| 24-01 | 388639-CÚ-NP-WJĊ - ŔOA # 2 - DAVID H. YAMASA  | nty of Orange, 03/22/2024 02:34:30 PM.<br>KI, Clerk of the Court By G. Galon, Deputy Cle |
|-------|---|--|
| 1     | JEFF H. GRANT (SBN 218974)  |  |
| 2     | jgrant@foxrothschild.com<br>MATTHEW FOLLETT (SBN 325481)                              |  |
|       | mfollett@foxrothschild.com  |  |
| 3     | FOX ROTHSCHILD LLP<br>Constellation Place   |  |
| 4     | 10250 Constellation Boulevard, Suite 900  |  |
| 5     | Los Angeles, CA 90067<br>Telephone: 310.598.4150                                      |  |
|       | Facsimile: 310.556.9828   |  |
| 6     | BENJAMIN N. PACHITO (SBN 308839)  |  |
| 7     | bpachito@thejacobsonlawgroup.com  |  |
| 8     | JOSEPH F. HALLORAN ( <i>Pro Hac Vice</i> forthco<br>jhalloran@thejacobsonlawgroup.com | oming)   |
|       | JAMES K. NICHOLS (Pro Hac Vice forthcomi  | ng)  |
| 9     | jnichols@thejacobsonlawgroup.com<br>JACOBSON, MAGNUSON, ANDERSON &                    |  |
| 10    | HALLORAN P.C.   |  |
| 11    | 180 E Fifth St. Ste. 940<br>Saint Paul, MN 55101                                      |  |
| 12    | Telephone: 651-644-4710<br>Facsimile: 651-644-5904                                    |  |
|       | Pacsinine. 051-044-5904   |  |
| 13    | Attorneys for Plaintiff   |  |
| 14    | MIAMI TRIBE OF OKLAHOMA   |  |
| 15    |   |  |
| 16    | SUPERIOR COURT OF TH  | IE STATE OF CALIFORNIA   |
| 17    | COUNTY OF ORANGE  |  |
| 18    | MIAMI TRIBE OF OKLAHOMA,  | Case No. 30-2024-01388639-CU-NP-W  |
| 19    | Plaintiff,  | COMPLAINT FOR CONVERSION   |
| 20    | v.  | CONSTRUCTIVE TRUST, AND<br>INJUNCTIVE RELIEF   |
| 21    | STACK'S-BOWERS NUMISMATICS,   |  |
| 22    | D/B/A/ STACK'S BOWERS GALLERIES,<br>AND DOES 1-10, INCLUSIVE,                         | Assigned for All Purposes  |
| 23    | Defendants.   | Judge Sheila Recio   |
| 24    |   |  |
| 25    |   |  |
| 26    |   |  |
| 27    |   |  |
| 28    |   |  |
| 20    |   | 1  |
|       |   | 1  |

2 3

4

5

6

8

1

Plaintiff, Miami Tribe of Oklahoma, by and through its attorneys, alleges the following as its cause of action against the Defendants STACK'S-BOWERS NUMISMATICS, d/b/a/STACK'S BOWERS GALLERIES, and DOES 1-10, INCLUSIVE, herein named:

**INTRODUCTION** 

This emergency action seeks to enjoin the Defendant, Stack's Bowers Numismatics, LLC d/b/a Stack's Bowers Galleries ("Stack's Bowers"), from auctioning the 1795 Peace Medal, 7 presented to Miami Chief Little Turtle at the Treaty of Greenville ("Miami Peace Medal")—an object of historic, cultural, and political importance belonging to the Plaintiff. It further seeks to 9 enjoin anyone, other than Miami Tribe of Oklahoma, from taking possession of it from Stack's 10 Bowers.

