

RUTH MUSSER-LOPEZ, in pro per
420 E Street
Needles, CA 92363
760885-9374; no fax
RuthMusserLopez@gmail.com

FILED
H/S
2016 MAY 27 AM 3:32
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE
BY _____

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RUTH MUSSER-LOPEZ, in pro per
420 E Street
Needles, CA 92363

ED CV16-01098
Case No.:
ODW (SKX)

Plaintiff,

Complaint For:

v.

- 1. 5 U.S.C. § 552("FOIA")
- 2. Libel and Slander Per Se
- 3. Defamation

JAMES G. KENNA, STATE DIRECTOR
CALIFORNIA STATE OFFICE
BUREAU OF LAND MANAGEMENT
DEPARTMENT OF THE INTERIOR
2800 Cottage Way, Suite W1623
Sacramento, CA 95825
Does 1 - 50, inclusive,

DEMAND FOR JURY TRIAL

DATE: May 26, 2016

Respondents/Defendants

COMPLAINT

Plaintiff Ruth Musser-Lopez brings this action against Defendant California State Office of the Bureau of Land Management (hereafter, CSO-BLM) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552("FOIA") and against the defendant for libel, slander per se and defamation. As grounds therefore, Plaintiff alleges as follows:

JURISDICTION AND VENUE

- 1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
- 2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

COMPLAINT: MUSSER-LOPEZ V. KENNA 5-26-16

5/21
3/60

FEE PAID

PARTIES

3. At all relevant times, Plaintiff RUTH MUSSER-LOPEZ has been and is an individual residing in San Bernardino County, California, is a professional archaeologist who is a former Bureau of Land Management Archaeologist but lost her job after blowing the whistle on an agency official, thereafter opening her own consulting business, "Archaeological Heritage Associates" with the acronym "AHA," also known as "River AHA" headquartered at 420 E Street, Needles, CA 92363 and No. 1 Grandview, Needles, CA 92363. Plaintiff seeks to promote Native American art appreciation, as well as promote education and understanding of archaeology, prehistory, and cultural heritage in the lower Colorado River area and surrounding region.

As part of the mission of Plaintiff's work, she volunteered to assist the American Rock Art Research Association (ARARA) in first developing and then directing rock art field trips during Memorial Day weekend, 2015, event. Said event was one of a series of annual events held by ARARA in different regions each year for the purpose of studying and advancing rock art research. Ruth Musser-Lopez was selected by ARARA based upon her professional knowledge and regional experience and requested to be the 2015 Rock Art Field Trip Coordinator/Director. After completing the plans for the some 20 field trips and working with approximately 15 federal, state and local agencies and private institutions she was suddenly removed from her position prior to the annual event.

4. Defendant California State Office of the Bureau of Land Management is a bureau established within the Department of the Interior of the United States Government and is headquartered at 2800 Cottage Way, Suite W-1623, Sacramento, CA. Plaintiff is informed and believes and It is here alleged that at all relevant times, employees of the Needles Field Office of the Defendant agency which is located in San Bernardino County, are responsible for having generated the documents and records subject to this complaint. Defendant has possession, custody, and control of records to which Plaintiff seeks access. Further, Defendant has hiring authority, liability and management authority over employees and their actions within its State, District and local offices including the Freedom of

Information Act (hereafter "FOIA") Officer in the state office and its manager and archaeologist in the Needles Field Office.

STATEMENT OF FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

5. On April 3, 2015, Plaintiff served a FOIA request on Defendant seeking access to certain public RECORDS of its field office archaeologist, CHRISTOPHER DALU to DIANE HAMANN, President of the American Rock Art Research Association (ARARA) and other members of the ARARA board, including ANN BRIERTY, ANN MCCONNEL AND SCOTT SEIBEL prepared and sent while Mr. Dalu was Field Office Archaeologist in the BLM-CSO's Needles Field Office during a period of March 1, 2015 through March 31, 2015. Request was also made for all telephone records and correspondence from Dalu sent to Linda Otero of the Fort Mojave Indian Tribe during that same period of time, concerning the matter of the ARARA field trip program.

6. By letter dated May 1, 2015, Defendant admitted receiving Plaintiff's FOIA request on April 3, 2015 and informed Plaintiff that it had assigned the request "FOIA case number BLM-2015-00537."

7. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to make a "determination" on the request for records within twenty working days of receipt and to notify Plaintiff of its "determination...to comply with such request" and "shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination."

