

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID ASCALON
311 N. Woodstock Drive
Cherry Hill, NJ 08034

Plaintiff,

vs.

DEPARTMENT OF PARKS & RECREATION
THE CITY OF HARRISBURG
Rev. Dr. Martin Luther King Jr. City Gov. Center
10 North 2nd Street – Suite 401
Harrisburg, PA 17101-1686

and

JEWISH FEDERATION
OF GREATER HARRISBURG
3301 North Front Street
Harrisburg, PA 17110

and

DAVID GRINDLE
1359 Caboose Lane
Boiling Springs, PA 17007

Defendants.

CIVIL ACTION

NO:

COMPLAINT

Plaintiff, David Ascalon (“Ascalon”), by and through his attorney, states as his complaint against the named defendants, Department of Parks & Recreation of

the City of Harrisburg (the “DPRH”), the Jewish Federation of Greater Harrisburg (the “Federation”), and David Grindle (“Grindle”), and alleges in support hereof as follows:

The Parties

1. Ascalon is a citizen of New Jersey, residing as stated in the above caption, in the county of Camden, New Jersey.
2. The DPRH, is a duly created public agency organized and existing under the laws of the Commonwealth of Pennsylvania for the purpose of controlling and supervising the operation of all parks, and public spaces, including the sculptural artwork and memorial plaza that are the subject of this litigation, under its jurisdiction in the City of Harrisburg. DPRH’s place of business is in the City of Harrisburg, County of Dauphin, Pennsylvania.
3. The Federation is a corporation having its principal place of business, as stated in the above caption, in the City of Harrisburg, County of Dauphin, Pennsylvania. The Federation is believed, and therefore is averred, to have been the owner, and in control, of the Holocaust Memorial and Sculpture located in Riverfront Park at Sayford Street, Harrisburg, Pennsylvania (the “Memorial”), at all times material to this litigation. The Federation is believed to have committed, or directed parties to commit, one or more of the acts and/or omissions that caused,

or contributed to, the destruction and mutilation of the sculptural artwork that is the subject of this litigation.

4. Grindle is a citizen of Pennsylvania residing, as stated in the above caption in the City of Boiling Springs, County of Cumberland, Pennsylvania. Grindle is believed to have committed one or more of the acts and/or omissions that caused, or contributed to, the destruction and mutilation of the sculptural artwork that is the subject of this litigation.

Jurisdiction and Venue

5. This is an action for a violation of the Visual Artists Rights Act of 1990 17 U.S.C. §106A et. seq. (“VARA”) under the United States Copyright Act.

6. This action is based on violations of Ascalon's VARA rights, and this Court therefore has exclusive jurisdiction over these matters pursuant to 28 U.S.C. §1338(a).

7. The claims made in this action arose within the City of Harrisburg, Pennsylvania.

8. Venue is proper in the Middle District of Pennsylvania under 28 U.S.C. §1400(a) and 28 U.S.C. §1391(b), in that the DRPH, and the Federation may be found maintaining a place of business and regularly doing business in this district, and Grindle resides and works in this district so all defendants are subject

to personal jurisdiction here, and if not all, then a substantial part of the events, actions and omissions that give rise to Ascalon's claims occurred in this district.

Factual Allegations

9. Ascalon, was born in 1945 in Tel Aviv, Israel and he was trained in the arts by his father, Maurice Ascalon, a noted Hungarian born sculptor and industrial designer.

10. After immigrating to the United States, Ascalon studied art and design at the California State University at Northridge, and he received a degree in architecture from the Pratt Institute in New York.

11. Throughout the 1970's Ascalon worked in architectural design in New York City, and for the firm of the noted Israeli architect Arie Elhanani in Tel Aviv, Israel.

12. Seeking to expand his work beyond architectural designs, Ascalon founded Ascalon Studios ("Ascalon Studios") in 1977 (which was subsequently incorporated in the State of New Jersey in 1982), to create artistic works in multiple media, including but not limited to bronze, aluminum, steel, stone, mosaics, and leaded stained glass.

