

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

DEBBORAH BROWN; ROBYN BUNDS, individually *
and on behalf of the minor child, *
SHAUN WISDOM HOWELL KORESH; SHERRY HOUTMAN *
BURGO; CLIVE DOYLE; KATHERINE FARRIS; *
TILLIE FRIESEN; BRUCE GENT; URSULA GEHRMANN, *
individually and on behalf of the minor child, *
JOAN VAEGA; BONNIE HALDEMAN; FLOYD *
HOUTMAN, JR.; JOEL JONES; KATHERINE JONES; *
individually and on behalf of the minor *
children KEVIN JONES, MARK JONES and HEATHER *
JONES; MARY BELLE JONES; SHEILA JUDITH MARTIN, *
individually and on behalf of the minor *
children, DANIEL MARTIN, JAMES MARTIN and *
KIMBERLY MARTIN; DANA OKIMOTO, individually *
and on behalf of the minor children, JARED *
MICHAEL OKIMOTO and SKY BORN OKIMOTO; *
ANACLETO RIVERA; CIRILA RIVERA; ELPEDIO *
RIVERA; EMMANUEL RIVERA; JESSIE RIVERA; *
JOEL RIVERA; RENE RIVERA; ROSE RIVERA; *
MRS. LONA SAIPAIA; OFILIA SANTOYO; JOHN *
SINCLAIR; DOROTHY FORDE SINCLAIR; *
REGINALD SINCLAIR; KENNETH GORO SONOBE, *
individually and on behalf of the minor *
children, ANGELICA SONOBE and CRYSTAL SONOBE; *
DAVID THIBODEAU; VAILOA VAEGA; *
COLLETTE SINCLAIR WYNN; GRACE JASMINE ADAMS; *
EDNA DOYLE; KAREN DOYLE; SINA SAIPAIA; *
WILLIE SAIPAIA; ALBERT VAEGA; ALLEN VAEGA; *
AUALEPOIA VAEGA; GEORGE VAEGA; *
LESLIE M. VAEGA; NESE VAEGA; DANA HOUTMAN; *
DEREK LOVELOCK; and THE GENERAL ASSOCIATION *
OF THE BRANCH DAVIDIAN 7TH DAY ADVENTIST, *
CLIVE DOYLE as administrator of the estate of *
SHARI DOYLE, deceased; SHEILA MARTIN as the *
administratrix of the estate of ANITA MARTIN, *
deceased; SHEILA MARTIN as administratrix of *
the estate of DOUGLAS WAYNE MARTIN, deceased; *
SHEILA MARTIN as administratrix of the estate *
of WAYNE JOSEPH MARTIN, deceased; SHEILA *
MARTIN as administratrix of the estate of *
LISA MARTIN, deceased; SHEILA MARTIN as *
administratrix of the estate of SHEILA MARTIN, *
deceased; MARY BELL JONES as administratrix *
of the estate of PERRY JONES, deceased; MARY *
BELL JONES, as administratrix of the estate of *
LITTLE ONE JONES KORESH, deceased; MARY BELL *
JONES as administratrix of the estate of *
SERENITY SEA JONES KORESH, deceased; MARY *
BELL JONES as administratrix of the estate *
of CHICA JANE KORESH, deceased; MARY BELL *
JONES as administratrix of the estate of *
MICHELLE JONES KORESH, deceased; MARY BELL *
JONES as administratrix of the estate of *
DAVID JONES, deceased; MARY BELL JONES as *

CIVIL ACTION NO.
W-96-CA-142

JURY TRIAL DEMANDED

**SECOND AMENDED
COMPLAINT**

1. Plaintiff, Debborah Brown, is and was at all times herein a citizen of the United States of America and natural mother of Shari Doyle, deceased, who hereby sues individually on her own behalf and as heir and/or representative of the estate of Shari Doyle. Shari Doyle was at all times relevant hereto a citizen of the United States and entitled to all rights, privileges and immunities under the laws and Constitution of the United States of America.