11 The Miami Peace Medal was wrongfully converted to private possession over 200 years 12 ago and has since been lost to the Miami Tribe, passing between private hands without legitimate 13 title. Plaintiff was very recently alerted to the location of the Miami Peace Medal and of Stack's 14 Bowers' intent to offer it at auction, despite Stack's Bowers' knowledge of the Miami Peace 15 Medal's political, historical, and cultural significance as a gift to the Miami Tribe from the United 16 States government. To recover its rightful possession of its Miami Peace Medal, Plaintiff seeks 17 relief by which the Plaintiff alleges a claim of conversion and constructive trust against Stack's 18 Bowers and Does 1-10, and seeks (1) an order enjoining Stack's Bowers from taking any action to 19 offer for sale, auction, sell, or convey the Miami Peace Medal; (2) an order enjoining Does 1-10 20 from taking possession of the Miami Peace Medal from Stack's Bowers; (3) the creation of a 21 constructive trust for the Miami Peace Medal pending the resolution of this matter, (4) declaratory 22 judgement finding the Miami Tribe owns the Miami Peace Medal, and (5) an order providing 23 injunctive relief consistent with a necessary to implement the Court's determination of the merits 24 of the Miami Tribe's claims.

25

## JURISDICTION AND VENUE

26 7. Jurisdiction in this Court is proper pursuant to Cal. Civ. Proc. Code § 410.10 because 27 it has general subject matter jurisdiction and no statutory exceptions to jurisdiction exist. The 28 amount in controversy exceeds the jurisdictional minimum of this Court.

| 1  | 8. This action is brought by the Miami Tribe of Oklahoma, a federally recognized                     |  |  |
|----|--|--|--|
| 2  | Indian tribe, for emergency injunctive relief under Cal. Civ. Proc. Code § 527 from the conversion   |  |  |
| 3  | and continued dispossession of the Miami Peace Medal from the Miami Tribe of Oklahoma.               |  |  |
| 4  | 9. The matter in controversy arises under the laws and jurisdiction of the State of                  |  |  |
| 5  | California.  |  |  |
| 6  | 10. Venue is proper in this Court pursuant to Cal. Civ. Proc. Code § 395 because Stack's             |  |  |
| 7  | Bowers Galleries has its headquarters and principal place of business in Costa Mesa, California,     |  |  |
| 8  | and Stack's Bowers has publicized its intent to auction the Miami Peace Medal from its               |  |  |
| 9  | headquarters.  |  |  |
| 10 | PARTIES  |  |  |
| 11 | 11. Plaintiff Miami Tribe of Oklahoma ("Miami Tribe") is a federally recognized Indian               |  |  |
| 12 | tribe that has maintained a sovereign government to government relationship with the United States   |  |  |
| 13 | of America for more than 350 years. The Miami Tribe appears on the Federal List Act of "Indian       |  |  |
| 14 | Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian         |  |  |
| 15 | Affairs" published pursuant to Section 104 of the Act of November 2, 1994, PL 103-454, 108 Stat.     |  |  |
| 16 | 4791, 4792.  |  |  |
| 17 | 12. Defendant Stack's-Bowers Numismatics, LLC d/b/a Stack's Bowers Galleries                         |  |  |
| 18 | ("Stack's Bowers") has been conducting auctions and dealing in rare U.S., world, and Ancient         |  |  |
| 19 | Coins since 1933.  |  |  |
| 20 | 13. The true names of Defendants, Does 1 - 10, inclusive, are currently unknown to                   |  |  |
| 21 | Miami Tribe, who sues those defendants by such fictitious names pursuant Code of Civil Procedure     |  |  |
| 22 | section 474. Each of the defendants designated as a Doe defendant is alleged to be legally           |  |  |
| 23 | responsible for the damages the Miami Tribe alleges herein. When the true names, involvement,        |  |  |
| 24 | and capacities of Does 1 - 10, inclusive, are ascertained, Miami Tribe will seek leave to amend this |  |  |
| 25 | Complaint accordingly.   |  |  |
| 26 | 14. At all times relevant times each Defendant, whether fictitiously named or otherwise,             |  |  |
| 27 | was the agent, servant, or employee of the others, and was acting within the scope of such agency,   |  |  |
| 28 | enterprise, relationship, services, or employment.   |  |  |
|    | 3  |  |  |
|    | COMPLAINT FOR CONVERSION, CONSTRUCTIVE TRUST, AND INJUNCTIVE RELIEF                                  |  |  |