13. Since 1977, Ascalon has created monumental sculpture and site-specific artwork for public spaces, hospitals, universities, private schools, nonprofit

organizations; and houses of worship of a number of faiths – including for those of his own Jewish faith.

14. Recognized for his work and talent, Ascalon has been awarded scores of major commissions for public art and large-scale site-specific art projects, and has served as the elected president of the American Guild of Judaic Art.

15. Dozens of Ascalon's site-specific artwork and sculptural works are on permanent display throughout the United States, and he continues to receive new commissions on a regular basis. A select group of Ascalon's Site-Specific Installation artistic accomplishments are detailed more fully in Exhibit "A" attached hereto and incorporated by reference.

16. Ascalon has created numerous Holocaust memorials permanently installed in public locations and at institutions throughout the United States and he has been invited by institutions to speak on the subject of his Holocaust memorials.

17. Ascalon's intense interest in creating Holocaust memorials was shaped, largely, by the fact that he lost many relatives in the Nazi death camps, including both sets of his grandparents, as well as uncles and numerous cousins.

Holocaust Memorial Vision and Planning

18. On May 28, 1991, a group of Holocaust survivors, living in or around Harrisburg, Pennsylvania, held a meeting that began the process to fulfill a moral

obligation to remember the Holocaust and to create a monument of significance to educate future generations.

19. In 1991, the Holocaust Memorial Committee (the “Committee”) was formed as a group within the control and direction of the Federation. At all material times, the Committee was operating as part of and/or on behalf of the Federation.

20. Throughout the remainder of 1991 and through 1992, the Committee worked with the Greater Harrisburg community, and the DPRH to obtain a site for the Memorial, and to plan for the creation of this important and extremely sensitive project.

21. In 1992, the Federation received approval from the DPRH and other city organizations to use the park land and began soliciting proposals for design.

22. On June 12, 1992, the Design Subcommittee Chair for the Holocaust Memorial Committee of the Federation, provided Ascalon with the site specifications of the Memorial and identified that the design should reflect, among other things “a grave, stark and emotionally charged image (or images) and an educational opportunity.”

23. The Committee also stated that they “do not wish to “prettify” the landscape and are committed to developing a truth-telling monument.”

24. In response to the Federation's request for a proposal, Ascalon designed what he thought would be a fitting and suitable sculptural monument to commemorate, honor, and remember and honor the lives of his family members, and the more than eleven-million people, including the six million Jews, that were brutally murdered in the Nazi death camps.

25. On September 24, 1992, after many days and nights of tireless work to find the right artistic balance and visual message to create a suitable Memorial, Ascalon proudly submitted his proposal to the Federation (the "Proposal"). A copy of the Proposal is attached hereto as Exhibit "B."

26. From the inception, Ascalon clearly and expressly explained his artistic vision and the purpose and meaning behind each part of the Memorial and the expressive mediums: Stainless Steel, Cor-Ten Steel, Jerusalem Stone Pavers, and Black Granite.

27. The Proposal provides in pertinent part that "the core of the sculpture (in the shape of a Star of David) will be fabricated in stainless steel, using 1/8 inch thick walls. Around the core will be wrapped a serpentine shaped structure fabricated in Cor-ten steel, and will be set into the stainless steel core by means of stainless steel rods." Exhibit "B."

28. Every component of the Memorial was created to have a dramatic effect and to provide unique symbolic meaning. Ascalon's vision and the

important symbolism of the Memorial were expressly set forth in the Proposal.

Exhibit “B.”

29. Ascalon explained his artistic creation, providing that the “stainless steel core represents the Jewish people. Stainless steel suggests a ‘permanence;’ the manner in which the core is fragmented suggests the many tragedies and tribulations that have visited the Jewish people in their history.” Id.

30. The selection and importance of the stainless steel imagery was further explained by Ascalon as “appearing to have vitality and continued growth.” Id.

31. Following the description of the stainless steel core, the Proposal identifies in pertinent part that “the Holocaust is portrayed by the “cor-ten” steel outer shell; this represents the barbed wire fence that was used by the Nazis to surround and entrap their victims in the death camps, and inflict great misery and death upon them.” Id.