2. Plaintiff, Robyn Bunds, is and was at all times relevant hereto, a citizen of the United States of America and wife of David Koresh, deceased, and sues individually on her own behalf and as heir and/or representative of her deceased husband, David Koresh. Further, Robyn Bunds, is the mother and sues as next friend on behalf of her minor child, Shaun Wisdom Howell Koresh, individually and as heir and/or representative of the estate of his deceased father, David Koresh. David Koresh was at all time relevant hereto, a citizen of the United States of America and entitled to all the rights, privileges and immunities of the laws and Constitution of the United States of America.

3. Plaintiff, Sherry Houtman Burgo, is and was at all times relevant hereto, a citizen of the United States of America and natural daughter of Floyd Houtman, Sr., deceased, and sues individually on her own behalf and as heir and/or representative of the estate of Floyd Houtman, Sr. Floyd Houtman Sr. was at all material times herein, a citizen of the United States of America and entitled to all the rights, privileges and immunities of the

laws and Constitution of the United States of America.

4. Plaintiff, Clive Doyle, is and was at all times relevant hereto, a citizen of the United States of America and natural father of Shari Doyle, deceased, and sues individually on his own behalf and as heir and/or representative of the estate of Shari Doyle, deceased. Shari Doyle and Clive Doyle were at all times relevant hereto, citizens of the United States of America and entitled to all the rights, privileges and immunities of the laws and Constitution of the United States of America.

5. Plaintiff, Katherine Farris, is and was at all times relevant hereto, a citizen of the United States of America and natural grandmother of Lisa Marie Farris, deceased, and sues as heir and/or representative of the estate of Lisa Marie Farris, deceased, who was at all times relevant hereto, a citizen of the United States of America and entitled to all the rights, privileges and immunities of the laws and Constitution of the United States of America.

6. Plaintiff, Tillie Friesen, is and was at all times relevant hereto, a citizen of the United States of America and wife of Raymond Friesen, deceased, and sues individually on her own behalf and as heir and/or representative of the estate of Raymond Friesen, deceased, who was at all times relevant hereto, a citizen of the United States of America and entitled to all the rights, privileges and immunities of the laws and Constitution of the United States of America.

7. Plaintiff, Bruce Gent, is and was at all times relevant

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hereto, a citizen of the Commonwealth of Australia and natural father of Peter Gent, deceased, and Nicole Gent Koresh, deceased, and sues individually on his own behalf and as heir and/or representative of the estates of Peter Gent, deceased, and Nicole Gent Koresh, deceased, who were at all times relevant hereto, citizens of the Commonwealth of Australia, residing in the United States of America and were entitled to all the rights, privileges and immunities of the laws and Constitution of the United States of America.

Further, Bruce Gent, is the natural grandfather of Dayland Gent Koresh, deceased, and Paiges Koresh, deceased, and hereby sues as heir and/or representative of the estates of Dayland Gent Koresh and Paiges Koresh, who were citizens of the United States of America and entitled to all the rights, privileges and immunities of the laws and Constitution of the United States of America.

8. Plaintiff, Ursula Gehrman, is and was at all times relevant hereto, a citizen of the United States of America and natural daughter of Margarida Gehrman Vaega, deceased, and sues individually on her own behalf and as heir and/or representative of the estate of Margarida Gehrman Vaega, deceased, who was at all times relevant hereto, a citizen of the United States of America and entitled to all the rights, privileges and immunities of the laws and Constitution of the United States of America.

Further, Ursula Gehrman, is the sister and sues as next friend on behalf of the minor child, Joanne Vaega, natural daughter of Neil Vaega, deceased, and Margarida Gehrman Vaega, individually

*Pay Carol G. Koresh
to receive the same next page*

*If I can't get any
I can't get them*

on her own behalf and as heir and/or representative of the estates of Neil Vaega and Margarida Gehrman Vaega. Neil Vaega was at all times relevant hereto, a citizen of the New Zealand and residing in the United States of America and entitled to all the rights, privileges and immunities of the laws and Constitution of the United States of America.

