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UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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THOMAS TAMUASI, PHILLIP MIRIORI,)
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ALOYSIUS MOSES, RAPHEAL NINIKU,)
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WUIS, MICHAEL AKOPE, BENEDICT PISI,)
THOMAS KOBUKO, JOHN TAMUASI,)
NORMAN MOUVO, JOHN OSANI, BEN)
KORUS, NAMIRA KAWONA, JOANNE)
BOSCO, JOHN PIGOLO and MAGDALENE)
PIGOLO, individually and on behalf of)
themselves and all others similarly situated,)

Plaintiffs,)

v.)

RIO TINTO, plc and RIO TINTO LIMITED,)
Defendants.)

No.

CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE ALIEN TORT
CLAIMS ACT [28 U.S.C. § 1350]

DEMAND FOR JURY TRIAL

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1 I. INTRODUCTION

2 Plaintiffs, by counsel, for their Class Action Complaint for Violations of the Alien Tort
3 Claims Act (“Complaint”) against defendants, hereby allege as follows:

4 1. The Rio Tinto Group (“Rio”) is an international mining group with headquarters in
5 London. Rio operates mines throughout the world and has a long history of exploration and
6 mining in pristine and remote areas of the world and, in the process, destroying the environment,
7 local culture and the way of life of the native people it displaces.

8 2. Papua New Guinea, a small jewel of an island in the South Pacific, is both remote
9 and rich in mineral resources, including gold and copper deposits. The book, Cousteau’s Papua
10 New Guinea Journey,¹ described Papua New Guinea and its satellite islands, including the Island of
11 Bougainville, as follows:

12 The past half century has brought slow but inevitable change, yet
13 throughout the main island and among the confetti of six hundred
14 smaller islands off its shores, great pockets of antiquity endure.
15 There are people who have had only the vaguest contact with the
16 modern world. There are tracts of rain forest still unsurveyed by
17 terrestrial biologists, and seas that remain largely unknown to marine
18 science. Moreover, these natural habitats are thought to be among
19 the richest and most diverse remaining on the planet.

20 3. Into this tranquil and pristine environment entered Rio, seeking to exploit the area’s
21 resources, and to do so in blatant disregard for the people and the environment. As to the people,
22 as has been the case throughout the world, Rio considered the native people to be inferior in every
23 respect: socially, economically, politically and racially.

24 4. One of the resources identified by Rio for extraction was a copper deposit on
25 Bougainville, in the village of Panguna. To construct the mine, which required the displacement of
26 villages and the destruction of massive portions of rain forest and the environment, Rio needed the
27 cooperation of the government of Papua New Guinea (“PNG”). Rio secured PNG’s cooperation by
28 agreeing to give the PNG government 19 percent of the mine’s profits. This would become a
major source of income for PNG and provided the incentive for the PNG government to overlook
any environmental damage or other atrocities Rio committed. The financial stake of the PNG

¹ *Cousteau’s Papua New Guinea Journey* (1989).

1 government effectively turned the copper mine into a joint venture between PNG and Rio and
2 allowed Rio to operate under color of state law.

3 5. The mine was built on land owned by indigenous people on the island of
4 Bougainville, a relatively undeveloped island in the South Pacific, where land is of extreme
5 importance to the culture of the people and their way of life. Up until the commencement of mine
6 construction and operation, many people on the island relied on the land and the flora and fauna as
7 a source of food and culture. Much of the land on the island was owned pursuant to a matrilineal
8 system that was a central feature of the islands' culture, heritage and family structure.

9 6. Famed oceanographer Jean Michael Cousteau, who observed the mine in 1988,
10 sought to describe its size:

11 Arriving at the Panguna mine, named for the porphyry copper
12 deposit it exploits, the team is astonished by the scope of the
13 operation. Surrounded by dense rain forest and tropical stillness lies
14 one of the world's largest man-made holes in the ground. When the
15 ore is completely extracted, the pit will measure nearly 8,000 feet
16 across and around 1,200 feet deep. It would take two Golden Gate
17 Bridges to span the hole, and if the Empire State Building were set at
18 the bottom, only the antenna on top would rise above the rim of the
19 mine.

20 The Panguna copper deposit was discovered in 1964. Though it
21 amounts to a vast treasury of copper, and smaller amounts of gold
22 and silver as well, the ore is extremely low grade. The copper
23 content of the rocks excavated is only one part in 200. Thus, to make
24 the mine profitable, it must turn out a tremendous volume. That
25 requires an operation using immense equipment and 4,000 people
26 working in three eight-hour shifts seven days a week. The result is a
27 production of some 130,000 tons a day for processing to copper
28 concentrate. The bulk of this material is shipped to Japan, West
Germany, and Spain.²

7. Mine operations started in 1972 and by 1983, the mine was one of the world's
largest copper mines and an enormous source of profit for Rio, as well as for the PNG government.
This profit came at the expense of the people of Bougainville. As it has in dozens of unspoiled
areas around the world, Rio developed and operated the mine in wanton disregard for the
environment and with disdain toward the health and culture of those living there. No
environmental or cultural assessment was undertaken and no environmental precautions were

² *Id.*

1 followed. Promises made by Rio Tinto concerning efforts that would be made to protect the
2 environment were broken.

3 8. To build the mine, Rio chemically defoliated, bulldozed and sluiced off an entire
4 mountainside of rain forest. During the years of the mine's operations, billions of tons of toxic
5 mine waste was generated and dumped onto the land and into pristine waters, filling major rivers
6 with tailings, polluting a major bay dozens of miles away, and the Pacific Ocean as well. As a
7 result of its flagrant disregard for the environment and the people of Bougainville, Rio
8 dispossessed the people of Bougainville from their land, destroyed their culture and polluted their
9 environment and lifestyle. Rio destroyed previously pristine rivers and land that provided
10 substance and a way of life for the native people and went to the heart of their local culture. The
11 pollution is so extensive that plaintiffs and members of the class have been improperly exposed to
12 toxic chemicals. In certain villages, the chemicals still remaining have caused the death and/or
13 illness of residents.

14 9. One author described Rio's actions on Bougainville as follows: "Rio Tinto Zinc has
15 more to answer for in this tiny corner of the globe than any other. The day was certainly cursed
16 when [it] discovered copper deposits on Bougainville." A local scientist called the mine "an
17 economic godsend and an environmental disaster." A miner working on the project, commenting
18 on the impact on the local people, stated "It's f__ked them." In 1988, the PNG Environmental
19 Minister found the pollution "dreadful and unbelievable" and noted that the Jaba River was "full of
20 all kinds of chemicals and wastes" and that the people had to abandon traditional fishing.

21 10. Rio's destruction of the forests, fauna, and the river system was so pervasive that it
22 impaired the rights of plaintiffs and the members of the Class to health and life and is, therefore, in
23 blatant and wanton disregard of customary international law.

24 11. Rio's treatment of the Bougainville people and the environment was part of a
25 pattern of behavior it has perpetrated throughout the world where it has regarded the indigenous
26 people who live in the areas in which it is exploiting natural resources as racially inferior and
27 expendable.

1 12. Rio's actions on Bougainville were so egregious that they sparked an uprising
2 designed to close the mine. When the uprising succeeded, Rio and the PNG government brought
3 troops in to reopen the mine. Rio provided transport for these troops. After initial unsuccessful
4 efforts, the PNG government, as the agent of or co-venturer of Rio and with the support and
5 encouragement of Rio, instituted a military blockade of the island that lasted for almost ten years.
6 The purpose of the military blockade was to coerce the Bougainville people into surrender so that
7 the mine could be reopened. Both Rio and PNG made enormous profits from the mine and were
8 anxious for it to operate, notwithstanding the resistance of the island's people. The blockade
9 prevented medicine, clothing and other essential items from reaching the people of Bougainville.
10 Hospitals were forced to close, women died needlessly in childbirth and young children died from
11 easily preventable diseases. Rio's top manager on the Bougainville encouraged continuation of the
12 blockade for the purpose of "starving the bastards" out. This blockade directly caused the deaths
13 of at least 10,000 people between 1990 and 1997. According to the Red Cross, the blockade killed
14 more than 2,000 children in just its first two years of operation. By the time the war ended in 1999,
15 10% of the population of Bougainville, approximately 15,000 civilians, were killed.

16 13. Rio's conduct, as detailed in this Complaint, violated customary international law,
17 including prohibitions against destruction of the right to life and health, and prohibitions against
18 racial discrimination, and war crimes. Rio's conduct violated the settled standards for the
19 protection of human rights and the environment recognized by customary international law and
20 United States legal precedent. The plaintiffs seek redress under the federal Alien Tort Claims Act
21 (28 U.S.C. § 1350).

22 14. By this Complaint, plaintiffs seek to recover compensatory, punitive and treble
23 damages for the harm they have suffered. In addition, they seek injunctive and declaratory relief
24 on behalf of themselves, including disgorgement of all profits, restitution and other appropriate
25 relief, on behalf of themselves and the members of the Class.
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1 **II. THE PARTIES**

2 **Plaintiffs**

3 15. Plaintiff Thomas Tamuasi is a resident of Bougainville. He is a chief and
4 landowner at Pakla village and a major stakeholder of the land which was mined out. In the earlier
5 stages of Rio Tinto’s operations in Bougainville in 1964, he and the people of his village fought
6 against the intrusion of Rio onto their land. Because of their resistance, he and his fellow villagers
7 were taken to Kieta prison and jailed for about one month. Mr. Tamuasi summarizes, for the
8 purpose of this Complaint, the subsequent destruction of his culture and life as follows:

9 In 1968, CRA (“Rio”) used aerial chemical spraying from helicopter
10 to kill trees and plants ready for mining. Everything in and around
11 the Panguna area died. Food production was either poisoned or
12 disrupted. Like other areas affected by the mine, normal village life
13 was either disturbed or destroyed and our sacred sites were also
14 destroyed. We have yet to come to terms with the enormity of the
15 destruction caused as a direct result of the mine’s operations.

16 16. Plaintiff Gregory Kopa is a resident of Moroni Village, Bougainville. He is the
17 paramount chief of Moroni village which was located right in the heart of what is now the Panguna
18 mine. In connection with this Complaint, he summarizes some of the destruction of his people’s
19 life and culture as follows:

20 Despite our people’s resistance, land for the mine was forcefully
21 taken from our people. My mother was at the forefront of the fight
22 against bulldozers and other heavy machinery used to force our
23 people off the land.

24 Where our village was is now a big hole. We have lost our land, the
25 environment is destroyed, fishing rivers contaminated and destroyed,
26 sacred grounds destroyed and normal village life disturbed and
27 destroyed through relocation. Relocation was done against our
28 wishes to places unsuitable for farming, etc.

A number of people in my village have died of unknown diseases.
During the blockade many people including babies died of
preventable diseases including malaria, diarrhea, etc.

17. Plaintiff Methodius Nesiko is a resident of Bougainville. At the age of 16 he was
featured in the film “My Valley is Changing,” promoted by Rio. In hindsight, he now considers his
involvement with the production of this film to be morally wrong because it promoted the
destruction of his land, environment, culture, sacred sites and traditional way of life. He was not

1 made aware or ever told the truth by Rio's officials about the consequences of the mining in his
2 homeland. His family, especially his sister, together with the community of Moroni fought against
3 the company surveyors. His sister went to the extent of placing her own daughter on the ground in
4 front of the surveyors and told them to kill her before they could cut down one tree. In his view,
5 she later died of a broken heart through loss of the battle and witnessing the destruction of the land.

6 18. Plaintiff Aloysius Moses is a resident of Rorovana, Bougainville and a landowner.
7 He and the people of his village resisted efforts by Rio to build facilities at Loloho. After months
8 of confrontation he and his people were forcibly removed from the area by PNG police, acting in
9 concert with Rio. Rio has left in his village and others containers full of toxic chemicals that are
10 leaking and polluting the environment. The smell from these chemicals is noxious. The
11 surrounding sea is heavily polluted and many in the village are dying from new and previously
12 unknown diseases.

13 19. Plaintiff Raphael Niniku resided on Bougainville. He is the paramount chief of
14 Arawa village and a former public servant, employed first as provincial aid post supervisor and
15 later as Provincial Government Parliament Speaker. As a result of Rio's conduct he experienced or
16 observed the following: The loss of productive trees and crops through the operation of the
17 Panguna mine; dust from the gravel road, built during the construction phase of the mine, which
18 ran past Arawa village and resulted in high incidences of respiratory infections and diseases;
19 effluent from the Arawa township (mining town) sewerage discharged into the sea resulting in the
20 contamination of fish; and destruction and degrading of ancestral sacred sites (Siokate, Aneva and
21 Bokodadong). Further, despite resistance, land for the mining port of Loloho was forcefully taken,
22 with the help of the Papua New Guinea police force.

23 20. Plaintiff Phillip Miriori is a resident of Bougainville. He is a chief and landowner of
24 land that has been destroyed by the mining operations at Panguna. In 1964, at the height of local
25 resistance to Rio's explorations, his sick father was asked to travel to Panguna from Guava to give
26 evidence on land ownership to Rio's representative judge. His father was knocked to the ground
27 by an empty 44-gallon drum hurled at him by the force of an airborne helicopter operated by Rio.
28 He subsequently died in 1968 from injuries sustained during that incident. From 1987 onwards, his

1 sisters, Perpetua Serero and Cecilia Gemel, together with their brother Francis Ona, mobilized their
2 people to stop the destruction of their remaining virgin land by Rio's mining operations.

3 21. At all relevant times, plaintiff Gabriel Tareasi was a resident of Bougainville. He
4 has experienced damage and been injured in his person and property. In addition he has witnessed
5 the destruction or burial of 90 percent of the customary land for the people of Pieurari under the
6 huge dumps of the mine waste. All sacred sites and cemeteries were also destroyed.

7 22. Plaintiff Linus Takinu is a resident of Bougainville. He alleges that he and the
8 people of Dapera Village have lived substandard lives ever since the Panguna mine was
9 established, and that such misery has destroyed their right to a healthful life. He was forced from
10 his village and relocated in the houses built by Rio as part of the relocation program. This housing
11 does not meet the family's basic need because they have no proper shower rooms and toilets and
12 no water supply. The awful smell of the dumps and the chemicals used at the mine is a health
13 hazard to human beings.

14 23. Plaintiff Leo Wuis is a resident of Bougainville. He witnessed chemical pollution
15 causing animals like flying foxes, possums and other animals to die; cocoa trees that stopped
16 producing; and fruit trees that didn't bear fruit at their right seasons. He witnessed innocent people
17 die during the armed conflict, including seven people from Iaun village. Some were dropped into
18 the sea to die from a government helicopter. He witnessed incidents in which Patrick Osima, John
19 Vaerere, John Bontas, John Pipi and many others from the village of Tinputz were shot. In
20 addition to these atrocities, as a result of the military blockade, there was a shortage of medicine in
21 hospitals, and as a result, pregnant mothers died and small children suffered.

22 24. Plaintiff Michael Akope is a resident of Bougainville. As a result of mine
23 construction, he and others members of the Class were forcibly evicted from their land, including
24 those in the villages of Pakia, RoRouana and others.

25 25. Plaintiff Benedict Pisi is a resident of Bougainville. He has witnessed that, as a
26 result of mine operations, there is an increase in cancer of all types on the island, and that
27 discharged cyanide is causing harm to the health of the people.

1 26. Plaintiff Thomas Kobuko is a resident of Bougainville. As a result of defendants'
2 actions, as set forth below in this Complaint, he experienced a destruction of his native culture and
3 right to a healthful life caused by the mine's chemical pollution and its destruction of the rainforest,
4 animals and fish.