| 1  | FACTUAL BASIS FOR CLAIMS   |  |
|----|--|--|
| 2  | I. Historical Context  |  |
| 3  | 9. The Miami Tribe is a federally recognized Indian tribe that has had sovereign to                  |  |
| 4  | sovereign engagements with the United States for over 350 years involving military engagements,      |  |
| 5  | multiple treaties between 1795 and 1867, a military alliance fighting against the British in the War |  |
| 6  | of 1812, and an intergovernmental relationship continuing to the present time.                       |  |
| 7  | 10. The Miami Tribe's original homeland was in the Wabash watershed, which spanned                   |  |
| 8  | parts of modern-day Ohio, Indiana, and Illinois. The Tribe was subjected to two forced removals,     |  |
| 9  | first from their homeland to the Kansas Territory in 1846, and then, twenty years later, from the    |  |
| 10 | Kansas Territory to the then Indian Territory.   |  |
| 11 | 11. The Miami Tribe today occupies and exercises sovereign governmental authority                    |  |
| 12 | over its Reservation in the former Indian Territory, now northeastern Oklahoma.                      |  |
| 13 | 12. Prior to the forced removal of the Miami Tribe from their homelands, the Miami                   |  |
| 14 | Tribe engaged in periods of war and negotiation with the United States that lasted from 1785 to      |  |
| 15 | 1795. These wars have been referred to as the Northwest Indian Wars, the Wabash Wars, and the        |  |
| 16 | Little Turtle Wars.  |  |
| 17 | 13. During that time, the War Chief of the Tribe was Mihšihkinaahkwa, known in                       |  |
| 18 | English as Little Turtle.  |  |
| 19 | 14. Chief Little Turtle was one of the principal leaders in the war effort between 1785              |  |
| 20 | and 1794, with victories over Generals Harmar and St. Clair and losses at the Battle of Fort         |  |
| 21 | Recovery and finally at the Battle of Fallen Timbers in 1794.  |  |
| 22 | 15. Following the loss at Fallen Timbers, Chief Little Turtle was a lead negotiator and              |  |
| 23 | prominent speaker during the treaty negotiations that led to the Treaty of August 3, 1795, known     |  |
| 24 | commonly as the Treaty of Greenville ("Treaty").   |  |
| 25 | 16. On August 7th, 1795, at the conclusion of the negotiations for the Treaty, General               |  |
| 26 | Wayne addressed the crowd that had gathered for the signing and distributed the medals to each       |  |
| 27 | signatory, stating that the medals would be "hand[ed] down to your children's children in            |  |
| 28 | commemoration of this day-a day in which the United States of America gives peace to you and all     |  |
|    | 4  |  |
|    | COMPLAINT FOR CONVERSION, CONSTRUCTIVE TRUST, AND INJUNCTIVE RELIEF 156648485.1                      |  |

- your nations, and receives you and them under the protecting wings of the eagle." (Francis Paul
   Prucha, *Indian Peace Medals in American History*, 9 (1994).)
- The Washington medals distributed at the Treaty signing were the sole signifier of
  the bonds of peace and friendship solidified at Greenville.
- 5 18. The distribution of medals at Greenville also continued the long tradition,
  6 established by British and French colonists, of using medals in Indian diplomacy.
- 7 19. Chief Little Turtle was presented with the peace medal that was given to the Miami
  8 Tribe by the United States.
- 9

10

11

II.

## Obligation to Hold the Miami Peace Medal in Trust for the Miami Tribe

20. Among the Miami, objects and documents of importance to the Tribe were kept by the leaders of the Tribe, who acted as their guardians but, importantly, did not own them.