8. More than twenty working days have elapsed since Defendant received Plaintiff's April 3, 2015 request, but Plaintiff has received no notification of any determination, instead the Defendant informed Plaintiff that they anticipated processing and determination would take place by May 29, 2015. Defendant a) failed to inform the Plaintiff as to whether it had located records responsive to the request, b) failed to invoke a legitimate exemption, and d) failed to make a determination or state the reasons for said determination. Since no adverse determination was ever made, no appeal procedure was ever provided for an adverse determination.

9. Instead, Defendant sent Plaintiff on a wild goose chase to administratively appeal “the delay.” The administrative appeal process provides for an appeal of an “adverse determination” but not of “more time needed” or “delay.”
10. No responsive records or portions thereof have ever been produced to Plaintiff. Plaintiff has received no notification of any determination or denial, nor has Plaintiff received instruction on Plaintiff’s right to seek administrative appeal on a determination or denial pursuant to 5 U.S.C. § 552(a)(6)(A)(ii) or judicial review of any determination or denial.
11. Because Defendant failed to comply with 5 U.S.C. § 552(a)(6)(A)(i) to make a determination, no administrative remedy was available thus Plaintiff is deemed to have exhausted any and all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).
12. The failure of the Defendant to release the public documents withheld from Plaintiff is evidence that the requested records contained evidence of what Plaintiff is informed about and believes and therefore alleges: a defamatory smear campaign by the Defendant.
13. Plaintiff has knowledge and is informed, and it is here alleged that on or about March, April and May of 2015, a smear campaign with defamatory speech and libelous correspondence was delivered from Defendant agency to the president of the American Rock Art Research Association (ARARA) president.
14. Though Plaintiff was never provided a copy of the subject 2015 correspondence subject to this complaint, Plaintiff is informed and believes that In furtherance of the Defendant’s plan to ruin Ruth Musser-Lopez’s reputation, among the false and malicious statements that were made, Defendant agency asserted that Ruth Musser-Lopez disrespected Native Americans, particularly, members of the Fort Mojave Indian Tribe and that by allowing her to be the Director of the Field Trips, ARARA would also be insulting and disrespecting Native Americans. Further, his statements to Plaintiff directly indicate that he had falsely accused Ruth Musser-Lopez of disrespect to him and of “breach of various confidentiality agreements.”
15. Plaintiff has knowledge and is informed and therefore alleges that under color of authority of his position as a federal employee, in charge of the archaeology program at the Needles Field Office of the Bureau of Land Management, that these false statements were made to members of the

anthropological and archaeological community in San Bernardino County, California, and the communications were whispered about the Fort Mojave Indian community as well.

16. Plaintiff is informed and believes and thereon alleges that the Defendant's secret correspondence from its employee Chris Dalu, was behind the action by the ARARA president to remove Plaintiff from the position with the association as 2015 Field Trip Coordinator/Director prior to the annual event.

17. At the ARARA Annual Meeting on Memorial Day 2015 weekend, Plaintiff was humiliated and embarrassed before her professional peers as whispers and rumors persisted as to why she was removed from her position as ARARA Field Trip Coordinator/Director and why the field trips were cancelled for the event.

18. Plaintiff has knowledge and believes, therefore It is here alleged that as a result of said speech by the Defendant, Plaintiff was not acknowledged at the annual meeting for her hard and diligent volunteer work in planning and preparing the event field trips and for successful negotiation and coordination with some 20 various federal, state and private agencies approving the field trip plans....successful with all all but the Defendant agency. Further such rumors and whispers continue irreparably into the future as Plaintiff was not invited to participate in field trip plans for the current Memorial Day weekend annual meeting and has had a continuing chilling effect on her life long professional standing.

19. The statements made by Defendant had the tendency to injure Ruth Musser-Lopez in her occupation because the statements attack Ruth Musser-Lopez's veracity as an esteemed regional expert on the Native American rock art, particularly that of the Mojave Indian Tribe and misrepresented with malice the rapport that Ruth Musser-Lopez has with the tribe whose rock art she researches, therefore calling into question her authority and professionalism as well as the quality of her work. Further, the statements made by Defendant resulted in the loss of the position and standing Ruth Musser-Lopez had within the community, in particular, ones which she had been grooming, that of the American Rock Art Research Association and the Fort Mojave Indian Tribe.

