth v. Seldin*, 422 U.S. 490, 511 (1975) ("There is no question that an association may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy, but even in the absence of injury to itself, an association may have standing solely as the representative of its members.").

“and inability to freely connect with, consecrate, commemorate, and honor their ancestors.” *See* Def. Br. at 10-11. Defendant even acknowledges Plaintiffs’ allegations are based in “continuing harm” (Def. Br. at 10) – a type of injury that is ripe for review – and even identifies those allegations in the Complaint. These are concrete, existing injuries.⁸ A harm cannot be continuing and at the same time fail to be existing and concrete.

Plaintiffs’ claims are not hypothetical. Formosa attempts to characterize Plaintiffs’ claims as hypothetical by suggesting that all parties agree that “commemorative events occurred without interference” and that Plaintiffs’ “do not allege that FG was [in July 2025] excavating or disturbing the graves, or that access had been categorically denied.” *See* Def. Br. at 11. This is not what Plaintiffs allege nor is doing so required to establish standing. First, it strains credulity to read an acknowledgement of non-interference with commemorative events into Plaintiffs’ Complaint. Compl. ¶ 132-142 (describing Formosa’s refusal to allow a prayer event to take place without court order and last minute appeal of said order), 146-178 (describing multiple forms of interference with the February 23, 2025 prayer ceremony). Second, Plaintiffs are not limited to allegations of excavation and disturbance of the graves or categorical denial of access to the cemetery to establish an injury under the Thirteenth Amendment or the Louisiana cemetery law. *See, e.g.*, Section II.B., *supra* (discussing ongoing harms that constitute “badges” and “incidents” of slavery); Section II.C., *supra* (discussing violations of rights of access and care under cemetery

⁸ The case that Formosa relies on for the prohibition on anticipatory claims, *Texas v. United States*, 523 U.S. 296 (1998), helps to illustrate this point. In that case, Texas asked the U.S. Supreme Court to declare that Section 5 of the Voting Rights Act did not apply to specific subsections of a statute when Texas could not identify a situation where application of the statutory provisions was “currently foreseen or even likely.” *Id.* at 300. Finding that it could not hear Texas’ claims without “powers of imagination,” the Supreme Court found it “too speculative whether the problem Texas presents will ever need solving.” *Id.* at 301-02. Likewise, the other case that Formosa relies on is also not helpful to Formosa because there the plaintiffs filed a pre-enforcement challenge to an amendment to a statute, but the Fifth Circuit held plaintiffs had not shown that any hardship would result from the court’s withholding consideration at the time. *Choice Inc. of Tex. v. Greenstein*, 691 F.3d 710 (5th Cir. 2012).

law); *Vidrine*, 225 So. 2d at 697 (“Relatives and friends have *unrestricted rights* to visit and care for the graves”). Plaintiffs’ Complaint is replete with existing, concrete injuries, more than sufficient to establish ripeness.

II. PLAINTIFFS SUFFICIENTLY PLEAD FACTS TO MAKE OUT THEIR CLAIMS.

A. Legal Standard

Plaintiffs are not required to “prove [their] case” at the initiation of a lawsuit. *Lalin v. ESN Prop., LLC*, No. CV 24-2335, 2025 WL 1115607, at *3 (E.D. La. Apr. 15, 2025) (requiring this “conflates a party’s burden at the motion to dismiss stage with a party’s burden at summary judgment”). Courts must accept Plaintiffs’ “well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.” *Yumilicious Franchise, L.L.C. v. Barrie*, 819 F.3d 170, 174 (5th Cir. 2016). Thus, to rule on a 12(b)(6) motion to dismiss, a court must ask whether the complaint contains “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A “claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

B. Plaintiffs State a Valid Thirteenth Amendment Claim.

Plaintiffs plead ample facts demonstrating how Formosa’s ownership and control of the sacred remains and graves of people who died in slavery on the property the company now owns constitutes a badge or incident of slavery that was never rectified after the Thirteenth Amendment entered into force. Plaintiffs seek to rectify that now, as the Thirteenth Amendment requires that those buried in these graves, and the descendant community that wishes to honor them, be freed from this lingering vestige of the slavery system. Plaintiffs urge their claim directly under the Thirteenth Amendment and through operation of 42 U.S.C. § 1985(3).

i. Plaintiffs’ Inability to Freely Access and Care for the Resting Places of Those Enslaved at Buena Vista Is a Badge or Incident of Slavery under the Thirteenth Amendment of the U.S. Constitution.

