

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

**INCLUSIVE LOUISIANA,
THE DESCENDANTS PROJECT**

Plaintiffs,

vs.

FG LA LLC

Defendant.

CASE NO. 2:25-CV-1398

DISTRICT JUDGE: BARBIER

MAG. JUDGE: DOSSIER

SECTION: J(3)

FG LA LLC'S MEMORANDUM IN SUPPPORT OF MOTION TO DISMISS

Defendant FG LA LLC ("FG"), through undersigned counsel, respectfully submits this Memorandum in Support of its Motion to Dismiss pursuant to FED. R. CIV. P. 12(b)(1), FED. R. CIV. P. 12(b)(6), and FED. R. CIV. P. 12(b)(7) in response to the Complaint (R. Doc. 1) filed by Plaintiffs, Inclusive Louisiana ("Inclusive") and the Descendants Project (the "Descendants Project") (collectively, "Plaintiffs").

Plaintiffs seek declaratory and injunctive relief granting them ongoing and unrestricted access to, and control over, an unmarked burial site (the "Buena Vista Site") located on FG's privately owned property in St. James Parish, Louisiana. Plaintiffs allege that FG's ownership and control of this property (1) constitutes a continuing "badge of slavery" in violation of the Thirteenth Amendment and (2) violates Louisiana cemetery law. Through these claims, Plaintiffs seek to convert FG's cooperation with state preservation authorities and local community members into a federal constitutional dispute, asking this Court to effectively strip FG of its property rights and confer continuing access and management authority on two private organizations without any legal or statutory basis for doing so.

Plaintiffs' Complaint should be dismissed for three independent reasons:

1. **Lack of subject matter jurisdiction**: Plaintiffs lack Article III standing because they allege no concrete, particularized, or redressable injury. Their asserted harms—subjective feelings of separation, speculative fears of future restrictions, and disagreement with reasonable access conditions—do not confer federal jurisdiction. Their claims are also unripe, resting on hypothetical future events rather than any existing controversy.
2. **Failure to state a claim**: Plaintiffs fail to state a claim as a matter of law. The Thirteenth Amendment does not create a private right of action, and the notion that modern land ownership constitutes a “badge of slavery” finds no support in any precedent. Likewise, the Buena Vista Site does not satisfy the requirements for a dedicated cemetery under Louisiana jurisprudence, and the Louisiana Unmarked Human Burial Sites Preservation Act vests enforcement authority exclusively in the State—not in private citizens or organizations.
3. **Failure to join indispensable parties**: Plaintiffs’ requested relief cannot proceed in the absence of indispensable parties. Their claims directly implicate the property rights of others, including the operator of a recorded pipeline right-of-way and servitude and an adjacent landowner whose property encompasses portions of the Buena Vista Site.

BACKGROUND

This present action arises out of a long-standing dispute between the parties over access to the Buena Vista Site, which is located on FG’s privately owned property in St. James Parish, Louisiana. Plaintiffs allege that the Buena Vista Site, which was disturbed by development prior to FG’s ownership of the property, contains unmarked graves of formerly enslaved people. Complaint ¶¶ 69, 112-113. In the present action, Plaintiffs claim that FG’s continued ownership

and control of this property (1) constitute a continuing “badge of slavery” in violation of the Thirteenth Amendment and (2) violate Louisiana cemetery law. *Id.* at ¶¶ 198-219. In support of these claims, Plaintiffs assert that FG has impeded their ability to access and commemorate the Buena Vista Site. *Id.* at ¶¶ 128-131. They seek declaratory and injunctive relief granting them permanent, unrestricted access to the Buena Vista Site, authority to maintain and protect it, permission to install headstones, and divestiture of FG’s control. *Id.* at pp. 34-5.

In reality, FG has consistently worked with state and parish authorities to identify, preserve, and protect the Buena Vista Site. As reflected in FG’s declaratory-judgment complaint (subsequently voluntarily dismissed by FG prior to service) filed in *FG LA LLC v. Inclusive Louisiana, et al.*, No. 25-cv-00170 (E.D. La. Jan. 24, 2025), attached hereto as Exhibit A,¹ FG retained professional archaeologists before beginning any site activity for its permitted Sunshine Project, which had been approved by St. James Parish and the Louisiana Department of Environmental Quality. Exhibit A ¶¶ 2-17. Those surveys, conducted in coordination with the Louisiana Division of Archaeology and the State Historic Preservation Office, confirmed the presence of disturbed but intact burials on a portion of the former Buena Vista Plantation. *Id.* at ¶ 24. No headstones or archival records identified the individuals interred, and state authorities have not determined their ancestry or ethnicity. *Id.* at ¶ 31. To protect the Buena Vista Site, FG fenced the portion of the site located on its property in coordination with state officials. *Id.* at ¶¶ 26–30.

Since acquiring the property in 2018, FG has repeatedly accommodated requests from community members and advocacy groups, including Inclusive, while ensuring visitor safety and

¹ “Documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff’s complaint and are central to her claim.” *Causey v. Sewell Cadillac-Chevrolet, Inc.*, 394 F.3d 285, 288 (5th Cir. 2004) (internal citations omitted). The Complaint relies on FG’s filing of a lawsuit to support Inclusive’s assertion that FG makes access to the Buena Vista Site burdensome on Plaintiffs. *See* Complaint ¶¶ 153-158, 179-184. Because the issue of access is central to Plaintiffs’ claims, FG’s declaratory judgment complaint should be considered part of the pleadings.

compliance with preservation requirements. *See generally* Exhibit A. However, after community members learned of the Buena Vista Site through a public records request, community members, including Inclusive members, visited the Buena Vista Site unannounced for prayer and memorial activities. Complaint ¶ 132. Plaintiffs allege that FG requested that sheriff’s deputies remove the unannounced visitors, warning that they could be arrested for trespassing under Louisiana’s critical-infrastructure law because a pipeline runs through the area. *Id.* at ¶¶ 133-135.