5 27. Plaintiff Thomas E. Tapuri is a resident of Payia Village, Central Bougainville. As
6 a result of the unlawful acts described below in this Complaint, his village was burned and
7 destroyed, as was his home, and he was exposed to toxic dust from defendants' mining activities.
8 He has suffered a loss of the use and enjoyment of his culture, his environment and his right to
9 health and life.

10 28. Plaintiff John Tamuasi is a resident of Darenal Village, Central District,
11 Bougainville. Mr. Tamuasi lived and relied upon the Jaba River for food and its use was part of his
12 life. As a result of defendants' unlawful conduct, mine tailings have destroyed his use of the Jaba
13 River and he has been exposed to toxic chemicals, such that his right to life and health has been
14 impaired.

15 29. Plaintiff Norman Mouvo is a resident of Bougainville. Mr. Mouvo worked at the
16 Panguna mine. During the course of his work he observed hazardous wastes discharged directly
17 into the Moroni Creek and then into the Kawerong River, including dissolved copper, at
18 concentration levels toxic to plants and animals. Included in the discharge were heavy metals such
19 as mercury, cadmium, lead, zinc and arsenic. Plaintiff Mouvo has been exposed to cyanide and
20 other chemicals, and has experienced hardship and loss due to the destruction of his environment.

21 30. Plaintiff John Osani is a resident of Bougainville and a representative of the War
22 Crimes Class. His sister, Agnes Tasoro Hop of Lontis Village, Buka, suffered from post operation
23 complications and asthma that needed regular medical attention and hospitalization. During the
24 blockade she was unable to receive the necessary medical attention and her condition worsened;
25 she subsequently died. His daughter, Vivian Tolsa Osani, also of Lontis Village, was injured in a
26 fall in 1990 and was rushed to the health center. There was no doctor available and the nurses did
27 not have the facilities nor the medication to tend to her. She died that same afternoon.

1 31. Plaintiff Ben Korus is a resident of Bougainville and a representative of the War
2 Crimes Class. His father was beaten by the PNG defense force and he died as a result.

3 32. Plaintiff Namira Kawona was a resident of Bougainville and is a representative of
4 the War Crimes Class. His relative was assassinated by PNG armed forces and he witnessed other
5 atrocities.

6 33. Plaintiff Joanne Bosco is a resident of Bougainville and is a representative of the
7 War Crimes Class.

8 34. Plaintiff John Pigolo is a resident of Buka and a representative of the War Crime
9 Class. His uncle died from the lack of medicine that occurred as a result of the blockades.

10 35. Plaintiff Magdalene Pigolo is a resident of Bougainville and a representative of the
11 War Crimes Class. As a result of the lack of medical facilities her sister died in childbirth.

12 36. Each of the plaintiffs experienced injury in the form of a degraded right to life and
13 health arising from Rio's destruction of the environment, culture, sacred/ancestral sites and other
14 acts that destroyed the native way of life.

15 37. Each of the war crimes plaintiffs, as defined below, had a blood relative injured or
16 killed as a result of the military blockade or were subject to their own deprivations as a result of the
17 blockade.

18 **Defendants**

19 38. Rio Tinto, plc is a British and Wales corporation with its principal office located at
20 6 St. James Square, London, England. Rio Tinto Limited is an Australian corporation that has a
21 place of business located in Melbourne, Australia. At all relevant times, defendants Rio Tinto plc
22 and Rio Tinto Limited operated as one business organization that was referred to by defendants
23 both internally and externally as the "Rio Tinto Group," or "Rio."

24 39. The Rio Tinto Group is a leading international mining group, combining Rio Tinto
25 plc and Rio Tinto Limited in a dual listed companies structure, according to the Rio Tinto 1999
26 Annual Report. As of December 31, 1999, the Rio Tinto Group had consolidated operating assets
27 of US\$12.8 billion; 47 percent of its assets were located in North America, while 33 percent were
28

1 located in Australia and New Zealand. The Rio Tinto Group owns and operates its subsidiaries
2 throughout the world through a series of holding companies.

3 40. The corporate history of Rio Tinto is complicated, but necessary to understand for
4 the purpose of this action. The original Rio Tinto was founded in 1873 and took its name from its
5 copper mining operations in the Rio (River) Tinto region of southern Spain. Rio Tinto plc was
6 formed in 1962 by the merger of two English companies, The Rio Tinto Company and the
7 Consolidated Zinc Corporation. This company was known as RTZ Corporation plc (“RTZ”),
8 which changed its name to Rio Tinto plc in June 1997. At times in this complaint, when citing to
9 older documents, Rio is referred to as RTZ.

10 41. Also in 1962, the Australian interests of Rio Tinto Company and Consolidated Zinc
11 Corporation merged to form Conzinc Riotinto of Australia (“CRA”). In June 1997, CRA changed
12 its name to Rio Tinto Limited.

13 42. In 1968, RTZ purchased U.S. Borax, Inc., a California corporation whose present
14 address is 26877 Tourney Rd., Valencia, California 91355. Rio Tinto owns 100% of U.S. Borax,
15 Inc.

16 43. The present day Rio Tinto was created in December 1995 by the unification of RTZ
17 and CRA. Prior to June 1997, the combined company was referred to as RTZ/CRA; after June
18 1997, it was referred to as Rio Tinto. It is now the world’s largest private mining company with
19 assets of over A\$17.7 billion. The “dual listed” company is based in the UK and in Australia and
20 America, with control being exercised by the parent company in London.

21 44. The Rio Tinto Group operated its plant in Bougainville through its affiliate, CRA.
22 Although Rio Tinto has reduced its holdings in CRA over time, during operation of the mine the
23 Rio Tinto Group exercised complete, effective and pervasive control. The 1999 Rio Tinto Annual
24 Report states that: “Bougainville Copper Limited (“BCL”) is a Papua New Guinea company listed
25 on the Australian stock exchange with a market capitalization of A\$80 million (US \$50 million) as
26 of December 31, 1999. The Rio Tinto Group owns 53.6 percent of BCL.”

27 45. During the course of its operation, Rio executives in London exercised control over
28 all major decisions involving the mine, including acts and policies regarding protection of the

1 environment, relocation of villages, treatment of plaintiffs and members of the class as racially
2 inferior, and the funding and participation in the military efforts of the PNG army. In this regard,
3 Rio officials are quoted in the Engineering and Mining Journal as noting that RTZ maintains
4 “short, direct lines of communication. RTZ does not believe in intermediate holding companies or
5 geographical structures.”

6 46. Rio management both in London and at BCL headquarters were involved in the
7 decision making, planning, preparation and execution of some of the military attacks described
8 here.

9 III. JURISDICTION AND VENUE

10 47. This Court has subject-matter jurisdiction over this action pursuant to the Alien Tort
11 Claims Act, 28 U.S.C. § 1350, because this proceeding consists of a civil suit brought by aliens for
12 torts committed in violation of the law of nations and treaties of the United States. This Court also
13 has jurisdiction pursuant to 28 U.S.C. § 1331 because plaintiffs’ claims pose a substantial federal
14 question and pursuant to 28 U.S.C. § 1332 because there is complete diversity between the parties
15 and the matter in controversy exceeds \$75,000 exclusive of interests and costs. Plaintiffs’ causes
16 of action arise under, among others, the following laws, agreements, resolutions and treaties:

- 17 (a) Customary International Law;
18 (b) Common Law of the United States of America;
19 (c) Universal Declaration of Human Rights, U.N. G.A. Res. 217 (III 1948);
20 (d) International Covenant on Civil & Political Rights, 999 U.N.T.S. 171
21 (December 16, 1996);
22 (e) Convention Against Torture and Other Cruel, Inhuman, or Degrading
23 Treatment or Punishment, 23 I.L.M. 1027 (1984), as modified 24 I.L.M.
24 (1985);
25 (f) International Convention on the Elimination of All Forms of Racial
26 Discrimination, 660 U.N.T.S. 195 (1966);
27
28

- 1 (g) Declaration of the United Nations Conference on the Human Environment,
2 U.N. Doc. A/CONF. 48/14, 11 I.L.M. 1416 (June 16, 1972); and
3 (h) the Alien Tort Claims Act, 28 U.S.C. § 1350.

4 48. Under the California “long-arm” statute, Code Civ. Proc. § 410.10, this Court may
5 properly exercise personal jurisdiction over the parties because (a) plaintiffs are all aliens who
6 allege fundamental violations of international law in accordance with the Alien Tort Claims Act,
7 and (b) defendants Rio Tinto, plc and Rio Tinto Limited are subject to the general jurisdiction of
8 this Court because their contacts with the State of California and in the United States as a whole are
9 substantial, continuous and systematic as set forth below.

10 **A. Rio Tinto Is Subject to Jurisdiction for its Detailed and Hands-On Direction of the**
11 **Conduct of its Wholly-Owned Subsidiaries Operating in the United States.**

12 49. Rio Tinto directly employs 34,000 people, with many more employed as
13 subcontractors or through other company activities. Either directly, through subsidiaries or through
14 joint ventures, the company produces and/or refines aluminum/bauxite, borates, coal, copper,
15 diamonds, gold, iron ore, molybdenum, salt, silica, silver, talc, tin, titanium dioxide, uranium, zinc
16 and other industrial metals. Rio Tinto is not merely a holding company that owns businesses as
17 investments. Rather, its subsidiary companies fit within its purpose as a consolidated mining
18 company and implement its strategic objectives.

19 50. Rio Tinto operates over 60 mines and processing plants located in 40 countries,
20 including the following: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, France,
21 Guinea, Indonesia, Italy, Namibia, Netherlands, New Zealand, Norway, Papua New Guinea,
22 Portugal, South Africa, the UK, the United States and Zimbabwe. The company is also
23 undertaking exploration and development work in many of the above countries, as well as in
24 Ecuador, Finland, India, Laos, Madagascar, Mexico, Peru, Sweden, Spain and Tanzania.

25 51. By its own admission, the multiple corporations that make up the Rio Tinto empire
26 “operate as one business group” known as the “Rio Tinto Group.” Rio Tinto’s annual reports are
27 replete with references to its “group” operation:
28

- 1 • “This report, my last as chief executive, shows sustained
2 improvements being achieved throughout *the Group*.... In
3 today’s global village there are neither niche markets nor niche
4 operators.... I am equally confident that the continuing efforts of
5 *the Group’s* talented and committed people....” (Leon Davis,
6 Chief Executive, 1999 Rio Tinto Report, p. 4)
- 7 • “*Group Overview*” – “Rio Tinto is a leading international mining
8 *group*..... Rio Tinto’s assets are managed on a unified basis....”
9 (1999 Rio Tinto Annual Report, p. 7)
- 10 • “Rio Tinto’s Management structure facilitates a clear focus on
11 business performance and *the Group’s objective*.” (1999 Rio
12 Tinto Annual Report, p. 7)
- 13 • “The US dollar is the principal currency used in these financial
14 statements, as it most reliably reflects *the Group’s global*
15 *business performance*.” (1999 Rio Tinto Annual Report, p. 10)
- 16 • Operating earnings in the 1999 Annual Report are reported by
17 “*Product Group*,” not by individual company. (1999 Rio Tinto
18 Annual Report, p. 4)
- 19 • The benefits of productivity improvements “come from across
20 *the Group*.” (1999 Rio Tinto Annual Report, p. 4)
- 21 • “The Rio Tinto team’s performance has kept *the Group* at the
22 forefront of our industry.” (1999 Rio Tinto Annual Report, p. 6)
- 23 • “Rio Tinto’s substantial mining interests are diverse both in
24 geography and by product. *The Group* consists of a number of
25 wholly and partly owned subsidiaries, joint ventures, associated
26 companies and joint arrangements....” (1999 Rio Tinto Annual
27 Report, p. 7)

28 52. In spite of the complex nature of dual-listed companies as noted, for all practical purposes, Rio Tinto is a single business entity, with unified management and identical corporate strategies and policies in the field of industrial relations, community relations, occupational health and safety and environmental standards. The parent corporation in London maintains control far in excess of normal exercise of shareholders’ rights over all major corporate decisions and appoints British-based executives who maintain continuous and frequent contacts with Rio management to run operations in California and elsewhere in the United States, as described in this Complaint. Rio manages its business based on six management groups, each based upon a particular product such as copper or gold. Rio’s copper and coal operations in the United States are managed by Rio. Rio reports its assets and financial results in a combined financial statement; included in the

1 financial statement are the results of its U.S. subsidiaries. Exploration, research and technology are
2 all centrally managed, including such activities in the United States that are conducted by the Rio
3 group on behalf of and for the benefit of U.S. and California subsidiaries. Rio executives control
4 most of the major decisions of its U.S. group members beyond the normal exercise of shareholder
5 rights; thus, Rio Tinto and its U.S. Group members do not deal with each other as distinct corporate
6 entities in anything other than a superficial manner.

7 53. A striking example of this centralized group control occurred in 1997 when Rio
8 Tinto reorganized itself along commodity and product lines as opposed to geographic lines. This
9 operation was conceived and implemented at the highest levels of Rio Tinto's management, and
10 involved sending Rio Tinto executives from Australia to shut down American offices and
11 restructure Rio Tinto's American subsidiaries. This information was only revealed after a thirty-
12 year employee of Kennecott Corporation, a Rio Tinto American subsidiary, sued the company
13 when the corporate reorganization changed his retirement benefit package.

14 54. The testimony in that federal court case revealed the following: At a clandestine
15 meeting held in January, 1997, Rio Tinto's chairman, Sir Robert Wilson, and Leon Davis, the
16 company's chief executive officer, ordered an Australian Rio Tinto executive, Jonathan Leslie, to
17 move to Salt Lake City, Utah and reorganize Kennecott's operations in the United States. As part
18 of the reorganization, Wilson and Davis decided to shut down Kennecott's office in Salt Lake City,
19 according to the findings of United States District Court for the District of Utah:

20 On January 15, 1997, the Chairman of Rio Tinto, Robert Wilson, and
21 the chief executive officer, Leon Davis, met with Australian Rio
22 Tinto executive Jonathan Leslie. They told him that there was going
23 to be a world-wide reorganization of RTZ/CRA along commodity or
24 product lines rather than geographic lines and gave him the
25 assignment of moving to Salt Lake City to reorganize Kennecott's
26 operations in the United States, explaining that the corporate office in
27 Salt Lake City, in which plaintiff worked, would probably no longer
28 be needed. (48 F. Supp. 2d 1294 at 1296)

25 55. According to the federal district court, Leslie, an Australian who had never worked
26 for Kennecott, was responsible for deciding what the reorganized structure of the U.S. subsidiary
27 would be:
28

1 Leslie also understood that the reorganization was very sensitive and
2 was to be kept as confidential as possible prior to its public
3 announcement. He arrived in Salt Lake City on February 12, 1997,
4 but did not inform any Kennecott manager of the planned
5 reorganization until February 17th, when he told Tracy Stevenson,
6 Senior Vice President, Finance and Control. *Id.*

7
8 56. Jonathan Leslie is now based in London, England, and is chief executive officer of
9 Rio Tinto's Gold & Other Minerals Group. The Financial Times has described Sir Robert Wilson,
10 Rio Tinto's Chairman, as "the company's brains, the man with his hands on all the levers."

11
12 57. As a result of the 1997 reorganization, Rio Tinto Group's management structure is
13 based upon six principal product groups: Iron Ore; Industrial Minerals; Copper; Comalco
14 (aluminum); Energy; and Gold & Other Minerals. Rio manages each of these product groups
15 wherever they are located, and exercises significant control over the actions of Rio's subsidiaries
16 with respect to these products.

