

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

IN RE:  
LINCOLN MEMORIAL PARK LITIGATION

LEAD CASE  
CASE NO. BC133643

**NOTICE OF CERTIFICATION OF CLASS ACTION**

**PLEASE READ THIS NOTICE CAREFULLY  
YOUR LEGAL RIGHTS MAY BE AFFECTED**

**TO: ALL PERSONS WHO HAVE DECEDENTS BURIED AT LINCOLN MEMORIAL PARK**

PLEASE TAKE NOTICE that a Class Action lawsuit alleging that Lincoln Memorial Park and Hollywood Cemetery Association ("Lincoln") failed to maintain the cemetery and that graves were encroached upon is pending in the Superior Court of the State of California for the County of Los Angeles. On January 19, 2000, the Court granted Plaintiffs' motion for Class Certification as to certain sub-classes. If your decedent was buried or interred before August 10, 1995, you may be a member of the Class for whom relief is sought and you should read this Notice carefully. This Notice is to inform you about the lawsuit, the Court's order certifying the case as a Class Action, and your rights and liabilities as a potential member of the class. If you remain in the Class, and do not request exclusion as explained below, you will be bound by any and all determinations or judgments in the litigation. If you wish to assert any individual claims, you should consult your own attorney at your own expense.

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;

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.

1. Nature and Status of The Lawsuit

Plaintiffs allege that for many years Lincoln Memorial Park Cemetery: (a) was improperly maintained and that (b) graves were encroached upon at the cemetery. (See Definition Below In Section III)

Plaintiffs seek relief on a class wide basis for claims of breach of contract, breach of the covenant of good faith and fair dealing, negligence and negligence per se.

The Court has ruled that emotional distress claims are excluded from this Class Action, due to the individual nature of that proof, and only economic damages are therefore being sought on a class-wide basis. However, this does not preclude you from pursuing emotional distress claims in your own individual action as discussed below.

Defendants deny any liability relating to these allegations and deny that the class members are entitled to any damages or any other relief.

The Court has not made any rulings on the merits of Plaintiffs' claims or Defendants' defenses and has not yet scheduled a trial in this matter, but has indicated that the trial will go forward sometime before August, 2000. Further, although the problems that are now being examined may have had a prior history, to establish a common proof of conditions at the cemetery, the Court is limiting Plaintiffs class period to a time period from May 29, 1995 to August 10, 1995 on the maintenance subclass claims and from the date of any decedents burial to August 10, 1995 on the encroachment subclass claims.

## **II. About Class Actions**

A class action is a lawsuit in which the claims and rights of many people are decided in a single proceeding. Representative plaintiffs ("Class Representatives") assert claims on behalf of the entire class. This avoids the necessity of a large number of individual lawsuits and enables the court to resolve similar claims efficiently. In a class action, the court supervises the prosecution of the class claims by class counsel to assure fairness. Plaintiffs' counsel are proceeding on a contingency basis, and, if they are successful, any fees and costs paid to them are subject to court approval.

## **III. Class Certification And Class Definition**

On January 19, 2000, the Los Angeles County Superior Court granted Plaintiffs' motion for Class Certification with respect to certain of their claims and certified a class, consisting of two subclasses, (a) **Maintenance subclass** and (b) **Encroachment subclass**, defined as follows:

(a) **MAINTENANCE SUBCLASS**: (Failure to properly maintain the cemetery.)

All persons (as described on page one) who had family members interred at Lincoln Memorial Park, but who were not disinterred prior to May 29, 1995. The class period for this subclass is from May 29, 1995 through August 10, 1995;

(b) **ENCROACHMENT SUBCLASS**: (Failure to provide appropriate grave space for which Defendants had a duty to provide.)

All persons (as described on page one) who had family members interred at Lincoln Memorial Park. The class period for this subclass is from the date of a burial to August 10, 1995.

## **IV. Claims That Were Not Certified By The Court**

The Court has not Certified for Class treatment the following sub-classes:

- (1) Business and Professions Code §17200 claims;
- (2) Mausoleum Sub-Class ( except as to general maintenance issues, which are included in the Maintenance Subclass;
- (3) Unable To Locate Headstones Sub-Class;
- (d) Shallow Graves Sub-Class;
- (e) Unable To Locate Graves Sub-Class; and
- (4) All other claims raised by any Class Action Complaint filed in this Consolidated Action.

In denying certification of the Business and Professions Code §17200 claims this Court rarely certifies those causes of action. The law appears to be that a plaintiff suing under this cause of action may obtain collective relief for absent persons, and that therefore there is no "superiority" in certifying this cause of action. See Dean Whitter Reynolds (1989) 211 Cal app 3d 758, 772 and other cases cited in the tentative ruling of July 29, 1999;

In denying certification of the Mausoleum Sub-Class (except as to general maintenance issues, which are included in the Maintenance Subclass), the Unable To Locate Headstones Sub-Class, the Shallow Graves Sub-Class, the Unable To Locate Graves Sub-Class and all other claims raised by any Class Action Complaint filed in this Consolidated Action the Court found that common factual and legal issues did not predominate, thereby the commonalty and superiority requirements could not be met.

**You may have the right to pursue additional claims, any of the above claims or your emotional distress claims in an individual action. You should consult your own attorney, at your own expense, to determine your rights in this regard. It is important to receive legal counsel, as soon as possible, regarding your individual claims and/or whether those claims or types of damages may be barred by the statute of limitations.**

**V. Other Claims**

Plaintiffs are also pursuing a non-class claim against Lincoln Memorial Park, Inc. and the Hollywood Cemetery Association, Inc. under California Business & Professions Code § 17200, *et seq.*, for unfair business practices, seeking restitution and injunctive relief for all class members. Lincoln Memorial Park and the Hollywood Cemetery Association deny Plaintiffs' allegations.