The Thirteenth Amendment abolished slavery and gave Congress the power to further “abolish[] all badges and incidents” of that system. *Civil Rights Cases*, 109 U.S. 3, 20 (1883). Our courts have continued to address lingering aspects of the slavery system. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 441-42 (1968) (racial discrimination in real estate transactions constituted “badges” or “incidents” of slavery and observing that “[j]ust as the Black Codes, enacted after the Civil War to restrict the free exercise of those rights, were substitutes for the [slave] system,” the exclusion of Black people “from white communities became a substitute for the Black Codes”); *Griffin v. Breckenridge*, 403 U.S. 88, 103, 105 (1971) (badges or incidents of slavery extend “far beyond the actual imposition of slavery or involuntary servitude” in holding that private violence against perceived civil rights workers could be brought pursuant to 42 U.S.C. § 1985(3)); *United States v. Nelson*, 277 F.3d 164, 190 (2d Cir. 2002) (upholding the constitutionality of a federal hate crimes conviction finding that “race-based private violence” was a badge or incident of slavery); *Runyon v. McCrary*, 427 U.S. 160 (1976) (racial discrimination in private contracting can rise to an impermissible badge or incident of slavery); *see also, United States v. Jefferson Cnty. Bd. of Educ.*, 372 F.2d 836, 867-68 (5th Cir. 1966) (describing school segregation as a “badge” of slavery).

The defining feature of slavery is ownership of a person. *Plessy v. Ferguson*, 163 U.S. 537, 542 (1896) (defining slavery as “the ownership of mankind as a chattel” and “the absence of a legal right to the disposal of his own person, property, and services”); *see also, Convention to Suppress the Slave Trade and Slavery*, Sept. 25, 1926, 60 L.N.T.S. 253 (1926), Art. 1 (defining slavery as the “status or condition of a person over whom any or all of the powers attaching to the

right of ownership are exercised").⁹ Plaintiffs state particularly devastating facts showing “ownership” and financial transactions on the Buena Vista Plantation continued even after death when the enslaver mortgaged those he enslaved after they died, sometimes more than once. Compl. ¶¶ 54, 55, 60 (Betsy), 62 (Rachel), 64 (Stanley), 65 (Harry). Their bodies and sacred remains have continued to be subject to financial transactions and profit-driven decision-making as ownership of the property, including their graves, changed hands from one owner to the next. *Id.* ¶ 203.

There could hardly be a clearer and more direct badge or incident of slavery than ownership and control of the graves, and therefore the bodies, of the people who were “owned” and perished in that system. This is all the more so when that ownership and control is exercised with the lack of due regard, respect, and appreciation for the sanctity of those sites and the descendant community that wishes to honor them, as has historically been shown for cemeteries like the Buena Vista, and now exhibited by Formosa. Plaintiffs plead at length how the cemeteries and the continuing inability of Plaintiffs to freely access, care for, and congregate at Buena Vista, are clear and direct “burdens and incapacities [that] were [and are] the inseparable incidents of the institution” of slavery. *Civil Rights Cases*, 109 U.S. at 22.

Plaintiffs trace a direct line from their experiences and the treatment of cemeteries of the enslaved today back through to the burial practices on sugarcane plantations under the slavery system in St. James Parish.¹⁰ Compl. ¶¶ 38-40, 43-49, 72-76 (comparing official recording and commemoration of deaths of enslavers with lack thereof for those enslaved), 32-36 (noting high mortality rates, low average age of death for those enslaved), 45 (restrictions on movement and

⁹ Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/slavery-convention>.