Outside of this initial, unannounced visit, Plaintiffs fails to allege any instance in which they were denied access to the Buena Vista Site. Instead, Plaintiffs rely on a prior denial of a separate organization to access the Buena Vista Site (which was resolved in a state court proceeding) and several approvals to visit to inexplicably assert that FG prevents community members, including members of Plaintiffs, from access the Buena Vista Site. The record shows a consistent pattern of access under reasonable conditions:

June 2020: RISE St. James (“RISE”) State Court Action. In 2020, RISE, a separate entity not party to this action, requested access to hold a Juneteenth prayer service at the Buena Vista Site. Complaint ¶ 136. FG, citing safety and access concerns, did not grant the request. Exhibit A ¶ 33. RISE, whose has some overlapping members with Inclusive, filed a petition in state court seeking a temporary restraining order to ensure access to the site. Complaint ¶ 137. The state court granted the temporary restraining order, and the Louisiana Fifth Circuit denied FG’s writ application. *Id.* at ¶¶ 138-139. The prayer service proceeded under the court’s order. *Id.* at ¶¶ 141.

October 2020: FG Accommodates Access. FG accommodated a request from RISE to host an All Saints’ Day ceremony at the Buena Vista Site. *Id.* at ¶ 143.

February 2021: FG Accommodates Access. FG accommodated a request from RISE to hold a private Black History Month event near the Buena Vista Site. Exhibit A ¶ 36. Without FG’s

prior knowledge and consent, RISE advertised the event, presenting safety and security concerns due to attendees having to traverse unmaintained portions of FG's property. *Id.* During the event, attendees made verbal and physical threat to FG personnel onsite. *Id.*

May 2021: FG Accommodates Access. FG accommodated a request from RISE to hold a Juneteenth event at the Buena Vista Site. *Id.* at ¶ 37. Once again, RISE advertised the event without FG's knowledge or consent. *Id.* Due to weather, the event was ultimately cancelled. *Id.*

April 2023: FG Accommodates Access. FG accommodated a request from RISE to hold a closed educational event at the Buena Vista Site in April of 2023 subject to attendees signing a sign-in sheet upon arrival to FG's property. *Id.* at ¶ 38. The event proceeded without incident. *Id.*

February 2025: FG Accommodates Access. On December 20, 2024, Inclusive, through counsel, requested access to hold a Black History Month commemoration at the Buena Vista site on February 23, 2025, and asked to "lay headstones there to honor five of the people they have confirmed were enslaved on the Buena Vista Plantation and who died while enslaved there[.]" Complaint ¶¶ 146-147 (internal citations omitted). Inclusive requested that FG confirm whether they would agree to this event by January 15, 2025, so Inclusive could seek authorization in court if necessary. Exhibit A ¶ 41. Inclusive subsequently extended this deadline to January 23, 2025. *Id.* On January 23, 2025, FG offered to provide access to the Buena Vista Site for a closed event consistent with the terms reached in April of 2023, but stated that it could not comply with Inclusive's request to place individual headstones at the site because the identities (including the ethnicities) of the remains are still unknown. *Id.* at ¶ 42; Complaint ¶¶ 149-152. Inclusive agreed to the terms (attendees sign a sign-in sheet and a liability waiver) and successfully held the event on February 23, 2025. Complaint ¶¶ 157, 162-163.² However, Inclusive chose to hold the majority

² FG declined Inclusive's belated request for advance access for "planning purposes[.]" Complaint ¶¶ 159-160.

of its event on a different portion of FG's property and certain attendees choose to not traverse FG's property to reach the Buena Vista Site because of a weather event. *Id.* at ¶¶ 164-165.

FG's January 2025 Complaint. Over safety and security concerns that an unknown number of unidentified individuals would have unfettered access to FG's property during the February 2025 event, FG filed a declaratory-judgment action in the Eastern District of Louisiana to clarify the parties' respective rights and obligations concerning access to and use of the site. *See generally* Exhibit A; *see also* Complaint ¶¶ 153-155. FG voluntarily dismissed this complaint in April of 2025. Complaint ¶ 179. Plaintiffs thereafter filed this action seeking declaratory and injunctive relief to obtain unrestricted access, authority to maintain and protect the site, and to prohibit FG from restricting their entry or objecting to installation of headstones on unidentified graves sites.

From 2018 to the present, Plaintiffs have only identified one instance where they requested access to the Buena Vista Site, which was granted. The only other instance they identify of *Plaintiffs* accessing the site was their unannounced trespass at some point prior to May 2020. Otherwise, Plaintiffs cannot point to any instance of FG's outright denial of access to the Buena Vista Site. Moreover, Plaintiffs conveniently ignore FG's obligations to preserve an unmarked burial site. To ensure the integrity of the Buena Vista Site and safety of all visitors, FG has consistently maintained the protective fencing and coordinated access under agreed conditions.

Plaintiffs now challenge FG's reasonable limitations, asserting constitutional and statutory rights to unrestricted access and management authority over the Buena Vista Site.

LAW AND ARGUMENT

I. The Complaint fails to establish standing under FED. R. CIV. P. 12(b)(1).

Plaintiffs' claims fail at the threshold because they allege neither a concrete, particularized injury nor a ripe controversy sufficient to invoke Article III jurisdiction. Their asserted harms are

speculative, rooted in subjective perceptions and hypothetical future events rather than any present, redressable injury. The Complaint must therefore be dismissed for lack of jurisdiction.

