COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS. SUPERIOR COURT
CIVIL ACTION NO. 2583CV01090

UNITED AMERICAN INDIANS OF NEW ENGLAND (UAINE) and MAHTOWIN MUNRO

Plaintiffs,

v.

TOWN OF PLYMOUTH and DEREK BRINDISI, TOWN MANAGER, in his official capacity,

Defendants.

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF RENEWED EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND DECLARATORY RELIEF

(ORAL ARGUMENT REQUESTED)

INTRODUCTION

This case exists because the Town of Plymouth made a series of solemn promises after its police violently suppressed UAINE's National Day of Mourning in 1997, negotiated a settlement, accepted the benefits of that settlement for nearly three decades, and now seeks to escape responsibility by way of unjustified repudiation.

The 1998 Settlement Agreement that emerged after the events of 1997 is not a discretionary accommodation, an annual courtesy, or an arrangement subject to unilateral municipal reconsideration. In exchange for resolving the aftermath of 1997 through liability releases and the dismissal of pending suits, the Town made a number of promises, including:

i. that UAINE "will be allowed to conduct a demonstration, which may include a march . . . *every* Thanksgiving Day/Day of Mourning, beginning at Cole's Hill";

ii. that Town officials "will work with UAINE so that preparatory activities for the noon assembly at Cole's Hill will be facilitated";

iii. that "the Town Manager of Plymouth will serve as a liaison with UAINE for the purpose of facilitating Day of Mourning activities in 1998 and *future years*"; and

iv. that the Town "agrees to make available to UAINE its 'showmobile' for use during the National Day of Mourning speeches. . . . [and] [i]f UAINE elects to provide its own stage and sound system, [the Town] will cooperate to facilitate its installation and powering on the Day of Mourning."

Declaration of Mahtowin Munro, Ex. 4, 1998 Settlement Agreement (emphasis added).

One year ago, again on the eve of NDOM, the Town tried to condition UAINE's 2025 National Day of Mourning and the Town's compliance with the 1998 Settlement Agreement on a new insurance, indemnity, defense, and hold-harmless requirement nowhere found in the Agreement. After UAINE brought the instant suit, this Court entered an Order on Parties' Joint Agreement enjoining the Town from requiring insurance or a bond for 2025, from requiring indemnity, defense, or hold-harmless agreements, and from requiring municipal permits, and required Plymouth to facilitate the 2025 event consistent with historical practice after the 1998 settlement, including erection of a stage on Cole's Hill. (Dkt. 7).

Now, one year later, and again on the eve of NDOM, this case persists because the Town has doubled down on its repudiation of the 1998 Settlement Agreement with the Plymouth Select Board voting on November 10, 2026 to cease compliance with the 1998 Settlement Agreement and end its decades-long facilitation of preparatory activities for NDOM's opening speeches on Cole's Hill by either providing a showmobile or setting up a stage. Plymouth has declared it will do neither, leaving UAINE without a stage days before over a thousand people travel across the country to attend NDOM.

UAINE is likely to prevail on its contract, covenant, declaratory judgment, and First Amendment claims. The equities and public interest favor enforcing a settlement agreement designed to protect a solemn political and religious observance in the very place where its message must be heard. Without relief, UAINE faces the loss of First Amendment freedoms due to the Town's breach at a time-sensitive annual event that cannot be recreated after November 26 passes, and it has no other adequate remedy.

STATEMENT OF FACTS[1]

A. UAINE and the National Day of Mourning

UAINE was organized in 1970 by Wamsutta Frank James (Aquinnah Wampanoag) and other Indigenous people living in Massachusetts and New England. Its original purpose was to educate about Native history and current issues, refute the myth that "All the New England Indians died off," engage politically, and advance Native cultures and sovereignty. National Day of Mourning began in 1970 after Wamsutta Frank James was asked to speak at a Commonwealth event commemorating the 350th anniversary of the Pilgrims' arrival in what is now Plymouth, but his proposed speech was deemed unacceptable. He refused to give a sanitized speech and helped organize the first National Day of Mourning so Indigenous people could tell the truth about European colonization and its aftermath.

NDOM remains UAINE's signature event. It is solemn, spiritual, and political. Participants fast, gather at Cole's Hill, begin with prayer and ceremony, hear speeches from Indigenous speakers, march through downtown Plymouth, and close with prayer and ceremony. UAINE instructs attendees not to film the religious portions of the program.