9. Plaintiff, Bonnie Haldeman, is and was at all times relevant hereto, a citizen of the United States of America and natural mother of David Koresh, deceased; and natural grandmother of: *✓✓✓* Cyrus Ben Joseph, deceased; Star Hadassah Howell, deceased; Serenity Sea Jones Koresh, deceased; Dayland Gent, deceased; Paiges Gent, deceased; Bobbie Lane Koresh, deceased; Chica Jones Koresh, deceased; Little One Jones Koresh, deceased; Startle Summers, *✓* deceased, Chanel Andrade, deceased; and Mayana Schneider, deceased. Bonnie Haldeman sues individually on her own behalf and as heir and/or representative of the estates of: David Koresh, deceased; *✓* Cyrus Ben Joseph, deceased; Star Hadassah Howell, deceased; Serenity Sea Jones Koresh, deceased; Dayland Gent, deceased; Paiges Gent, deceased; Bobbie Lane Koresh, deceased; Chica Jones Koresh, deceased; Little One Jones Koresh, deceased; Startle Summers, *✓* deceased; Chanel Andrade, deceased; and Mayana Schneider, deceased. All decedents named in this paragraph were at all times relevant hereto, citizens of the United States of America and entitled to all the rights, privileges and immunities of the laws and Constitution of the United States of America.

10. Plaintiff, Floyd Houtman, Jr., is and was at all times

no last name

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relevant hereto, a citizen of the United States of America and natural son of Floyd Houtman, Sr., deceased, and sues individually on his own behalf and as heir and/or representative of the estate of Floyd Houtman, Sr., deceased, who was at all times relevant hereto, a citizen of the United States of America and entitled to all the rights, privileges and immunities of the laws and Constitution of the United States of America.

11. Plaintiff, Joel Jones, is and was at all times relevant hereto, a citizen of the United States of America and natural son of Perry Jones, deceased; natural brother of Rachael Jones Howell Koresh, deceased; natural brother of Michelle Jones Koresh, deceased; and natural brother of David Jones, deceased; and sues individually on his own behalf and as heir and/or representative of the estates of Perry Jones, deceased; Rachael Jones Howell Koresh, deceased; Michelle Jones Koresh, deceased; and David Jones, deceased; who were at all times relevant hereto, citizens of the United States of America and entitled to all the rights, privileges and immunities of the laws and Constitution of the United States of America.

12. Plaintiff, Katherine Jones, is and was at all times relevant hereto, a citizen of the United States of America and is the mother and sues as next friend on behalf of her minor children Heather Jones, Mark Jones, and Kevin Jones who are the natural children of David Jones, deceased. Katherine Jones sues on the children's behalf individually and as heirs and/or representative of the estate of David Jones who was at all times relevant hereto,

a citizen of the United States of America and entitled to all the rights, privileges and immunities of the laws and Constitution of the United States of America.

13. Plaintiff, Mary Belle Jones, is and was at all times relevant hereto, a citizen of the United States of America and wife of Perry Jones, deceased; mother of: David Jones, deceased; Rachael Jones, deceased; and Michelle Howell Koresh, deceased; and grandmother of: Cyrus Howell Koresh, deceased; Star Howell Koresh, deceased; Bobbie Lane Koresh, deceased; Serenity Sea Koresh, deceased; Chahka Koresh, deceased; and Little One Jones Koresh, deceased.

Mary Belle Jones sues individually on her own behalf and as heir and/or representative of the estates of: Perry Jones, deceased; David Jones, deceased; Rachael Jones, deceased; Michelle Howell Koresh, deceased; and Cyrus Howell Koresh, deceased; Star Howell Koresh, deceased; Bobbie Lane Koresh, deceased; Serenity Sea Koresh, deceased; Chahka Koresh, deceased; and Little One Jones Koresh, deceased; who were at all times relevant hereto, citizens of the United States of America and entitled to all the rights, privileges and immunities of the laws and Constitution of the United States of America.

14. Plaintiff, Sheila Judith Martin, is and was at all times relevant hereto, a citizen of the United States of America and wife of Douglas Wayne Martin, deceased; and mother of: Lisa Martin, deceased; Anita Martin, deceased; Sheila Martin, deceased; and Wayne Joseph Martin, deceased; and sues individually on her own

behalf and as heir and/or representative of the estates of Douglas Wayne Martin, deceased; Lisa Martin, deceased; Anita Martin, deceased; and Wayne Joseph Martin, deceased; who were at all times relevant hereto, citizens of the United States of America and entitled to all the rights, privileges and immunities of the laws and Constitution of the United States of America.