12 21. As the War Chief, Little Turtle received correspondence and objects on behalf of 13 the Miami Tribe including, but not limited to, Wampum, treaty documents, and gifts honoring the 14 Miami Tribe. The Miami Peace Medal was given to the Miami Tribe to honor the Tribe, and Chief 15 Little Turtle was responsible for maintaining and protecting it, and other gifts like it, for the Tribe. 16 22. Objects and items of the Miami Tribe held by a Miami War Chief, such as Chief 17 Little Turtle, were not the personal possessions of the Chief. Rather, as Chief Little Turtle would 18 have well understood, the Chief was the custodian and protector—a trustee in the Anglo-American 19 construct—of the objects and items. As trustees, they would have passed items belonging to the 20 Miami Tribe, such as the Miami Peace Medal, to the next generation of leaders to be held in 21 precisely the same way.

22 23

23. A loss of such an object or its transfer to anyone other than the next Chief would have been viewed as a breach of the Chief's duty and obligations to the Miami people.

24 24. Chief Little Turtle died in 1812, and the Miami Peace Medal was not buried with
25 him. Its absence among his grave-goods is notable because he had been buried with other gifts
26 given to him as personal gifts, including a sword presented to him as a personal gift from President
27 George Washington.

28

| .  |  |  |
|----|--|--|
| 1  | 25. It was customary among the Miami to be buried with personal belongings so that                   |  |
| 2  | they could be carried with the interred on their spiritual journey.                                  |  |
| 3  | 26. Chief Little Turtle would have understood the Miami Peace Medal was not his to                   |  |
| 4  | take on his journey but was to be passed on into the care of his successors.                         |  |
| 5  | 27. In 1826, the Miami Peace Medal was transferred to "Judge Allen of Wabash,                        |  |
| 6  | Indiana" for unknown reasons.  |  |
| 7  | 28. While it is not clear who transferred the Miami Peace Medal, it would have been                  |  |
| 8  | one of Chief Little Turtle's descendants who had access to his possessions, including the objects    |  |
| 9  | and items that he had held for the Miami as the Tribe's War Chief.                                   |  |
| 10 | 29. Whoever transferred the Miami Peace Medal, and for whatever reason, breached the                 |  |
| 11 | obligation of the custodian of the Miami Peace Medal to protect it and pass it on to Chief Little    |  |
| 12 | Turtle's successor as War Chief.   |  |
| 13 | 30. No individual within the Miami Tribe had the authority or capacity to lawfully                   |  |
| 14 | convey the Miami Peace Medal to Judge Allen.   |  |
| 15 | III. Private Possession of the Miami Peace Medal and Current Auction                                 |  |
| 16 | 31. After passing out the Miami Tribe's possession, the Miami Peace Medal spent                      |  |
| 17 | almost two hundred years in private hands, being sold and acquired in private sales.                 |  |
| 18 | 32. The only time the Miami Peace Medal was presented in the public sphere was from                  |  |
| 19 | 1960-1983, when it was on loan from R. Henry Norweb to the Western Reserve Historical Society        |  |
| 20 | of Cleveland, Ohio.  |  |
| 21 | 33. The Miami Peace Medal was correctly identified by the Western Reserve Historical                 |  |
| 22 | Society as having belonged to Chief Little Turtle of the Miami Tribe.                                |  |
| 23 | 34. In 1988, the Miami Peace Medal was auctioned by Stack's Bowers, then Bowers                      |  |
| 24 | and Merena, and sold to Albert Holden Norweb.  |  |
| 25 | 35. Every transaction that occurred between 1826 and 1988 was a private transaction                  |  |
| 26 | that, by design, was not public and involved no public notice. These transactions occurred at a time |  |
| 27 | where the worldwide reach provided by the internet did not exist. Unless one was engaged with a      |  |
| 28 | small community of traders, they would have no reason or means to know of these transactions.        |  |
|    | 6  |  |
|    | COMPLAINT FOR CONVERSION, CONSTRUCTIVE TRUST, AND INJUNCTIVE RELIEF                                  |  |