¹⁰ See *United States v. State of La.*, 225 F.Supp. 353, 363, 380 (E.D. La. 1963), *aff'd sub nom. Louisiana v. United States*, 380 U.S. 145 (1965) for a recounting of generations of racial discrimination and disenfranchisement that accompanied these events where the court details the history of “long, logically connected series of socio-political events” that were “rooted in the State’s historic policy and the dominant white citizens’ firm determination to maintain white supremacy in state and local government.”

gatherings during slavery), 78-81 (restrictions on movement and gatherings after Emancipation), 82-87 (desecration and destruction of cemeteries as a result of industrial development beginning in the 1960s), 7, 113, 134 (desecration of Buena Vista Cemetery when a pipeline was constructed through it, which increases threats of arrest for alleged trespassing under Louisiana's critical infrastructure law), 12 (Formosa's threat of arrest), 119 (Formosa's failure to inform the Parish and local community of the existence of the graves while its land use application was pending), 132-135 (Formosa's threats of arrest of those visiting the site), 136-139 (Formosa's refusal to allow a Juneteenth commemoration ceremony at the site, necessitating legal action by descendants), 146-161, 179-84 (Formosa's drawn out negotiations around Plaintiffs' desire to hold a Black History Month ceremony at the site, refusal to allow placement of headstones, suing Plaintiffs in this Court and then unilaterally dismissing without any resolution), 166-177 (failure to maintain access road to the cemetery, harassment and interference by security firm personnel during prayer ceremony). Defendant's suggestion that Plaintiffs' claim that ownership of "an unmarked burial site constitutes a 'badge or incident of slavery' is unsupported," Def. Br. at 14, is without merit in light of these detailed allegations.

ii. Plaintiffs Sufficiently State a Thirteenth Amendment Claim Under 42 U.S.C. § 1985(3).

Defendants wrongly argue that Plaintiffs fail to assert an independent cause of action under the Thirteenth Amendment or adequately plead a Section § 1985(3) claim, suggesting only a "cursory reference to 42 U.S.C. § 1985." Def. Br. at 14. This argument lacks merit.

First, that "cursory reference" to § 1985 is in the section of Plaintiffs' Complaint advising the Court on the jurisdictional basis of the action on the federal claim, i.e. the Thirteenth Amendment. Compl. ¶ 22. Section 1985 was enacted by Congress specifically to help fulfill the Thirteenth Amendment's purpose. *Griffin v. Breckenridge*, 403 U.S. at 99, 105. Second, contrary

to Defendant's argument, Def. Br. at 14-15, the Complaint amply states factual allegations demonstrating all of the elements of a § 1985(3) claim as set forth in *Hilliard v. Ferguson*, 30 F.3d 649, 652-53 (5th Cir.1994).¹¹ As shown below, Formosa's persistent actions, in concert at times with law enforcement and a security firm, have had the purpose and effect of depriving Plaintiffs of the equal protection of the laws and freedom from the badges and incidents of slavery in violation of the Thirteenth Amendment, an inherently unlawful purpose.

a. *Conspiracy.* Plaintiffs demonstrate that a conspiracy exists through specific factual allegations from which an agreement to deprive them of the equal protection of the laws may be inferred – not mere conclusory allegations. *Body by Cook, Inc. v. State Farm Mut. Auto. Ins.*, 869 F.3d 381, 390 (5th Cir.2017) (explaining that in § 1985 cases plaintiffs “must plead the operative facts upon which their claim is based” and not “mere conclusory allegations”); *see also, Crowe v. Lucas*, 595 F.2d 985, 993 (5th Cir.1979) (requirement to show an agreement to commit an unlawful act “must often be met by circumstantial evidence; conspirators rarely formulate their plans in ways susceptible of proof by direct evidence”). Plaintiffs sufficiently allege that Formosa conspired with separate entities to deprive their members of the equal protection of the laws. Compl. ¶¶ 12 (Formosa threatening members with arrest), 133 (sheriff’s deputies arrived “at request” of Formosa threatening to arrest anyone who did not leave the property despite Louisiana law guaranteeing access to cemeteries), 173, 175-177 (employees of private security firm hired by Formosa harassed and interfered with Plaintiffs’ prayer service near the cemetery). The security firm’s harassment and interference were consistent with other actions taken by Formosa to inhibit

¹¹ The elements are “(1) a conspiracy involving two or more persons; (2) for the purpose of depriving, directly or indirectly, a person or class of persons of the equal protection of the laws; and (3) an act in furtherance of the conspiracy; (4) which causes injury to a person or property, or a deprivation of any right or privilege of a citizen of the United States.” *See Hilliard v. Ferguson*, 30 F.3d 649, 652-53 (5th Cir.1994) (holding that in doing so, plaintiff must show that the conspiracy was motivated by a class-based animus).