17
18 58. As described above and below, Rio Tinto operates in a way that its U.S. subsidiaries
19 are in reality divisions of a single corporate entity. This entity is engaged in mining of numerous
20 minerals, and its business is divided into groups organized around mineral types. Certain of these
21 groups nominally have separate corporate forms, but Rio Tinto operates and manages its business
22 so that the groups in reality are a division of a single, centralized entity. The parent and
23 subsidiaries are interdependent. Rio Tinto is dependent on its U.S. subsidiaries for essential
24 product groups that compose its business. The subsidiaries are dependent on Rio Tinto for
25 financial backing, research and exploration, contacts with other countries, financial record keeping
26 and reporting, and other matters described below.

27
28 **B. Rio Tinto's California Operations Are Significant**

59. The relationship Rio Tinto has with its American subsidiaries is far more than that
of a mere stock holding company. Rio Tinto maintains control over all major corporate decisions,
and its substantial, continuous and systematic contacts with this State through its American
subsidiaries subject it to this Court's general jurisdiction in California. Rio Tinto's American
subsidiaries act as the parent company's alter ego and/or agent. During the period relevant to this

1 Complaint, through to the present, Rio Tinto's subsidiaries acted as the general agent for Rio and
2 carried out their activities for the benefit of Rio.

3 60. Rio Tinto's U.S. subsidiaries acted for the benefit of Rio Tinto; Rio Tinto had
4 knowledge of, and consented to, the subsidiaries' actions on Rio Tinto's behalf; and Rio Tinto had
5 pervasive control over the subsidiaries' actions beyond the normal exercise of shareholders' rights.

6 61. Rio decided it wished to engage in the mining of borate rather than create its own
7 mine in the U.S. It purchased U.S. Borax, which became Rio's agent in the United States. If U.S.
8 Borax did not mine borate in the U.S. on Rio Tinto's behalf, Rio Tinto would undertake these
9 activities itself.

10 62. Rio Tinto's California subsidiary, U.S. Borax Inc., is a California corporation whose
11 headquarters is located in Valencia, California. In Rio Tinto's 1999 Annual Report, it is called Rio
12 Tinto Borax, and it is described as part of the Industrial Minerals Group. The group employs 7,800
13 people. Rio Tinto Borax exists for the sole benefit of Rio and acts as Rio's agent in the United
14 States.

15 63. The Chairman of the Board of U.S. Borax, Inc. is G.H. Sage, a British national who
16 is based in London. Mr. Sage is also a Director of Rio Tinto, as well as the chief executive of the
17 Industrial Minerals product group managing Rio Tinto Group's interests in borates, titanium
18 dioxide feedstock, talc, salt and diamonds, according to Rio Tinto's 1999 Annual Report. Upon
19 information and belief, plaintiffs allege that Mr. Sage regularly travels to California to direct the
20 affairs of Rio and U.S. Borax, Inc. in a manner beyond the normal exercise of shareholders' rights.

21 64. The President and Chief Executive Officer of U.S. Borax, Inc. is Preston Chiaro, an
22 American citizen who is based in Los Angeles, California. Mr. Chiaro is also an executive with
23 Rio Tinto Borax, Limited, the London-based holding company.

24 65. Mr. Chiaro's predecessor, Ian L. White-Thomson, was a British citizen who was
25 appointed Chairman and C.E.O. of U.S. Borax, Inc. in 1988 and in 1995 was elected Chief
26 Executive Officer of Rio Tinto Borax Limited, a global holding company, before his retirement in
27 1999. Upon information and belief, plaintiffs allege that he lives in Los Angeles and that he
28

1 regularly traveled to London when working for U.S. Borax. He did so in order to report to
2 management at Rio and to receive their instructions.

3 66. The Vice President of Finance of U.S. Borax, Inc. is Daniel Larson, an American
4 based in Los Angeles, California. Mr. Larson is also an executive with Rio Tinto Borax, Limited,
5 the London holding company.

6 67. U.S. Borax, Inc.'s boron mine, located in California's Mojave Desert, is the world's
7 largest private borate mine, and one of two world-class borate deposits on the planet, according to
8 U.S. Borax's Internet web site.

9 68. The Internet web site of Rio Tinto Borax/U.S. Borax, Inc. promotes the companies'
10 connection to its London parent:

- 11 • "[T]oday we are aiming for a higher level of excellence in all areas of our
12 business. We are making this effort on a global basis. To this end, we have
13 been strengthening ties between companies and countries, operations and
14 departments, processes and procedures."
- 15 • "[Our] resources include...the financial strength of Rio Tinto, our corporate
16 parent."

17 69. Rio Tinto Borax/U.S. Borax, Inc. does not produce an annual report, nor does it
18 conduct its shareholders' meeting in the United States. Its accounts are consolidated with those of
19 Rio Tinto plc.

20 70. In its 1999 annual report to shareholders, Rio Tinto emphasized the importance of
21 its North American operations. 47% of Rio Tinto's assets were located in North America, the
22 largest single concentration anywhere in the world. Rio Tinto's profits for 2000 are dependent on
23 the performance of its American operations, according to Rio's chairman, Sir Robert Wilson: "For
24 Rio Tinto in general, the outlook is encouraging. The prospect is for faster growth in demand in
25 2000 and potential further acceleration in 2001. *As always, this assumes no major setback in the
26 U.S.*"

27 71. For many years, Rio Tinto's North American operations in California have been
28 crucial to the company's overall success. According to the Journal of Commerce, in 1987 the
boron mine in the Mojave Desert was the Group's largest profit center. According to the Rio Tinto

1 1999 Annual Report, Rio Tinto Borax contributed \$133 million dollars toward Rio Tinto's overall
2 earnings. Thus, U.S. Borax is an essential component of Rio Tinto and is necessary to implement
3 Rio Tinto's strategic objectives.

4 **C. Rio's Other Significant Contacts With the United States**

5 72. Alternatively, Rio has systematic and continuous contacts in the United States that
6 subject it to this Court's jurisdiction.

7 73. The above-referenced pattern of either London or Australian-based executives
8 running U.S. subsidiaries is repeated at the Group's other American holdings. Rio Tinto also owns
9 Kennecott Utah Copper (KUC) and the nearby Barneys Canyon gold mine, both of which are
10 located near Salt Lake City, Utah. This group's chief executive officer, Oscar Groeneveld, is based
11 in London, England. Upon information and belief, Mr. Groeneveld regularly travels to the United
12 States to conduct business on behalf of the Rio Group. KUC acts as Rio Tinto's alter ego and
13 agent in the United States.

14 74. Much like their California counterpart, Rio's various Kennecott subsidiaries tout
15 their connections to the parent company in England:

- 16 • Kennecott Minerals Company: "Today, as one of the six global product business
17 units of London-based Rio Tinto, the world's largest minerals company,
18 Kennecott Minerals *is charged with the responsibility* of exploring for,
developing, producing and managing precious and base metal mines."
(www.kennecottminerals.com)
- 19 • Kennecott Energy Company: "is part of the London-based Rio Tinto. Our coal
20 mines in Wyoming, Colorado and Montana contain more than one billion tons
of coal...." (www.kenergy.com)
- 21 • Kennecott Ridgeway Mining Company: "We are the Kennecott Ridgeway
22 Mining Company, a part of Kennecott Minerals, which is part of Rio Tinto,
PLC, the world's leading mining company." (www.members.zoom.com)

23 75. Rio Tinto's mine located in Bingham Canyon near Salt Lake City is the biggest
24 copper mine in history, according to press reports.

25 76. The relationship that Rio Tinto has with its operating companies is far more than a
26 mere stock holding company. Rio Tinto maintains control over all major corporate decisions
27 beyond normal exercise of shareholders' rights, and the company routinely appoints Rio Tinto
28

1 executives from around the world to important management posts at Rio Tinto Borax and its other
2 United States subsidiaries. These executives have knowledge of and loyalty to Rio Tinto's global
3 goals and maintain Rio Tinto's direct involvement in the management of the U.S. subsidiaries. For
4 example:

- 5 • In November 1999, Rio Tinto named a new General Manager of Operations at
6 Borax, Doug Batchelor, a Rio Tinto employee who spent most of his career
7 working for Rio Tinto in South Africa.
- 8 • As stated earlier, in 1997, Rio Tinto appointed an Australian executive, Jonathan
9 Leslie, to run the operations of Kennecott corporation in Salt Lake City, Utah.

10 77. Exploration research and technology are also centrally managed. Rio Tinto's head
11 of Exploration, David Klingner, is based in London. Exploration budgets of the U.S. subsidiaries
12 are derived from a worldwide exploration budget, as a Kennecott advertisement makes clear:

13 Funding for Kennecott Exploration comes from the Rio Tinto
14 worldwide exploration budget. Our expenditure will be US \$19
15 million in 1999, one of the largest mineral exploration budgets in
16 North America.

17 78. Rio Tinto directly funds exploration budgets for its subsidiaries because it considers
18 these mines to be their own. In an advertisement's statement of purpose, Rio Tinto claims its goal
19 is to "discover additional ore reserves adjacent to *Rio Tinto's operating North American mines.*"

20 79. The web site for "Kennecott Exploration/(Rio Tinto PLC),"
21 www.kennecottexploration.com, makes it equally clear that exploration activities conducted by
22 North American subsidiaries are done on behalf of Rio Tinto: "Kennecott Exploration is a leader
23 in mineral exploration and evaluation in North America. *It is part of the Rio Tinto Company* and
24 has proven expertise in all aspects of the mineral exploration business."

25 80. Upon information and belief, plaintiffs allege that Rio Tinto executives regularly
26 travel to the United States to conduct business on behalf of the Rio Group. Upon information and
27 belief, plaintiffs also allege that executives of Rio Tinto's subsidiaries regularly travel to London to
28 conduct business on behalf of the Rio Group.

81. The original funding for the Panguna mine came from a syndicate of banks led by
Bank of America ("B of A"). Upon information and belief, plaintiffs allege that Rio executives

1 conducted business with B of A here in the United States in connection with raising funding for the
2 mine and continue to do so today.

3 82. In its annual report, Rio lists 15 different sites in the United States where the Rio
4 Group has assets. Rio owns 100% of most of these sites:



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KEY ● Mines and mining projects.
▲ Smelters, refineries and processing plants remote from mine

Source: Rio Tinto 1999 Annual Report, pg. 36

RIO TINTO % interest shown

COPPER AND GOLD

- 2 Barneys Canyon (100%)
- 3 Bingham Canyon (100%)
- 5 Cortez/Pipeline (40%)
- 14 Rawhide (51%)
- 16 Ridgeway (100%)

COAL

- 21 Antelope (100%)
- 23 Colowyo (20%)
- 21 Cordero Rojo (100%)
- 24 Decker (50%)
- 21 Jacobs Ranch (100%)
- 24 Spring Creek (100%)

BORATES

- 38 Boron (100%)
- 41 Wilmington plant (100%)

ZINC, LEAD AND SILVER

- 48 Greens Creek (70%)

TALC

- 52 Ludlow (100%)
- 54 Yellowstone (100%)

15
16 83. In addition to its contacts with the State of California and the United States
17 maintained through its subsidiaries, Rio Tinto plc has an American Depositary Receipt (“ADR”)
18 facility with The Bank of New York. These ADRs evidence Rio Tinto plc American Depositary
19 Shares (ADS), each ADS representing four (4) Shares of Rio Tinto plc stock. The Shares are
20 registered with the United States Securities and Exchange Commission and are listed for sale on
21 the New York Stock Exchange. Rio Tinto Limited also has an ADR facility with The Bank of
22 New York. The ADRs evidence Rio Tinto Limited’s ADSs, each representing four (4) shares of
23 Rio Tinto Limited stock, and are traded in the over-the-counter market. In addition, the Rio Tinto
24 Group maintains a website on the Internet (www.riotinto.com) which it utilizes to solicit potential
25 employees in the State of California and throughout the United States.

26 84. As the above-referenced contacts make clear, Rio Tinto is subject to this Court’s
27 personal jurisdiction because of its substantial, continuous and systematic contacts with the State of
28 California and the United States through its subsidiaries, and through its own activities here in the

1 United States and the activities of its executives here in the United States. In California, U.S.
2 Borax Inc. acts as Rio Tinto's alter ego, *i.e.*, there is a unity of interest and ownership so that the
3 separate personalities of U.S. Borax, Inc. and Rio Tinto no longer exist and failure to disregard
4 their separate identities would result in a fraud or injustice.

5 85. Rio Tinto Borax also acts as the agent of Rio Tinto plc, because without the
6 presence of Rio Tinto Borax, Rio Tinto plc would have to perform the services now performed by
7 Rio Tinto Borax. Thus it is fair to impute and attribute the acts of Rio Tinto Borax to Rio Tinto
8 plc.

9 **D. Venue**

10 86. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) because defendants
11 do business within the District. Venue is also proper in this District because defendants own
12 property located in this District pursuant to 28 U.S.C. § 1391(b). Venue is also proper pursuant to
13 28 U.S.C. § 1391(d) because defendants Rio Tinto plc and Rio Tinto Limited are alien (foreign)
14 corporations. This Court is the only appropriate forum for adjudication of this action because the
15 government of Papua New Guinea, where the acts took place, is a co-conspirator and participant in
16 some of the unlawful acts alleged in this Complaint. Given the importance of this matter to the
17 government, a fair trial of plaintiffs' claims against defendants could not be obtained in Papua New
18 Guinea. Indeed, the Papua New Guinea government is so tainted in the mining company's favor
19 that it has made it a crime to sue a mining company in a foreign jurisdiction. Further, the
20 jurisdiction does not recognize class actions, so relief for many of the class members would be
21 impossible to obtain. The only other potential forum is Australia, where CRA does business.
22 However, as the Australian government lent helicopters to fight plaintiffs and members of the
23 class, Australia is a co-conspirator and should be a defendant in this case and would be but for
24 sovereign immunity. The courts in England, where Rio is headquartered, would not recognize this
25 form of action and would not afford adequate relief for the class.

26 87. This Court has supplemental jurisdiction over plaintiffs' non-federal law claims
27 pursuant to 28 U.S.C. § 1367.
28

1 **IV. CLASS ACTION ALLEGATIONS**

2 88. Plaintiffs bring this action on behalf of themselves and all others similarly situated
3 who were themselves or whose family members were the victims and/or survivors of the
4 Bougainville conflict, pursuant to Federal Rules of Civil Procedure § 23(a), (b)(1)(B), (b)(2), and
5 (b)(3). The Class of plaintiffs includes those named herein and all others similarly situated who
6 were themselves or whose family members were the victims and survivors of the Bougainville
7 conflict. Victims and survivors include, but are not limited to (a) all other survivors of the conflict
8 who suffered physical injury as a direct consequence of the conflict; (b) all those individuals
9 and/or families residing near the mine or portions of Bougainville that were destroyed or injured by
10 defendants' destruction of the environment and culture; and (c) individuals (Bougainvilleans) who
11 were forced to flee to the Solomon Islands and elsewhere as a result of the conflict and who
12 suffered greatly during flight and subsequently as impoverished refugees in the Solomon Islands.
13 Those seeking relief as a result of the military blockade described in this Complaint are members
14 of the "War Crimes Class". Those seeking relief as a result of environmental, social and cultural
15 harm, described in this Complaint, are members of the "Environmental Right to Life Class."

16 89. Plaintiffs also bring this action on behalf of all individuals who at any time from the
17 establishment of the mining facility in Bougainville to the present reside or resided in the adjacent
18 area whose property has been damaged and/or who have been exposed to toxic chemicals as a
19 result of the discharge of toxic effluents and other persistent pollutants into the soil and water in
20 and around the mining plant and throughout the river system. These claims are brought on behalf
21 of the medical monitoring class.