**VI. Amount of Recovery**

If a recovery is obtained for the entire Class, by way of trial or settlement, the amount each class-member will receive is unknown at this time. The amount for each class member shall depend on the type of damage suffered by the claimant, relationship to the decedent and number of qualified timely filed claims.

**VII. Class Representatives And Class Counsel**

The Court has appointed Thelma Binford, Emma Smith, Joetta D. Brown, Tracy Moore and Solisa Mathews-Sherrills as Class Representatives for the Maintenance Subclass and Thelma Binford, Emma Smith, Joetta D. Brown, Tracy Moore, Solisa Mathews-Sherrills, Dalina Miller and Regina Winston as Class Representatives for the Encroachment Subclass.

The Court appointed as Plaintiffs' Class Counsel the law firms of Arias & Ozzello LLP, Stanbury Fishelman Wisner & Adsit, Cappello & McCann LLP, and Loeff, Cabraser, Heimann, Bernstein, LLP.

**VIII. Representation By Counsel**

As a member of the Class, you may communicate with, seek the advice of, or enter an appearance through counsel of your own choice at your own expense. Any member of the class who does not enter an appearance either individually or through his or her own counsel will be represented by counsel for the Class Plaintiffs and will have no individual liability for attorneys fees and costs.

**IX. Attorneys' Fees And Costs**

In Class Actions, counsel who generate a monetary recovery for the benefit of the Class are entitled to an award of attorneys' fees and costs representing a reasonable percentage of the recovery in recognition of their efforts, expenses, risks, and performance. This percentage generally ranges from 25% to 40% of the recovery, if any, and Class Counsel would apply to the Court for an award of attorneys' fees and for reimbursement of their actual out-of-pocket costs.

**X. Procedures For Requesting Exclusion From The Class**

If you are a person, as defined on page one of this notice, who has a decedent buried at Lincoln Memorial Park, you are automatically included in the Class. **If you wish to remain in the Class, you do not need to take any action at this time.**

**If you remain in the Class, and do not request exclusion as explained below, you will be bound by any and all determinations or judgments in the litigation, whether favorable or unfavorable to the Class, including any judgment ultimately rendered in the action. You will also be entitled to participate in any recovery obtained in this litigation, whether at trial or through**

**settlement.**

**If you do not wish to be included in the Class**, you may request to be excluded. To do so, you must send the enclosed Exclusion Form **postmarked no later than May 26, 2000** to the following address:

LINCOLN MEMORIAL PARK LITIGATION  
2801 Ocean Park Boulevard, PMB #12  
Santa Monica, California 90405

If you timely request exclusion from the Class, you will: (1) be excluded from the Class; (2) not be bound by any determination or judgment entered in the litigation; (3) not participate in any recovery obtained through trial or settlement in this litigation; and (4) not be precluded, by reason of your decision to request exclusion from the Class, from otherwise prosecuting an individual action, if timely, at your own expense.

**If you believe you have an individual claim you should check with an attorney before deciding to opt-out of the Class. It is important to receive legal counsel regarding your individual claims and/or whether those claims or types of damages may be barred by the statute of limitations.**

**XI. Additional Information**

The information contained in this Notice is only a summary of the litigation. For more detailed information, you may review the complete court files in this case at the office of the Clerk of the Los Angeles County Superior Court, 111 North Hill Street, Los Angeles, California, during its regular business hours.

Additional information regarding the litigation and this Notice may be obtained by contacting any the following:

**Lincoln Memorial Park Class Action Website: <http://web.usxc.net/classaction/>**

**Lincoln Memorial Park Class Action Voicemail No: (310) 535-4787**

**LEAD COUNSEL FOR CLASS PLAINTIFFS**

Mike M. Arias, Esq.  
**ARIAS & OZZELLO, LLP**  
6701 Center Drive West, Suite 950  
Los Angeles, California 90045  
(310) 670-1600

Richard M. Franco, Esq.  
**LIEFF, CABRASER, HEIMANN, et. al.**  
275 Battery Street, 30<sup>th</sup> Floor  
San Francisco, California 94111  
(415) 956-1000

Bruce C. Fishelman, Esq.  
**STANBURY FISHELMAN WISNER & ADSIT**  
9200 Sunset Boulevard, Penthouse 30  
Los Angeles, California 90069  
(310) 278-1800

J. Paul Gignac, Esq.  
**CAPPELLO & MCCANN LLP**  
831 State Street  
Santa Barbara, California 93101  
(805) 564-2444

All questions regarding the litigation or this Notice should be directed to above-named counsel.

**DO NOT CONTACT THE COURT REGARDING SUCH QUESTIONS.**

DATED: March 13, 2000

Commissioner Bruce E. Mitchell  
Superior Court of the County of Los Angeles

*In Re: Lincoln Memorial Park Litigation*

**L.A. Superior Court**

**Case No. BC133643**

**Request for Exclusion Form**

**PLEASE NOTE:** This Form Should Not Be Returned Unless You Want To Be Excluded From This Class Action Lawsuit.

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I have read the Notice of Certification of Class Action in the  
In Re: Lincoln Memorial Park Litigation.

I have decided to request exclusion from:

- Maintenance Subclass  
 Encroachment Subclass  
(Check one or both boxes)

Name: \_\_\_\_\_  
(Please Print)

Signature:

Address:

Home telephone number: \_\_\_\_\_

Work telephone number: \_\_\_\_\_

Please mail this form **postmarked no later than May 26, 2000** to the following:

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