Plaintiffs' access to the cemeteries. *Id.* ¶¶ 119, 132-139, 147-161, 179-84, 166-177.

Formosa argues that the security firm it hired is an “agent” of Formosa and therefore Formosa cannot be said to be conspiring with itself, despite the fact that the firm is a separate legal entity. Def. Br. at 14-15. Formosa cites no case for the proposition that two separate legal entities – in this case Formosa Plastics and Rollo Security Services – are to be treated as a single “person” for purposes of a § 1985(3) conspiracy, because there is no such precedent. The only case Formosa cites involved employees of different departments of a school board who were thus part of a “single legal entity which is incapable of conspiring with itself for purposes of § 1985(3).” *Hilliard v. Ferguson*, 30 F.3d 649, 653 (5th Cir. 1994); *see also, Nelson Radio & Supply Co. v. Motorola, Inc.*, 200 F.2d 911, 914 (5th Cir. 1952) (intra-corporate conspiracy doctrine does not bar conspiracies between “separate corporate entities”); *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 771 (1984) (parent corporation and wholly-owned subsidiary were part of a single enterprise because their “general corporate actions are guided or determined not by two separate corporate consciousnesses, but one”). Formosa cannot claim that it has a parent/wholly-owned subsidiary relationship with Rollo Security Services, or that the two separate entities are guided by a single “consciousness.”

b. *Purpose and Steps in Furtherance of the Conspiracy.* With regard to the second and third elements, Plaintiffs sufficiently plead facts showing that 1) Formosa took steps for the purpose of depriving Plaintiffs of the equal protection of the laws, 2) in furtherance of the conspiracy. Plaintiffs plead that cemetery dedication law requires they be allowed to access, maintain, care for, and protect the cemetery. Compl. ¶¶ 17, 21, 212-216. Plaintiffs further plead that Formosa’s repeated actions, in concert with others, have had the purpose and effect of “depriving [them], either directly or indirectly,” per the statute, of the equal protection of this law.

Id. ¶¶ 133-137 (sheriff’s office and threats of arrest), 111-119, 147-161, 166-177, 179-84, (Formosa’s failure to inform community about location of cemeteries and plans to remove the graves, placing onerous and changing conditions on their access, start-and-stop litigation; using private security firm to surveil, interfere, and harass them while they access the cemetery, and failing to maintain a safe access road). Formosa’s conclusory assertion that Plaintiffs plead no facts showing “any overt act undertaken for an unlawful purpose,” in furtherance of a conspiracy, Def. Br. at 15, is belied by these allegations.

c. *Injury.* As Plaintiffs set out above with regard to their standing, they have sufficiently alleged that they and their members have been harmed, and will continue to be harmed, by Formosa’s actions absent judicial intervention. Compl. ¶¶ 15, 132-134 (threats of arrest for visiting site), 137-139 (Plaintiffs’ members forced to obtain court order allowing them to access the site), 147-150 (denied permission to lay headstones), 175-177 (security firm personnel interfere with and interrupt prayer service), 209-210, 220.

d. *Class-Based Animus.* Plaintiffs state facts throughout their Complaint showing class-based animus, and Formosa’s argument to the contrary, Def. Br. 15, is without merit. Plaintiffs show that they belong to the very class of people the Thirteenth Amendment, the Fourteenth Amendment, and the implementing Civil Rights Acts were originally enacted to liberate and protect – descendants of the slavery system. Compl. ¶¶ 2 (founded by and serving the descendant community of enslaved people), 15 (living members of the descendant community of the River Parish plantations), 16, 24-30 (describing their missions and work, including at 28, to champion the “voice of the Black descendant community”). They further show that their current experiences follow from the history of slavery and the long-running discrimination against the descendant community following Emancipation, including depriving them of access to the