32. When the Federation reviewed and selected Ascalon’s Proposal as the winning entry, it knew that by its design, the central focus and instructive imagery of the sculpture required a juxtaposition of a bright, shining stainless steel core, surrounded and, in essence, “choked” by dark, rusting Cor-Ten steel spiral serpent.

33. Indeed, Ascalon explained that Cor-Ten steel’s oxidized and rusty appearance was appropriate because it “represents oppression, decay, and misery.

It appears to be strangling the stainless steel core with its serpentine-like form.”

Exhibit “B.”

34. Ascalon created an original watercolor painting of the proposed design, which provides clear illustration of the intended artistic meaning and vision of the Memorial, was submitted as part of the Proposal (the “Rendering”). A copy of Ascalon’s Rendering is attached as Exhibit “C.”

35. The Rendering depicts the Memorial, in a setting along a river, with the black granite and stone base, and a bright “stainless steel” center core surrounded by the dark “Cor-Ten” barbed wire shaped metal work. Id.

36. The Federation selected Ascalon’s Proposal after considering forty (40) proposals submitted by artists from around the world.

37. When the Federation reviewed and selected Ascalon’s Proposal as the winning entry, it accepted Ascalon’s artistic vision and the symbolic juxtaposition of light (stainless steel) and dark (Cor-Ten) metals for the centerpiece sculpture.

38. By winning the design competition, Ascalon’s Memorial, was recognized as a significant work of visual art from its inception.

39. Indeed, the symbolic significance of this Memorial was paramount for Ascalon, the Federation and the hundreds, if not thousands, of people that supported and participated in the creation and development of the Memorial.

Creation & Recognition of the Memorial

40. Throughout 1993, Ascalon diligently worked to bring the vision of the Memorial to life, by crafting the sculptural portion of the Memorial.

41. Although the only portion of the Memorial to be fabricated by Ascalon was the sculpture, the Federation and its architect, John Butler Davis Associates, consulted with Ascalon with respect to construction of the remaining aspects of the memorial to assure that, although Ascalon did not construct them, they would nonetheless be created in a manner that was consistent with Ascalon's design and vision for the project.

42. The Federation's contractors and subcontractors involved in constructing the other elements of the Memorial were required to have their plans and proposals approved by Ascalon to assure that the Memorial was created in a manner that was consistent with Ascalon's design and vision for the project. A copy of the Contractor's Bid and Proposal Package is attached as Exhibit "D."

43. All permits and licenses for construction of the Memorial were obtained by the Federation, through the Committee or the Federation's architects and agents.

44. All construction plans and the project scope for the Memorial were reviewed and approved by the DPRH.

45. On May 11, 1994, Ascalon placed an order with Walt Heller of A.B.B. Air Preheater Company (“ABB”) to purchase 60 linear feet (36 inch width) of Cor-Ten Steel. A copy of the Purchase Order is attached as Exhibit “E.”

46. On May 13, 1994, ABB acknowledged Ascalon’s Purchase Order and it confirmed that it was supplying Ascalon with sixty (60) feet of Cor-Ten Steel. ABB’s acknowledgement and acceptance was signed by Walt Heller, and identifies the steel as “36” CORTEN-COIL-22GA-LA-60 FT. LG.” A copy of ABB’s Acknowledgment is attached as Exhibit “F.”

47. Between May 1994 and July 1994, Ascalon crafted the sculptural work and coordinated with the Federation’s architects and contractors to complete the Memorial.

48. After many years of careful work and dedication, the vision of the Memorial was complete, and on July 17, 1994 the Memorial was consecrated.

49. The first page of the Consecration Program provides a statement by the artist that explains the significance of the composition and provides the reader with a guide to the symbolic meaning of the visual artwork.

50. On July 16, 1994, the day before the Consecration, the Patriot News ran an article heralding the completion of the Memorial. In addition to identifying the dignitaries and important speakers for the Consecration, the article notes that “a lot of symbolism is featured in the monument. The core, which represents the

victims of the Holocaust, is made of stainless steel to suggest permanence and is fragmented to symbolize the tribulations endured by the Jewish people throughout history. The rusting barbed wire that wraps around the core represents the fences around Nazi death camps.”