[1] This Memorandum on UAINE's Renewed Motion for TRO relies on the same underlying facts as previously submitted in connection with its earlier Motion for TRO, including its Memorandum of Law, and Declaration of Mahtowin Munro, Declaration of David Nathanson, Esq. (Dkts. 3.1, 3.2, 3.3).

The time and place matter and are deliberately part of the message: NDOM speakers discuss colonization, land theft, genocide, the erasure of Indigenous culture, sovereignty, and resistance at a time and place (Cole's Hill) central to the national myth UAINE challenges.

B. The 1997 Suppression and the 1998 Settlement

In 1997, approximately 200 NDOM participants marched after speeches at Cole's Hill. The group was led largely by women and children at the front and carried a banner reading, "You are on Indian land." Plymouth police set up a line on Leyden Street, ordered dispersal, arrested a participant who approached to negotiate, arrested UAINE co-leaders, arrested spiritual leader Sam Sapiel while he was attempting to urge participants onto the sidewalk, and pepper-sprayed and knocked people to the ground. Twenty-five people were arrested, and the charges were later dismissed.

The parties then negotiated and executed the 1998 Agreement, which provides, in relevant part, that the Town "agrees to make available to UAINE its 'showmobile' for use during the National Day of Mourning speeches. . . . [and] [i]f UAINE elects to provide its own stage and sound system, [the Town] will cooperate to facilitate its installation and powering on the Day of Mourning."

Since 2014, because the showmobile deteriorated, a non-mobile stage has been set up by the Town for NDOM. This was done without issue, without incident, and without any cause for concern until 2025 and the instant litigation. The stage is essential because speakers, including elders, must be seen and heard by the thousands gathered, and the visibility of UAINE's certified ASL interpreter depends on the stage.

C. Plymouth's Extra-Contractual Insurance and Indemnity Demand for NDOM 2025

On October 31, 2025, UAINE notified the Town of its 2025 NDOM march route and approximate times, including gathering and setup at Cole's Hill, the noon ceremony and speaking program, the march beginning at approximately 1:30 p.m., and the route through Plymouth. On November 11, 2025, the Town raised for the first time that, notwithstanding the 1998 Agreement, UAINE would be required to purchase liability insurance for the NDOM event and the use of the Town-provided stage. The Town's proposed language required UAINE, at its sole expense, to obtain either a certificate of insurance or a one-day event liability policy with limits of not less than $1 million per occurrence and $3 million aggregate, on a primary and non-contributory basis, naming the Town as an additional insured. The Town also demanded that UAINE defend, indemnify, and hold harmless the Town from claims arising out of the UAINE event. UAINE offered a limited release for use of the stage, but the Town's November 18, 2025 draft was not a minimal stage release; it attempted to rewrite, for that year, the settlement agreement that had been in place for 27 years.

UAINE asked the Town to withdraw its demands, explained that no insurance, indemnity, or defense requirement had ever been imposed in the 55 years since the first NDOM, and stated that the Town had not identified any statute, ordinance, regulation, or written policy requiring such conditions for protected First Amendment activity. UAINE further stated that the only justification identified was the demand of the Town's insurer. The Town opposed emergency relief by arguing that the 1998 Agreement was silent on insurance, indemnity, and the Town's current stage; that the Agreement could not control the event forever; that UAINE had not shown insurance costs were prohibitive; that the Town was willing to help find insurance; and that the Town should be relieved from setting up the stage if UAINE would not provide a

release and indemnity. The Town asked the Court to require a one-day event liability policy "if not for this year, for years in the future," and to order the parties to develop an updated agreement, codicil, or amendment.

D. This Court's Sanctioned Resolution for NDOM 2025

On November 25, 2025, this Court entered an agreed order after finding good cause for a temporary restraining order, including a substantial likelihood of success on the merits, immediate and irreparable harm, a balance of equities favoring UAINE, and service of the public interest. The order enjoined the Town from requiring any form of insurance or financial bond in relation to NDOM activities for 2025; enjoined the Town from requiring indemnity, defense, or hold-harmless agreements in relation to NDOM activities; enjoined the Town from requiring municipal permits for NDOM activities; and required the Town to facilitate, prepare, and enable NDOM activities consistent with historical practice after the 1998 settlement, including erection of a stage on Cole's Hill for NDOM 2025.