cemeteries of their ancestors. *Id.* ¶¶ 32-69 (history of slavery in St. James and burial practices), 72-85 (ongoing discrimination, including disregard for, damage to and destruction of burial sites and lack of ability of descendant community to access the sites). And, they plead facts showing that, as a result of this historical harm, subsequent neglect, and failure to address the situation of cemeteries of the enslaved and the rights of descendants, they have been treated differently from descendants of enslavers and other free persons not subjugated in the slavery system. *Id.* ¶ 19-20. Formosa's persistent continuation of that denial of equal protection of cemetery dedication laws in the face of repeated efforts by Plaintiffs' members to honor their ancestors, and Black history, at the sites is clear evidence of an invidious discriminatory animus. *Id.* ¶¶ 119, 132-139, 147-161, 166-177, 179-84. *See Body by Cook, Inc.*, 869 F.3d at 386 (discriminatory motive may be — and commonly is — demonstrated by circumstantial evidence).

iii. The Supreme Court Has Explicitly Left Open the Possibility of a Direct Cause of Action Under the Thirteenth Amendment.

Defendant's argument that a claim directly under the Thirteenth Amendment is altogether foreclosed is wrong. Def. Br. at 14. The Supreme Court has explicitly left open the question whether § 1 of the Thirteenth Amendment supports a private right of action to address badges and incidents of slavery. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 439 (1968) ("By its own unaided force and effect, the Thirteenth Amendment abolished slavery, and established universal freedom. Whether or not the Amendment itself did any more than [abolish slavery]—a question not involved in this case—it is at least clear that the Enabling Clause of that Amendment empowered Congress to do much more."). The Court reiterated more than a decade later that the question remained open. *See City of Memphis v. Greene*, 451 U.S. 100, 126 (1981) ("It is also appropriate today to leave that question open because... the official action challenged... could not, in any event, be fairly characterized as a badge or incident of slavery."); *see also, id.* at 154, (Marshall, J., dissenting)

(noting that the Court had “reserve[d] until another case the issue of whether § 1 of the Thirteenth Amendment by its own force bans ‘badges and incidents of slavery’”) 451 U.S. 100, 154, n. 18 (1981). Defendant’s argument that such a claim is altogether foreclosed is wrong. Def. Br. at 14.

Thus, in addition to § 1985(3), Plaintiffs urge that their claim is validly stated directly under the Thirteenth Amendment. If ever there were a case warranting direct application of the Amendment, in light of its origin and purpose, it would be a case requiring that the graves and sacred remains of those who perished in slavery be freed from the chain of ownership and control that began with their enslavement, necessitating that they be released into the care and control of their community of descendants. The preservation, protection, and veneration of cemeteries of people enslaved on plantations are part of the unfinished business of abolishing slavery. They are tied directly to the *crime* of slavery – physically, geographically, and morally.

Moreover, this is why Formosa’s argument that any remedy under the Thirteenth Amendment must be limited by state cemetery law fails. Def. Br. at 19. Rather, this claim and the relief required, either directly pursuant to the Amendment or through § 1985(3), must be seen through the lens of the ongoing Thirteenth Amendment harm – and no state law can prevent a constitutional remedy that is necessary to right that wrong.

C. Plaintiffs Have Sufficiently Alleged a Violation of Their Right Under Louisiana Cemetery Dedication Law to Access, Maintain, Care For, and Protect the Buena Vista Cemetery.

Formosa misunderstands the interplay of several cemetery protection laws in Louisiana: common law regarding cemetery dedication, its civil law corollary (La. Stat. Ann. §§ 8:304–306), the Unmarked Burial Sites Act (La. Stat. Ann. §§ 8:671-681), as well as various other civil provisions. These laws are additive and not mutually exclusive, so a landowner is required to follow all that apply. Plaintiffs’ Claim II is brought under the Louisiana cemetery dedication laws.

i. Plaintiffs Sufficiently Allege that the Buena Vista Cemetery is a Dedicated Cemetery.

Under Louisiana law, once a plot of land is set aside for burial purposes, it becomes “dedicated.” *Humphreys v. Bennett Oil Corp.*, 195 La. 531, 547, 549, (1940). Once dedicated, descendants “have a ‘species of interest or form of title’” in the cemetery, *id.*, and current or future owners have to abide by the following:

- (1) He cannot remove or disturb any grave. (2) *Relatives and friends have unrestricted rights to visit and care for the graves.* (3) Property included in the cemetery cannot be used by the owner for any purpose inconsistent with cemetery purposes. (4) The owner cannot reduce the size of the lands set apart as a cemetery.