A. Legal standard for dismissal under Rule 12(b)(1).

To have Article III standing, a plaintiff must clearly allege that they have: (1) injury in fact—“a harm suffered by the plaintiff that is concrete and actual or imminent, not conjectural or hypothetical”—(2) causation—“a fairly traceable connection between the plaintiff’s injury and the complained-of conduct of the defendant”—and (3) redressability—“a likelihood that the requested relief will redress the alleged injury.” *Servicios Azucareros de Venezuela, C.A. v. John Deere Thibodeaux, Inc.*, 702 F.3d 794, 799 (5th Cir. 2012) (internal quotation marks omitted). However, as the Fifth Circuit recently emphasized, “[p]laintiffs cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.” *La Union del Pueblo Entero v. Abbott*, 151 F.4th 273, 286 (5th Cir. 2025).

Like standing, the ripeness doctrine arises from Article III’s limitation of the judicial power to actual cases or controversies. *Cochran v. United States SEC*, 20 F.4th 194, 212 (5th Cir. 2021); *Urban Developers LLC v. City of Jackson*, 468 F.3d 281, 292 (5th Cir. 2006) (“Ripeness is a question of law that implicates this court’s subject matter jurisdiction[.]”). “Whether an issue is ripe for appeal turns on (1) the fitness of the issues for judicial decision; and (2) the hardship to the parties of withholding court consideration. *Midship Pipeline Co., L.L.C. v. FERC*, 45 F.4th 867, 872 (5th Cir. 2022) (internal citations omitted).

B. Plaintiffs have failed to plead injury, causation, or redressability.

To have standing as organizations, Plaintiffs must establish an injury through one of two theories: (1) organizational standing, or (2) associational standing. “While associational standing allows an association to raise claims based on injuries to its members, organizational standing

allows an association to raise claims based on injuries to the association itself.” *NetChoice, L.L.C. v. Fitch*, 134 F.4th 799, 805 n.15 (5th Cir. 2025). Because Plaintiffs fail to plead with any specificity which theory of standing they are asserting, it is necessary to address both in turn.

i. Plaintiffs fail to establish organizational standing.

“The Supreme Court has recognized that when an organization’s ability to pursue its mission is perceptibly impaired because it has diverted significant resources to counteract the defendant’s conduct, it has suffered an injury under Article III.” *Tex. State LULAC v. Elfant*, 52 F.4th 248, 253 (5th Cir. 2022) (internal citations omitted). Not every diversion of resources to counteract a defendant’s conduct establishes an injury in fact. *NAACP v. City of Kyle*, 626 F.3d 233, 238 (5th Cir. 2010). Here, Plaintiffs allege no facts demonstrating that they have “diverted significant resources” to carry out their organizational missions because of FG’s conduct.³

The only potentially plausible strain on Plaintiffs’ asserted relates to time spent negotiating access to the Buena Vista Site for the February 2025 event with FG. However, “the time spent attending meetings and one member’s efforts intervening as an interested party do not constitute ‘significant resources.’” *Tenth St. Residential Ass’n v. City of Dall.*, 968 F.3d 492, 500 (5th Cir. 2020) (quoting *La. ACORN Fair Hous. v. LeBlanc*, 211 F.3d 298, 305 (5th Cir. 2000)). Moreover, to the extent Plaintiffs rely on the dismissed complaint filed by FG to assert organizational standing, “the mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization.” *La. ACORN*, 211 F.3d at 305.⁴ Plaintiffs’ efforts to organization efforts

³ Inclusive asserts that their mission is to “spread ‘enlightenment and hope’ and ‘to create a fairer and more inclusive society’ and a vision to ‘educate and inform the community about social, racial, and environmental justice along with [] civic responsibilities.’” Complaint ¶ 24. The Descendants Project’s mission is to “revers[e] the harms of slavery through healing and restorative work.” Complaint ¶ 29.

⁴ Similarly, Plaintiffs cannot rely on the prior RISE state court litigation to assert organizational standing. Plaintiffs were not parties to that action. Complaint ¶ 137 (RISE “filed in court[.]”).

for the February 2025 event are consistent with their existing objectives and do not constitute a diversion of resources. Accordingly, Plaintiffs may not rely on litigation filed by FG (which FG dismissed before a response from Plaintiffs was required). Similarly, Plaintiffs may not rely on efforts to organize and provide transportation for the February 2025 event to assert organizational standing. *See La Union del Pueblo Entero*, 151 F.4th at 286-287 (5th Cir. 2025) (finding no organizational standing where the plaintiff-organization used resources to educate their members).

Because Plaintiffs have not alleged any operational disruption or expenditure of “significant resources” to counteract FG’s conduct, they lack organizational standing.

ii. Plaintiffs fail to establish associational standing.

An association may sue on behalf of its members only if: (1) its individual members would have standing to bring the suit; (2) the association seeks to vindicate interests germane to its purpose; and (3) neither the claim asserted nor the relief requested requires participation of individual members. *NetChoice*, 134 F.4th at 804 (5th Cir. 2025); *see also Inclusive La. v. St. James Par.*, 134 F.4th 297, 309 n.9 (5th Cir. 2025).

First, the Complaint does not establish that any individual member of either Inclusive or the Descendants Project have standing to bring the suit. Instead, Plaintiffs’ members’ alleged harms rest almost entirely on voluntary choices and hypothetical scenarios. Plaintiffs do not allege that FG currently prohibits access to the site for members of either organization;⁵ to the contrary, they acknowledge that FG has permitted several commemorations, including the October 2020 All Saints’ Day ceremony. Their asserted injuries—such as the “risk” of future restrictions—are speculative at best.⁶

⁵ Inclusive cannot rely on the prior RISE state court litigation to assert that their individual members have standing because RISE and Inclusive have some members in common.