| 1        | 36. Stack's   | Bowers' announcement of the upcoming sale of the Ronald A. Slovick                                |  |  |  |
|----------|---|---|--|--|--|
| 2        | Family Collection of I  | ndian Peace Medals highlights the Miami Peace Medal as "a magnificent                             |  |  |  |
| 3        | second size 1795 oval   | George Washington medal presented at the Treaty of Greenville." <sup>1</sup>                      |  |  |  |
| 4        | 37. The Dire  | ector of U.S. Coins for Stack's Bowers displayed the Miami Peace Medal in                         |  |  |  |
| 5        | an Instagram post and   | described it as "a national treasure" on February 19, 2024. <sup>2</sup>                          |  |  |  |
| 6        | 38. Stack's   | Bowers' current description of the Miami Peace Medal in its offering for                          |  |  |  |
| 7        | auction correctly ident   | ifies it as having been presented by the Washington administration to the                         |  |  |  |
| 8        | Miami Tribe.  |   |  |  |  |
| 9        | 39. At no tin   | me during any of the 200 years of private custody of the Miami Peace Medal                        |  |  |  |
| 10       | did any person or entity  | y in possession of it attempt to notify the Miami Tribe.  |  |  |  |
| 11       | 40. Despite   | its knowledge of the origin of the Miami Peace Medal and the circumstances                        |  |  |  |
| 12       | of its presentation and   | gifting to the Miami Tribe, Stack's Bowers did not notify the Tribe of its                        |  |  |  |
| 13       | possession of a Tribal of   | object of cultural and historical significance.   |  |  |  |
| 14       | 41. On Mar  | ch 6, 2024, an expert from a neighboring tribe alerted Miami Tribe officials                      |  |  |  |
| 15       | to the appearance of the  | e Miami Peace Medal in auction offerings by Stack's Bowers.                                       |  |  |  |
| 16       | 42. The Mia   | ami Peace Medal is listed for live auction, Lot #2044, on Stack's Bowers                          |  |  |  |
| 17       | website on March 25, 2  | 2024, at 3 p.m. PDT, with the current bid listed as $160,000.00.^3$                               |  |  |  |
| 18       | 43. On Mar  | ch 19, 2024, the Miami Tribe sent a letter to Stack's Bowers detailing its                        |  |  |  |
| 19       | ownership of the Miam   | ni Peace Medal describing how "excited and grateful" the Miami Tribe was                          |  |  |  |
| 20       | to see its Peace Medal s  | surface again after being lost for nearly 200 years. The Miami Tribe informed                     |  |  |  |
| 21       | Stack's Bowers that th  | e Miami Peace Medal had been passed along between private individuals                             |  |  |  |
| 22       | with defective title. The   | e Miami Tribe requested that Stack's Bowers suspend the auction for the                           |  |  |  |
| 23       |   |   |  |  |  |
| 24       | Peace Medals, STACK'  | ries Announces Sale of the Ronald A. Slovick Family Collection of Indian s BOWERS (Feb. 12, 2024) |  |  |  |
| 25       | https://stacksbowers.com/sbpressreleases/stacks-bowers-galleries-announces-sale-of-the-ronald-a-slovick-family-collection-of-indian-peace-medals.   |   |  |  |  |
| 26       | <sup>2</sup> @stacksbowers, INSTAGRAM (Feb. 19, 2024),<br>https://www.instagram.com/p/C3iUP9IRcez/?hl=en.   |   |  |  |  |
| 27<br>28 | <sup>3</sup> Spring 2024 Auction - Session 2 - Numismatic Americana - Lots 2001-2240, STACK'S BOWERS<br>GALLERIES, https://auctions.stacksbowers.com/auctions/3-18DCD6/spring-2024-auction-session-<br>2-numismatic-americana-lots-2001-2240?limit=36&jump_to_lot=2044 (last visited Mar. 21, |   |  |  |  |
|          | 2024).  | 2024). 7  |  |  |  |
|          | COMPLAINT FOR CONVERSION, CONSTRUCTIVE TRUST, AND INJUNCTIVE RELIEF   |   |  |  |  |