51. On July 17, 1994, during an emotional and tear-filled ceremony, the Memorial was formally introduced to the public.

52. The Memorial was well received and since its completion, the Memorial has been recognized both locally and internationally as a valuable, significant, and moving artistic tribute to the victims of the Holocaust.

53. The public media has recognized the artistic significance of the Memorial, and its striking appearance and symbolic meaning have been the subject of many positive articles.

54. Stephen Reed, the former mayor of Harrisburg, Pennsylvania served on the Committee and he noted the importance and significant stature of the Memorial in many local articles.

55. Photographs of Ascalon’s work, in its original form are still shown on the City of Harrisburg’s official website at

<http://www.harrisburgpa.gov/Visitor/citywide/Midtown.html>.

56. Additionally, the Federation’s website also highlights the Memorial in its original form at <http://www.jewishharrisburg.org/page.aspx?id=118776>.

57. Of particular note, the Memorial was recognized and included as one among great international public visual artworks in Public Art : A World's Eye View: Integrating Art Into Environment, Yumiko Mochizuki, ICO Publishing (2007) (the "Public Art Text"). Relevant portions of the Public Art Text showing the Memorial and identifying Ascalon are attached as Exhibit "G."

Destruction of the Memorial

58. For almost ten (10) years, the Memorial endured and it was highlighted as one of Ascalon's most significant public visual art works.

59. The Memorial, is a highly visible public work of visual art of recognized stature, and Ascalon has never consented to the destruction, mutilation or modification of the Memorial and Ascalon never waived his rights under VARA, 17 U.S.C. §106A.

60. Around October, 2003, Ascalon was contacted by David Weisberg of the Federation and advised that Mr. Weisberg was concerned about the appearance of the plaza area (stone and granite) as well as the sculptural portion of the Memorial.

61. In the decade separating the completion of the Memorial and Weisberg's contact to Ascalon expressing concern with the condition of the Memorial and the Memorial plaza, at no time did the Federation contact Ascalon regarding any concerns with the Memorial; and at no time in the preceding years

did the Federation retain the services of a conservator to inspect, preserve, or maintain the Memorial; and at no time in the preceding years was a fund established to inspect, preserve, or maintain the Memorial.

62. On October 16, 2003, Ascalon visited the Memorial and met with representatives of the Federation to discuss the Memorial.

63. Weisberg expressed by that the Federation was concerned that the Memorial plaza was in a state of decay, including the stonework that was not constructed by Ascalon.

64. During this initial meeting, Ascalon advised the Federation that the “Cor-Ten” steel spiral appeared to “wearing” in certain areas, but that the structure appeared and it felt secure. Asclon reminded Weisberg that the Cor-Ten was designed to rust and show wear, but he volunteered that if the Federation was concerned about the condition of the “Cor-Ten” barbed-wire shaped portion of the Memorial, he would be happy to replace the structure requesting only reimbursement of his cost.

65. After the meeting, Ascalon sent a piece of the original steel to United States Steel (“USS”) for chemical analysis. Upon review, USS confirmed that the steel supplied by ABB “does indeed meet the standard for weathering steel, [however] it is not U.S. Steel Cor-Ten.”

66. On December 8, 2003, exhibiting good faith and an abundance of cooperation, Ascalon wrote to the Federation and advised them that the steel supplied by ABB was not “Cor-Ten.” A copy of the December 8, 2003 correspondence is attached as Exhibit “H.”

67. In his December 8, 2003 correspondence, Ascalon reiterated that he was proud of the sculpture and that he was willing to restore the sculpture to its original condition. He further advised the Federation that he would replace the spiraling barbed-wire shaped ring with USS Cor-Ten, requesting only reimbursement of his cost.

68. Ascalon assured the Federation that he valued the Memorial and he would ensure that it was restored and preserved.

69. Around September 2004, Ascalon was contacted by counsel for the Federation, Robert Hoffman, Esquire, who acknowledged Ascalon’s cooperation and advised that the Federation would be seeking to recover the costs to restore the Memorial from ABB.