⁶ *Cf. Inclusive Louisiana v. St. James Parish*, 134 F.4th 297 (5th Cir. 2025). That decision—which involved the one of the same organizational plaintiffs—concerned alleged injuries caused by governmental land-use

Assuming, *arguendo*, that an individual member of either Inclusive or the Descendants Project does in fact have standing, adjudicating this case would require that member's active participation to prove family lineage and individual connection to those interred at the Buena Vista Site. Courts in Louisiana recognize that cemetery visitation rights “derive from a real connection to the deceased, a connection that is not recognized for strangers or acquaintances.” *Ass'n of Cemetery Tour Guides & Co. L3C v. New Orleans Archdiocesan Cemeteries*, 2024-0044 (La. App. 4 Cir. 09/04/24); 401 So. 3d 797, 806. The Complaint contains no concrete allegations of a verified familial connection between any of Plaintiffs' members and any of the individuals buried at the Buena Vista Site—nor could they, as none of the remains have been identified. Louisiana cemetery law provides no right to access for organizations. The Louisiana Cemetery Dedication Law claim requires individual participation of each member.

Thus, Plaintiffs' claims cannot proceed through associational standing.

C. The relief sought against FG is not ripe for review.

Even if Plaintiffs could establish Article III standing, their claims must also be dismissed as unripe. A claim resting on “contingent future events that may not occur as anticipated, or indeed may not occur at all,” is not fit for adjudication. *Texas v. United States*, 523 U.S. 296, 300 (1998).

At the time of filing, Plaintiffs identified no existing, concrete injury. Their Complaint describes the possibility of future or continuing harm: they allege “impediments to accessing and caring for the burial sites of their ancestors” (Complaint ¶ 81); an ongoing “risk” of destruction or desecration from industrial activity (*Id.* at ¶¶ 82-83); and “continued forced separation” and

decisions that authorized industrial development over historical cemeteries. *Id.* at 309-10. The Fifth Circuit's standing analysis rested on direct governmental action that purportedly “authorized the desecration, destruction, and inaccessibility” of ancestral burial sites. *Id.* Here, by contrast, Plaintiffs challenge the potential conduct of a private property owner acting in consultation with the Louisiana Division of Archaeology to preserve, not disturb, an unmarked burial site. Because no governmental decision is at issue, *Inclusive Louisiana* is inapposite.

inability “to freely connect with, consecrate, commemorate, and honor” their ancestors—an “enduring harm ... still felt today” (*Id.* at ¶ 84). They further allege a *threat* of future arrest under Louisiana’s critical-infrastructure law if they attempt to visit the Buena Vista Site (*Id.* at ¶¶ 133-134), and they challenge FG’s January 23, 2025 denial of permission to install headstones⁷ or publicly advertise a February 23, 2025 ceremony (*Id.* at ¶¶ 146-150).

Those allegations, even taken together, do not describe any present, tangible injury as of July 2025, or as of this filing. Plaintiffs acknowledge that commemorative events occurred without interference. They do not allege that FG was then excavating or disturbing graves, or that access had been categorically denied. Instead, Plaintiffs speculate that FG’s ownership “perpetuates” a sense of separation and *might* result in future restrictions or desecration. Allegations of generalized spiritual distress or subjective perceptions are insufficient to satisfy Article III, which demands concrete, particularized injury. *See Choice Inc. of Tex. v. Greenstein*, 691 F.3d 710, 715-16 (5th Cir. 2012) (no ripeness where harm depends on “contingent future events”). At most, Plaintiffs allege an ongoing dialogue about reasonable access conditions on private property, which does not present a ripe constitutional or statutory dispute.

Because the Complaint seeks declaratory and injunctive relief aimed at hypothetical future conduct, it effectively asks the Court to render an advisory opinion about how FG must treat hypothetical descendants’ access and memorial practices going forward. Article III forbids such prospective adjudication. The claims therefore are not ripe and must be dismissed.

⁷ FG’s limited denial of permission to install individual headstones was based on the lack of verified identification or confirmed ancestry of the remains and the need to preserve the site’s archaeological integrity. *See infra* Section II(B). The decision reflected a preservation measure—not a denial of commemoration—and did not restrict Plaintiffs from holding their February 2025 event. Thus, it cannot constitute a present, concrete injury sufficient to establish ripeness.

II. The Complaint fails to state a claim for relief under FED. R. CIV. P. 12(b)(6).

If the Court finds that jurisdiction exists, the Complaint should nevertheless be dismissed because it fails to state any legally cognizable claim. Plaintiffs invoke constitutional and statutory provisions that do not create private rights of action, advance theories unsupported by precedent, and seek relief that Louisiana law affirmatively forbids.

A. Legal standard for dismissal under Rule 12(b)(6).

FED. R. CIV. P. 12(b)(6) allows a party to move for dismissal of a complaint for failure to state a claim upon which relief can be granted. To survive dismissal under Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Gonzalez v. Kay*, 577 F.3d 600, 603 (5th Cir. 2009) (internal citations omitted). “Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations and footnote omitted). “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.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). This is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.

“[A] court is compelled to dismiss an otherwise well-pleaded claim if it is premised upon an invalid legal theory.” *Neitzke v. Williams*, 490 U.S. 319 (1989). “[S]pecific facts supporting each element of a claimed offense must be alleged in order to withstand a motion to dismiss.” *Steib v. Lastrada Inn, Inc.*, No. 92-2204, 1993 U.S. Dist. LEXIS 308, at *7 (E.D. La. Jan. 7, 1993) (citing *Elliot v. Foufas*, 867 F.2d 877, 881 (5th Cir. 1989)).

B. Plaintiffs fail to state a claim under the Thirteenth Amendment.

The Thirteenth Amendment states:

Section 1. Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have the power to enforce this article by appropriate legislation.

U.S. Const. amend. XIII.

