KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General
CARTER OTT
Deputy Attorney General
State Bar No. 221660
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2219
Facsimile: (510) 622-2270
E-mail: Carter.Ott@doj.ca.gov
Attorneys for Complainant

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE CEMETERY AND FUNERAL BUREAU
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **SUNRISE MEMORIAL CEMETERY ASSOCIATION, INC.** **2201 Sacramento Street** **Vallejo, CA 94590** **Certificate of Authority No. COA 39** **and** **BUCK KAMPHAUSEN** **200 Rollingwood Drive** **Vallejo, CA 94591** **Cemetery Manager License No. CEM 259** **Cemetery Broker License No. CEB 441** **Cemetery Branch Broker License No. CBB 120441** Respondent.	Case No. A1 2015 7 OAH No. 2015070674 **SECOND AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Lisa M. Moore ("Complainant") brings this Second Amended Accusation solely in her official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs.[1]

2. On or about May 1, 1950, the Cemetery and Funeral Bureau ("Bureau") issued Certificate of Authority Number COA 39 to Sunrise Memorial Cemetery Association, Inc. ("Respondent Sunrise Memorial"). The Certificate of Authority was in full force and effect at all times relevant to the charges brought in this Second Amended Accusation and will expire on January 1, 2016, unless renewed. Respondent Sunrise Memorial maintains a cemetery property located at 2201 Sacramento Street, Vallejo, California.

3. On or about January 20, 2015, the Bureau issued Cemetery Manager License Number CEM 259 to Buck Kamphausen ("Respondent Kamphausen"). The Cemetery Manager License was in full force and effect at all times relevant to the charges brought in this Second Amended Accusation and will expire on January 1, 2016, unless renewed.

4. On or about February 1, 1972, the Bureau issued Cemetery Broker License Number CEB 441 to Respondent Kamphausen. The Cemetery Broker License was in full force and effect at all times relevant to the charges brought in this Second Amended Accusation and will expire on June 30, 2016, unless renewed.

5. On or about July 2, 2004, the Bureau issued Cemetery Branch Broker License Number CBB 120441 to Respondent Kamphausen for use at Respondent Sunrise Memorial's cemetery property. The Cemetery Branch Broker License was in full force and effect at all times relevant to the charges brought in this Second Amended Accusation and will expire on June 30, 2016, unless renewed.5. Respondent Kamphausen controls, manages, and operates

[1] Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and was vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the Cemetery Board and the Board of Funeral Directors and Embalmers, and consolidated the functions into the Cemetery and Funeral Programs. Effective January 1, 2001, the regulatory agency is designated as the Cemetery and Funeral Bureau.

Respondent Sunrise Memorial and its cemetery property. In particular, since Respondent Sunrise Memorial's last cemetery manager resigned, on February 3, 2015, Respondent Kamphausen has acted as Respondent Sunrise Corporation's de facto cemetery manager and agent.

JURISDICTION

6. This Second Amended Accusation is brought before the Director of the Department of Consumer Affairs ("Director") for the Cemetery and Funeral Bureau, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

7. Section 118, subdivision (b) provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Bureau of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

8. Section 9729 states:

"The bureau may deny, suspend or revoke the cemetery license of a corporation as to any officer or agent acting under its cemetery license, and the cemetery license of a copartnership as to any member acting under its cemetery license, without revoking the cemetery license of the corporation or of the copartnership."

RELEVANT STATUTES AND REGULATIONS

9. Section 9604 states:

"A cemetery broker is a person who, other than in reference to an occasional sale, sells or offers for sale, buys, or offers to buy, lists, leases or offers to lease, or solicits, or negotiates the purchase or sale, lease or exchange of cemetery property or interment services, or interest therein, for his or her own account or for another."

10. Section 9605.1 states:

"(a) A cemetery manager is a person engaged in or conducting, or holding himself or herself out as engaged in those activities involved in, or incidental to, the maintaining, operating, or improving a cemetery licensed under this chapter, the interring of human remains, and the care, preservation, and embellishment of cemetery property.

"(b) For persons licensed pursuant to Section 9676, a cemetery manager is a person engaged in or conducting, or holding himself or herself out as engaged in those activities involved in, or incidental to, the following:

"(1) The maintaining, operating, or improving of a cemetery licensed under this chapter.

"(2) The interment of human remains.

"(3) The care, preservation, and embellishment of cemetery property.

"(4) Activities described in Section 9677."

11. Section 9677 states:

"Any act other than an occasional sale of buying or selling, leasing or exchanging cemetery property or interment services of or for another or on his or her own account, or offering for another or for his or her own account to buy or sell, lease or exchange cemetery property or interment services, or negotiating the purchase or sale, lease or exchange of cemetery property or interment services, or negotiating the purchase or sale, lease or exchange, or listing or soliciting, or negotiating a loan on or leasing of cemetery property or interment services constitutes the person making such offer, sale or purchase, exchange or lease, or negotiating the loan, or listing or soliciting, a cemetery broker or cemetery salesperson."