Vidrine v. Vidrine, 225 So. 2d 691, 697 (La. Ct. App. 1969) (emphasis added).

Formosa wrongly asserts that the Buena Vista Cemetery is not dedicated. **First**, contrary to Formosa’s argument, Def. Br. at 15, 17, Plaintiffs have alleged that the Winchesters “intended” to set aside the cemetery for burials. Compl. ¶¶ 57-71, 99-101 (the Winchesters enslaved hundreds of people, many of whom – including Simon, Betsy, Rachel, Stanley, and Harry – died while enslaved there and would have had to be buried), 42 (slaveowners required by Louisiana law to bury in consecrated ground anyone they enslaved who was Christian), 104 (1878 map depicts the Buena Vista Cemetery). This is virtually certainly a cemetery of enslaved people because, while plantation owners were generally buried in marked graves in church cemeteries or family plots, enslaved people were buried within the plantation: on uncultivated land in the back. *Id.* ¶ 46. Formosa’s own archaeologist has acknowledged that it is likely a cemetery of enslaved people. *Id.* ¶ 186. Thus, the Winchesters at the very least knew, and therefore had “acquiesced,” *Thomas v. Mobley*, 118 So. 2d 476, 478 (La. Ct. App. 1960), to this use of their property. Formal dedication is not required. *Id.*

It is also clear that “the public, or those in whose favor the dedication is made, accept[ed]

and ma[d]e use of the property for" cemetery purposes, *Humphreys*, 195 La. at 545, as revealed by the public map from 1878, Compl. ¶ 104; the fact that the cluster of trees marking the cemetery was preserved until at least 1971, *id.* ¶ 105; and the fact that descendant communities have commemorated the cemetery over the past 6 years, *id.* ¶¶ 132-178.

Second, contrary to Formosa's argument, Def. Br. at 16, Louisiana law clearly establishes that lack of continuous use of a cemetery does not extinguish its dedication. *See* La. Stat. Ann. §8:304(a) ("After property is dedicated . . . neither the dedication nor the title of a plot owner shall be affected by the dissolution of the cemetery authority, by nonuse on its part, by alienation of the property, or otherwise, except as provided in this Title."). Nor could it, as that would extinguish the protection afforded by cemetery dedication law over countless plantation cemeteries and to descendants of the enslaved, who, even after Emancipation, were prevented from entering plantation cemeteries and commemorating their ancestors. Compl. ¶¶ 78-80.

In any case, Plaintiffs' ancestors, and Plaintiffs themselves, have found ways to venerate the Buena Vista Cemetery through generations, notwithstanding the brutal forms of discrimination that persisted after Emancipation that prevented them from honoring the cemetery fully. *Id.* ¶¶ 45, 74-77 (Plaintiffs' ancestors marked the Buena Vista Cemetery with trees), 78-80 (Plaintiffs' ancestors were prevented from accessing plantation cemeteries and prevented from gathering for religious practices), 105 (Buena Vista Cemetery was preserved as a sacred tree grove, and potentially used, between 1940 and until at least 1971), 91 (Inclusive members' knowledge of cemetery of enslaved people there through oral histories from ancestors), 132-178 (Plaintiffs' members and other descendant communities efforts to honor the cemetery). The manner in which the Buena Vista Cemetery has been preserved and used is remarkable given the circumstances.

Third, Formosa questions Plaintiffs' members' connections with their enslaved ancestors.

As described in Section I.C. above, Louisiana law requires a broad construction of who may bring claims under cemetery dedication law. But even accepting Defendants' narrow construction, Plaintiffs have amply pled this "real connection." Def. Br. at 10. Unlike the plaintiffs in *Ass 'n of Cemetery Tour Guides Co.*, many of whom alleged *no connection* to those buried in the cemetery at issue, Inclusive Louisiana's members, as well as the local residents served by The Descendants Project, have ancestral ties to the Buena Vista Cemetery, Compl. ¶ 2, and the founders of Inclusive as well as The Descendants Project are themselves descendants of people enslaved in St. James, *id.* ¶¶ 24-25, 27-28, and their kinship practices means that they are part of the descendant community of those enslaved and buried in the Buena Vista Cemetery, *id.* ¶ 192.

ii. Application of the Unmarked Burial Sites Act is Not Mutually Exclusive to Application of Cemetery Dedication Law; Cemetery Dedication Law Gives Descendant Communities "Unrestricted Rights to Visit and Care for" Cemetery.