Under Section 2 of the Thirteenth Amendment, Congress has the power “rationally to determine what are the badges and incidents of slavery, and the authority to translate that determination into effective legislation.” *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 439-40 (1968). However, the Thirteenth Amendment itself does not provide a private cause of action, and a plaintiff must proceed under an implementing statute. *La. Acorn Fair Hous. v. Quarter House*, 952 F. Supp. 352, 357 (E.D. La. 1997) (dismissing plaintiff’s cause of action under the Thirteenth Amendment); *Bascomb v. Smith Barney*, No. 96 Civ. 8747 (LAP), 1999 U.S. Dist. LEXIS 353, at *19 (S.D.N.Y. Jan. 15, 1999) (same); *Sylvester v. Nilsson*, No. H-23-4085, 2024 U.S. Dist. LEXIS 45857, at *15 (S.D. Tex. Mar. 15, 2024) (“The Thirteenth Amendment does not provide a direct cause of action.”); *Doe v. Siddig*, 810 F. Supp. 2d 127, 135 (D.D.C. 2011) (dismissing plaintiff’s claim based on an implied cause of action under the Thirteenth Amendment).

Courts routinely dismiss Thirteenth Amendment claims when a plaintiff fails to state a claim for relief under an implementing statute. *See Goss v. Stream Glob. Servs.*, No. C14-4033-MWB, 2015 U.S. Dist. LEXIS 33958, at *18 (N.D. Iowa Mar. 19, 2015) (dismissing Thirteenth Amendment claim after finding that plaintiff failed to state a claim for relief under implementing statutes); *Doe v. Ark. Dep’t of Educ.*, No. 4:15-cv-623-DPM, 2016 U.S. Dist. LEXIS 135265, at

*28 (E.D. Ark. Sep. 28, 2016) (dismissing Thirteenth Amendment claim upon a finding that plaintiff failed to state a cause of action under 42 U.S.C. §§ 1983, 1985).

Here, Plaintiffs assert an independent cause of action under the Thirteenth Amendment. Complaint ¶¶ 198-210. Even if the Thirteenth Amendment could be privately enforced, Plaintiffs' theory that modern ownership of land containing an unmarked burial site constitutes a "badge or incident of slavery" is unsupported. Plaintiffs provide a cursory reference to 42 U.S.C. § 1985, but fail to either assert an independent cause of action or meet the pleading standards under Section 1985. Accordingly, Plaintiffs' Thirteenth Amendment claim must be dismissed.

i. Plaintiffs fail to sufficiently plead a violation under 42 U.S.C. § 1985.

To state a claim for relief under Section 1985(3), "a plaintiff must allege: (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." *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 410 (5th Cir. 2020) (internal citations omitted). "The heart of the cause of action accorded by § 1985 is a conspiracy to interfere with a person's civil rights." *Holdiness v. Stroud*, 808 F.2d 417, 424-25 (5th Cir. 1987). And, "[a] conspiracy under § 1985(3) is an agreement between two or more persons to participate in an unlawful act or a lawful act in an unlawful manner." *Leilenett H. Mkt. v. Extended Stay Am.*, No. 3:15-CV-4065-G, 2016 U.S. Dist. LEXIS 66226, at *5-6 (N.D. Tex. May 19, 2016) (internal citations omitted).

Plaintiffs allege no facts supporting that FG engaged in a conspiracy to interfere with Plaintiffs' civil rights. Within the confines of the Complaint, the only plausible entity that Plaintiffs could be alleging FG conspired with is FG's security company. But, a "corporation cannot conspire

with itself . . . , and it is the general rule that the acts of the agent are the acts of the corporation.” *Hilliard v. Ferguson*, 30 F.3d 649, 653 (5th Cir. 1994). The alleged coordination between FG and its contracted security officers to enforce access restrictions on private property therefore cannot, as a matter of law, establish the existence of a conspiratorial agreement under Section 1985(3). Moreover, Plaintiffs plead no facts showing class-based discriminatory animus or any overt act undertaken for an unlawful purpose.

In the absence of a plausible agreement between distinct entities or any cognizable discriminatory motive, Plaintiffs’ Section 1985(3) claim must be dismissed under Rule 12(b)(6).⁸

C. Louisiana Cemetery Dedication Law Claim

Plaintiffs’ Louisiana Cemetery Dedication Law claim fails because the Buena Vista Site does not satisfy the requirements for a dedicated cemetery under Louisiana jurisprudence, which demands either clear owner intent and long, continuous use. Because the Complaint does not (and cannot) meet either requirement, the Buena Vista Site falls instead within the scope of Louisiana’s Unmarked Human Burial Sites Preservation Act, which provides no private right of action.

i. The Buena Vista site is not a dedicated cemetery.

The Buena Vista Site does not satisfy the jurisprudential requirements for a dedication because: (1) there is no evidence whatsoever of a landowner’s intent to dedicate; and (2) the evidence demonstrates that the Buena Vista site did not have a long and continuous use as a cemetery. *See Humphreys v. Bennett Oil Corp.*, 197 So. 222 (La. 1940) (finding that the basis for informal dedication was the “unequivocal manifestation” of intention to dedicate by the

⁸ 42 U.S.C. § 1988, which Plaintiffs also cite, does not confer a private right of action. *Gallagher v. Spell*, No. 02-1204, 2002 U.S. Dist. LEXIS 25949, at *24 (E.D. La. Dec. 11, 2002) (citing *Venegas v. Mitchell*, 495 U.S. 82, 86-87 (1990)) (“By its terms, § 1988 is not a private right of action, but instead authorizes the trial court to order an unsuccessful litigant to pay to the prevailing party reasonable attorney’s fees.”).

landowner); *Vidrine v. Vidrine*, 225 So. 2d 691 (La. App. 3d Cir. 1969) (finding a dedication of a cemetery because of the “long and exclusive usage” of the property as a cemetery); *see also In re St. James Methodist Church*, 666 So. 2d 1206 (La. App. 5th Cir. 1995) (involving stipulation of dedication maintained cemetery with ongoing interments that had been used for decades).