| 1  | Miami Peace Medal so that the Miami Tribe and Stack's Bowers could discuss possible terms for         |  |  |
|----|---|--|--|
| 2  | its return to the Miami Tribe. As of the filing of this Complaint, Stack's Bowers has not responded   |  |  |
| 3  | to the Miami Tribe's request.   |  |  |
| 4  | FIRST CLAIM FOR RELIEF  |  |  |
| 5  | <b>Conversion in Violation of California Common Law</b>   |  |  |
| 6  | (Against All Defendants)  |  |  |
| 7  | 44. The Miami Tribe incorporates and realleges each of the preceding paragraphs and                   |  |  |
| 8  | incorporates them by reference.   |  |  |
| 9  | 45. The Miami Tribe is the rightful owner of the Miami Peace Medal. It was presented                  |  |  |
| 10 | to the Miami Tribe in recognition of actions of the Tribe; it was not owned by or subject to          |  |  |
| 11 | alienation by any individual member of the Miami Tribe, including Chief Little Turtle or any of his   |  |  |
| 12 | descendants.  |  |  |
| 13 | 46. The Miami Peace Medal was to be cared for through the generations by a designated                 |  |  |
| 14 | custodian and protector for the Miami Tribe.  |  |  |
| 15 | 47. Transfer of the Miami Peace Medal to any person other than the designated                         |  |  |
| 16 | custodian—trustee—for the Miami Tribe constituted a breach of fiduciary duty to the Tribe.            |  |  |
| 17 | 48. Although specific details have been lost to time, it remains that whoever transferred             |  |  |
| 18 | the Miami Peace Medal out of the possession of the Miami Tribe, and for whatever reason, breached     |  |  |
| 19 | the obligation of the custodian of the Miami Peace Medal to protect it and pass it on to Chief Little |  |  |
| 20 | Turtle's successors as war chief.   |  |  |
| 21 | 49. Possession and purported ownership by private individuals and entities                            |  |  |
| 22 | demonstrates that conversion of the Miami Peace Medal-trust property of the Miami Tribe-              |  |  |
| 23 | occurred as a result of breach of that fiduciary duty, which is "akin to a fraudulent concealment."   |  |  |
| 24 | (Stasberg v. Odyssey Group, Inc., 51 Cal. App. 4th 906, 917 (Cal. Ct. App. 1996) (quotations          |  |  |
| 25 | omitted).)  |  |  |
| 26 | 50. Despite Stack's Bowers' published knowledge of the history and circumstances of                   |  |  |
| 27 | the gifting of the Miami Peace Medal to the Miami Tribe from the United States government,            |  |  |
| 28 | Stack's Bowers did not notify or consult with the Tribe about the Miami Peace Medal; rather,<br>8     |  |  |
|    | COMPLAINT FOR CONVERSION, CONSTRUCTIVE TRUST, AND INJUNCTIVE RELIEF                                   |  |  |

Stack's Bowers proceeded to exploit the historical and cultural significance of the Miami Peace Medal for its own gain and offered it up for auction with early bids of \$160,000.00.

51. Through no fault of its own, the Miami Tribe had no actual or presumptive 4 knowledge of where its Miami Peace Medal was because (1) from the time of its wrongful 5 conveyance into private hands, none of those in private possession of it notified the Tribe, and (2) 6 the Miami Tribe had no reasonable way of accessing information about the transfer of the Miami 7 Peace Medal through private sales occurring throughout the country from the late 1800s to the present.

9 52. Stack's Bowers' exercise of control over and attempted sale of the Miami Peace 10 Medal is inconsistent with the Miami Tribe's property rights because the Miami Peace Medal was 11 to be cared for in trust for the Tribe through the generations and was wrongfully converted into 12 private possession through a breach of fiduciary duty to the Miami Tribe.