UAINE agreed to execute a release of liability in favor of the Town for UAINE's use of the stage and to notify speakers and participants using the stage that the Town was not liable for their use of the stage. The parties also agreed to meet by February 1, 2026 to negotiate future NDOM arrangements.

E. The Current Dispute Concerning NDOM 2026 and the Town's Impending Breach Based on an Ever-Changing Rationale

The parties did meet prior to February 1, 2026 and set off a year's worth of continued meetings, phone calls, and attempts to negotiate issues concerning the stage setup. The Town raised a concern that Cole's Hill is not Town property, but is part of Pilgrim Memorial State Park, which belongs to the Commonwealth through the Department of Conservation and Recreation (DCR). Notwithstanding that this fact has been true since the signing of the

Settlement Agreement, UAINE undertook efforts to alleviate any concern the Town may have with continuing to set up the stage on Cole's Hill.

Representatives, including counsel, from DCR, UAINE, and the Town met on November 5, 2026 to discuss DCR's position on UAINE using Cole's Hill and the Town's setting up the stage. DCR expressed in unambiguous terms that (i) it considered NDOM a First Amendment free speech event and would require no DCR permits, (ii) the Town was free to continue to set up a stage as it had historically done, and (iii) UAINE could continue to start NDOM on Cole's Hill as it had for decades.

Plymouth has now revived the same dispute, but its stated rationale has moved from one ground to another. First, in 2025, the Town framed the issue as an insurance issue. Then, it invoked Cole's Hill and DCR property concerns. The rationale then shifted to the Town's desire not to bear any increased premium if an incident occurred. Finally, the Town stated that it does not believe the 1998 Agreement should continue in perpetuity. Each effort at justifying its repudiation fails, and UAINE is entitled to relief.

ARGUMENT

I. UAINE Satisfies The Preliminary Injunction Standard.

To obtain preliminary injunctive relief, UAINE must show likelihood of success on the merits, irreparable harm absent relief, and that the balance of harms weighs in its favor. Where governmental action is challenged, the Court also considers the public interest. *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 616–17 (1980); *Tri-Nel Mgmt., Inc. v. Bd. of Health of Barnstable*, 433 Mass. 217, 219 (2001).

The showing is readily made. UAINE seeks to preserve the status quo created by the 1998 settlement, confirmed by this Court's 2025 order, and buttressed by three decades of

performance without issue. The Town, by contrast, seeks to either impose new conditions not found in the Agreement or to repudiate the Agreement in its entirety.

II. UAINE Is Likely To Succeed On Its Claim That Plymouth Remains Bound By The 1998 Agreement.

"Settlement agreements enjoy great favor with the courts 'as a preferred alternative to costly, time-consuming litigation.' *Mathewson Corp. v. Allied Marine Indust., Inc*., 827 F.2d 850, 852 (1st Cir. 1987). Thus, a party to a settlement agreement may seek to enforce the agreement's terms when the other party refuses to comply." *Fid. & Guar. Ins. Co. v. Star Equip. Corp.*, 541 F.3d 1, 5 (1st Cir. 2008) (citing *Malave v. Carney Hosp*., 170 F.3d 217, 220 (1st Cir. 1999)). Massachusetts and federal courts routinely enforce settlement agreements according to ordinary contract principles, including by specific performance where damages are inadequate.

H.L. Turner Group, Inc. v. City of Methuen is particularly apt. There, the City of Methuen resisted a settlement arising from an underlying municipal contract dispute, arguing that the underlying contract suffered from procurement-law defects. The court held the settlement enforceable, explaining that there was no authority allowing a municipality to repudiate a settlement agreement solely because of the alleged invalidity of the underlying contract. *H.L. Turner Grp., Inc. v. City of Methuen*, 2020 WL 1816343, at *1–2 (D. Mass. Jan. 16, 2020). Plymouth's position is even weaker than the arguments raised by Methuen; the Town does not and cannot contend that the 1998 Agreement was unauthorized or invalid when made.

With the issue of permission from DCR out of the way, the Town is left only to argue that the Agreement is now inconvenient, old, incomplete, or insufficiently protective of its finances. None permits unilateral repudiation of a settlement agreement.