In the Complaint, Plaintiffs cite to *Thomas v. Mobley*, 118 So. 2d 476, 477-78 (La. App. 1st Cir. 1960), to support that the Buena Vista Site is a dedicated ceremony, stating that the court found “that a cemetery of enslaved people was a dedicated cemetery by virtue of being set apart and used for cemetery purpose[.]” Complaint ¶ 216. However, Plaintiffs underrepresent relevant factual background that the *Mobley* court relied on in making its determination.

In *Mobley*, the evidence established that, commencing in the days of slavery, the disputed one-acre tract had been used for burial purposes by the black families residing on or near the plantation *with the acquiescence* of the previous and current landowners. *Mobley*, 118 So. 2d at 478. Burials *continued through 1948*; however, by 1956 the graveyard, though still distinguishable from the surrounding pasture, had become overgrown, with all but one or two of the grave markers becoming deteriorated or displaced. *Id.* Further, “some of the comparatively small number . . . of stone or marble tombstones had been knocked over or become obscured by overgrowth.” *Id.* While the court reaffirmed the general principle that “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[.]” the court also found that “*descendants and near relatives* of those interred therein are entitled to damages for profanation of these sacred grounds, as well as injunctive relief to protect the graves and their burial and visitation rights related thereto.” *Id.* at 478 (emphasis added).

The burial grounds in *Mobley* is easily distinguishable from the Buena Vista Site. Unlike the numerous marked graves at issue in *Mobley*, there are a limited number of *unmarked* graves at

the Buena Vista Site. And, unlike the continuing interments in *Mobley*, Plaintiffs provide no allegations of interments at any date after 1832 and fail to allege any attempts at visitation of the prior to FG's acquisition of the land in 2018. Thus, there is no evidence of "long and exclusive use" of the property as a cemetery such that it was dedicated to public use. Similarly, the Complaint contains no allegations that any landowner ever intended to dedicate the property as a cemetery.

Even if the Buena Vista Site is a dedicated cemetery, only the relatives and friends who have a "real connection" to persons buried there have a recognized right to visit. *Ass'n of Cemetery Tour Guides & Co. L3C*, 401 So. 3d at 806 ("[T]he right to access or visit derives from a real connection to the deceased, a connection that is not recognized for strangers and acquaintances[.]"). While Plaintiffs generically allege that they have "kinship" to the remains at the Buena Vista Site, they do not allege that either Plaintiff or any of their members qualify as a "relative" or "friend" of the unknown individuals buried at the Buena Vista Site. Instead, they turn the argument on its head—if it is impossible to identify any relative or friend of the deceased, then everyone must enjoy the rights of relatives and friends. Complaint ¶ 218. Plaintiffs cannot establish a real connection to persons buried at the Buena Vista Site based on Plaintiffs own conjecture over the deceased individuals identities.

ii. Louisiana's Unmarked Human Burial Site Preservation Act.

Because the Buena Vista Site fails to satisfy the jurisprudential requirements for a dedicated cemetery, the Unmarked Human Burial Sites Preservation Act (the "Unmarked Burial Act") applies to the Buena Vista Site. The Unmarked Burial Act defines an 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." La. R.S. § 8:673(5). And, only the

secretary of the Department of Culture, Recreation and Tourism “may institute civil proceedings seeking injunctive relief to restrain and prevent” violations of the Unmarked Burial Act. La. R.S. § 8:679. Indeed, the Unmarked Burial Act was enacted to ensure the respectful treatment of human remains and to establish an administrative mechanism for investigating and preserving unmarked burials—not to create private enforcement rights or to divest landowners of control over their property. La. R.S. § 8:672.

The Buena Vista Site falls squarely within the purview the Unmarked Burial Act for the following reasons: (1) it is presumably not authorized by the Louisiana Cemetery Board (the “LCB”); (2) human remains have been found in the ground; and (3) the site is not a “maintained”⁹ cemetery of any kind. And, because the Unmarked Burial Act provides no private right of action, Plaintiffs claims are legally deficient.

Even if Plaintiffs have a private right of action to bring a claim, the Unmarked Burial Act does not provide for the “free access” and the right to place headstones that Plaintiffs are ultimately seeking. Under La. R.S. § 8:681(A)(b), “[a]ny agreement by the owner of the property to leave the unmarked burial site undisturbed *shall not constitute consent* on the owner's part to allow relatives of the deceased or any other interested parties *free access to the site without the owner's permission.*” (emphasis added). And, “[a]ny activity that may disturb¹⁰ the unmarked burial site, human skeletal remains, or burial artifacts associated with the site shall immediately cease on

⁹ The terms “recognized” and “maintained” are not defined, though one commentator has opined that “recognized” means listed on the LCB register but not meeting the threshold for requirement of an LCB certificate of authority to operate, and “maintained” means the generally understood definition of kept in good working order. R. 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. of Energy & Resources 239, 250-51 (Spring, 2014).

¹⁰ “‘Disturb’ includes excavating, removing, exposing, defacing, mutilating, destroying, molesting, or desecrating in any way any unmarked burial sites or any human skeletal remains, burial artifacts, or burial markers on or in an unmarked burial site without a permit.” La. R.S. § 8:673(2).

discovery.” La. R.S. § 8:680(B). Thus, far from supporting Plaintiffs’ demand for unrestricted access, the Unmarked Burial Act affirmatively prohibits unsupervised or unauthorized activity and requires FG—as the property owner—to prevent disturbance to the site.

Because Plaintiffs have no private right of action under Louisiana law and no entitlement to the injunctive relief they seek, Plaintiffs fail to state a cause of action under Rule 12(b)(6).

iii. Plaintiffs requested relief circumvents Louisiana law.