13 53. Stack's Bowers has no lawful claim to the Miami Peace Medal against the Miami 14 Tribe because Stack's Bowers and each private possessor before it received possession of the 15 Miami Peace Medal from "one who had no legal title and therefore no right to transfer the items." 16 (Strasberg, 51 Cal. App. 4th at 919 [(ordering an auction house to return items to the rightful 17 beneficiary 34 years and several possessors after the fraudulent concealment and wrongful 18 conveyance occurred])).

19 54. Stack's Bowers' impending sale of the Miami Peace Medal will cause irreparable 20 injury and interim harm to the Miami Tribe by allowing this object of significant cultural, historical, 21 and political meaning to once again be lost to private possession and by further depriving the Miami 22 Tribe of its rights of ownership, possession, and care of the Miami Peace Medal.

23

1

2

3

8

55. Stack's Bowers and Does 1-10 are strictly liable for the Miami Tribe's conversion 24 claim, which "rests neither in the knowledge nor the intent of the defendant," but instead in the 25 breach of an "absolute duty." (Regent All. Ltd. v. Rabizadeh, 231 Cal. App. 4th 1177, 1181 (Cal. 26 Ct. App. 2014) [affirming and applying strict liability even when there were successive 27 "converters"]).

28

| 1  | 56. The Miami Tribe's conversion claim accrued on March 6, 2024, because that is                      |
|----|---|
| 2  | when the Miami Tribe discovered for the first time where its Miami Peace Medal was, and who           |
| 3  | was in possession of it, following its conversion to private possession. (See Strasberg, 51 Cal. App. |
| 4  | 4th at 916.)  |
| 5  | SECOND CLAIM FOR RELIEF   |
| 6  | Constructive Trust  |
| 7  | (Against All Defendants)  |
| 8  | 57. The Miami Tribe incorporates and realleges each of the preceding paragraphs and                   |
| 9  | incorporates them by reference.   |
| 10 | 58. Stack's Bowers is an involuntary trustee of the Miami Peace Medal because it                      |
| 11 | gained it through conversion to private possession from lawful ownership in trust by the Miami        |
| 12 | Tribe. (Cal. Civ. Code § 2224; Optional Capital, Inc., v. DAS Corp., 222 Cal. App. 4th 1388, 1402     |
| 13 | (Cal. Ct. App. 2014).) For the same reason, Does 1-10 will also be involuntary trustees if they take  |
| 14 | possession of the Miami Peace Medal after its auction.  |
| 15 | 59. Stack's Bowers and Does 1-10 would be unjustly enriched by the proceeds and                       |
| 16 | possession of any auction of the Miami Peace Medal because they would be wrongfully holding           |
| 17 | the Miami Peace Medal from its rightful owner-the Miami Tribe. (See Meister v. Mensinger, 230         |
| 18 | Cal. App. 4th 381, 399 (Cal. Ct. App. 2014) [noting that constructive trust can be used to prevent    |
| 19 | unjust enrichment].)  |
| 20 | THIRD CLAIM FOR RELIEF  |
| 21 | Preliminary Injunction and Temporary Restraining Order  |
| 22 | (Against All Defendants)  |
| 23 | 60. The Miami Tribe incorporates and realleges each of the preceding paragraphs and                   |
| 24 | incorporates them by reference.   |
| 25 | 61. The Miami Tribe is likely to succeed on the merits at trial because it can produce                |
| 26 | strong evidence to demonstrate that the Miami Peace Medal was to be held in trust for the Miami       |
| 27 | Tribe by a designated trustee through the generations.  |
| 28 |   |
|    | 10<br>COMPLAINT FOR CONVERSION, CONSTRUCTIVE TRUST, AND INJUNCTIVE RELIEF                             |
|    |   |

62. The conveyance of the Miami Peace Medal to private possession by an individual without authority was a breach of fiduciary duty and constituted fraudulent concealment.