22 90. There are predominating common questions of law and fact relating to the
23 international law claims of plaintiffs and the members of the Class and subclasses including, but
24 not limited to, the following:

- 25 (a) whether Rio's operation of the mine violated customary international law;
26 (b) whether Rio acted under color of state law and in a joint venture with the
27 PNG government;

1 (c) whether Rio' operation, storage, treatment and disposal practices at the mine
2 were negligent;

3 (c) whether Rio's operation, storage, treatment and disposal practices at the
4 mine constitute intentional malfeasance;

5 (d) the policies, procedures and guidelines used by Rio's in operating, storing,
6 treating and disposing of chemical products and waste by-products of its mining production
7 processes;

8 (e) whether Rio's design, operation and maintenance of the facility was
9 negligent insofar as it directly resulted in the severe contamination of the soil and water in and
10 around the mining facility and throughout the rivers adjacent to the mine and downstream;

11 (f) whether Rio's design, operation and maintenance of the mining facility
12 constitutes intentional malfeasance directly resulting in the severe toxic contamination of the soil
13 and water in and around the mine in Bougainville;

14 (g) whether the grounds and surrounding environs of the mining plant in
15 Bougainville have been contaminated with mining by-products, wastes, pesticides and other toxins
16 and the extent of such contamination;

17 (h) whether the persistent pollutants which Rio has discharged into the
18 environment surrounding its mining facility are toxic;

19 (i) whether Rio's conduct constitutes a nuisance;

20 (j) whether the members of the Class should receive medical monitoring;

21 (k) whether Rio Tinto is liable for compensatory damages and the measure of
22 such damage;

23 (l) whether Rio acted jointly with others, including the PNG and Australia
24 governments;

25 (m) whether Rio participated in and conspired to deny medicine to the island and
26 to institute and maintain the blockade;

27 (n) whether Rio Tinto's conduct was wanton and outrageous;

28

1 (o) whether Rio Tinto is liable for punitive damages and the amount of such
2 damages; and

3 (p) whether the members of the Class are entitled to equitable relief.

4 91. While all members of the Class share common questions of law and fact, the
5 proposed Class includes the following subclasses, which have been divided on the basis of the type
6 of injury sustained:

7 (a) All persons who continue to be exposed to toxic effluents, chemical by-
8 products and other hazardous agents as a result of ongoing environmental pollution in
9 Bougainville;

10 (b) All persons who have suffered property damage and other losses as a result
11 of the continuing environmental pollution and contamination at Rio Tinto's facility in
12 Bougainville; and

13 (c) All persons who were injured or killed as a result of the Bougainville
14 conflict.

15 92. The Class and subclasses represented by plaintiffs are so numerous that joinder of
16 all members is impracticable. The precise number of individuals is not presently known with
17 certainty, but exceeds 10,000.

18 93. Adjudications with respect to individual members of the Class would, as a practical
19 matter, be dispositive of the interests of other Class members not parties to the adjudication.
20 Individual litigation of these claims would be entirely impractical and would impair the ability of
21 Class members to protect their interest.

22 94. The claims of the named plaintiffs are typical of those of the Class and subclasses,
23 and the named plaintiffs will fairly and adequately protect the interests of the Class and its
24 subclasses. Plaintiffs' interests do not conflict with those of the Class and subclasses, and plaintiffs
25 are represented by counsel who are experienced in class action and human rights litigation.

26 95. A class action is superior to other available methods for the fair and efficient
27 adjudication of this controversy, and maybe the only mechanism whereby plaintiffs and the class
28 can obtain justice.

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V. STATEMENT OF FACTS

A. Bougainville

96. Bougainville Island is situated 6° south of the equator at the northern end of the Solomon Islands chain (see map at Exhibit A). Bougainville is an island in the once-peaceful South Pacific region. The people of Bougainville have exercised sovereignty over their land continuously for thousands of years. They hold their land as their natural, God-given inheritance, handed down “since time immemorial,” to be preserved for future generations. Bougainville is known to many as Me’ekamui, which means “Sacred Island.”

97. One of the island’s key natural resources is its rivers, including the Jaba River. The Jaba River was a major source of food for many residents of Bougainville, and use of the riches of the Jaba River was an integral part of the way of life of many. It was one of the world’s most majestic rivers.

98. The middle reaches of the Jaba River were low-lying, broad, alluvial coastal plains with some densely forested areas, some grassland, and some areas of swamp. Villages through this area grow the same range of subsistence food crops as those in the mountain areas, although the sweet potato was even more dominant on the coast. In the mountains there were some small areas where coffee was grown, and in the Jaba River area coconut and cocoa crops provided cash incomes. Adjacent and towards the coast were swampy areas where there were no villages, except on the coast itself, but within which hunting and food gathering were carried out. Immediately inland from the shore is another distinct land zone on which sandy soils support tall forests and in which hunting and gathering and subsistence gardening occurred.

B. Customary Land Ownership

99. Bougainville Copper Limited (“BCL”) was established as a CRA-controlled subsidiary to operate the mine. Between 1969 and 1972 (when mining operations commenced), the Australian Colonial Administration granted BCL leases over 12,500 hectares of land for the mine site, access roads and waste disposal. These land acquisitions were vigorously opposed by many of

1 the people whose lands were affected. The Nasioi and Nagovisi villages were forcibly evicted
2 from their land.

3 100. In Bougainville, much of the land is owned on a clan basis. Land is passed down
4 through generations, and the people know well the boundaries of their land entitlements. The right
5 to use any piece of land must be sought from the female members of the clan. This is an idea that
6 has been adhered to on the island since time immemorial.

7 101. According to custom, everything in each particular piece of land or in the sky above
8 and the earth beneath is respectively owned by each particular clan and not by another governing
9 body.

10 102. At no time did any of the women or other members of the Class give permission for
11 their land to be used for exploration or mining. From the beginning, the Nasioi people resisted
12 CRA's intrusion onto their land, and treated the prospectors as trespassers. In 1965, they expelled
13 the CRA exploration team and pulled down their camp, which had been erected on Nasioi land
14 without their permission. The Australian Government responded by jailing 200 Bougainvilleans,
15 including elders, some of whom were beaten while in custody.

16 103. In 1969, the women at Rorovana refused to allow their land to be used for mine port
17 facilities. On July 28, 1969, the Rorovana people were told they had to accept Rio's terms of \$105
18 per acre plus \$2 per coconut tree by August 1, 1969, or their land would be taken without
19 compensation. The people rejected the ultimatum.

20 104. One hundred riot police, especially trained and equipped by the Australian
21 Government, were flown to Bougainville to help the surveyors mark out the areas of land owned
22 by the Rorovana people that Bougainville Copper Limited wanted. On August 1, 1969, surveyors,
23 supported by police wearing gas masks and carrying truncheons, drove in the first concrete peg.
24 Some of the women landowners broke through the police cordon and wrenched the peg out of the
25 ground, triumphantly carrying it home.

26 105. On August 5, 1969, riot police carrying batons, shields, rifles and respirators
27 attacked a group of about 65 unarmed villagers, men, women and children. The police fired a
28

1 barrage of 150 tear gas canisters at them, yet the people stood firm. Then the police charged them
2 with their batons, clubbing both men and women who were forced off their land.

3 **C. Joint Ownership of the Mine and State Action**

4 106. As of 1999, Defendant Rio Tinto plc through Rio Tinto Limited, owns a 53.6
5 percent interest in the Panguna Mine. The government of Papua New Guinea was given a 19.1
6 percent interest in the mine. Over time, Rio Tinto has reduced its ownership of CRA, its Australian
7 subsidiary, but it has exercised complete, effective and pervasive control over the Panguna mine
8 through the course of the mine's operation.

9 107. Rio Tinto and the governments of Papua New Guinea and at times Australia were
10 joint venture partners, worked in concert with each other and conspired to commit the violations of
11 customary international law set forth below.

12 108. Pursuant to their joint venture agreement, the mine provided 17% of PNG's total
13 revenue on a yearly basis during the period of its operation.

14 109. At all relevant times, Rio Tinto acted herein under color of state law because
15 (a) PNG conferred a mining concession to Rio; (b) Rio and PNG were co-owners of the mine;
16 (c) PNG profited by virtue of the mining operation; (d) PNG allowed Rio to exercise the power of
17 eminent domain and to dispossess the native people of Bougainville whenever and wherever Rio
18 decided to do so; (e) Rio encouraged and assisted in the PNG military effort to suppress the
19 revolution as described in this Complaint; (f) Rio's actions were done with the concurrence and
20 authority of the PNG government; and (g) the PNG military acted as Rio's agent in attacking and
21 blockading the people of Bougainville.

22 **D. The History of Rio Tinto**

23 110. When Rio came to Bougainville, Rio officials promised that they would take care of
24 the people and the environment. Such promises were false and misleading. Unknown at the time
25 to plaintiffs and the members of the Class, Rio has a long history of wanton disregard for the
26 environment and local populations. For example, Rio operated what was once one of the world's
27 largest tin smelters, at Capper Pass, near the town of Hull, England. The smelter discharged
28

1 radioactive, carcinogenic and toxic substances. Over a period of years, workers and those living in
2 the area have experienced a marked increase in leukemia, brain tumors and other forms of cancer.

3 111. For years Rio claimed that its operation of the Capper Pass smelter was in
4 compliance with all environmental laws. In 1985, Rio management internally decided that it would
5 continue to discharge arsenic into a local river because reducing the waste would impact profits.
6 About that time British officials found arsenic levels to be six times higher than that of any other
7 river in Britain.

8 112. In 1988, Rio could no longer hide its wanton disregard for the environment, and a
9 major investigation was launched by the British Health and Safety Executives (“HSE”). HSE
10 found that Rio had violated environmental laws, and high levels of arsenic and cadmium were
11 found in the urine of workers.

12 113. The reports were so serious that the following motion was made in the House of
13 Commons:

14 **NOTICES OF MOTIONS**
15 **HOUSE OF COMMONS (UK)**

16 **10 May, 2000**

17 **EARLY DAY MOTION**

18 **RIO TINTO AND HEALTH AND SAFETY**

19 That this House is gravely concerned to learn that the London-based
20 Rio Tinto, the largest mining company in the world, has made a
21 series of false statements that during its operation of the Capper Pass
22 Tin Smelter in Hull, it had fully complied with all Environmental,
23 Health and Safety Regulations; notes that there is incontrovertible
24 evidence that the Health and Safety Executive had served a Statutory
25 Improvement Notice identifying contravention of Sections 2(1) and
26 3(1) Health and Safety at Work Act, 1974 and Section 63 Factories
27 Act, 1961 and that the Health and Safety Executive had also served
28 upon the company a major report identifying the extremely limited
competence of safety management, and major breaches of The
Control of Substances Hazardous to Health Regulations 1989, The
Control of Lead at Work Regulations, 1980 and The Ionising
Radiations Regulations, 1985; further notes that there were repeated
breaches of Environmental Regulations and Statutory Licenses
governing discharge of toxic substances into the river Humber; and
deplores the refusal of Rio Tinto to answer the specific allegations
put to its Executive Chairman on 7 October, 1999 concerning the
promulgation of those false statements by Senior Executives of the

1 company, and urges Her Majesty's Government to institute a full
2 public inquiry and report back to this House.

3 114. Eventually, with its credibility at stake and facing governmental action, Rio
4 admitted that it had violated applicable environmental regulations in its operations at Capper Pass.

5 115. The Capper Pass situation is not an isolated instance. As one mining historian
6 noted, Rio's "financial killings depend on a low price of labor, and negligible environmental
7 costs." One of Rio's methods was to discriminate in pay and working conditions, paying native
8 workers, whom it decreed inferior, lower wages.

9 116. For example, Rio's Palabora mine in South Africa, relied for its development stages
10 on a large, migrant, black labor force, whose average wage for many years was well below the
11 minimum set by the South African Institute of Race Relations ("SAIRR"). (The SAIRR calculated
12 the minimum at £44.1 a month for a family of five, when the company was paying only £33.9).
13 Between 1966 and 1971, Rio paid its African miners just under £5 million, while its profits for the
14 same period were nearly £140 million. Not surprisingly, the *Times* commented in 1968 that "... at
15 around £100 a ton, Palabora's costs per ton of copper produced makes it one of, if not the, lowest
16 cost copper mines in the world." It was not until 1985 that Palabora's management recognized the
17 National Union of Mineworkers of South Africa – three years after its competitors did the same
18 thing.

19 117. Similarly, Rio's Rössing mine – which by 1980 had become the biggest uranium
20 project in the world – was constructed by hundreds of Ovambo laborers, who were separated from
21 their families and housed in what the *Economist* called "appalling temporary camps." Even when a
22 black township was constructed, conditions hardly improved: South African researchers Gillian
23 and Suzanne Cronje, as late as 1979 (six years after mine construction started), found the working
24 conditions "akin to slavery." Under the spotlight of international pressure, Rio cleaned-up its act
25 over the following decade, but the surgery was still largely cosmetic. In a speech delivered in early
26 1989, Ben Ulenga, the General Secretary of the Mineworkers Union of Namibia (MUN), claimed
27 that: "92% of all black and 51% of all colored workers still remain in the company's lowest
28 income bracket [which does not] constitute a living wage ... black workers in the Exploration

1 department have no house, no housing allowance. Their conditions in crowded army-style tents
2 are, in fact, among the worst in the mining industry.”

3 118. At one point in the early 1980s, the Rössing mine was Rio’s biggest money-spinner.
4 For most of its life it has paid no taxes – and only then into a fund controlled by the South African
5 régime. Likewise, the Bougainville copper mine enjoyed a five-year tax-holiday (until the newly
6 independent government of Michael Somare forced a re-negotiation in 1974).

7 119. It is indigenous land claims that have been the bane of Rio’s expansionist policies
8 for two and one-half decades. There are several major mines within the company’s domain which
9 have displaced native people or risked their lives. Constructing the north Queensland bauxite strip-
10 mine at Weipa caused the forced removal of two entire Aboriginal communities in the early 1960s.
11 The Elliot Lake uranium mines, while not situated on Indian territory, leach poisonous heavy
12 metals and acids into lakes and rivers that are essential to the livelihood of the Serpent River Band.

13 120. The last decade has seen the encroachment and destruction proceeding apace. A
14 sacred women’s Dreaming site was leveled to uncover the lucrative kimberlite diamond pipe at
15 Lake Argyle, Western Australia. Test-drilling for uranium has been carried out near life-giving
16 water sources on Martu land in the desert to the south. Rio has constructed one of Asia’s major
17 new coal mines upstream of Dayak settlements in East Kalimantan, while both CRA and Rio have
18 been accused of engineering the removal of indigenous miners and their families, further inland.
19 One of the Group’s most important future mines – a wetdredge mineral sands project in south-
20 eastern Madagascar – is likely to profoundly affect the coastal areas used by the Antanosy, one of
21 the island’s largest tribal communities. Hardly before the curtain was raised on the 1990s, CRA
22 announced a 30% stake, later raised to 40%, in a gold mine on Igorot land, high in the Filipino
23 Cordillera. Its partner here is Lepanto Mining – a domestic company which has been organizing
24 by the broad-based National Federal of Labor Unions (“NAFLU”) and uses its own private army to
25 attempt to silence dissidents.

26 121. Rio’s Rössing uranium mine in Namibia enjoys the unenviable reputation of being
27 the most condemned mining project of the twentieth century. No other mine has been the subject
28 of United Nations (“UN”) resolutions, a UN-sponsored court case, and scores of demonstrations

1 throughout Western Europe. Nonetheless, as already pointed out, the company's exploits in
2 Namibia have gained the seal of approval from a succession of British governments.