Contrary to Formosa's suggestion, the application of the Unmarked Burial Sites Act is not mutually exclusive to the application of Louisiana cemetery dedication law.¹² For example, the Buena Vista Cemetery may be "unmarked"¹³ but still "dedicated," such that both the Unmarked Burial Sites Act as well as cemetery dedication law apply, because dedication occurs at the time of a burial, particularly for burials prior to 2008.¹⁴ *See., e.g., Humphreys*, 195 La. at 551 ("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

¹² See, e.g., Ryan M. Seidemann, *Do Not Disturb: A Practical Guide for What Not to Do Around Cemeteries and Human Remains for the Louisiana Energy and Land Use Practitioner*, 2 *LSU J. Energy L. & Resources* 240, 260 (2014) (stating that a proposed industrial project area where human remains are found can only be used for any non-cemetery purposes if: (1) it is un-dedicated, and if the site also qualifies as an unmarked or historic cemetery, (2) compliance with the Unmarked Burial Sites Act and the Historic Cemeteries Act.)

¹³ La. Stat. Ann. § 8:673(5) (defining "Unmarked burial site" as "the immediate area where one or more human skeletal remains are found in the ground that is not in a recognized and maintained municipal, fraternal, religious, or family cemetery, or a cemetery authorized by the Louisiana Cemetery Board.")

¹⁴ La. Stat. Ann. §8:304(b) reads: "The provisions of this Subsection [requiring official act of dedication to be filed with clerk of the district court] shall apply only to a cemetery established after June 21, 2008." (emphasis added).

overrides conveyancers' precedents and requires freedom from profanation . . ."); *see Thomas v. Mobley*, 118 So. 2d 476, 478 (La. Ct. App. 1960) (holding that cemetery was properly dedicated "although no formal dedication of the cemetery was ever recorded in the conveyance records"). Disuse, disrepair, or lack of maintenance does not by itself change the dedicated nature of a plot of land. *See La. Stat. Ann. §8:304(a)*.

Formosa argues that the Unmarked Burial Sites Act only gives the state the right to institute civil proceedings, but Plaintiffs do not bring claims under that Act, and there is nothing in the Act that suggests that the remedies available under it extinguish other remedies arising out of cemetery protection law. Rather, under cemetery dedication law, those with a connection to the cemetery at issue, and likely any member of the public, have a right to bring an action to protect their unrestricted right to visit, maintain, and care for the cemetery. *See Humphreys*, 195 La. at 549; *Locke v. Lester*, 78 So. 2d 14, 16 (La. App. 2 Cir. 1955); *Vidrine v. Vidrine*, 225 So. 2d 691, 697 (La. App. 3 Cir. 8/7/69) ("Relatives and friends have *unrestricted rights* to visit and care for the graves . . .") (emphasis added); *In re St. James Methodist Church of Hahnville*, 95-410, pp. 6, 8 (La. App. 5 Cir. 12/27/95), 666 So. 2d 1206, 1209-10 (same). The Act does not extinguish those rights.¹⁵

Formosa also argues that it is denying Plaintiffs their right to commemorate their ancestors through the placement of headstones because Formosa has not identified any of the individuals buried in the Cemetery. Def. Br. at 11 n.7. But its own consultant confirmed that it is likely a cemetery where enslaved people were buried, Compl. ¶ 186, and Formosa does not indicate that it has made any effort to identify the individuals buried there. Against all odds, Plaintiffs have been

¹⁵ Formosa also argues that the complete relief Plaintiffs seek would distinguish their property rights in violation of Louisiana law. As discussed above in Section II.B., in making this argument, Formosa ignores Plaintiffs' federal constitutional claim and that state law cannot be read to prevent or limit any relief necessary to comply with the Thirteenth Amendment of the U.S. Constitution.

able to do so. *Id.* ¶¶ 50-71. If Formosa disagrees with these allegations, that is a factual dispute that cannot be resolved at this stage in the proceedings.