70. Mr. Hoffman advised Ascalon that the Federation planned to accept Ascalon’s offer to restore the sculpture after the Federation either recovered the necessary funds from ABB or it raised the necessary funds through other sources.

71. On September 15, 2004, Mr. Hoffman, advised ABB that it was responsible for the “repair” of the Memorial because ABB did not satisfy the

original order because it failed to provide “Cor-Ten” steel. The Federation asked ABB to cover the cost to replace the steel spiral and restore the Memorial. Counsel advised ABB that, if necessary, the Federation would pursue a claim against ABB in state court (the “Demand Letter”). A copy of the Demand Letter is attached as Exhibit “I.”

72. A copy of the Demand Letter was provided to Ascalon and the Federation advised Ascalon that it was also seeking to raise funds to support the restoration of the Memorial.

73. Ascalon relied on the Demand Letter and the representations by the Federation. Ascalon believed that the Federation was pursuing ABB to recover the costs to restore the Memorial, while simultaneously seeking other means to fund the “restoration” plan proposed by Ascalon.

74. In relying on the Federation’s Demand Letter to ABB and representations by counsel for the Federation, Ascalon was led to believe that Ascalon was doing all that was necessary to satisfy the Federation, that the Federation viewed Ascalon to be fully cooperative, and that there was no reason for Ascalon to make independent demands for redress against ABB.

75. On July 8, 2005, after nearly one year, during which there was no communication from the Federation or any indication that Ascalon had been remiss in cooperating, another attorney for the Federation, Harvey Freedenberg, Esquire

wrote a “cease and desist” letter to Ascalon, incredulously and improperly demanding that Ascalon cease referencing the Memorial that he created. The Freedenberg Correspondence is attached as Exhibit “J.”

76. In response to the inaccurate and improper demands of the Freedenberg Correspondence, Ascalon, through his son, then “General Counsel” to Ascalon Studios, vigorously responded to the Freedenberg Correspondence by explaining that it was the artist’s right to refer to his own work and he reiterated Ascalon’s commitment to see the Memorial restored, citing in support his December 8, 2003 Correspondence. A copy of the Ascalon Response is attached as Exhibit “K.”

77. Ascalon was shocked by the Freedenberg correspondence, and he rejected the demand that he cease referencing his own work; and furthermore he rejected the assertion that he had been uncooperative.

78. Ascalon further advised Freedenberg that Ascalon had just read a Patriot News Article confirming that the Federation reported that it was raising money to create a maintenance fund.

79. Ascalon relied on the Federation’s oral and written representations by its officers and counsel (Mr. Hoffman) that it was pursuing ABB and that the Federation was, as confirmed in the media, establishing a maintenance fund to preserve and restore the Memorial.

80. Based on these repeated representations and the fact that Ascalon reiterated his willingness to cooperate in the letter to Freedenberg, he waited for the Federation to contact him when and if they were ready to restore the Memorial.

81. The Federation did not contact Ascalon after the Freedenberg Correspondence.

82. On July 30, 2007, Ascalon's son, Eric Ascalon, together with an Ascalon Studios employee, had a meeting with a client, the Milton S. Hershey Foundation, in Hershey, Pennsylvania.

83. After the meeting, Eric Ascalon and the employee elected to take a brief detour into Harrisburg to visit the Memorial; whereupon Eric Ascalon was stunned to see that, unbeknownst to him, Ascalon's work had been drastically altered.

84. Eric Ascalon immediately took photographs of the destruction and altered state of the Memorial. Copies of select photographs showing the Stainless Steel alterations are attached as Exhibit "L."

85. The first and most apparent destruction of the Memorial was the removal of the original "Cor-Ten" steel and replacement with a shining Stainless Steel replica of the "barbed-wire" shaped spiral.

86. Perhaps even more distressing, Eric Ascalon saw that his father's name, which had been thickly welded in steel near the base of the sculpture, had

been completely excised and grinded off of the Memorial. Copies of photographs showing Ascalon's original "Signing" of the Memorial and photographs showing the removal of Ascalon's name are attached as Exhibits "M" and "N."