20. Plaintiff has knowledge, is informed and believes, and it is here alleged that the ongoing retaliation stems from a series of protests that Plaintiff has made exposing the wrongdoings and shortcomings of the Defendant agency and its employees since 1986. In 1986, shortly after marrying

and having her first child, Ruth Musser-Lopez was removed from her position as archaeologist within the very same field office of the Defendant agency responsible for the current defamatory conduct after then (1986) having turned evidence of wrongdoing on her former BLM Needles Field Office manager Everell "Butch" Hayes. Thereafter Ruth Musser-Lopez filed a whistleblower complaint against the agency for wrongful termination. Since that time, in her private capacity, Plaintiff has been an ongoing activist working with the Fort Mojave Indian Tribe against the Defendant agency's actions to enable a nuclear dump in the vicinity of her home in Needles, Defendant's involvement in the wrongful disposal of PG&E hazardous toxic chromium sludge in her community's landfill on public land managed by Defendant agency, AND of the Defendant agency's inaction in reviewing the environmental impact of the Cadiz Water project which would involve voluminous down drafts and piping to the coast water under public east Mojave desert land managed by the defendant agency, which water is tributary to her community's water supply.

21. Plaintiff is informed and believes and thereon alleges that the Defendant's statements and written federal agency action had the specific intent to injure Plaintiff without any reasonable basis for believing them to be true.

FIRST CAUSE OF ACTION

(Violation of FOIA, 5 U.S.C. § 552)

22. Plaintiff realleges paragraphs 1 through 8 as if fully stated herein.

23. Defendant is violating FOIA by unlawfully withholding records responsive to Plaintiff's request.

24. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply fully with FOIA.

SECOND CAUSE OF ACTION

(Libel and Slander Per Se Against Defendant)

25. Plaintiff repeats, realleges, and realleges paragraph 1 through ___, inclusive, and incorporates the same herein by reference.

26. In March through May of 2015, specifically through Memorial Day weekend 2015, Defendants made the following defamatory statements to professionals in the rock art, archaeological and anthropological professional community:

a. asserted that Ruth Musser-Lopez disrespected Chris Dalu, and others of the professional archaeological and anthropological community, Native Americans, particularly, members of the Fort Mojave Indian Tribe and

b. that by allowing Ruth Musser-Lopez to be the Director of the Field Trips, ARARA would also be insulting and disrespecting Native Americans; and

c. breach of various confidentiality agreements.

27. Upon information and belief, members of the rock art, anthropological and archaeological community understood that the statements were about Ruth Musser-Lopez as the statements were made of, concerning and mentioned Ruth Musser-Lopez expressly.

28. All Statements are entirely false as they pertain to Ruth Musser-Lopez, and are defamatory and libelous/slanderous on their face and expose Ruth Musser-Lopez to hatred, contempt, ridicule, and obloquy because Ruth Musser-Lopez did not and does not disrespect the Native Americans or members of the Fort Mojave Indian Tribe in particular. These statements were understood by those who heard them in a way that defamed the reputation of Ruth Musser-Lopez as a well-respected archaeological professional, anthropologist and rock art expert as well as a hard-working businesswoman, in that the statements connote that Ruth Musser-Lopez efforts were to disrespect the Native American in particular the Mojave people when in fact she sought to bring understanding and appreciation of their culture and the beauty of their art work.

29. These statements were made to members of the rock art, archaeological and anthropological community as well as members of the local Native American tribe in the community in which Ruth Musser-Lopez lives, some of whom are her relatives and family members.

30. Upon information and belief, Defendant failed to use reasonable care to determine the truth or falsity of the statements. Upon information and belief, the wrongful conduct of Defendant was a substantial factor in causing Ruth Musser-Lopez harm, including but not limited to harm to Ruth Musser-Lopez's business, trade, profession and/or occupation, expenses Ruth Musser-Lopez had to

pay as a result of the defamatory statements, and harm to her reputation in addition to that assumed by law.

31. As a proximate result of the above described statements, Ruth Musser-Lopez suffered loss to her personal and professional reputation and standing within the association and general professional community, humiliation, embarrassment, shame, mortification, and hurt feelings, all to her general damages.

32. As a further proximate result of the above-described statements, Ruth Musser-Lopez has suffered loss of business, in an amount to be proven at trial.

33. Upon information and belief, by engaging in the above conduct, Defendant acted with malice, oppression, and/or fraud, entitling Ruth Musser-Lopez to exemplary and punitive damages.

THIRD CAUSE OF ACTION

(Defamation Against Defendant)

34. Plaintiff repeats repleas, and realleges paragraph 1 through __ , inclusive, and incorporates the same herein by reference.

