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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11 IN RE: LINCOLN MEMORIAL PARK
12 LITIGATION

13 THELMA BINFORD, et. al.,

14 Plaintiffs,

15 vs.

16 LINCOLN MEMORIAL PARK, INC., et al.,

17 Defendants.

21 AND RELATED AND CONSOLIDATED
22 ACTIONS

MASTER CASE NO. BC 133 643
Honorable Richard L. Fruin

CLASS ACTION

**APPLICATION OF CLASS PLAINTIFFS
FOR: (1) FINAL APPROVAL OF
SETTLEMENT WITH CEMETERY
DEFENDANTS; AND (2) ENTRY OF
FINAL ORDER AND JUDGMENT OF
SETTLEMENT WITH CEMETERY
DEFENDANTS; MEMORANDUM OF
POINTS AND AUTHORITIES AND
DECLARATION OF MIKE ARIAS IN
SUPPORT THEREOF**

Date: April 4, 2005
Time: 1:30 p.m.
Dept: 15

23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

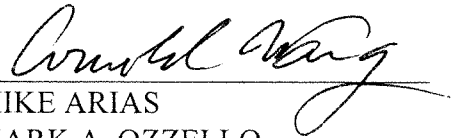
24 NOTICE WAS GIVEN in the Class Notice of Settlement that on April 4, 2005 at 1:30 p.m.
25 or as soon thereafter as the matter may be heard in Department 15 of the above referenced Court,
26 Class Counsel will move the Court for an Order (1) Granting Final Approval of the Proposed
27 Settlement with Cemetery Defendants; and (2) for Entry of Final Order and Judgment of Settlement
28 with Cemetery Defendants. This Application is based on the attached Memorandum of Points and

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Authorities filed in support thereof, the attached Declaration of Mike Arias, Esq., the pleadings and records on file in this action and such oral argument as may be presented at the hearing on this application.

Dated: April 1, 2005

ARIAS, OZZELLO & GIGNAC, LLP

By: 

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MARK A. OZZELLO
J. PAUL GIGNAC
ARNOLD C. WANG
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BERNSTEIN, L.L.P.
MICHAEL W. SOBOL

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 Class Plaintiffs respectfully submit this Memorandum in support of their Application for
5 Final Settlement Approval pursuant to the Class Action settlement approval procedure described in
6 California Rules of Court Rule 1859. The parties to the Settlement Agreement request the issuance
7 of an order providing for: (1) Final Approval of Settlement with Cemetery Defendants; and (2) Entry
8 of Final Order and Judgment of Settlement with Cemetery Defendants.

9 The proposed settlement before this Court disposes of all causes of action against all of the
10 Cemetery Defendants and is binding on all parties to this action. The settlement also will benefit
11 the Settlement Class. Additionally, the parties agree that the potential total value under the
12 Settlement Agreement is in excess of one million six hundred thousand dollars (\$1,600,000.00),
13 including attorneys' fees, costs, an incentive payment to the Class Representatives, the cost of claims
14 administration, the endowment care fund lien, and substantial repairs and improvements to the
15 cemetery grounds.

16 As the resulting Settlement is the product of serious, informed and arms-length negotiations
17 and contains no deficiencies, it is worthy of final approval by this Court under the operative
18 standards of CRC Rule 1859 and applicable state law. Settlement discussions were conducted with
19 the supervision and assistance of the Honorable Carl J. West. The settlement is fair, adequate, and
20 reasonable and provides relief consistent with the claims asserted. Accordingly, final approval of
21 the settlement at this time is appropriate.