87. Eric Ascalon called his father and relayed the upsetting discovery to Ascalon.

88. Not only was the Memorial mutilated and the important symbolism of Nazi regime (the dark rusting metal) lost, but Ascalon was now "literally" erased from the Memorial.

89. Where Ascalon's name was once prominently and proudly displayed were crude "grinding" marks and all that remained was the date "1994." Exhibit "N."

90. Above the original creation date now prominently shows the marking of "Restored by David Grindle 2006." Exhibit "N."

91. Additionally, crudely engraved into the stainless steel of the memorial, were names of the "Restoration Advisors."

92. The artist of the Memorial had his name involuntarily severed from his creation, while those responsible for its mutilation were now prominently inscribed onto the artwork itself.

93. The modification of the sculpture has changed it so that now the same shiny stainless steel that represents the enduring Jewish people is also used to

depict the Nazi regime and atrocities of the Holocaust. This alteration is abhorrent, and runs completely contrary to the core vision of the Memorial, which was based on the notion of creating a striking and stark visual contrast between the Jewish people and their Nazi oppressors. The sculpture as modified now creates a visual equivalency between good and evil, which is a mutilation and bastardization of the artwork and its purpose.

94. At no time did Ascalon ever consent to the modifications to the Memorial sculpture undertaken by the Federation or Grindle, and nor was he ever consulted with by the Federation with respect to the drastic change in materials or removal of his name from the artwork.

95. The Federation and Grindle, both with knowledge of VARA and Ascalon's desire to protect the Memorial and his rights, knowingly violated Ascalon's VARA rights by taking such grossly negligent actions in destroying the Memorial.

96. The Federation knowingly violated Ascalon's rights when, with knowledge of Ascalon's desire to preserve the Memorial, it failed to contact Ascalon before it destroyed the Memorial.

97. It is believed that the Federation and/or Grindle submitted plans to modify and alter the Memorial to the DPRH for review and approval, and that that the DPRH approved the project plans.

98. The Memorial is a highly visible public work of visual art that has been and continues to be attributed to Ascalon in the media, the public record (i.e. The Smithsonian American Art Museum Art Inventories Catalogue), and the public art world. The destruction and mutilation of the Memorial, and the removal of Ascalon's name from the Memorial, which form the basis for this Complaint, are prejudicial to the honor and reputation of Ascalon because they: (a) ruin the aesthetic of the Memorial; (b) destroy the important and thoughtful symbolic aspects of the Memorial; (c) prevent the public from being able to observe and appreciate the Memorial as it was created by Ascalon and continues to be shown in publications, and websites about the Memorial; (d) tarnish honor and purpose of the Memorial; and (e) can be reasonably misconstrued to have been caused, or permitted to occur by Ascalon.

Cause of Action

Violation of the Visual Artists Rights Act and Copyright Infringement against all Defendants

99. Ascalon repeats the allegations of paragraphs 1 through 96 of this Complaint as if fully set forth herein at length.

100. Ascalon has the exclusive right to safeguard the integrity of his work by preventing any intentional distortion, mutilation or other modification of the Memorial that would be prejudicial to his honor or reputation 17 U.S.C. §106(a)(3)(A).

101. The Memorial is a work of recognized stature, as described in 17 U.S.C. §106(a)(3)(B) and as noted above, the Memorial has received significant media attention, awards, and commendations that praise the work as a significant artistic contribution to the local and international community.

102. The Memorial was internationally recognized for its artistic design and contribution among other public sculptures.

103. Because the Memorial qualifies as a work of recognized stature under the Copyright Act, Ascalon has the sole right to prevent any intentional or grossly negligent, destruction, modification or mutilation of the work. 17 U.S.C. §106(a)(3)(B).

104. The Federation's original reckless and willful failure to maintain the original structure caused distortion, destruction and damage to the Memorial amounts to grossly negligent destruction of the Memorial in violation of Ascalon's rights under 17 U.S.C. §106A(a)(3)(B).