Assuming, *arguendo*, that the Buena Vista Site qualifies as a “cemetery” under Louisiana law rather than an unmarked burial ground, Plaintiffs’ requested relief far exceeds the rights recognized by the relevant statutory scheme. Plaintiffs ask this Court “[i]ssue an order that ends [FG’s] control” over the Buena Vista Site and declare that Plaintiffs have “unrestricted access to and care for” the Buena Vista Site. Complaint, pp. 34-35. While Plaintiffs do not expressly identify to whom “control” over FG’s property should be divested to, their request for unrestricted access equates to Plaintiffs holding ultimate control over the Buena Vista Site.

La. R.S. § 8:802 governs the transfer of ownership rights in cemetery spaces or interment rights—*i.e.*, the conveyance or assignment of rights in burial plots or spaces—by imposing requirements of written consent, recordation, fee payment, and compliance with cemetery authority rules. Under Section 8:802, “the sale or transfer of any right of interment or cemetery space, shall not be binding upon a cemetery authority until approved in writing by a duly authorized officer, agent or employee of the cemetery authority and duly recorded in the official records of the cemetery.” Plaintiffs requested relief seeks to circumvent these transfer requirements, not only divesting FG of its rightful ownership of its property but also divesting the appropriate cemetery board of its authority to approve of the transfer of a cemetery space.

Accordingly, Plaintiffs' claims also fail because the relief they seek would effectively require this Court to expropriate private land in violation of Louisiana's expropriation statutes. Plaintiffs ask this Court to enter injunctive relief ending FG's "control" over the Buena Vista Site. Complaint, p. 34. That relief would divest FG of fundamental incidents of ownership—including the right to exclude others and to control activities on its property—and would confer those powers upon private organizations with no ownership interest. Such relief is indistinguishable from a forced taking or transfer of control of private land.

Under Louisiana law, expropriation is reserved to governmental entities and certain limited public-service corporations and utilities. *See* La. R.S. § 19:2 (enumerating entities vested with expropriation authority); La. R.S. § 19:3 (requiring strict construction of expropriation powers). Neither Inclusive nor the Descendants Project is a governmental entity, political subdivision, or corporation authorized to exercise the power of eminent domain. Accordingly, there is no legal basis under Louisiana law for the relief they seek.

Even in the narrow cemetery context, Louisiana law specifically provides a mechanism for reclaiming or preserving abandoned cemeteries, but that authority lies exclusively with parish or municipal governments—not private citizens or advocacy organizations. La. R.S. § 8:112 states:

Whenever the governing authority of any municipal corporation or parish determines that a private cemetery within its jurisdiction is not being used or maintained and is in fact abandoned or that there is no longer in existence any person or legal entity with the legal authority to operate, control, or manage an existing cemetery, it may judicially expropriate the cemetery and thereafter operate and maintain the cemetery as a public cemetery and make expenditures necessary for the acquisition, operation, and maintenance thereof.

Under Section 8:112, only a municipality or parish, acting through a judicial expropriation, may convert a private cemetery into public ownership. Plaintiffs are neither, and they do not allege that

any local government has invoked this authority. Their requested injunction would thus bypass every statutory safeguard Louisiana imposes on expropriation of burial grounds.

By asking this Court to grant them permanent access, control, and maintenance authority over the Buena Vista Site, Plaintiffs seek judicial expropriation of private land for the use of private advocacy groups. Because Plaintiffs' relief would supplant and contradict the statutory scheme governing cemetery rights and transfers—granting them judicially-created access and control beyond what Louisiana law allows—the claims must be dismissed.

III. Plaintiffs fail to properly join a party under FED. R. CIV. P. 12(b)(7).

The Complaint must also be dismissed because Plaintiffs have failed to join indispensable parties whose property rights would be directly affected by the relief they seek. The Buena Vista Site includes areas burdened by a recorded pipeline right-of-way and portions extend onto an adjacent landowner's property, yet neither the pipeline owner nor the neighboring landowner is before the Court. Any injunction granting Plaintiffs "control" or "unrestricted access" would impair those owners' rights and expose both Plaintiffs and FG to inconsistent legal obligations.

A. Legal standard for dismissal under Rule 12(b)(7).

FED. R. CIV. P.12(b)(7) requires dismissal for "failure to join a party under [FED. R. CIV. P.] 19." Under Rule 19, there is a two-step inquiry for a district court to determine whether a party should be joined in an action. *First*, the court must determine whether the party is necessary to the action. FED. R. CIV. P. 19(a). *Second*, if the court determines that the party is necessary, it must then determine whether the party is indispensable to the action. FED. R. CIV. P. 19(b).

Rule 19 requires three types of parties: (1) "parties needed to give complete relief to the existing parties[;]" (2) "parties who claim interests which could be practically impaired or impeded if not joined[;]" and (3) "parties necessary to ensure that existing parties are not exposed to multiple

or inconsistent obligations[.]” *Lee v. Anthony Lawrence Collection, L.L.C.*, 47 F.4th 262, 265-66 (5th Cir. 2022) (internal citations omitted), *cert. denied*, 143 S. Ct. 1054 (2023). “The burden of proof starts with the movants, but if at first glance it appears a ‘possibly necessary party is absent,’ the burden shifts to the nonmovant to dispute that ‘initial appraisal’ of the facts.” *Id.* at 266 (quoting *Hood ex rel. Miss. v. City of Memphis*, 570 F.3d 625, 628 (5th Cir. 2009)).