35. In March through May of 2015, specifically through Memorial Day weekend 2015, Defendants made the following defamatory statements to professionals in the rock art, archaeological and anthropological professional community:

a. asserted that Ruth Musser-Lopez disrespected Chris Dalu, and others of the professional archaeological and anthropological community, Native Americans, particularly, members of the Fort Mojave Indian Tribe and

b. that by allowing Ruth Musser-Lopez to be the Director of the Field Trips, ARARA would also be insulting and disrespecting Native Americans; and

c. breach of various confidentiality agreements.

36. Upon information and belief, members of the rock art, anthropological and archaeological community understood that the statements were about Ruth Musser-Lopez as the statements were made of, concerning and mentioned Ruth Musser-Lopez expressly.

37. All Statements are entirely false as they pertain to Ruth Musser-Lopez, and are defamatory and libelous/slanderous on their face and expose Ruth Musser-Lopez to hatred, contempt, ridicule,

and obloquy because Ruth Musser-Lopez did not and does not disrespect the Native Americans or members of the Fort Mojave Indian Tribe in particular. These statements were understood by those who heard them in a way that defamed the reputation of Ruth Musser-Lopez as a well-respected archaeological professional, anthropologist and rock art expert as well as a hard-working businesswoman, in that the statements connote that Ruth Musser-Lopez efforts were to disrespect the Native American in particular the Mojave people when in fact she sought to bring understanding and appreciation of their culture and the beauty of their art work.

38. These statements were made to members of the rock art, archaeological and anthropological community as well as members of the local Native American tribe in the community in which Ruth Musser-Lopez lives.

39. Upon information and belief, Defendant failed to use reasonable care to determine the truth or falsity of the statements. Upon information and belief, the wrongful conduct of Defendant was a substantial factor in causing Ruth Musser-Lopez harm, including but not limited to harm to Ruth Musser-Lopez's business, trade, profession and/or occupation, expenses Ruth Musser-Lopez had to pay as a result of the defamatory statements, and harm to her reputation in addition to that assumed by law.

40. As a proximate result of the above described statements, Ruth Musser-Lopez suffered loss to her personal and professional reputation and standing within the association and general professional community, humiliation, embarrassment, shame, mortification, and hurt feelings, all to her general damages.

41. As a further proximate result of the above-described statements, Ruth Musser-Lopez has suffered loss of business, in an amount to be proven at trial.

42. Upon information and belief, by engaging in the above conduct, Defendant acted with malice, oppression, and/or fraud, entitling Ruth Musser-Lopez to exemplary and punitive damages.

PRAYER

WHEREFORE, Plaintiff respectfully requests the court:

A. FIRST CAUSE OF ACTION (Violation of FOIA, 5 U.S.C. § 552)

1. for an order Defendant to demonstrate that it employed search methods reasonably calculated to uncover all records responsive to Plaintiffs request;
2. for an order Defendant to produce, by a date certain, any and all non-exempt records responsive to the request and a Vaughn index of any responsive records withheld under claim of exemption;
3. to enjoin Defendant from continuing to withhold any and all non-exempt records responsive to the request;
4. to grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. to grant compensation for emotional pain and suffering, and
6. to grant Plaintiff such other relief as the Court deems just and proper.

B. SECOND CAUSE OF ACTION (Libel and Slander Per Se)

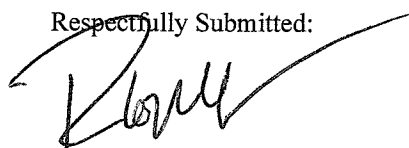
1. For all general damages, in a sum to be proven at trial, but in an amount no less than \$500,000.
2. For all special damages, in a sum to be proven at trial; and
3. For exemplary and punitive damages as allowed by law and in a sum to be proven at trial.
4. An order prohibiting Defendant employees from making the same false and damaging statements in the future.

C. THIRD CAUSE OF ACTION (Defamation)

1. For all general damages, in a sum to be proven at trial, but in an amount no less than \$500,000.
2. For all special damages, in a sum to be proven at trial ; and
3. For exemplary and punitive damages as allowed by law and in a sum to be proven at trial.
4. An order prohibiting Defendant employees from making the same false and damaging statements in the future.