22 II.

23 SUMMARY OF CLAIMS AND ALLEGATIONS

24 A. Background of the Case

25 The initial Class Action Complaint was filed on August 17, 1995, against Lincoln Memorial
26 Park Cemetery, Hollywood Cemetery Association and over 30 mortuaries. The complexity and
27 nature of these consolidated matters include: five (5) separate Class Action lawsuits; in excess of
28 100,000 putative class members; in excess of 30 individual lawsuits with more than 400 named
plaintiffs. At the time of the filing of the lawsuit, Los Angeles County Superior Court had a specific

1 department which heard all Class Action matters and as such, all of the Class Actions and the
2 individual actions were assigned to Commissioner Bruce E. Mitchell in Department 59 and were
3 consolidated for pre-trial purposes. On October 15, 1996, the United States Bankruptcy Court
4 ordered that Plaintiffs' Motion For Relief From Automatic Stay be granted for the sole purpose of
5 proceeding with the litigation in state court and further held that the Plaintiffs could proceed to
6 judgment and that any judgment could be enforced as against the amount of insurance coverage
7 available to the Real Parties in Interest. Following several Demurrers and Motions To Strike, Class
8 Plaintiffs filed their Second Revised Fifth Amended Consolidated Class Action Complaint (the
9 operative complaint) on May 22, 1997. Following a settlement conference with Court of Appeal
10 Justice John Trotter, Ret. in 1998, the Mortuary Defendants settled with the Class Plaintiffs after
11 three years of litigation. After extensive discovery and briefing, the Court certified the Cemetery
12 Class on June 12, 2000.

13 It is alleged that for at least twelve years, beginning as early as 1983, the owners and
14 employees at Lincoln Memorial Park Cemetery ("Cemetery") engaged in conduct which included
15 the depletion of the Endowment Care Fund, the removal of water lines, the failure to maintain the
16 headstones, the use of headstones as curbstones, the failure to maintain the mausoleum, the failure
17 to maintain the grass, and the failure to maintain the fences. In addition, the owners of the cemetery
18 allegedly failed to maintain the Cemetery as a whole in a dignified and respectful condition.

19 Defendants have denied and continue to deny each and all of the claims and contentions
20 alleged by the Class Plaintiffs, including whether a certifiable litigation class exists.

21 **B. Court Certified Class with 2 Subclasses**

22 The Court, on June 12, 2000, certified the Class with Subclasses defined as:

- 23 1. Maintenance Subclass: (Failure to properly maintain the cemetery); and
- 24 2. Encroachment Subclass: (Failure to provide appropriate grave space for
25 which Defendants had a duty to provide.

26 **C. Court Certified Causes of Action**

27 The causes of action that were certified by the Court for the Subclasses are:

- 28 1. Maintenance Subclass: Breach of Contract, Breach of the Covenant of Good
Faith and Fair Dealing, Negligence and Negligence Per Se.

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2. Encroachment Subclass: Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, Negligence and Negligence Per Se.

D. Court Defined Class Membership For Certification Of The Cemetery Class

The Court, in its Certification Order defined the class as follows:

The Following Persons May Be a Member of the Class:

Persons who are or were vested with the right, pursuant to *California Health & Safety Code* §7100, to control the disposition of the remains of any decedent who was buried at Lincoln Memorial Park Cemetery ("Lincoln"), located at 16701 South Central Avenue, Carson, California;

or

Persons who contracted with Lincoln Memorial Park for funeral or burial services of any decedent interred at Lincoln Memorial Park;

or

Persons who are close family members of any decedent interred at Lincoln; are relatives who lived in the household of the decedent at the time of death; or are qualified individuals with "exceptional circumstances," and who: (a) were aware of the death of the decedent; (b) were aware that funeral or burial services were being performed for the decedent; and (c) were among those on whose behalf or for whose benefit the funeral or burial services were performed.

Each Class member may be a member of the following subclasses:

- (a) All persons as described above, who had a decedent interred at Lincoln Memorial Park prior to August 10, 1995 and whose remains were not disinterred prior to May 29, 1995.
- (b) All persons as described above, who had a decedent buried at Lincoln Memorial Park prior to August 10, 1995.

E. Court Defined the Class Period

The Court determined the Class Period for each of the Subclasses to be as follows:

- 1. Maintenance Subclass: The class period for this subclass is from May 29, 1995 through August 10, 1995;
- 2. Encroachment Subclass: The class period for this subclass is from the date of a burial to August 10, 1995.

1 **F. Notice Was Sent to the Class Members**

2 In the spring of 2000, the Court approved a Notice of the Class Certification, and it was
3 mailed, posted at the cemetery and published in the LA Times and two local newspapers. Attached
4 to the Notice was an opt-out form. The Notice was mailed to thirty-six thousand three-hundred and
5 two (36,302) class members and over 120 plaintiffs filed requests for exclusion from the Class.