105. The Federation's willful, intentional and reckless retention of Grindle to "restore" the Memorial caused the destruction, and mutilation of the Memorial, and amounts to grossly negligent destruction of the Memorial in violation of Ascalon's rights under 17 U.S.C. §106A(a)(3)(B).

106. The Federation's direction to Grindle, or alternatively its acceptance of Grindle's decision, to remove the original "Cor-Ten" barbed-wire structure and

replace the spiral with Stainless Steel amounts to grossly negligent and intentional destruction of the Memorial in violation of Ascalon's rights under 17 U.S.C.

§106A(a)(3)(B).

107. The Federation's direction to Grindle, or alternatively its acceptance of Grindle's decision, to remove Ascalon's name from the Memorial amounts to grossly negligent and intentional destruction of the Memorial and prejudice to Ascalon's honor and reputation in violation of Ascalon's rights under 17 U.S.C.

§106A(a)(3)(B).

108. The Federation and Grindle willfully and knowingly acted with reckless disregard for Ascalon's VARA rights when they intentionally, with gross negligence removed part of his original artwork.

109. The Federation and Grindle willfully and knowingly acted with reckless disregard for Ascalon's VARA rights when they intentionally, with gross negligence grinded the artist's name off of the Memorial.

110. It is believed that the DPRH reviewed and approved the Federation's and/or Grindle's plans to alter the Memorial and that DPRH's review and approval of the modifications and destruction of the Memorial amounts to grossly negligent and intentional destruction of the Memorial and prejudice to Ascalon's honor and reputation in violation of Ascalon's rights under 17 U.S.C. §106A(a)(3)(A) and (B).

111. Ascalon's original work continues to be promoted to the public in its original form through print and online sources and the Memorial is inextricably associated with Ascalon.

112. The intentional destruction and mutilation of the Memorial prejudices Ascalon's honor and reputation in violation of Ascalon's rights under 17 U.S.C. §106A(a)(3)(A).

113. Such willful, intentional and grossly negligent actions and/or omissions by the defendants have caused and continue to cause Ascalon substantial injury, loss, and damages that are cognizable at law and equity.

WHEREFORE, Ascalon demands against some or all of the defendants as the proofs may show that:

a. Defendants, their officers, directors, agents, servants, employees and assigns, and all those in active concert or participation with them, be enjoined permanently, under 17 U.S.C. §502 from allowing continued destruction or mutilation of the Memorial;

b. Defendants, their officers, directors, agents, servants, employees and assigns, and all those in active concert or participation with them, be enjoined, under 17 U.S.C. §502, to permit Ascalon unimpeded and immediate access to the Memorial to restore it to its original form consistent with Ascalon's original Proposal;

c. Defendants, their officers, directors, agents, servants, employees and assigns, and all those in active concert or participation with them, be enjoined, under 17 U.S.C. §502, to permit Ascalon unimpeded and immediate access to the Memorial to restore his name to the Memorial in its original form;

d. Ascalon be awarded his actual damages suffered as a result of the grossly negligent destruction, mutilation and alteration of the Memorial under 17 U.S.C. §504(a)(1); and/or

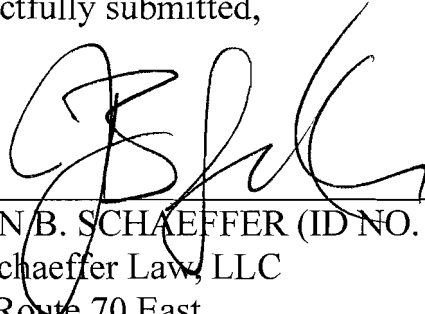
e. In lieu of the relief requested under paragraph d above, Ascalon be awarded statutory damages for the destruction, mutilation and alteration of the Memorial under 17 U.S.C. §504(c)(1); and/or

f. In lieu of the relief requested under paragraphs d and e above, Ascalon be awarded statutory damages for the willful destruction, mutilation and alteration of the Memorial under 17 U.S.C. §504(c)(2);

g. Ascalon be awarded the costs of this action, together with his attorney's fees under 17 U.S.C. §505; and

h. Ascalon be awarded such other and further relief as the Court deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JBS', is written over a horizontal line.

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