A. The Agreement's operative terms are clear.

Paragraph 1 states the core promise: UAINE will be allowed to conduct its demonstration and march *every* Thanksgiving Day/Day of Mourning beginning at Cole's Hill, and Plymouth will not require UAINE to apply for a permit. Paragraph 4 requires Plymouth officials to work with UAINE so that preparatory activities for the noon assembly at Cole's Hill will be facilitated. Paragraph 5 makes the Town Manager the liaison for Day of Mourning activities in "future years." Paragraph 13 requires Plymouth to make the showmobile available or, if UAINE provides its own stage and sound system, to cooperate in facilitating installation and power.

Nothing in the Agreement requires insurance, a financial bond, defense obligations, indemnity, a hold-harmless agreement, or annual renegotiation as a condition of NDOM. Nothing authorizes the Town to withdraw facilitation because its insurer prefers a different risk allocation. Nothing permits the Town to convert its liaison role into a veto over the event.

The Court need not wonder what substitutionary measures are available and appropriate: Plymouth has, without any issue, set up a stage on Cole's Hill since 2014.

B. The Town's "perpetuity" argument contradicts the bargain.

The Town argued in 2025 that the Agreement could not control the event for an "unlimited amount of time" and asked the Court to order an updated agreement or amendment. But the Agreement itself says "*every* Thanksgiving Day/Day of Mourning" and assigns the Town Manager a facilitation role for "*future years*." The Town cannot accept the releases, settlement peace, and decades of performance and then declare that the annual obligation expired by municipal fatigue.

As the Appeals Court held in finding a 1978 Memorandum valid and binding, "[w]e do not consider the memorandum unenforceable because it lacks a termination date…to hold otherwise would make a sham of the memorandum by rendering it voidable at any time that the

Authority became dissatisfied with the hiring committee's votes. An agreement so construed would essentially bind the Authority to do nothing, and would render nugatory the DCA regulation which required its negotiation." *Fall River Hous. Joint Tenants Council, Inc. v. Fall River Hous. Auth.,* 15 Mass. App. Ct. 992, 994 (1983).

Nor can the Town rewrite the Agreement by invoking conditions not included in the negotiated settlement. In *Eck v. Godbout*, 444 Mass. 724 (2005), the SJC enforced broad release language according to its terms and rejected the argument that later consequences made the release a mistake. Similarly, the fact that current officials might wish the Town had bargained for insurance or temporal limits does not add those terms to the Agreement.

Nor can the Town now claim impossibility or impracticability of providing a showmobile or stage setup. "The doctrine of impossibility -- often referred to, perhaps more accurately, as the doctrine of impracticability -- excuses performance of a contract where (1) an event occurring after the execution of the contract makes the contract's performance impossible or impracticable; (2) nonoccurrence of the event was a basic assumption on which the contract was made; and (3) the party who seeks to have his or her performance excused did not cause the event." *Martorella* v. *Rapp*, 100 Mass. App. Ct. 1104 (2021) (Rule 23.0).

The Town fails to meet any of the required elements. Its performance, or acceptable substitute performance, is not impossible. The Town could fix the showmobile, purchase a new showmobile, or perform as the parties agreed was appropriate substitute performance, i.e., setting up a stage. The Town also cannot claim that the degradation of the showmobile was unforeseeable or that the Town entered into the settlement agreement because it had assurance its current showmobile would last forever. Most importantly, the Town can assign no blame to UAINE for the situation it is in. The Town entered into the Settlement Agreement, contracted to

provide a showmobile, began performing by setting up a stage instead, and can point to no change in circumstances or unforeseeable event that merits avoidance of the Settlement Agreement.

There cannot be doubt as to what the signatories to the Settlement Agreement intended; "[t]here is no surer way to find out what parties meant, than to see what they have done." *Krumsiek* v. *Collins Elec. Co., Inc.*, 105 Mass. App. Ct. 214, 222 (2025) (internal citations omitted). The Town has, for nearly three decades, facilitated a stage for UAINE's event.

III. The Town's Shifting Rationales Show A Breach Of The Implied Covenant Of Good Faith And Fair Dealing.

Every Massachusetts contract includes an implied covenant of good faith and fair dealing. The covenant requires that neither party do anything that will have the effect of destroying or injuring the other party's right to receive the fruits of the contract. *Young v. Wells Fargo Bank, N.A.*, 717 F.3d 224, 237–38 (1st Cir. 2013); *T.W. Nickerson, Inc. v. Fleet Nat'l Bank*, 456 Mass. 562 (2010).