Dated: May 26, 2016

Respectfully Submitted:



RUTH MUSSER-LOPEZ
420 E STREET
NEEDLES, CA 92363
760/885-9374

Plaintiff in pro per

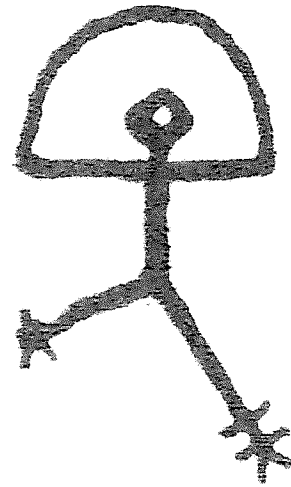
EXHIBITS

1. Plaintiff's FOIA Request dated April 3, 2015
2. Defendant's FOIA Response dated May 1, 2015

EXHIBIT 1

RIVER AHA

Archaeological Heritage Association



www.RiverAHA.org
1704 Needles Hwy.
mailto: 420 E Street
Needles, CA 92363
760/885-9374
Office@RiverAHA.com

April 3, 2015

Ms. Kathleen Christian, FOIA Coordinator/Public Liaison
California State Office
Bureau of Land Management
Sacramento, California 95825

Dear Ms. Christian,

Under the Freedom of Information Act and the California Public Records Act, I am requesting a copy of all the telephone records and all correspondence sent by Mr. Christopher Dalu to Diane Hamann, President of the American Rock Art Research Association (ARARA), other members of ARARA's board, including Ann Brierty, Ann McConnell and Scott Seibel during the period of March 1, 2015 to March 31, 2015. I am also requesting all telephone records and correspondence from Dalu sent to Linda Otero of the Fort Mojave Indian Tribe during that same period of time, concerning the matter of the ARARA field trip program.

Please expedite the delivery of these documents that I request within 10 working days to the above mailing address or to my email address if electronic copies are available. Please inform me as to the cost of copying the documents and the availability of less costly electronic documents.

Submitted by,

A handwritten signature in black ink, appearing to read "R. Lopez", with a long, sweeping underline.

Ruth Musser-Lopez
Director, RiverAHA
760/885-9374

Complaint Exhibit 1, page 1 of 2

- c. Mr. Mike Ahrens, F. O. Manager, Needles
Ms. Linda Miller, Refuge Manager, U. S. FWS
Ms. Dianne Hammon, President ARARA

EXHIBIT 2



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
California State Office
2800 Cottage Way, Suite W1623
Sacramento, CA 95825
www.blm.gov/ca

INREPLY REFER TO:
1278 (CA942)
FOIA No. BLM-2015-00537

MAY 11 2015

Ms. Ruth Musser-Lopez
Director, RiverAHA
420 E Street
Needles, California 92363

Dear Ms. Musser-Lopez:

This is in regard to your April 3, 2015, Freedom of Information Act (FOIA) request to the Bureau of Land Management's (BLM) California State Office, control number **BLM-2015-00537**.

As stated in our April 21, 2015, letter, your request has been placed in the Normal processing track. The BLM-California currently has 11 Normal track requests and 1 Simple track request before yours in our FOIA processing queue. Due to the volume of requests, we have not yet been able to make a determination on your request. We expect that we will be able to provide our determination and complete processing your request by May 29, 2015. Please know that this date roughly estimates how long it will take us to close requests ahead of yours in the queue and complete work on your request. The actual date of completion might be before or after this estimate based on the number and complexity of the requests in our processing queue.

We apologize for this delay. Although we hope that you will wait so that we can complete our search, review and duplication process, please note that you may file an appeal with the Department's FOIA/Privacy Act Appeals Officer regarding this delay. If you choose to appeal this delay, you may do so anytime between now and the date we make our determination on the FOIA request. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must also include with your appeal copies of all correspondence between you and the BLM concerning your FOIA request, including your original FOIA request and this letter. Failure to include with your appeal all correspondence between you and the BLM will result in the Department's rejection of your appeal, unless the

Complaint, Exhibit 2, page 1 of 2
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FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

FOIA/Privacy Act Appeals Office Contact Information:

Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, DC 20240

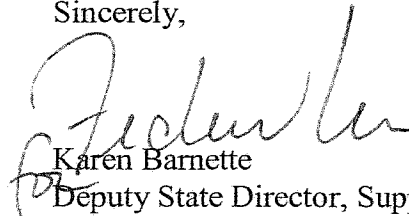
Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

Attn: FOIA/Privacy Act Appeals Office

We regret the delay and appreciate your consideration. For more information on FOIA Administrative Appeals, you may review the Department's FOIA regulations at *43 C.F.R. Part 2, Subpart H*.

If you have any questions, contact Ms. Kathleen Christian, California State Office FOIA Coordinator, at (916) 978-4409 or BLM_CA_FOIA@blm.gov.

Sincerely,



Karen Barnette
Deputy State Director, Support Services

cc: California Desert District FOIA Coordinator