III. THERE ARE NO ABSENT REQUIRED PARTIES.

A. Legal Standard for Rule 12(b)(7) Motions

Fed. R. Civ. Proc. 19 requires that a court determine whether a person is a necessary party in a lawsuit, and provides for dismissal only in cases where a necessary party cannot be joined. *HS Res., Inc. v. Wingate*, 327 F.3d 432, 438 (5th Cir. 2003). Neither of those situations is present here as the parties Formosa identifies are not necessary for the “fair and complete resolution of the dispute at issue.” *Id.* Even if they were, Formosa has not established that they could not be joined.

i. Neither the Pipeline Company nor Adjacent Landowner Are Necessary Parties; and Even if They Were, Formosa Has Not Shown Joinder Is Not Possible.

None of the injuries Plaintiffs seek to address in this lawsuit interfere with the pipeline servitude owned by UCAR Pipeline Incorporated (“UCAR”). Formosa does not explain how Plaintiffs’ requested relief would involve, much less impair, the pipeline owner’s servitude or “compel FG to grant access that Louisiana law forbids the servient owner to grant.” Def. Br. at 24. In fact, Formosa seems to understand that complete relief would not impact UCAR as it argues that the servitude “continues to burden FG’s property as the servient estate, *regardless of changes of ownership.*” *Id.* at 23 (emphasis added). There will be no “prejudice to [UCAR] or others in the lawsuit from a judgment” and “adequate relief can be given without participation of [UCAR].” *HS Res., Inc. v. Wingate*, 327 F.3d at 439. UCAR is thus not a required party, and even if it were, Formosa has not shown why it could not be joined.¹⁶

¹⁶ According to the Pipeline Right-of-Way and Servitude, UCAR is “a corporation created and existing under and by virtue of the laws of the State of Delaware, with an office and place of business in Houston, Texas.” Doc. 9-5 at 2. Adding UCAR as a party would not destroy the court’s diversity jurisdiction or impact the court’s federal question jurisdiction. Fed. R. Civ. Proc. 19(a); *Mann v. Alston Contractors*, 2019 WL 969820 (E.D. La. February 28, 2019), quoting *Moss v. Princip*, 913 F.3d 508, 515 (5th Cir., January 16, 2019) (“Federal Rule of Civil Procedure 19 directs federal courts to join ‘required’ parties when feasible.”).

Defendant also makes a disingenuous argument that Plaintiffs seek relief over land both within and beyond the reach of Formosa's ownership. Def. Br. at 23 (arguing that plaintiffs seek access to "the *entirety* of the Buena Vista Site") (emphasis in original). But the Complaint is clear that Plaintiffs seek relief limited to the Cemetery and other found burial grounds located on property exclusively owned by Formosa. *See* Compl. ¶¶ 81 (impediments to access on "former plantation lands now owned by Formosa"), 115 ("The Cemetery is now marked off by a three-sided chain-link fence with barbed wire.").¹⁷ Moreover, in the lawsuit Formosa filed against Inclusive and other organizations in January 2025, Formosa uses the "Buena Vista site" to mean only the portion of the Cemetery that lies within Formosa's property. Doc. 9-3 ¶¶ 1, 3, 12, 22-28, 30, 40, 42, 50. And, again, Formosa does not explain why joinder would not be possible even if the adjacent landowner were a necessary party.

None of the injuries Plaintiffs seek to address in *this* lawsuit involve land owned by any person or entity other than Formosa Plastics. Therefore, there will be no "prejudice to [the adjacent landowner] or others in the lawsuit from a judgment" and "adequate relief can be given without participation of the [adjacent landowner]." *HS Res., Inc. v. Wingate*, 327 F.3d at 439.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendant's Motion to Dismiss on all counts.

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¹⁷ As Formosa's exhibits show, while archaeologists have surveyed and confirmed the parameters of the Buena Vista Cemetery on the property owned by Formosa, less is known about the burials on the adjacent property. Doc. 9-4, p. 6 (consultant noting that the "remaining portion appears to be located on" adjacent tract).

Dated: December 19, 2025

Respectfully Submitted,

s/Kayla Vinson

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**Admitted pro hac vice*

***Application for pro hac vice admission
forthcoming*