Further, Sheila Judith Martin is the mother of and sues as next friend on behalf of her minor children, Daniel Martin, Kimberly Martin and James Martin who were at all times relevant hereto, citizens of the United States of America and the natural children of Douglas Wayne Martin, deceased; and siblings of: Lisa Martin, deceased; Anita Martin, deceased; Sheila Martin, deceased; and Wayne Joseph Martin, deceased. Sheila Martin sues individually on the children's own behalf and as heir and/or representative of the estates of Douglas Wayne Martin, deceased; Lisa Martin, deceased; Anita Martin, deceased; and Wayne Joseph Martin, deceased; who were at all times relevant hereto, citizens of the United States of America and entitled to all the rights, privileges and immunities of the laws and Constitution of the United States of America.

15. Plaintiff, Dana Okimoto, is and was at all times relevant hereto, a citizen of the United States of America and wife of David Koresh, deceased, and sues individually on her own behalf and as heir and/or representative of the estate of David Koresh, deceased; who was at all times relevant hereto, a citizen of the United States of America and entitled to all the rights, privileges and

This job is to qualify the Plaintiff's claims.

limitation: Clive Doyle as administrator of the estate of Shari Doyle, deceased; Sheila Martin as administratrix of the estate of Anita Martin, deceased; Sheila Martin as administratrix of the estate of Douglas Wayne Martin, deceased; Sheila Martin as administratrix of the estate of Wayne Joseph Martin, deceased; Sheila Martin as administratrix of the estate of Lisa Martin, deceased; Sheila Martin as administratrix of the estate of Sheila Martin, deceased; Mary Bell Jones as administratrix of the estate of Perry Jones, deceased; Mary Bell Jones as administratrix of the estate of Little Ones Jones Koresh, deceased; Mary Bell Jones as administratrix of the estate of Serenity Sea Jones Koresh, deceased; Mary Bell Jones as administratrix of the estate of Chica Jane Koresh, deceased; Mary Bell Jones as administratrix of the estate of Michelle Jones Koresh, deceased; Mary Bell Jones as administratrix of the estate of David Jones, deceased; Mary Bell Jones as administratrix of the estate of Rachel Jones Koresh, deceased; Bonnie Haldeman as administratrix of the estate of Floyd Houtman, Sr., deceased; Bonnie Haldeman as administratrix of the estate of Raymond Friesen, deceased; Bonnie Haldeman as administratrix of the estate of Novellette Hipsman Sinclair, deceased; Bonnie Haldeman as administratrix of the estate of Neil Vaega, deceased; Bonnie Haldeman as administratrix of the estate of Rebecca Saipaia, deceased; Bonnie Haldeman as administratrix of the estate of Margarita Gehrman Vaega, deceased; Bonnie Haldeman as administratrix of the estate of Scott Sonobe, deceased; Bonnie Haldeman as administratrix of the estate of Florecita Riveras

children inside, knew of and observed the tanks crushing the Church on TV and from FBI and news reports, approved the conduct and never attempted to halt, or modify it through the long hours of April 19, 1993. From February 28 to April 19, 1993, no Church member committed a single act toward the government tormentors. Not a shot was fired by Church members despite the constant harassment and unobstructed view of agents.

117. Defendant Attorney General Reno failed to appoint experienced leadership, to support it, to assure needed resources for its efforts and to rotation and effectuation of its personnel and to order it to negotiate a peaceful resolution of the Waco crisis. The Church members could not escape from the Church. They were surrounded. Government agents had only to patiently work for agreements to end the confrontation. A policy of conciliation that consistently and clearly communicated a determination to achieve a just and non violent resolution of the confrontation, that recognized the religious and human needs of the Church members and that patiently worked for an agreement releasing members as to whom there was no probable cause to believe they had committed an offense and negotiating the surrender of any Church members against whom legal charges were proffered assuring their constitutional rights to assistance of counsel and a fair trial and guaranteeing the right of the Church and its membership to the free exercise of its religion would have avoided a human slaughter that occurred because defendants were determined to attack the Church, drive members who would leave out and destroy the entire Church Center.

many of whom were dead, or unconscious from gas inhalation. Several FBI defendants proceeded to the second floor and placed an explosive material on the top of the concrete Church vault at the second floor level. The tank, other armored vehicles and the FBI agents withdrew from the Church building between 12:05 and 12:10 p.m. Between 12:05 and 12:10 pyrotechnic missiles were fired at and into the southeast corner tower of the Church and elsewhere in the Church by FBI agents. During the same time incendiary explosives were fired into the debris at the northern side of the gymnasium from a tank and elsewhere by FBI agents.