If a party is necessary, but such joinder would destroy the court’s jurisdiction, the court must determine whether “in equity and good conscience” the lawsuit can proceed without the absent party or should be dismissed. FED. R. CIV. P. 19(b). Courts must consider: (1) prejudice from a judgment to the absent party or other in the lawsuit; (2) “whether the shaping of relief can lessen prejudice to absent parties;” (3) whether a judgment rendered in the party’s absence would be adequate; and (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder. *HS Res., Inc. v. Wingate*, 327 F.3d 432, 439 (5th Cir. 2003).

B. Plaintiffs fail to join two required parties.

Plaintiffs’ own allegations confirm that a pipeline runs through the Buena Vista Site. *See* Complaint ¶¶ 7, 113, 134, 152. Specifically, Plaintiffs refer to an October 25, 2018, archeologist report on file with the Louisiana Division of Archaeology to confirm that a pipeline was previously constructed through parts of what is now FG’s property, including the Buena Vista Site. *Id.* at ¶¶ 112-113; *see also* Memorandum of Understanding: Acadia and Buena Vista Cemeteries, Melanie Hanks (Oct. 25, 2018), attached hereto as Exhibit B.¹¹ However, Plaintiffs ignore that the report explicitly states that while a portion of the Buena Vista Site is situated on FG’s property, a portion of the Buena Vista Site also appears to be located on the adjacent track. Exhibit B, p. 2. Despite

¹¹ Because the Complaint clearly refers to the October 25, 2018, report and because the ownership of the Buena Vista Site is central to Plaintiffs’ claims, the report is properly considered part of the pleadings. *See Causey*, 394 F.3d at 288.

having knowledge of the pipeline and of the adjacent property owner, Plaintiffs seek an injunction granting them “unrestricted access to” and “control over” the *entirety* of the Buena Vista Site. Granting Plaintiffs’ requested relief would therefore adjudicate property rights belonging to absent persons, effectively reallocating possessory and management authority over portions of land not owned by FG and imposing new obligations on non-party owners to facilitate Plaintiffs’ access.

i. The pipeline owner/operator is a required party.

The St. James Parish conveyance records confirm that UCAR Pipeline Incorporated (“UCAR”) holds a recorded pipeline right-of-way and servitude across the property encompassing the Buena Vista Site. *See* Pipeline Right-of-Way and Servitude (Aug. 25, 2008), as amended Aug. 28, 2012, attached hereto as Exhibit C.¹² The UCAR instrument grants a thirty-foot permanent right-of-way for the installation, operation, and maintenance of an eight-inch underground pipeline used for the transport of propane, ethane, or mixtures thereof. Under Louisiana law, such a servitude constitutes a predial servitude, which is a real right inseparable from the dominant estate. LA. CIV. CODE art. 650(A) provides that “[a] predial servitude is inseparable from the dominant estate and passes with it,” and that “the right of using the servitude cannot be alienated, leased, or encumbered separately from the dominant estate.” The servitude therefore remains attached to UCAR’s pipeline ownership and continues to burden FG’s property as the servient estate, regardless of changes in ownership. *See* LA. CIV. CODE art. 650(B).

Moreover, LA. CIV. CODE art. 651 imposes upon the owner of the servient estate only the obligation “to abstain from doing something on his estate or to permit something to be done on it.” The owner of the servient estate “is not required to do anything,” except to maintain the estate in

¹² Because the Complaint refers to the presence of a pipeline and because the ownership of the Buena Vista Site is central to Plaintiffs’ claims, the right-of-way and servitude is properly considered part of the pleadings. *Id.*

a condition suitable for the exercise of the servitude. *Id.* By operation of law, FG must permit UCAR's continued use and maintenance of its pipeline corridor and cannot interfere with UCAR's access or impose additional burdens inconsistent with the servitude's purpose. Conversely, FG cannot unilaterally authorize third-party activities within that corridor that would conflict with UCAR's rights or with federal pipeline-safety obligations.

Plaintiffs' request for "unrestricted access" or "control" over the Buena Vista Site would necessarily include areas subject to UCAR's predial servitude and would compel FG to grant access that Louisiana law forbids the servient owner to grant. Such relief would directly impair UCAR's inseparable property right and impose inconsistent obligations on FG. Because UCAR's servitude rights are real rights running with the land and cannot be extinguished or modified without its participation, UCAR is a required and indispensable party under Rule 19.

Because complete relief cannot be afforded without joining UCAR, the Complaint must be dismissed under Rule 12(b)(7).

ii. The adjacent property owner is a required party.

The 2018 archaeological report also indicates that the Buena Vista Site extends beyond FG's tract and partially overlaps an adjacent parcel owned by a non-party. *See* Exhibit B, p. 2. Plaintiffs' requested injunction, which seeks "unrestricted access to" and "control over" the entire Buena Vista Site, would therefore necessarily extend onto that adjacent property.

The Fifth Circuit has made clear that a non-party whose property interests would be directly affected by the relief sought is a required party under Rule 19. *Anthony Lawrence Collection, L.L.C.*, 47 F.4th at 265–66. Here, the adjacent property owner's possessory rights would be "practically impaired or impeded" if the Court were to grant Plaintiffs' requested relief without

the owner's participation. Any order compelling or allowing access to areas lying outside FG's boundaries would necessarily prejudice that landowner's rights of exclusion and control.

Even if the Court were inclined to award Plaintiffs some form of access, any such decree would be inherently incomplete without the participation of all landowners whose property comprises the Buena Vista Site. Because the Site includes both FG's property and the adjacent tract, the Court could not fashion a judgment granting "unrestricted access" or "control" without encroaching on property beyond FG's ownership. Proceeding in the absence of that owner would risk inconsistent obligations and would directly prejudice the non-party's proprietary interests.

Accordingly, the adjacent property owner is a required and indispensable party whose absence compels dismissal of this action under Rule 12(b)(7).

CONCLUSION

For these reasons, this Court should dismiss Plaintiffs' Complaint.

Respectfully submitted,

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