3 **E. The World's Largest Mine Is Built**

4 122. It was with this corporate background, history and intent that Rio entered into the
5 remote Bougainville area. Having thrown the people off the land with the permission of the PNG
6 government, the stage was set for the mine to be built. The mine was located on a rain forest that
7 was a key source of food and subsistence for the people. The rain forest was completely removed
8 by chemical defoliant and bulldozers, and Rio then sluiced off the hillside. Entire villages were
9 destroyed in the process.

10 123. The Panguna ore body is roughly elliptical in shape and occupies an area
11 approximately 1000 meters across to a depth of 300 meters beneath the Kawerong Valley near its
12 source.

13 124. The mine is a roughly symmetrical, cone-shaped excavation or open pit with
14 benches stepping down from the lip. The pit is approximately one-half kilometer deep and seven
15 kilometers across. Ore and waste rock (sub-economic mineralized rock and unmineralized
16 overburden) were mined continuously from as many as six cuts. Each day during its operation,
17 approximately 300,000 tons of ore and waste are blasted, excavated and trucked from the pit.
18 Blasting took place once or twice each day.

19 125. The waste rock was transported in 142-ton and 172-ton capacity trucks or by
20 conveyors to dumps in the headwaters of the Kawerong Valley. Soft waste comprising overburden
21 and weathered waste rock is selectively dumped within the hard rock dump.

22 126. The tailings, comprising over 95% of the ore feed, were dumped into the headwaters
23 of the Kawerong River.

24 **F. Tailings and Waste Disposal**

25 127. Rocks wastes associated with mining at Panguna comprise three categories of
26 material: Fine overburden, waste rock and tailings.

1 128. The original proposals formulated by Rio and its consultants were for sluicing or
2 hydraulicking the fine overburden into the Kawerong-Jaba river system. This material, comprising
3 unconsolidated volcanic ash and weathered rock, was estimated at 40 million tons (40.6 million
4 tonnes). The waste rock was to be dumped in the most convenient and economical method of
5 emplacement, into the Kawerong River valley.

6 129. The tailings disposal system proposed was the construction of an open flume with a
7 1% slope to convey the tailings to tailings dams to be constructed on large areas of western
8 lowlands adjacent to the Jaba River.

9 130. A number of consultants' reports on tailings disposal and the effects of tailings and
10 fine overburden discharge to the Kawerong-Jaba river system were prepared in 1969 and 1970.
11 Initially the consultants advised *against* discharge of tailings to the river, predicting deposition and
12 land degradation on the scale that has eventuated. The Company proposed construction of an open
13 flume to carry tailings to the lowlands where they would be retained in a conventional cycloned
14 tailings dam. Subsequently, a further report was prepared by consultants in which disposal to the
15 river near the base of the dumps was identified as the least costly of five options considered. The
16 cost estimates were based entirely on construction and maintenance costs of disposal pipelines and
17 associated facilities. In the report, a review and reconsideration of the earlier predictions of tailings
18 deposition was presented and new predictions were made. Without explanation or reasoned
19 justification for the revisions of earlier predictions, these new predictions indicated that the tailings
20 would pass through the Kawerong and upper Jaba rivers to deposit at sea and on the flood plane
21 adjacent to the coast.

22 **G. Rio and PNG Profit**

23 131. The Panguna mine was highly profitable. Rio described the operation as the "Jewel
24 in Its Crown," and by 1983 the processing plant at Panguna was the world's largest copper
25 concentrate processor.

26 132. Until 1989, Bougainville Copper Ltd. (BCL) was likely CRA's most consistently
27 successful subsidiary.

1 133. In 1973, BCL was not only Rio's most profitable single venture, with profits
2 running at A\$158 million, it was also the most successful company in Australian corporate history
3 up to that time. The following year, 1974, it turned in another huge profit of A\$140 million, due
4 partly to the dubious practice of "high grading" (mining and processing higher grade ore while
5 dumping lower grade material, possibly for future use). By the early 1980s, Bougainville was
6 contributing a hefty 23% of Rio's pre-tax profits, despite representing only 9.4% of the
7 corporation's total assets and 8% of its sales.

8 **H. Destruction of an Ecosystem**

9 134. Of the company's many enterprises, Bougainville Copper in Papua New Guinea
10 best illustrates the degree to which Rio is prepared to exploit indigenous people, and virtually
11 wreck a major ecosystem.

12 135. The mine produced 180,000 tons of copper concentrate and 400,000 ounces of gold
13 annually, generating billions for Rio and substantial sums for PNG. During its operation, 110
14 mining trucks were hauling mine materials 24 hours a day.

15 136. The mine produced over one billion tons of waste, a mountain as large as the west
16 end of London, where Rio is headquartered. The environmental destruction was not limited to the
17 mine site which is permanently destroyed.

18 137. The tailings spread out over an area of 4000 hectares turning fertile river valleys
19 into wasteland. Lowlands near the coast were converted into toxic chemically contaminated
20 swamps as the Jaba River, laden with the toxic waste products of mineral processing ,overflowed
21 its banks. Entire forests died, the branches of the dead trees pointing skywards like the fingers of a
22 huge skeleton. Three thousand hectares of land were totally destroyed, covered with chemically
23 contaminated tailings where nothing will grow. Thirty kilometers of the river valley system was
24 converted into moonscape. (See photographs at Exhibit B.)

25 138. The Jaba River choked, became convoluted and changed its course. Tailings
26 accumulated at the mouth of the river, creating an artificial cape covering 1000 hectares and
27 stretching several kilometers into the Empress Augusta Bay. The white sands at the mouth of the
28

1 river were replaced by a huge expanse of gray black tailings. Where there was once a plentiful
2 supply of fish and shellfish, the area is now desolate, inhabited by sick crocodiles and dead water
3 rats.

4 139. The tailings that did not remain on the Jaba River were deposited in Empress
5 Augusta Bay. The fish in the Bay, which were a major food source, soon disappeared and died.

6 140. The impact of tailings input to the Kawerong-Jaba system has been, in geomorphic
7 terms, dramatic. Because of rapid build-up, the channel is presently oversteepened and highly
8 turbulent flow is maintained most of the time. Retraining the river to its former shape and size will
9 depend on reducing the channel slope to allow a single thread channel to develop. This may be
10 difficult because the imposition of engineered drop structures in the highly unstable Kawerong-
11 Jaba system may be unproductive and create further instability.

12 141. In 1973, tailing discharges were running at a massive 70,000 tons a day — totaling
13 34,376,000 tons between January 1972 and June 1973 alone. At that time, it was estimated that
14 about 60% of the tailings would be carried all the way along the 35-kilometer river and into the
15 sea, while the remaining 40% would be deposited on land. By 1974, these tailings were eroding at
16 some 539,000 tons a month.

17 142. It is estimated that one-half of the tailings have remained in the valley, while finer
18 portions have been carried into the Empress Augusta Bay. Contaminated with heavy metals —
19 such as copper, zinc, cadmium, mercury and molybdenum — these washes are also high in
20 sulphur, arsenic and mercury. This sedimentation alone would have robbed the Jaba River of its
21 aquatic life, quite apart from the chemical pollution. It will be impossible to restock the river
22 system until long after the mine has been closed.

23 143. By the mid-1980s, some 8000 hectares of the Empress Augusta Bay were covered
24 with tailings to a copper concentration greater than 500ppm (parts per million). One writer noted
25 by this time that mining operations had impacted the Kawerong/Jaba River, where the “entire
26 length of the valley is covered by sediment up to 60m deep and 1km wide in basins.”

27 144. The company itself revealed its contempt for the environment in a statement made
28 in the early 1970s by Brian Barry, BCL’s public relations manager:

1 “I get pretty snakey,” stomped Barry, “when I hear the
2 conservationists complain about what we’re doing to Bougainville,
3 because I live at Toorak, which is a very nice suburb of Melbourne,
4 and I can’t go for a walk without stepping in the doggy dirt which
has been left by the dear little doggies of the rich people. So why
can’t they worry about conservation in their own suburbs first?”

5 **I. Chemical Contamination**

6 145. Discharge from the copper concentrator, which processed 130,000 tons of ore per
7 day, poured directly in the Kawerong River, coloring the water green. Chemicals discharged into
8 the river included dissolved copper, at concentration levels toxic to both plants and animals, and
9 residual lime, which rendered the river water alkaline. These alone were enough to kill all the
10 animal and plant life in the rivers and turn fertile valleys into wasteland. Aluminum and heavy
11 metals such as mercury, cadmium, lead, zinc and arsenic, contributed to the ecocide. Xanthates,
12 ingestion of which is harmful, methyl isobutyl carbinol, which is a severe skin irritant in
13 concentrate form, and polyacrylmide monomer, which is toxic and can be absorbed through the
14 skin, were also discharged into the river. The health of villagers is deteriorating as time goes by.

15 146. Chemical action and reaction between the chemical contaminants in the tailings has
16 made revegetation impossible for many years, if ever. Vast tracts of tailings are still barren and
17 devoid of vegetation, many years after the closure of the mine.

18 **J. Air and Water Pollution**

19 147. The mine, one of the largest open cut operations in the world, dug a crater six
20 kilometers long, four kilometers wide and half a kilometer deep. Dust clouds from the mining
21 operations combined with emissions from the copper concentrator, created a poisonous mix which
22 polluted the air, increasing the incidence of upper respiratory infections and asthma. The climate
23 changed, crops were damaged, and trees no longer bore fruit. The fish in the rivers developed
24 ulcerations and died. Much of the animal and plant life in the Kawerong and Jaba River valleys
25 was extinguished.

26 148. Land animals were also affected. Birds left the area seeking a more hospitable
27 environment. Possums and flying foxes, once plentiful in Panguna, the area of the mine, became
28

1 scarce. The normal food supply, garden vegetables and fruits, supplemented by possum, flying fox
2 and fish, could no longer provide for the needs of the people, creating health problems.

3 **K. The Rape of the Land**

4 149. The widespread impact of Rio’s exploitation has been recognized from many
5 different viewpoints.

6 150. A decade and a half later, the worst fears of Bougainville landowners have been
7 confirmed. In 1988, Perpetua Serero, leader of the island’s matrilineal landowners, told a visiting
8 reporter:

9 We don’t grow healthy crops any more, our traditional customs and
10 values have been disrupted and we have become mere spectators as
11 our earth is being dug up, taken away and sold for millions. Our land
12 was taken away from us by force: we were blind then, but we have
13 finally grown to understand what’s going on.

14 151. Four months later, echoing Serero, another traditional owner — defining her
15 traditional land as somewhere in the bottom of the gaping mine-pit — said: “We are in the
16 darkness at that time ... Now we see with our own eyes.” What the people of Bougainville see is
17 one of the worst human-made environmental catastrophes of modern times. “Rio Tinto Zinc has
18 more to answer for in this tiny corner of the globe than any other. The day was certainly cursed
19 when [it] discovered copper deposits on Bougainville,” said Diane Hooper in 1977. “An economic
20 godsend — and an environmental disaster” was how Philip Hughes, Head of Environmental
21 Science at the University of PNG, dubbed BCL’s operations ten years later. Ken Lamb, Professor
22 of Biology at the same university, has also called the Bougainville experience “disastrous.” An
23 Australian engineer, working on the mine in the early phase, was more direct. Commenting on the
24 impact on the local people, he declared: “It’s f__k_d them.” “Take a trip down the Jaba River,”
25 invited the respected *Pacific Islands Monthly* in early 1989, “where millions of tonnes of waste is
26 dumped to become floating filth.” “All aquatic life in the Jaba Valley has been killed,” concluded
27 another scientist, M M M R Chambers, in 1986. “Entire villages have been moved and rebuilt on
28 tailings down-river from the mine-site,” commented the *Australian Financial Review* in late 1988,
“where crops grow only after heavy application of artificial fertiliser to the highly acidic soil.”

1 “When the mine first came,” another Bougainvillean has declared, “everything was so new, we
2 didn’t know what to expect. The thing what we were becoming so ignorantly proud of was that it
3 was the biggest open-cut mine in the world. At the time, our thinking was that money can be a
4 supplement to our way of life. But now it’s not only that, it is chewing and going right into the
5 people’s life and that has disturbed a traditional balance that has existed.”

6 152. The life and the culture of the people are entwined with the land. As the destruction
7 of the land and environment by the mine spread, the culture, economy and life of the people was
8 ripped apart.

9 153. In the meantime, the destruction of the land and the pollution of the environment
10 were undermining the health of the people. Deaths from upper respiratory infections, asthma and
11 TB increased. Many children had impaired hearing due to chronic middle ear infections. Coughs
12 and colds became commonplace, especially among children. Obesity, particularly among women,
13 became common when they had to abandon their traditional diet for European tinned and packaged
14 foods.

15 154. This was just the tip of the iceberg, the smoke emission at the top of the live
16 volcano. A deep sense of social malaise set in which expressed itself in clan tensions, depression,
17 alcohol abuse, rage, traffic accidents and incidents of violence — all distress signals of a people
18 severed from their roots.

19 155. A pervasive sense of powerlessness spread like clouds of pollution across the valley
20 as the mining operations continued to rape the land. Panguna became known as “The Valley of
21 Tears.”

22 156. For more than two decades, the cries of the people fell on deaf ears. The Australian
23 Government officials and the CRA executives did not understand Melanesian society, the system
24 of land ownership, or the importance of women as custodians of the land.

25 157. By overriding the women of the clan, by forcing mining on the people against their
26 will, raping the land, environment and culture, the mining company and their partners destroyed
27 the culture.

28

1 158. Since 1969, when the construction phase started, there have been three principal
2 village relocations:

- 3 (1) the movement of Uruawa village from the Loloho site to Rorovana;
- 4 (2) the movement of Dapera and Moroni villages (and various hamlets such as
5 Dokotonama, Isibokuma and Pirurari) from the mine site; and
- 6 (3) the movement of Kuneka from the Jaba flood plain to a new site at New
7 Kuneka (Katauri) north of the tailings lease area.

8 159. As a result of the mine's operation:

- 9 (1) plaintiffs and the members of the Class have lost land;
- 10 (2) plaintiffs and the members of the Class have lost natural drinking and fishing
11 waters;
- 12 (3) plaintiffs, Class members and the community have lost areas of forest which
13 formerly provided vegetables, meat and timber;
- 14 (4) deposition of tailings has blocked tributary stream channels which has
15 caused the streams to flood land and the water table to rise in adjacent land
16 so that the land becomes swampy;
- 17 (5) tailings deposition has blocked, or made dangerous, access to the north bank
18 of the Jaba River;
- 19 (6) the waste rock dumps are unstable and may collapse, particularly during an
20 earthquake;
- 21 (7) the area occupied by tailings and waste rock is far greater than the people
22 had understood it would be; and
- 23 (8) the area occupied by tailings extends beyond the boundaries of the tailings
24 lease.

25 160. Land, natural waters and forest resources have been lost. Tailings deposition has
26 caused flooding and waterlogging of adjacent land and has destroyed or made dangerous access to
27 the north bank of the Jaba and lower Kawerong rivers.

1 161. Every village (with the possible exception of Koiare) has been directly affected by
2 the loss of land. In the case of villages in the area of Dapera, Moroni and Pirurari, and Jaba, at the
3 mouth of the river, a very high proportion of all land has been lost. In the case of Dapera this
4 proportion may already be as high as 90%. However, most villagers have little ability to establish
5 land rights elsewhere and therefore no opportunity to migrate into other land areas.