Thus, "[t]he purpose of the covenant is to guarantee that the parties remain faithful to the intended and agreed expectations of the parties in their performance." *Id*. (alteration in original) (quoting *Uno Rests., Inc. v. Bos. Kenmore Realty Corp*., 441 Mass. 376, (2004)). "A breach [of the covenant of good faith and fair dealing] occurs when one party violates the reasonable expectations of the other." *Weiler v. PortfolioScope, Inc*., 469 Mass. 75 (2014) (quotations and citations omitted). "There is no requirement that bad faith be shown; instead, the plaintiff has the burden of proving a lack of good faith." *Robert & Ardis James Found. v. Meyers*, 474 Mass. 181 (2016).

The fruit of the 1998 Agreement is straightforward: UAINE can hold NDOM every Thanksgiving Day/Day of Mourning, beginning at Cole's Hill, without a municipal permit, and

with Town facilitation of the preparatory activities and stage functions necessary for the noon assembly. Plymouth's shifting rationales destroy that bargain by turning every year into a new negotiation over insurance, indemnity, property permissions, premium exposure, and whether the settlement should continue at all.

The Town's conduct also places UAINE in the same emergency posture that required relief in 2025. The Agreement was supposed to prevent exactly this kind of last-minute municipal burden on NDOM. The Town cannot manufacture uncertainty near NDOM and then argue that UAINE must accept new conditions because the event is imminent.

IV. The Insurance, Indemnity, And Premium-Shifting Rationales Independently Violate The First Amendment, And The Town's Demands Unlawfully Burden UAINE's Rights.

A. NDOM occurs in traditional public fora and is protected speech, assembly, and religious exercise.

Streets, sidewalks, and parks are paradigmatic traditional public fora. *Hague v. CIO*, 307 U.S. 496, 515 (1939); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). Public streets and sidewalks used for marches and public assembly receive the highest First Amendment protection, subject only to content-neutral, narrowly tailored time, place, and manner restrictions that leave open adequate alternatives. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

NDOM is not a commercial event. It is an annual political, cultural, and spiritual observance in which Indigenous speakers address colonization, land theft, genocide, sovereignty, and contemporary Indigenous struggles at the site where the Thanksgiving myth is most publicly celebrated.

B. Insurance and indemnity demands operate as prior financial restraints on speech.

In *Courtemanche v. Gen. Servs. Admin.,* 172 F. Supp. 2d 251 (D. Mass. 2001), the Court held that an insurance requirement poses the same impediment to speech as a prior permit fee because it requires the applicant to pay an insurance premium as a prerequisite to using the forum for First Amendment activities. The point applies with even greater force here. The Town did not merely ask for a limited stage release; it sought to require UAINE to purchase event liability insurance with $1 million per occurrence and $3 million aggregate coverage, name the Town as an additional insured, and defend, indemnify, and hold the Town harmless for claims arising out of the UAINE event. That is a financial precondition on annual protest, religious exercise, and assembly.

Courtemanche explains why outsourcing the cost of speech to a private insurer does not cure the First Amendment problem. Insurance premiums may vary depending on the content of the demonstrators' message, the controversial nature of the organization, or the insurer's anticipation of hostile audience reaction. *Courtemanche*, 172 F. Supp. 2d at 270; *Van Arnam v. Gen. Servs. Admin.,* 332 F. Supp. 2d 376, 384 (D. Mass. 2004) ("Insurers set the premiums for special event insurance based in significant part on the subject matter of the event. According to Rodman, the premium depends on the insurer's assessment of the risks of injury and property damage, based on factors such as: the event sponsor's cause; exactly how the event will be carried out; the location and duration of the event; the number of participants and expected onlookers; and whether the subject matter or manner of communication are, in the underwriter's opinion, likely to be controversial.").

That concern is not abstract for UAINE. NDOM criticizes the foundational Plymouth narrative and speaks about genocide, stolen land, colonialism, sovereignty, political prisoners,

and Indigenous struggles. A rule that makes UAINE's ability to speak turn on how insurers or municipal risk managers price the controversy of that message is not content-neutral.

The loss of First Amendment freedoms, even for minimal periods, constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Massachusetts courts and federal courts applying Massachusetts law repeatedly recognize that threatened interference with protected expression in a public forum supports injunctive relief.

The harm here is not compensable after the fact. NDOM occurs once a year, on Thanksgiving Day, at a particular place, on a particular route, and as part of a decades-long Indigenous observance. If Plymouth's conditions prevent, burden, move, delay, or chill the event, no damages award can restore that year's speech, religious exercise, assembly, or historic continuity.