G3. If Stack's Bowers is not enjoined from selling the Miami Peace Medal, and Does 110 are not enjoined from taking possession of it, the Miami Tribe will suffer irreparable injury
because it will be further deprived of its right to ownership and possession of an invaluable object
of cultural, historical, and political significance.

64. Enjoining Stack's Bowers from selling the Miami Peace Medal at auction, and
enjoining Does 1-10 from taking possession of it, will not harm either because they never had the
right to obtain proceeds from the sale of converted goods or the goods themselves.

10 65. The Miami Tribe seeks to "preserve the status quo" to allow the parties the
11 opportunity to negotiate an equitable solution before the Miami Peace Medal is sold and disappears
12 again into wrongful private possession for an untold number of years. (*See Law School Admission*13 *Council, Inc. v. State of California* 222 Cal. App. 4th 1265, 1280 (Cal. Ct. App. 2014) (quotations
14 omitted).)

## **PRAYER FOR RELIEF**

Based on the allegations above, the Miami Tribe prays that the Court enter an Order as follows:

Enjoining Stack's Bowers from taking any action to offer for sale, auction, or other
 conveyance the Miami Peace Medal to any party other than the Miami Tribe;

21 2. If a sale or auction occurs, enjoining Does 1-10 from taking possession of the Miami Peace Medal;

Creating a constructive trust for the Miami Peace Medal pending the resolution of
 this matter;

4. Exercising continuing jurisdiction to ensure compliance with the Court's Order for
 as long as the Court deems appropriate;

5. Declaring that the Miami Peace Medal belongs to the Miami Tribe;

27 28

15

16

1

2

COMPLAINT FOR CONVERSION, CONSTRUCTIVE TRUST, AND INJUNCTIVE RELIEF 156648485.1

| 1        | 6.                 | Ordering injunctive relief necessary to implement the Court's determination of                               | the |
|----------|--------------------|--|-----|
| 2        | merits of the      | Miami Tribe's claims;  |     |
| 3        | 7.                 | Awarding the Miami Tribe its reasonable attorneys' fees and costs incurred                                   | to  |
| 4        | protect its rig    | tt to ownership and possession of the Miami Peace Medal; and   |     |
| 5        | 8.                 | Providing such other relief as this Court determines is appropriate.   |     |
| 6        | Data di Maria      |  |     |
| 7        | Dated: Marc        | h 22, 2024 FOX ROTHCHILD LLP   |     |
| 8        |                    | /a/ Iaff II Current  |     |
| 9        |                    | <u>/s/ Jeff H. Grant</u><br>Jeff H. Grant  |     |
| 10       |                    | Matthew Follett  |     |
| 11       |                    | Attorneys for Plaintiff<br>MIAMI TRIBE OF OKLAHOMA   |     |
| 12       |                    | and  |     |
| 13<br>14 |                    | JACOBSON, MAGNUSON, ANDERSON & HALLORAN P.C.   |     |
| 15       |                    | Benjamin N. Pachito  |     |
| 16       |                    | Joseph F. Halloran ( <i>Pro Hac Vice</i> forthcoming)<br>James K. Nichols ( <i>Pro Hac Vice</i> forthcoming) |     |
| 17       |                    | Attorneys for Plaintiff  |     |
| 18       |                    | MIAMI TRIBE OF OKLAHOMA  |     |
| 19       |                    |  |     |
| 20       |                    |  |     |
| 21       |                    |  |     |
| 22       |                    |  |     |
| 23       |                    |  |     |
| 24       |                    |  |     |
| 25       |                    |  |     |
| 26       |                    |  |     |
| 27       |                    |  |     |
| 28       |                    |  |     |
|          |                    | 12   |     |
|          | COF<br>156648485.1 | IPLAINT FOR CONVERSION, CONSTRUCTIVE TRUST, AND INJUNCTIVE RELIEF  |     |