6 **G. Court Assigned the Entire Matter to Judge Parkin in May 2001**

7 On May 11, 2001, the court assigned the Class Action and all of the Individual Cases, for all
8 purposes, to Judge Robert Parkin (Ret.) sitting by assignment in Department N of the Los Angeles
9 Superior Court in Compton. On July 13, 2001, Judge Parkin set the Class Action trial for October
10 2, 2001. On August 2, 2001, at the start of an individual trial, Judge Parkin, in the course of
11 reviewing Motion in Limine No. 4, became aware that the Class Plaintiffs had stipulated to only
12 pursue the Real Parties In Interest's insurance policies. Real Parties In Interest had previously filed
13 for bankruptcy protection in 1996, and since the only assets available to Class Plaintiffs are the
14 insurance policies, Judge Parkin opined that the coverage cases should be prosecuted first, even on
15 the eve of the sixth year of the litigation. In doing so, Judge Parkin stayed the Class Action trial and
16 all of the Individual trials until the insurance coverage disputes have been resolved. The underlying
17 cases remained stayed until the Individual Plaintiffs, on the eve of their Declaratory Relief trial in
18 2003, settled with all of the insurance carriers. Judge Fruin set the trial date for this matter for April
19 26, 2004, which was continued to June 7, 2004 and then continued to June 21, 2004. This matter
20 was thereafter resolved in a mediation, which resulted in a settlement with the remaining three
21 carriers in the Class Action.

22 **III.**

23 **TERMS AND CONDITIONS OF THE SETTLEMENT**

24 The terms and conditions of the settlement provide or require that:

- 25 1. The Class is defined as: All persons who: (1) are or were vested with the right,
26 pursuant to California Health & Safety Code §7100, to control the disposition of the remains of any
27 decedent buried at Lincoln; (2) contracted with any Person for present or preneed funeral and/or
28 burial services at Lincoln; (3) are grandparents, parents, spouses, siblings, children, grandchildren
of any decedent buried at Lincoln; and/or (4) close family members who lived in the household of

1 the decedent at the time of death (within the meaning set forth in *Christensen v. Superior Court*,
 2 (1991) 54 Cal.3d 882 and its progeny).

3 2. The Class Representatives are Joetta D. Brown, Tracy Moore, Solisa Mathews-
 4 Sherrills, Dalina Miller, Regina Winston, Thelma Binford and Emma Smith.

5 3. The total amount of the Settlement Fund is \$1,600,879.25, which consists of the
 6 following: Mortuary Settlement Balance for Distribution (\$362,920.05); Cemetery Settlement I
 7 (\$330,000.00); Interest Paid to Date for Cemetery Settlement I (\$7,959.20); Cemetery Settlement
 8 II (\$900,000.00).

9 4. Any Settlement Class Member who objects to any aspect of the settlement may
 10 appear and be heard at the Final Approval Hearing. Any such person must submit a written notice
 11 of objection prior to the Settlement hearing upon the Court and the Class Counsel.

12 5. Settling Class Plaintiffs will release all claims that have or could have been asserted
 13 in the matters against the Settling Defendants. Class Plaintiffs upon final approval of the settlement
 14 and payment of the settlement funds will also provide for dismissal of this action, with prejudice,
 15 as to the Settling Defendants.

16 6. Ten (10) days following the final effective date, and subject to Court approval, Class
 17 counsel shall retain Four Seasons Landscaping as the Restoration/Contractor. An account shall be
 18 established to fund the repairs and improvements to the cemetery up to a maximum cost of
 19 approximately \$600,000.00 and funded by the settlement fund. The proposed restoration to the
 20 cemetery is as follows:

- 21 a. Full restoration of the roadways, which would include repairing all cracks
 22 and complete slurry coat from entrance to exit;
- 23 b. Re-seeding of the entire complex with perennial seed;
- 24 c. New fencing around cemetery perimeter where existing fence is inadequate
 25 (on the north, west, and south sides of the cemetery), including ivy to be put
 26 on the newly installed fence area and also on the existing fence area where
 27 needed;