V. The Balance Of Harms And The Public Interest Favor Enforcement Of The Settlement And Protection Of Constitutional Rights.

The balance of harms favors UAINE. UAINE faces loss of speech, religious exercise, assembly, and the benefit of a settlement agreement. Plymouth faces, at most, compliance with the same settlement duties it has performed for decades and the same obligations this Court ordered in 2025.

The public interest likewise favors relief. The public has a strong interest in enforcement of settlement agreements, especially where a municipality resolved prior official misconduct by making forward-looking commitments. The public also has a strong interest in protection of First Amendment activity in traditional public fora, particularly where the speech concerns controversial messages concerning government conduct, history, race, religion, colonialism, and sovereignty.

The requested injunction does not disable lawful public safety measures. UAINE seeks an order preventing extra-contractual insurance, indemnity, bond, permit, premium-shifting, or repudiation conditions and requiring the Town to facilitate NDOM consistent with the 1998 Agreement and historical practice. The Town remains free to take lawful, content-neutral, narrowly tailored public safety measures that do not burden the settlement rights and constitutional rights at issue.

VI. Declaratory And Injunctive Relief Are Appropriate And The Equities Clearly Favor Plaintiffs.

General Laws c. 231A authorizes the Superior Court to make binding declarations of right, duty, status, and other legal relations where an actual controversy has arisen, including under written contracts and municipal practices. G.L. c. 231A, §§ 1–2. The statute is remedial and is to be liberally construed and administered to remove uncertainty and insecurity regarding legal rights and duties. G.L. c. 231A, § 9.

An actual controversy exists. Plymouth disputes the continued force of the 1998 Agreement, has denied that the Agreement applies every NDOM, and has repeatedly attempted to condition NDOM on financial and risk-transfer demands not found in the Agreement. UAINE is entitled to declarations that: (1) the 1998 Agreement remains valid and binding; (2) the Agreement applies to every Thanksgiving Day/Day of Mourning; (3) Plymouth may not require UAINE to obtain municipal permits, insurance, financial bonds, indemnity, defense, hold-harmless obligations, or premium-shifting obligations as conditions of NDOM; and (4) Plymouth must facilitate NDOM consistent with the Agreement and historical practice, including access and stage-related arrangements necessary for the Cole's Hill program.

Under Massachusetts law, contracting parties also have available the equitable remedy of specific performance, a decree ordering a party to affirmatively carry out its contractual duties or

enjoining it from violating the contract. G.L. c. 214, § 1A. *See Poltorak v. Jackson Chevrolet Co.,* 322 Mass. 699, 700 (1948); *Ropes v. Upton*, 125 Mass. 258 (1878). "Whether specific performance should be granted is within discretion of the judge." *Greenfield Country Estates Tenants Ass'n v. Deep,* 423 Mass. 81, 88 (1996) (citing *Raynor v. Russell,* 353 Mass. 366, 367 (1967)).

VII. UAINE Should Recover Attorneys' Fees And Costs.

UAINE's renewed motion also preserves its claim for fees. 42 U.S.C. § 1988(b) provides that in an action to enforce 42 U.S.C. § 1983 (constitutional violations by state actors) the court may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of costs. As the SJC explained in *LaChance v. Commissioner of Correction*, 475 Mass. 757 (2016), a civil rights plaintiff is a prevailing party if the plaintiff obtains relief on the merits, an enforceable judgment, a direct benefit at the time of judgment, a material alteration of the parties' legal relationship, and a judicial imprimatur on the change. Declaratory relief against public officials can suffice, because courts assume public officials will comply with the law declared by the court. *See also Thomka v. Massachusetts Interscholastic Athletic Ass'n, Inc.*, 80 Mass. App. Ct. 1105 (2011) (Rule 23.0) (affirming attorney-fee award under § 1988 where a temporary restraining order granted the plaintiff the relief she sought, even though the later declaratory judgment was vacated for failure to notify the Attorney General).

A civil-rights settlement may embody prospective obligations that go beyond the constitutional minimum and remain enforceable according to their terms, and a party seeking to enforce such obligations need not relitigate the underlying constitutional violation each time enforcement is sought. Here, Plymouth's breach is also the very mechanism of the renewed First Amendment burden: the Town is conditioning UAINE's Day of Mourning speech, assembly, and

religious observance on insurance, indemnity, permit, or premium-shifting demands that the 1998 Agreement was designed to remove.