6 162. Loss of land has almost completely destroyed the agricultural base of Dapera and
7 Moroni villages and severely reduced agricultural development opportunities in such villages as
8 Pirurari. In these and other villages there is serious concern over these losses, in terms of the
9 present and future agricultural system. Land losses have put pressure on both food production and
10 cash-cropping systems, provoking recurrent statements that villages could not produce enough
11 food.

12 163. All of the rivers of the Jaba River catchment have been detrimentally affected by the
13 mining operation. The most obvious loss has been that of fresh flowing water from the Kawerong
14 River and other streams that originally crossed the pit area, from the Jaba River downstream of the
15 pumphouse and from parts of other tributaries which have been dammed by the tailings deposits.
16 The reasons for the loss of freshwater from the rivers receiving tailings is obvious: high sediment
17 concentrations and chemicals. Where the tributaries of the Jaba River have been dammed by
18 tailings, the water ceased flowing resulting in stagnant conditions and noxious odors.

19 164. The impact on the physical environment of the mine has been extreme by any
20 measure and most of the adverse impacts are long lasting; in some cases permanent. While the
21 PNG National Government particularly, and the Company, have enjoyed the benefits, the costs
22 have not been borne by them but by plaintiffs and the members of the Class.

23 **L. Discriminatory Treatment**

24 165. From the outset, as they have elsewhere in the world, Rio officials and its agents on
25 the scene regarded the native people as inferior from a social, economic and political perspective.

26 166. As a result of this attitude and intent, as they did elsewhere in the world, Rio and its
27 agents abused the basic human rights of plaintiffs and the members of the Class.
28

1 167. The human rights abuses that might be considered in relation to the period during
2 the operation of the mine are of the nature of apartheid, discrimination and slavery.

3 168. Between 1966 and 1971, some 6,300 newcomers entered the island. By 1970, out
4 of a working population of 10,500 some 9,000 were construction workers. A high (but unknown)
5 percentage of these were recruited from outside the island. This not only created a differential
6 wage system between locals and outsiders, but tensions leading to intercommunity conflict. In
7 1970, a petition signed by 700 local villagers and company employees demanded that the company
8 repatriate the outsiders. An Australian engineer working on the project during these years has
9 attested to the apartheid-like conditions of that time. And when the Australian Labor Party shadow
10 Minister of Labor visited the mine site in 1969, he was appalled at what he found. Accusing CRA
11 of paying “slave wages” to black workers, he conjectured that the company’s “excellent training
12 programme” was mainly a device to secure a cheap labor pool; blacks driving trucks were
13 receiving less than one-quarter of their white counterparts.

14 169. Colonel McKenzie, BCL’s employment relations manager at the mine in 1970,
15 expressed no doubt on the fact that he preferred outsiders to potentially restive Bougainvilleans;
16 “At present it’s about 50%” the Colonel told Richard West; “At the early stages we were recruiting
17 wherever we could, but we would prefer a proportion of 33%.” (West 1972). When the
18 construction phase came to an end, unemployed workers spilled out around the island, creating an
19 aimless, impoverished and self-destructive group of single men about whom Raphael Bele, a
20 member of parliament for central Bougainville, commented in mid-1973: “[W]e have so many
21 vagrants in Bougainville. Often they paid their own expenses to Bougainville ... what a pity when
22 a person arrives to find there are not vacancies. From there the person’s vagrancy begins; he is
23 now included on the list of those who steal, murder and so forth. Bougainville villagers are
24 terrified by these serious incidents; they dare not walk alone on the roads.”

25 170. Villagers relocated by Rio were housed in intolerable conditions. These homes
26 lacked basic sanitary conditions, and as such caused a depression in the spirit of local people.

27 171. Those who did work in the mine were paid less than they would have been if they
28 were white and not regarded as inferior and expendable.

1 172. Rio regarded the land as belonging to an inferior people and, for that reason, treated
2 the land with wanton disregard. The amount of pollution discharged by Rio and its lack of care
3 would not have occurred in an area populated by Caucasians.

4 **M. Events Leading to the Closing of the Mine**

5 173. Papua New Guinea was granted formal independence by Australia on September 16,
6 1975. Two weeks earlier, Bougainvilleans had declared independence, a move which was met
7 with police violence from the newly created state of PNG that paralleled the violence of its former
8 colonial master.

9 174. At no time had Bougainville ceded its independence to any foreign power.
10 Bougainville is geographically part of the Solomon Islands. The nearest island of the Solomons is
11 only eight kilometers away, while the mainland of PNG is 800 kilometers away, on the other side
12 of the Solomon Sea. Prior to colonization, contact between the peoples of PNG and Bougainville
13 was minimal. Bougainvilleans approached the United Nations three times, in 1962, 1968 and
14 1975, seeking to exercise their right to self-determination, and were rebuffed by the UN each time.

15 175. The Australian Government insisted that Bougainville be made part of the newly-
16 formed amalgam, the nation state of PNG. Having put in place an expensive top-heavy
17 government and administrative system that was ill-suited to the culture of the people on whom it
18 was imposed, money was needed to maintain it; the Bougainville copper mine was expected to
19 provide the revenue. For Rio, its shareholders and the PNG Government, the mine was a multi-
20 million dollar money earner, the “Jewel in the Crown” of Rio Tinto Zinc. During its 17 years of
21 operation, total dividends and other benefits to Rio and its shareholders totaled 2,341 million Kina
22 (over \$2 billion Australian). Total payments to the PNG Government in taxes and dividends was
23 1,085.6 million Kina.

24 176. On March 1988, the new Panguna Land Owners Association (“PLA”) organized a
25 march of 500 landowners to BCL and lodged a petition demanding localization of employment and
26 greater control of environmental degradation and pollution.

1 177. On March 24, 1988, Mr. Perry Zeipi, Minister of the Environment in the PNG
2 Government, sailed down the Jaba River and described the amount of pollution as “dreadful and
3 unbelievable.” The minister observed that the river was full of all kinds of chemicals and wastes
4 and that aquatic life had been destroyed. The water was no longer safe for drinking and bathing.
5 He expressed shock that this had been allowed to happen but said his department could do nothing
6 about it. Under the Bougainville Copper Agreement, the power to control and monitor
7 environmental pollution was vested with the Department of Minerals and Energy.

8 178. Bougainville Copper Limited failed to reply to the PLA petition. Two months later
9 the PLA organized a one-day sit-down protest which temporarily stopped mining operations. BCL
10 then engaged Applied Geology Consultants to conduct a survey of health, environment and other
11 effects of the mine.

12 179. The report avoided burning issues such as the effect of chemical pollutants on food
13 crops, which is the mainstay to the people. Instead of systematically comparing food crops in
14 mine-affected areas with other areas of Bougainville, the consultants performed a cursory survey
15 and stated that all villages observed, both near and distant from the mine, had problems with their
16 crops.

17 180. Francis Ona, secretary of the PLA and former surveyor with BCL, declared the
18 report a “whitewash.” A few days later, a quantity of dynamite was stolen from BCL stores. In
19 November 1988, militants commenced blowing up power pylons and engaged in other acts of
20 sabotage that forced the mine to close.

21 181. In November 1988, Paul Tohian, then-Minister for Police in the PNG Government,
22 issued an order for police to “shoot to kill.” The militants reorganized and formed the Bougainville
23 Revolutionary Army under the leadership of Sam Kaouna. Francis Ona, spokesperson for the
24 landowners, said that the people meant business and were prepared to die for their cause.

25 182. Early in 1989, the PNG army was called in and issued with a license to kill. The
26 human rights violations committed by the PNG army culminated in the St. Valentine’s Day
27 massacre on February 14, 1990, in which many civilians, including a Uniting Church pastor, were
28 killed. These human rights abuses turned Bougainvilleans against PNG and the struggle to close

1 the mine became a struggle for independence, which the people eventually won. In response to the
2 initial unrest, Rio supplied helicopters to PNG transport troops and provided troop transportation as
3 well.

4 183. In March 1990, the PNG army and police left the island. The PNG Armed Forces
5 imposed a military blockade of Bougainville in April 1990. This blockage was, in reality, a siege.
6 On May 17, 1990, the people of Bougainville declared independence and established an Interim
7 Government.

8 184. Bougainville is the first place in the world where an indigenous people have forced
9 the closure of a mine that was raping their land and environment, and have kept it closed.

10 **N. The Inhumane Blockade of Bougainville and Rio's Role**

11 185. At all times the PNG government wanted the mine to reopen, and Rio shared that
12 view. On November 24, 1988, a few days after the first attack on BCL installations by militants
13 under the command of Francis Ona, BCL chief Don Carruthers flew into Port Moresby. He
14 warned there that, "Rio would 'seriously reconsider' future investment in PNG in light of what he
15 described as the 'acts of terrorism' on Bougainville resulting from the 'unrealistic expectations' on
16 the part of landowners." At the time Rio was investing heavily in PNG, in exploration,
17 reinvestments in Panguna, the planned "Hidden Valley" project and -soon- the enormous gold mine
18 on Lihir Island. Obviously its wishes were commands for the PNG elites and Rio intended that its
19 comments would spur the PNG forces into action. Thereafter, acting with the encouragement and
20 support of Rio, PNG embarked on a course of conduct designed to open the mine even though the
21 plan was in blatant violation of international law.

22 186. To induce PNG military action and force the reopening of the mine, Rio issued a
23 threat to the PNG government that the failure to reopen the mine through military action would
24 result in Rio quitting the mine entirely and abandoning all other investment in PNG, including at
25 Mt. Kare and Hidden Valley, two other locations of possible PNG investments.

1 187. Throughout the conflict Rio remained anxious to reopen the mine. For example, the
2 1992 Annual Report of Bougainville Copper Limited stated that “subject to economic viability, the
3 Directors intend, that when conditions permit, the company will resume mining operations.”

4 188. In November 1992, Paias Wingti, PNG’s Prime Minister, said that the mine would
5 be ready for work to begin on it by April 1993. The following month, government officials and
6 mining company representatives flew over Panguna and surveyed the area from a helicopter.

7 189. In April 1993, the fighting continued and Mr. Wingti was now hoping to have the
8 mine re-opened late that year or early the following year. More PNG soldiers were sent into
9 Bougainville. The Australian government donated two speedboats to tighten the blockade. The
10 PNG government kept Rio informed of these increased efforts and received Rio’s tacit approval
11 and/or indication that so long as these efforts were made, Rio would not pull out of Papua New
12 Guinea.

13 190. In the face of this onslaught, the landowners remained resolute and issued the
14 following statement:

15 The Prime Minister of Papua New Guinea, his Government and his
16 people must recognize the unquestionable fact that we are both of
17 melanesian race and culture. Mr. Wingti, as a Melanesian you must
18 be aware that the roots of every Melanesian person, man and woman,
19 our very identity, our being, our culture is based on land and the
20 environment. Therefore the fight to save our land, our environment
21 and our livelihood is not only to save the people of Bougainville. It
22 is a fight to uphold the land rights of all Melanesians, including the
23 people of your land, Papua New Guinea.

24 191. As part of this joint plan to reopen the mine, in April 1990, the PNG government
25 isolated Bougainville by imposing a blockade of the island. The primary purpose of the blockade
26 was to cut off medical and other essential supplies, thereby increasing the hardships of the people,
27 in an attempt to induce the people to submit to PNG control, which in turn would allow the mine to
28 reopen. Because the objective of the blockade was to gain political control of the island, it was in
reality a siege directed at forcing the people of Bougainville into a state of submission. A second
objective of the blockade was also to prevent news of events on Bougainville, particularly the
human rights violations committed by the joint PNG/Australian forces, from reaching the outside

1 world, in the first place the Australian public. The strategy is outlined in a document leaked from
2 the Intelligence Branch of the PNG Department of the Defence: “... *the hardships of life without*
3 *essential goods and services (that they had been so used to as one of the PNG’s most developed*
4 *provinces) grow worse each morning. This alone has had a great psychological effect on the NSP*
5 *(Bougainville) population and is slowly but surely turning the population against the BRA. Should*
6 *a complete cut in shipping services to the island eventuate (a blockade?) goods and services would*
7 *come to a complete standstill and only a matter of time (3-4 weeks?) before Kauona will be*
8 *pressured to listen to the silent majority of the province. Because of Kauona’s weakness as a*
9 *strong leader, he will most certainly succumb to the pressure.”*

10 192. At meetings with Rio and PNG officials, Rio’s on-site employees encouraged
11 continuation of the blockade. At one meeting in 1990 between PNG officials and two top Rio
12 executives, one top Rio manager encouraged continuation of the blockade to “starve the bastards
13 out, some more and they will come around.” This comment was made after a discussion of the
14 devastating effects of the blockade.

15 193. Upon information and belief, plaintiffs allege that throughout the blockade, Rio
16 provided assistance to PNG, including economic assistance. For example, Rio provided vehicles
17 for use in operation Bulldog, one of the first attempts by PNG troops to clear the revolutionaries
18 and reopen the mine. Rio also provided helicopters for use by PNG troops.

19 194. With respect to the initiation and maintenance of the blockade, Rio conspired with
20 the PNG government and ratified the blockade, informing the PNG government that its actions
21 were enough to prevent Rio from withdrawing from the region.

22 195. At one point the PNG government was prepared to hire Sandline International, a
23 firm of mercenaries, to assist PNG soldiers. According to the statement of Brigadier General Jerry
24 Singirok, the sole purpose of hiring Sandline was the reopening of the mine. In a statement to a
25 PNG Commission of Inquiry, General Singirok testified that the war “stemmed from the people’s
26 protest over the mine.”

27 196. The lengthy siege, which contravened the Geneva Conventions of the Laws of War,
28 was both an economic blockade and a medical blockage. The siege prevented medicine, clothing

1 and other essential supplies from reaching the people behind the blockage. As a result, deaths from
2 preventable diseases continued to mount. The local Red Cross in central Bougainville estimated in
3 November 1992 that the blockade, through the lack of medicines and vaccines, had caused the
4 death of more than 2,000 children in its first two years of operation. The total number of deaths
5 resulting from the siege during the seven years from 1990-1997 is conservatively estimated to be
6 10,000 Bougainvilleans.

7 197. Hospitals in the blockaded areas were forced to close their wards due to lack of
8 medical supplies. Seriously ill people trying to escape to the Solomon Islands in search of medical
9 treatment were routinely fired upon if seen by PNG troops maintaining the siege.

10 198. Women and children were most affected. The siege meant that pregnant women
11 died needlessly in childbirth and that young children died from easily preventable diseases. Babies
12 born after 1989 had not been immunized against killers like tuberculosis, measles and whooping
13 cough. For many people, the siege was a death sentence.

14 199. Throughout, equipped with mortar bombs, helicopters, guns, grenades and
15 ammunition, the PNG Army attacked towns and villages. An essential element of the attempted
16 reconquest of Bougainville was the Australian (and some New Zealand) pilots of the helicopters.
17 Without these pilots the helicopters would have been useless, without the helicopters – used as
18 gun-ships from the first part of the war onwards – the PNG military would not have been able to
19 operate. The helicopter pilots had been granted exemptions from the “Foreign Crimes” Act by the
20 then Australian Attorney General Lionel Bowen on July 20, 1989. They were long paid for by a
21 special allocation directly of approximately A \$1 Million per year from the Australian government.

22 200. During 1993 and 1994, the situation deteriorated, the siege was intensified, and the
23 risk of illness, especially among babies and small children, increased. Many civilians who fled
24 their villages to avoid capture and detention by the PNG Army took refuge in the mountains.