123. Within seconds, or at most several minutes after pyrotechnic missiles and incendiary explosives were fired into the Church and the withdrawal of the tanks, armored vehicles and FBI agents, fire caused by the illegal, intentional and reckless acts of FBI defendants spread throughout the Church building. Heat plumes were seen above the building. The C.S. gas containing methylene chloride and ethanol acted as an accelerant and the high winds reaching more than 30 m.p.h. created a flue effect through the holes punched in the building fueled by kerosene and hay used for insulation. By 12:30 p.m. the building was largely consumed by flames. No member of the Church started any fire. The fire was the direct result of defendants' acts alone. Bradley armored vehicles with bulldozer blades pushed walls that were still standing and debris into the burning rubble of the Church from 12:30 to 12:45 p.m. At 12:41 p.m. the local fire department was permitted by the FBI to approach the burning ruins and pump water

into the burning remains.

124. At about 12:20 p.m. a huge explosion blasted a hole several feet in diameter on the top of the concrete ceiling and several times that wide on the bottom of the concrete ceiling of the Church vault, crushing, cutting, burying and killing or injuring most of the approximately thirty persons in the vault. A large fireball rising 160 feet above the Church vault and the remains of the Church was observed and photographed by the media and others. Photos taken of the fireball confirm its size and location. Government reports state nine bodies of Church members were found on top of the vault after the fire though the blast would make this impossible.

125. Only nine Church members, all adults were able to escape the fire. At least seventy-three Church members including no fewer than twenty-seven minors were dead from gas and smoke inhalation, including cyanide, ethanol and other poisonous substances in the gas, being hit by falling parts of the building, crushed from the explosive blast on the ceiling of the concrete Church vault, suffocation, gunshot wounds and cremation. Autopsy reports showed lethal levels of cyanide, ethanol, other toxins and asphyxiation, gun shot wounds, bruises, wounds and other causes of death. The Mt. Carmel Church Center was completely destroyed. No member of the Church fired at, or attempted to injure any FBI agent, or other person assaulting the Church during the more than 6 hour assault. No injury to any FBI agent or other personnel working with them has been reported.

could escape and assuring means of escape; instead the tanks destroyed all stairways, cut off exits and routes to safety, including the route to a shelter which would have protected the decedents from being hit by falling debris, crushed by tanks, asphyxiated by gas, smoke and burned by fire. Not a single Church member was able to exit through gaping holes in the Church torn by tanks because of debris, dust and fear of being crushed by tanks, or falling objects.

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b. Defendants knew that the Church members were using kerosene lamps and candles for light and heat because the defendants had cut off electricity to the premises and were using hay for warmth in the twenty (20) degrees nighttime temperature and the defendants knew and intentionally or recklessly ignored that the tanks which penetrated deeply into the Church more than 12 times between 11 and 12 would, as they did, cause a deadly fire by knocking over lamps and candles, and by friction from crushing structural materials. Had the tanks not crushed into the buildings, the April 19th fire would not have occurred. Defendants' fire expert, Paul Gray, testified before a joint committee of the U.S. House of Representatives that smashing a wooden frame building with a 50 ton tank would greatly risk fire.

c. From February 28th through April 19, 1993, the defendants ordered, supervised and participated in throwing flash-bang concussion and other grenades and devices at any Church members who attempted to leave the Church, or was seen outside the building or in windows and doors.

d. During the April 19th final assault, the defendants ordered, supervised and participated in firing and hurling many hundreds of flash-bang and concussion grenades, pyrotechnic flight rite projectiles and ferret rounds into the Church, knowing any of them alone or in combination with other elements created by, introduced by, or known to exist in the Church by the defendants, would start a fire in the Church.

e. Defendants ordered, supervised, and participated in putting CS gasses with heavy mixtures of methylene chloride and ethanol into the Church knowing these chemicals in concentrated amounts inside the Church, alone, or in combination with other elements created by, introduced by, or known to exist by defendants, would cause a fire and greatly accelerate any fire that occurred.