UAINE should therefore be awarded its reasonable fees and costs to the extent permitted by § 1988 and any applicable state-law fee provisions.

CONCLUSION

Courts are often tasked with crafting appropriate orders after reviewing actions occurring far in the past against the light of the present day. The SJC has indicated that, far from ignoring or shying away from the reality of history, courts can and should be informed by historical injustice when crafting equitable and legal remedies. When deciding whether the descendant of enslaved subjects of degrading early photographs taken in 1850 by Harvard professor Louis Agassiz could maintain any action against Harvard in 2019, the SJC concluded

> "that Harvard's present obligations cannot be divorced from its past abuses…[i]n light of Harvard's complicity in the horrific actions surrounding the creation of the daguerreotypes…"
> […]
> "We don't generally say, 'well, we rely upon the importance of continuity, so if it was an injustice that occurred a while ago, we're just going to leave it be.' Our obligation is to correct a miscarriage of justice whenever it happens, and that is part of what is bred in our bone."

Lanier v. *President & Fellows of Harvard Coll.*, 490 Mass. 37, 45, 74 (2022) (Cypher, J. concurring).

It should not, then, be lost that NDOM is an annual day of remembrance, spiritual gathering, and amplification of its message of highlighting historical genocide, land theft, and the disregarding or circumventing of Indigenous legal rights which cannot be

divorced from the current posture of the Town as to the enduring validity of its Settlement Agreement.[2]

For the foregoing reasons, UAINE respectfully requests that the Court allow the renewed motion; enter preliminary and permanent injunctive relief preserving UAINE's right to hold NDOM without extra-contractual insurance, indemnity, bond, premium-shifting, or permit requirements; declare the parties' rights under the 1998 Agreement; order Plymouth to facilitate NDOM consistent with the Agreement and historical practice; award UAINE its fees and costs as permitted by law; and grant such other relief as the Court deems just and proper.

[2] To be sure, Wampanoag agreements and land understandings have long been narrowed or displaced by colonial and state authority: the 1621 Plymouth-Pokanoket alliance was memorialized in English despite profound differences in language, law, and diplomatic practice; English land records treated Native transactions as permanent alienations even though Wampanoag participants did not understand them that way; lands confirmed in 1685 as belonging to the Mashpee "perpetually to them and their children" were later subjected to non-Mashpee overseers, altered governance, removal of alienation restrictions, and incorporation as the Town of Mashpee. *See*, Paula Peters *Of Patuxet* Colonial Society of Massachusetts, Vol. 93, https://www.colonialsociety.org/publications/3705/patuxet; *Littlefield* v. *United States Dep't of the Interior*, 656 F. Supp. 3d 280, 286 (D. Mass. 2023), *aff'd on other grounds*, 85 F.4th 635 (1st Cir. 2023); *Mashpee Tribe* v. *Mashpee*, 447 F. Supp. 940, 944 (D. Mass. 1978), *aff'd sub nom.*, 592 F.2d 575 (1st Cir. 1979) ("As a result of the 1685 deed, Mashpee differed from other proprietaries in an essential respect. Mashpee was designed to be a permanent Indian plantation, in which the land was to be held in common, entailed, and with a restraint on alienation into the indefinite future… In 1746, the General Court appointed guardians to control the finances of the plantation. These guardians apparently used their position to exploit their wards, and the efforts of the Indians to obtain redress through the General Court were unavailing… Nevertheless, in 1869 the General Court passed an act granting citizenship to the Indians, removing their legal disabilities, and releasing the restraints on alienation of land imposed originally in the 1685 deed and carried forward in the 1842 Act."); Pilgrim Hall Museum, *Plymouth Colony*, https://www.pilgrimhall.org/plymouth-colony/ ("Plymouth Colony's expansion created tension with the Wampanoag inhabitants, whose sovereignty over Native homelands and traditional landways were increasingly disregarded or circumvented by the English.").

UNITED AMERICAN INDIANS OF NEW ENGLAND (UAINE) AND MAHTOWIN MUNRO,

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Dated: November 16, 2026

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2026 a true and correct copy of the foregoing document was sent by electronic mail to Kathleen McKay, Esq. and Stacey Klein Verde, Esq., counsel for Defendants Town of Plymouth and Derek Brindisi.

/s/ Daniel S. Guenther

Daniel S. Guenther