25 201. The colder climate particularly affected small children, who were already at risk due
26 to the shortage in clothing. Mothers had no clothing to wrap newly-born babies. Without
27 antibiotics, many babies died of upper respiratory infections.

1 202. The siege also kept out journalists and human rights organizations. A frequently
2 heard “excuse” was “we cannot get any journalists in there.” On many occasions the journalists
3 and cineastes who reached free Bougainville through the blockade were specifically targeted by the
4 PNG military, assisted by the Australian pilots. The Australian government de facto encouraged
5 such violations of “press freedom.” In the absence of public scrutiny, PNG troops continued to
6 commit human rights violations with impunity. Human rights violations and war crimes
7 committed by the PNG Armed Forces included the following:

- 8 (a) Aerial bombardment of civilian targets;
- 9 (b) Wanton killing and acts of cruelty;
- 10 (c) Burning of houses and villages;
- 11 (d) Making the civilian population and individual civilians objects of attack;
- 12 (e) Outrages upon personal dignity, acts of rape, humiliating and degrading
13 treatment;
- 14 (f) Perfidious use of the Red Cross emblem; and
- 15 (g) Pillage

16 203. An estimated 15,000 civilians were killed as a result of violations of the laws of
17 armed conflict by PNG troops. Some examples are given below.

18 Case 1: Ken Savia, then Minister for Health in the Bougainville Interim Government, was
19 captured by the PNG Armed Forces on February 14, 1993. He was subsequently killed in custody.
20 He was reportedly dragged around a disused parking lot tied to the back of a truck and he died of
21 the injuries received.

22 Case 2: “When I did not return to the Tokiano Centre (a PNG controlled concentration
23 camp), PNG soldiers came to my village and shot dead my four sons, Raphael Morikei, Iamu
24 Kubui, John and Bana Kurai.” (Statutory Declaration of Chief Andrew Purai of Buin, sworn
25 January 1993).

26 Case 3: “As the PNG soldiers approached Kopani village, most of the people saw the army
27 coming and ran away into the bush. An elderly couple, Mr. Peter Tapatomam and his wife, were
28 shot and wounded as they were sleeping in their house. The soldiers stole 7000 Kina which

1 belonged to Mr. Tapatomam, who was a Health Extension Officer. The PNG soldiers then burnt
2 the village to the ground. Mr. And Mrs. Tapatomam were burnt alive in their house.”

3 Case 4: “In September 1992, a man called Peter from the Laguai village was seen carrying
4 a packet of rice to his village. He had left Turiboiru at the allotted time to go to his food garden.
5 He was spotted by PNG soldiers as he passed the PNG army base at Buin town. They captured
6 him and put in the back of a truck. On their way back to the base, they dropped him off the back of
7 the truck and onto the bitumen road. He broke one of his legs. He was dropped at the junction of
8 the road leading to the Buin Health Centre and the road to Kangu Beach.

9 The PNG soldiers then picked Peter up off the road and put him in the back of the truck
10 again. They drove the truck in the direction of Wally Sito’s store and, while the vehicle was
11 moving, dropped him off the truck again. The store is just in front of the PNG army barracks in
12 Buin. When he fell on the road, his skull split open and he died instantly. The PNG soldiers
13 picked him up again and took him down the Kangu Road until they reached the crossroads near
14 Laguai village. They put him face down on a lot and put the packet of rice on his back. They then
15 sprayed his body with bullets.”

16 Case 5: “A squadron of PNG armed forces surrounded Okogupa village in the Aita area of
17 Wakunai. The village is built on the top of a hill and is near the PNG army camp at Wakunai. The
18 PNG armed forces captured a whole family and some other residents of the village. They lined the
19 people up in two lines and asked them what they were doing. Someone had reported to the PNG
20 army that the village had been celebrating the Independence of Bougainville from Papua New
21 Guinea.

22 The father of the family, Silus Ausi, the chief of the village, admitted they had been
23 celebrating independence. PNG Army officers shot him in the head in front of his family. His
24 wife and five children were shot by the PNG Armed Forces next. Then all the other people in the
25 village were lined up and shot. The PNG Army then burned the village to the ground.”

26 204. The United Nations Commission on Human Rights, and the Sub Commission for
27 the Prevention of Racial Discrimination and the Protection of Minorities, passed resolutions calling
28 on the PNG Government to immediately lift restrictions on the flow of medical and other

1 humanitarian supplies into the areas under military blockade (siege), and to permit the Special
2 Rapporteur on Extrajudicial and Summary Executions and the Special Rapporteur on Torture to go
3 to Bougainville to investigate and report on allegations of human rights violations there.

4 205. In response to a post-war PNG government inquiry, the former commander of the
5 PNG forces confessed to the atrocities as follows:

6 The island of Bougainville is one of the most beautiful in the world,
7 populated by around 180,000 who are a fine and distinctive people.
8 The tragedy of this conflict for the people of Bougainville and for all
9 Papua New Guinea is that thousands have died. The infrastructure
10 such as schools, hospitals, airports and roads has been mostly ruined
11 or destroyed. A generation has now gone uneducated, and has grown
12 up knowing only war and violence. The island has been isolated.
13 Many have fled the island and communication with their families is
14 usually impossible, and there is uncertainty if they will ever see them
15 again. This has been a small but nasty war with atrocities committed
16 by many sides. All of the miseries and wretchedness and suffering of
17 war have been inflicted upon the people of Bougainville, the great
18 majority of whom wish only for peace. It is said that some 67,000
19 now live in "care centers" or refugee camps. The suffering for the
20 police and the troops of the P.N.G.D.F. and others continues. Many
21 have been killed and wounded leaving families who must bear that
22 loss for the rest of their lives.

23 VI. EQUITABLE ESTOPPEL AND TOLLING

24 206. The ten-year limitations period applicable to all claims brought under the Alien Tort
25 Claims Act, 28 U.S.C. § 1350 is equitably tolled during the period 1988 through 1999 by virtue of
26 the war and medical blockade which made it impossible to pursue legal remedies until the war
27 ended in 1999.

28 207. Even now, no remedy is available to plaintiffs under the laws of Papua New Guinea
or before any court in their domestic jurisdiction. Even if any remedy was available, plaintiffs
would be unable to avail themselves of that remedy because the government of Papua New Guinea
was part of the conspiracy described in this Complaint.

208. Lastly, no cause of action has begun to run on the claims asserted in this Complaint
by plaintiffs for the continuing environmental harm and toxic exposure caused by the
contamination of the mining facility of the soil and water in the nearby areas due to the fact that the
contamination is ongoing. Further, any statute of limitations is tolled on the grounds of fraudulent

1 concealment because Rio Tinto, despite knowledge of the scale of contamination at the facility, not
2 only failed to take remedial actions but withheld relevant information from publication and has
3 actually attempted to conceal revelation of the truth.

4 **COUNT I**

5 **(Crimes Against Humanity**
6 **Under 28 U.S.C. § 1350)**

7 209. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing
8 paragraphs as if fully set forth herein. This Count is asserted by all Classes.

9 210. Rio has acted jointly and willfully with PNG and the government of Australia to
10 institute a blockade of Bougainville. Indeed, Rio's mine manager expressly urged PNG to institute
11 and continue to blockade.

12 211. The medical blockade of the island was a form of torture in that it was a form of
13 inhumane and degrading treatment.

14 212. The medical blockade constitutes genocide because it foreseeably resulted in the
15 killing of natives, caused serious bodily harm, was deliberately calculated to destroy plaintiffs and
16 their way of life, in violation of the Convention on the Prevention and Punishment of the Crime of
17 Genocide and similar treaties.

18 213. The blockade and other atrocities described above, including the wanton execution,
19 torture and murder of civilians, were inhuman and undertaken in violation of international law.

20 214. The denial of medicine and the blockade also violates the law of war.

21 215. Defendants' wrongful conduct, as described in this Complaint, amounted to a
22 consistent pattern of gross violations of recognized human rights insofar as Rio Tinto operated and
23 maintained the mine which continuously posed a grave risk of destroying the resources of the
24 community such that the way of life of the Class would be impaired if not destroyed.

25 216. Defendants' wrongful conduct, as described in this Complaint, was unlawful,
26 reckless, malicious and reprehensible and was undertaken in deliberate, conscious and wanton
27 disregard of the lives, rights and safety of the residents of Bougainville and was in violation of the
28

1 Alien Tort Claims Act, customary international law, the common law of the United States and
2 international treaties, agreements, conventions and resolutions prohibiting such conduct.

3 **COUNT II**

4 **(War Crimes/Murder Under 28 U.S.C. § 1350)**

5 217. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing
6 paragraphs as if fully set forth herein and assert this Count on behalf of all Classes.

7 218. Rio has acted jointly with PNG and at times the government of Australia to institute
8 a blockade of Bougainville and to suppress the people's attempt to protect their way of life and
9 environment by acts of war.

10 219. The PNG government and its soldiers acted as the agent of Rio and with Rio's tacit
11 or implicit encouragement.

12 220. In the course of this war, innocent civilians were intentionally slaughtered by PNG
13 forces and the PNG forces committed acts of rape, torture and execution.

14 221. Rio, having encouraged efforts to repress the people of Bougainville, made no effort
15 to stop these illegal acts.

16 222. Rio's conduct, as described herein, was unlawful, malicious, and was undertaken in
17 deliberate and conscious disregard of the lives, safety and rights of the residents of Bougainville,
18 and was in violation of the Alien Tort Claims Act, customary international law, the common law of
19 the United States and international laws and treaties prohibiting such conduct.

20 **COUNT III**

21 **(Violation of the Rights to Life, Health and Security of the Person**
22 **Under 28 U.S.C. § 1350)**

23 223. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing
24 paragraphs as if fully set forth herein, and this Count is asserted on behalf of the Environmental
25 Right to Life Class and the Medical Monitoring Class.

26 224. The right to life is the most fundamental of human rights and has been widely
27 recognized as a non-derogable norm of customary international law in almost every international
28 instrument. Without question, therefore, this right is both universal and obligatory under

1 international law. The right to life is specifically applicable to cases involving severe
2 environmental harm.³ For example, the United Nations Human Rights Committee has expressly
3 ruled that a complaint alleging large-scale dumping of nuclear waste which threatened the lives of
4 local residents stated a prima facie case for a violation of the right to life under Article 6(1) of the
5 International Covenant on Civil and Political Rights.⁴

6 225. A wide variety of international instruments including, but not limited to, the
7 International Convention on Economic, Social and Cultural Rights (“ICESCR”) (art. 12), the
8 Universal Declaration of Human Rights (art. 25), the African Charter (art. 16), the American
9 Declaration (art. XI), the Rights of the Child Convention (art. 24), contribute to the consensus that
10 the right to health constitutes a norm of customary international law. The ICESCR, the Vienna
11 Declaration and the U.N. Human Rights Commission have all found that environmental destruction
12 and pollution which threatens the right to life and/or health are cognizable violations of
13 international law.⁵

14 226. International law has recognized that harm which threatens human life or health
15 necessarily implicates a violation of the right to security of the person. The Universal Declaration
16 of Human Rights affords this right a primacy equivalent only to the right to life, stating that
17 “[e]veryone has the right to life, liberty and the security of the person.” The right to security or
18 integrity of the person as a norm of customary international law may also be found in numerous
19 other sources, e.g., the European Convention on Human Rights (art. 5).

22 ³ The 171 states attending the World Conference on Human Rights affirmed that serious environmental
23 damage, specifically illicit dumping of toxic waste, can threaten the right to life. U.N. World Conference on Human
Rights, Vienna Declaration and Programme of Action, par. 11, 32 I.L.M. 1661 (1993). The U.N. Human Rights
24 Commission expressly reiterated this conclusion. U.N. Hum. Rts. Comm., Resolution 1995/81, Preamble and art. 1,
U.N. Doc. E/CN.4/1995/1.47 (1997).

25 ⁴ U.N. Human Rights Committee, Communication No. 67/1980, in United Nations, 2 Selected Decisions of the
26 Human Rights Committee under the Optional Protocol 20, U.N. Doc. CCPR/OP/2 (1990), *cited in* Human Rights and
the Environment, Second Progress Report prepared by Mrs. Zohra Ksentini, Special Rapporteur, July 26, 1993,
U.N. Doc. E/CN.4/Sub.2/1993/7 (“Ksentini Report”).

27 ⁵ *See, e.g.*, Inter-American Commission on Human Rights, Resolution 12/85 Case 7615 (Brazil),
OEA/ser.L./V./II.66 doc. 10 rev. 1, 1985 Inter-American Y.B. on Human Rights 264 (March 5, 1985) (“Yanomami
Case”) at 272-76; *EHP v. Canada*, Communication No. 67/1980, in United Nations, 2 Selected Decisions of the
28 Human Rights Committee under the Optional Protocol 20, U.N. Doc. CCPR/C/OP/2 (1990); *Ilmari Lansman, et al. v. Finland*,
Communication No. 511/1992, par. 9.4, UN Doc. CCPR/C/52/D/511/1992 (Nov. 8, 1992).

1 227. Rio Tinto’s unlawful conduct violated the plaintiffs’ fundamental human rights,
2 including the right to life, health and security of the person as guaranteed in Article 3 of the
3 Universal Declaration of Human Rights and Article 7 of the Universal Declaration, which provides
4 that “[a]ll are entitled to equal protection against any discrimination in violation of this
5 Declaration.” Moreover, Rio Tinto’s conduct violated Article 6(1) of the International Covenant
6 on Civil and Political Rights which states that “[n]o one shall be arbitrarily deprived of his life,”
7 and Article 9(1) of the Covenant, which expressly recognizes the right to security of the person.
8 Because these treaties and conventions are declaratory of customary international law, plaintiffs
9 assert the violation of these rights as violations of the law of nations.

10 228. At all relevant times, Rio Tinto had specific knowledge that its mining facility
11 involved the emission and deposit of extremely volatile and highly toxic chemical substances.
12 Nevertheless, Rio Tinto failed to design, construct, maintain and operate an environmentally safe
13 mine, exposing the people of Bougainville and its environs to a grave risk of destruction, all of
14 which was reasonably foreseeable. Further, with knowledge of the foregoing, Rio Tinto directed,
15 supervised, controlled and/or caused to be implemented a specific policy of cost-cutting which
16 resulted in the facility operating on a subsistence basis, thereby creating conditions that could
17 foreseeably result in physical injury to plaintiffs and the members of the Class and a destruction of
18 their right to a safe environment and right to health.

19 229. As a direct and proximate result of the conduct of Rio Tinto, numerous thousands of
20 Class members, including the plaintiffs, suffered. The survivors have witnessed the virtual
21 destruction of their families and entire communities; their culture and way of life have suffered and
22 they will continue to suffer severe psychological distress as a result. As another direct and
23 proximate result of Rio Tinto’s conduct, numerous plaintiffs and Class members have lost personal
24 income, are unable to work as a result of their injuries and have been reduced to penury. Further,
25 as a direct result of Rio’s conduct, the pollution is so egregious that it has killed members of the
26 class and/or caused serious illness.

27 230. Rio’s wrongful actions have destroyed the environment to such a degree so as to
28 constitute a violation of the right to life and to a healthy life.

1 231. Rio Tinto's wrongful conduct, as described in this Complaint, was unlawful,
2 reckless, malicious and reprehensible and was undertaken in deliberate, conscious and wanton
3 disregard of the lives, rights and safety of the residents of Bougainville and are in violation of the
4 Alien Tort Claims Act, customary international law, the common law of the United States and
5 international treaties, agreements, conventions and resolutions.