f. Defendants intentionally ignored the health hazards of concentrations of CS gases and their mixtures on human beings, though they knew such gases caused inflammation of the eyes, choking, chest pains, gagging, nausea, vomiting, skin burns, blistering rashes, first degree burns, severe respiratory distress, cyanosis, liver disease, eye injuries, the worsening of underlying heart and lung diseases, asphyxiation and death, particularly endangering infants, young children and the elderly.

g. Defendants knew that CS gases would immobilize the decedents and prevent their escape from the planned explosion and clearly foreseeable fire and falling debris.

h. Defendants continued and escalated the April 19th final

so as to effectively fight the April 19th fire at the Church, or provide or use any of many means of fire control including injection of fire retardants instead of accelerants, use of air dropped water slurries, robotic water hoses offered by a manufacturer, tank mounted water jets.

m. Defendants intentionally destroyed means to communicate with the Church members by telephone by causing armored vehicles to cut the lines early on the morning of April 19, preventing any effort by Church members to negotiate, or arrange to leave the Church and surrender.

n. Had defendants taken any of the actions or omitted the excessive force and introduction of dangerous substances as described above, they would not have taken the lives of decedents, injured Church members, or destroyed the Church.

I. Improper Motive

138. The actions of defendants towards plaintiffs and their decedents described in this complaint were motivated by impermissible antipathy and malice. The antipathy and malice stemmed in part from antagonism on the part of defendants to plaintiffs' religious beliefs and practices, constitutionally protected under the First Amendment from such government interference. It also stemmed in part from a desire to destroy evidence of the illegal use of deadly force by the ATF defendants against the Church and its members including evidence of entry bullet holes in the roof, walls and front door of the Church on

February 18, 1993. In part defendants were motivated by the deaths of four ATF agents in the February 28, 1993, attack for which defendants sought revenge and to punish plaintiffs by engaging in the various forms of mistreatment of plaintiffs that are alleged above in the complaint and by subjecting plaintiffs to unwarranted excessive and deadly force. 7

V. Claims Presented

A. Bivens Claims

139. Plaintiffs by their complaint herein are asserting claims for compensatory and punitive damages against the individual defendants whose conduct as federal officers and employees is described herein in their individual capacities under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics based upon their violations of clearly established rights of plaintiffs and their decedents and duties of defendants under the First, Fourth, Fifth and Eighth Amendments to the United States Constitution while acting under color of federal law, and based upon a conspiracy among the defendants continuing to date, to deprive plaintiffs of their constitutional rights by their conduct as aforesaid and also, among other things, by lying and concealing and destroying evidence in order to conceal the truth and deprive plaintiffs of their constitutional rights to redress of grievances and access to the courts. Reasonable officials acting as these defendants did would have understood that what they were doing violated plaintiffs'

alleged herein and to fail to perform each of the duties owed plaintiffs alleged herein with full knowledge that such acts and omissions were illegal and violated the constitutional, statutory and common law rights of plaintiffs alleged herein which acts and omissions were the direct and proximate cause of the deaths, injuries and property losses alleged. Each of the acts and omissions alleged was part of defendants' conspiratorial plan and was an overt act of the conspiracy. The conspiracy, including the alleged cover-up and destruction of evidence continues to this date.

Prayer For Relief

WHEREFORE, plaintiffs pray for judgment against defendants for compensatory damages in the amount of \$10,000,000 for each living plaintiff, \$10,000,000 for each decedent, \$7,500,000 for the Church plaintiff, the General Association of the Branch Davidian 7th Day Adventist, and punitive damages in the amounts the proof shall establish, trebled for plaintiffs' claims under RICO, except that no punitive damages are sought against the United States under the Federal Tort Claims Act, together with reasonable attorneys fees, interest, costs and disbursements, and such other and further relief as the Court may deem just and proper.

Dated: September 18, 1996


Respectfully submitted,

Scott W. McQuaig
Russell A. Solomon
Robert G. Harvey, Sr.

One Galleria Boulevard
Suite 1500

Metairie, Louisiana 70001-7502
(504) 836-5070

Ramsey Clark

Lawrence W. Schilling

36 East 12th Street
New York, N.Y. 10003
(212) 475-3232

Attorneys for Plaintiffs