6 **COUNT IV**
7 **(Racial Discrimination in Violation of International Law**
8 **Under 28 U.S.C. § 1350)**

9 232. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing
10 paragraphs as if fully set forth herein and asserted this Count on behalf of all Classes.

11 233. The wrongful acts described herein were the direct consequence of Rio Tinto's
12 deliberate policy of systematic racial discrimination against plaintiffs, which took place under color
13 of law and actual or apparent authority, because Rio Tinto acted under color of law and had a
14 sufficient nexus with the Papua New Guinea government, which held a financial stake in the
15 mining facility, for the alleged discriminatory acts to constitute governmental action.

16 234. As set forth above, at all times Rio viewed the people of Bougainville as inferior
17 due to their color and culture and, therefore, intentionally violated their rights. This is a policy and
18 intent that Rio has manifested and directed toward indigenous people in many areas of the world
19 where they have located mines. In this instance, this policy was, in part, the reason Rio destroyed
20 villages, the environment, sacred sites and local culture, and is one of the reasons behind Rio's
21 support of the blockade.

22 235. Customary international law not only prohibits racial discrimination, and has
23 elevated that prohibition to the level of a *jus cogens* norm.⁶ Article 1 of the International
24 Convention on the Elimination of All Forms of Racial Discrimination ("ICERD") defines racial
25 discrimination as "any distinction, exclusion, restriction or preference based on race, color,
26 descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the
27 recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental

28 ⁶ American Law Institute, Restatement (Third) of Foreign Relations Law § 702, comment i ("Restatement").

1 freedoms.” Further, the International Covenant on Civil and Political Rights, to which the United
2 States is a party, prohibits all acts of state discrimination, not just systematically discriminatory
3 policies.⁷

4 236. The ICERD, one of the most widely-endorsed human rights treaties that is universal
5 and legally binding as customary international law, prohibits discrimination that impinges upon
6 fundamental human rights and/or freedoms guaranteed in its provisions without requiring that it be
7 systematic. Furthermore, under customary international law, the Universal Declaration of Human
8 Rights, the International Covenant on Economic, Social and Cultural Rights, the International
9 Covenant on Civil and Political Rights as well as the ICERD do not require discriminatory intent in
10 order to establish a violation of the norm prohibiting racial discrimination.

11 237. As a direct and proximate consequence of Rio Tinto’s policies of racial
12 discrimination, plaintiffs witnessed and experienced the relocation of villages, the destruction of
13 the environment, were placed in great fear for their lives, were forced to undergo severe physical
14 and psychological anguish, were deprived of the right to earn a livelihood including the support of
15 their family members, suffered death or extremely serious, permanent physical injuries and
16 witnessed the destruction of their community.

17 238. Defendant Rio Tinto’s wrongful conduct, as described in this Complaint, was
18 unlawful, reckless, malicious and reprehensible and was undertaken in deliberate, conscious and
19 wanton disregard of the lives, rights and safety of plaintiffs and the members of the Class and are
20 in violation of the Alien Tort Claims Act, customary international law, the common law of the
21 United States and international treaties, agreements, conventions and resolutions.

22 **COUNT V**

23 **(Cruel, Inhuman and Degrading Treatment** 24 **Under 28 U.S.C. § 1350)**

25 239. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing
26 paragraphs as if fully set forth herein. This Count is asserted by plaintiffs and all Classes.

27
28 ⁷ International Covenant on Civil & Political Rights, 999 U.N.T.S. 171, Art. 26.

1 240. Rio Tinto’s intentional and outrageous conduct had the effect of grossly debasing
2 the value of life of plaintiffs and Class members by subjecting them to inhumane treatment.

3 241. As a result of Rio Tinto’s wrongful conduct, many of the plaintiffs have lasting
4 emotional, psychological and physical trauma, and have had their lives egregiously devalued and
5 debased by Rio Tinto’s pattern of conduct, including defendant’s assisting in the blockade and
6 destruction of the environment. Under Article 16 of the Convention Against Torture and Other
7 Cruel, Inhuman or Degrading Treatment, all states parties undertake to prevent such “other acts of
8 cruel, inhuman or degrading treatment or punishment which do not amount to torture.”

9 242. Defendant Rio Tinto’s wrongful conduct, as described in this Complaint, was
10 wanton, reckless, malicious and reprehensible and was undertaken in deliberate, conscious and
11 wanton disregard of the lives, right and safety of the residents of Bougainville and are in violation
12 of the Alien Tort Claims Act, customary international law, the common law of the United States
13 and international treaties, agreements, conventions and resolutions.

14 **COUNT VI**

15 **(Violations of International Environmental Rights**
16 **Under 28 U.S.C. § 1350)**

17 243. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing
18 paragraphs as if fully set forth herein. This Count is asserted by the Environmental Right to Life
19 Class and Medical Monitoring Class.

20 244. International law, as evidenced by a number of widely adopted international
21 instruments, has recognized a minimum right to a safe environment as a customary norm.⁸ In the
22 Stockholm Declaration on the Human Environment, 114 nations declared that “[m]an has the
23 fundamental right to freedom, equality and adequate conditions of life, in an environment of a
24 quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect
25 and improve the environment for present and future generations.” In the Rio Declaration on
26 Environment and Development, 178 states affirmed in Principle 1 that human beings “are entitled

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28 ⁸ E.g., Council of Europe, Convention on the Protection of the Environment Through Criminal Law, 38 I.L.M. 259 (1999); Council of Europe, Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, 32 I.L.M. 1228 (1993).

1 to a healthy and productive life in harmony with nature.” Article 11(a) of the Additional Protocol
2 to the American Convention on Human Rights, for example, provides that “[e]veryone shall have
3 the right to live in a healthy environment.”

4 245. Both international practice and domestic custom support the universal and
5 obligatory nature of an international legal norm prohibiting widespread, severe and long-term
6 environmental harm that threatens internationally recognized rights to life, health and security of
7 the person. In total, states have adopted some 350 multilateral treaties and 1,000 bilateral treaties
8 protecting the environment. In domestic legal systems, an obligation to protect the environment or
9 the right to a safe environment is enshrined in the constitutions of approximately 60 nations.
10 Therefore, at a minimum, customary international law provides that large-scale environmental
11 harm that threatens the right to life and security of the person constitutes a violation of its *jus*
12 *cogens*.⁹

13 246. As a result of Rio Tinto’s conduct, plaintiffs’ and Class members’ rights under
14 international environmental law were violated by the introduction of toxic chemicals and other
15 waste materials from the mining facility. This contamination continues to this day to pollute the
16 plaintiffs’ environment and habitations in water, livestock, agricultural products and soil in
17 violation of customary international law regarding protection of the human environment.

18 247. Defendant Rio Tinto’s wrongful conduct as described in this Complaint, was
19 unlawful, reckless, malicious and reprehensible and was undertaken in deliberate, conscious and
20 wanton disregard of the lives, rights and safety of the residents of Bougainville and are in violation
21 of the Alien Tort Claims Act, customary international law, the common law of the United States
22 and international treaties, agreements, conventions and resolutions prohibiting such conduct.

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27 ⁹ Ksentini Report, ¶ 175, *quoting* B.G. Ramcharan, *The Right to Life*, 310-11 (1983) (“States and other
28 responsible entities (corporations or individuals) may be criminally or civilly responsible under international law for causing serious environmental hazards posing grave risks to life”).

1 **COUNT VII**

2 **(Consistent Pattern of Gross Violations of Human Rights**
3 **Under 28 U.S.C. § 1350)**

4 248. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing
5 paragraphs as if fully set forth herein. This Count is asserted by all Classes.

6 249. Customary international law, which forbids even a single violation of its
7 fundamental rights and/or peremptory norms, such as the right to life, also provides that a
8 separately cognizable violation may be based on an aggregation of such violations. International
9 law prohibits a consistent pattern of gross violations of internationally recognized human rights
10 perpetrated under color of law.

11 250. Where, as here, the violations in question are repeated and/or severe enough to give
12 rise to numerous claims, the Alien Tort Claims Act, 28 U.S.C. § 1350, provides that the conduct in
13 question may be actionable as a “consistent pattern.” According to the *Restatement (Third) of*
14 *Foreign Relations Law*, this norm forbids “infringements of recognized human rights that are not
15 violations when committed singly or sporadically.”¹⁰

16 251. Rio’s consistent abuse of plaintiff and members of the class, both in terms of
17 destruction of the environment and its participation in the military efforts to reopen the mine,
18 violate international law.

19 252. Rio’s conduct as described herein, was unlawful, reckless, malicious, reprehensible
20 and was undertaken in deliberate, conscious and wanton disregard of the lives, rights and safety of
21 the residents of Bougainville and are in violation of the Alien Tort Claims Act, the common law of
22 the United States and international treaties and resolutions prohibiting such conduct.

23 **COUNT VIII**

24 **(Negligence)**

25 253. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing
26 paragraphs as if fully set forth herein and assert this Count on behalf of all Classes.

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28 ¹⁰ Restatement (Third) of Foreign Relations Law, § 702(g), comment m.

1 254. Defendants owed a duty to plaintiffs and the members of the Class to exercise
2 reasonable care in designing, operating and maintaining the mining facility.

3 255. Defendants breached this duty of care by engaging in the negligent manufacture and
4 disposal of tailings, chemicals and toxic effluents which contaminated the land and soil around its
5 facility and by otherwise failing to employ safe, prudent and technologically current techniques to
6 prevent the discharge of toxic chemicals, effluents and other by-products into the environment.

7 256. Rio Tinto was negligent in one, some and/or all of the following respects: Failing to
8 utilize proper technology and disposal mechanisms to prevent the contamination of the
9 environment surrounding its facility with toxic chemicals and its by-products; in failing to exercise
10 due care in the manufacture and disposal of its mining by-product; in failing to prevent spills,
11 discharges and other leaks of toxic effluents and by-products; in failing to warn the inhabitants of
12 the residential communities surrounding its facility of the toxicity of the by-products of the mine;
13 in failing to take reasonable precautions or exercise reasonable care to publish, adopt and enforce
14 safe methods of disposal of its by-products; and failing to test all products released into the
15 environment for adverse health or environmental effects, or to cause said products to be tested.

16 257. Defendants' breach of duty was wanton, outrageous, reckless and intentional. They
17 consciously decided, for their own economic gain, to dump by-products and toxic effluents into the
18 environment, and thereby to expose plaintiffs and the members of the Class to such products other
19 toxins, knowing that such substances were toxic to the environment and to plaintiffs' and Class
20 members' way of life.

21 258. As a direct and proximate result of defendants' breach of duty, plaintiffs and the
22 members of the Class have suffered injuries to their persons and property. Plaintiffs and the
23 members of the Class are entitled to recover compensatory and punitive damages in amounts to be
24 ascertained at trial.

1 **COUNT IX**

2 **(Public Nuisance)**

3 259. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing
4 paragraphs as if fully set forth herein and assert this Count on behalf of the Environmental Right to
5 Life Class and Medical Monitoring Class.

6 260. Plaintiffs and the Class members have suffered up special and peculiar harm of a
7 kind different from that suffered by others because their health already has been injured, their
8 properties already have been damaged and their sources of clean water and food already have been
9 impaired by Rio Tinto's conduct.

10 261. Defendants' conduct was unreasonable, wanton, outrageous, reckless and
11 intentional, and plaintiffs and the members of the Class are entitled to recover compensatory and
12 punitive damages in amounts to be ascertained at trial.

13 **COUNT X**

14 **(Private Nuisance)**

15 262. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing
16 paragraphs as if fully set forth herein and assert this Count on behalf of the Environmental Right to
17 Life Class and Medical Monitoring Class.

18 263. Defendants' conduct has caused non-trespassory (as well as trespassory) invasions
19 of plaintiffs' and Class members' private use and enjoyment of their land. Plaintiffs and Class
20 members in the residential colonies surrounding the facility in Panguna hold lawful title to the
21 properties in which they reside.

22 264. Defendants' conduct has been unreasonable because it has caused severe,
23 annoyance, harm, inconvenience and damage to plaintiffs' and Class members' enjoyment of their
24 private properties.

25 265. Defendants' conduct was unreasonable, wanton, outrageous, reckless and
26 intentional, and plaintiffs and the members of the Class are entitled to recover compensatory and
27 punitive damages in amounts to be ascertained at trial.

1 **COUNT XI**

2 **(Strict Liability)**

3 266. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing
4 paragraphs as if fully set forth herein and assert this Count on behalf of the Environmental Right to
5 Life Class and Medical Monitoring Class.

6 267. The technology used by Rio Tinto for the mining of copper at its Panguna facility
7 was designed, created and used by defendants in order to maximize Rio Tinto's profits. This
8 technology was defective and unreasonably dangerous.

9 268. The technology led to the contamination of the waters of the areas surrounding the
10 facility with toxic chemicals and by-products.

11 269. The technology was defectively designed and unreasonably dangerous because at all
12 times alternative technology existed for operation of a mine which would function without
13 discharging toxic effluents, chemicals and by-products into the environment, and without creating
14 unreasonable health hazards to plaintiffs and the Class.

15 270. Plaintiffs and the Class are entitled to recover compensatory and punitive damages
16 in amounts to be ascertained at trial.

17 **COUNT XII**

18 **(Equitable Relief)**

19 271. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing
20 paragraphs as if fully set forth herein and assert this Count on behalf of the Environmental Right to
21 Life Class and Medical Monitoring Class.

22 272. As a result of Rio Tinto's wrongful conduct, as alleged in this Complaint, plaintiffs'
23 properties and environment are highly contaminated with mining by-product.

24 273. In the absence of injunctive relief, plaintiffs will suffer irreparable harm, and
25 plaintiffs do not have an adequate remedy at law.

26 274. Plaintiffs are entitled to equitable relief to remedy the contamination and spoliation
27 of their properties, water supplies and environment.

1 **COUNT XIII**

2 **(Medical Monitoring)**

3 275. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing
4 paragraphs as if fully set forth herein and assert this Count on behalf of all Classes.

5 276. As a result of defendants' negligent and reckless conduct, plaintiffs and the
6 members of the Medical Monitoring Class have been significantly exposed to known hazardous
7 substances and have been harmed by the lack of medical attention.

8 277. As a result of such exposure and defendants' conduct, plaintiffs and the members of
9 the Class are at an increased risk of contracting diseases.

10 278. Early detection and treatment of these diseases is medically necessary and
11 advisable. Up until the present day, Rio has refused to disclose, release or make public its medical,
12 toxicological and other research on the waste byproducts produced which would facilitate the
13 medical treatment of plaintiffs and the members of the Class.

14 279. Plaintiffs and the members of the Class are entitled to recover the costs of a medical
15 monitoring program, and to recover punitive damages in amounts to be ascertained at trial.

16 **VII. DEMAND FOR JURY TRIAL**

17 280. Plaintiffs demand a jury trial on all issues.

18 **VIII. PRAYER FOR RELIEF**

19 WHEREFORE, each plaintiff demands judgment against the defendants as follows:

20 A. That the Court certify this case as a Class Action pursuant to Rule 23 of the Federal
21 Rules of Civil Procedure.

22 B. Award such compensatory damages to plaintiffs and the members of the Class as
23 allowed by law in an amount to be proven at trial.

24 C. Award punitive and exemplary damages to the plaintiffs and the members of the
25 Class in an amount to be proven at trial.

26 D. Order Rio to disgorge all profits earned from the mine.
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1 E. Grant equitable and injunctive relief on plaintiffs' environmental contamination and
2 medical monitoring claims.

3 F. Award reasonable attorneys' fees and the costs of the litigation.

4 G. Grant such other and further relief as this Court deems just and proper.

5 DATED: September 6, 2000.

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