12. Section 9723 states:

"A cemetery licensed under this chapter shall at all times employ a licensed cemetery manager to manage, supervise, and direct its operations. Notwithstanding any other provision of this chapter, licensed cemeteries within close geographical proximity of each other may request the bureau to allow a licensed cemetery manager to manage, supervise, and direct the business or profession of more than one facility.

"(a) Every cemetery shall designate a licensed cemetery manager to manage the cemetery, and shall report the designation to the bureau within 10 days of the effective date. Any change in the designated manager shall be reported to the bureau within 10 days.

"(b) The designated cemetery manager shall be responsible for exercising direct supervision and control over the operations, employees, and agents of the cemetery as is necessary to ensure full compliance with the applicable provisions of the Business and Professions Code, the Health

and Safety Code, and any regulations adopted thereto. Failure of the designated cemetery manager or the licensed cemetery to exercise that supervision or control shall constitute a ground for disciplinary action.

"(c) A cemetery may employ, in addition to the designated cemetery manager, additional licensed cemetery managers. However, only one licensed cemetery manager may be appointed as the designated cemetery manager of the cemetery."

13. Section 9725 states:

"Upon grounds provided in this article and the other articles of this act, the license of any cemetery licensee and the certificate of authority of any cemetery corporation may be revoked or suspended in accordance with the provisions of this article."

14. Section 9725.1 states:

"Unprofessional conduct by any licensee or registrant or by any agent or employee of a licensee or registrant constitutes grounds for disciplinary action. Unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of this chapter and any regulation adopted thereunder, or of any federal or state law or regulation governing the disposition of human remains, operation of cemeteries or crematories, the sale of cemetery property, or the sale of crematory services or commodities.

"(b) Negligence in performing any act related to the operation of a cemetery or crematory."

15. Section 9726 states, in part:

"The bureau may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a cemetery licensee, and may temporarily suspend or permanently revoke a license at any time where the licensee, within the immediately preceding three years, while a cemetery licensee in performing or attempting to perform any of the acts specified in this act, has been guilty of any of the following:

"(a) Making any substantial misrepresentation.

"(b) Making any false statement of a character likely to influence or persuade.

"(c) A continued and flagrant course of misrepresentation or making of false promises through cemetery agents or salespersons.

. . .

"(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

. . . ."

16. Code of Regulations, title 16, section 2326.5, subdivision (a) states:

"Licensed cemeteries, upon approval by the Bureau, may designate a licensed cemetery manager to manage more than one licensed cemetery under the following conditions:

"(a) The license cemeteries are under common ownership;

. . . ."

17. Code of Regulations, title 16, section 2333 states, in part:

"(a) Every endowment care cemetery shall have cemetery maintenance standards to ensure the property is kept in a condition so as to prevent the cemetery's offensive deterioration. The cemetery maintenance standards shall be in accordance with either subdivision (b) or subdivision (c) of this Section.

"(b) Each endowment care cemetery shall perform, at a minimum, the following maintenance on its cemetery property:

"(1) Trim or mow grass and prune shrubs and trees in and around the cemetery. Grass shall be trimmed or mowed to a level where flat markers of individual graves can be seen.

"(2) Suppress or remove weeds on the developed cemetery property.

"(3) Provide a sufficient supply of water to keep cemetery grass and plants as green as seasonally possible in accordance with natural terrain, availability of water, and local or county ordinances regarding water use.

"(4) Repair or restore improvements, structures and fences on the property which are owned by the cemetery.

"(5) Keep cemetery roads seasonally accessible and repair surfacing which presents a hazard.

"(6) Keep all occupied crypts and niches properly sealed or closed.

"(7) Refill or reset settled graves and markers annually, or within 120 days of the cemetery office becoming aware of the issue.

"(8) Repair any grave marker, monument, or burial vault that is damaged by the negligence of the cemetery or its employees or contractors.

"(9) Supply and empty trash receptacles when filled, and keep public areas of the cemetery grounds and water features clear of trash and debris.

"(10) Provide clear delineation of undeveloped cemetery property with the use of signage.

"(11) Control vermin and insect problems.

"(c) An endowment care cemetery may establish written rules and regulations in accordance with Health and Safety Code Section 8300. At a minimum, the rules and regulations addressing maintenance of the cemetery's property shall include its lots, graves, grounds, landscaping, roads, paths, parking lots, fences, mausoleums, columbaria, vaults, crypts, utilities, and other improvements, structures, and embellishments.

"(d) Notwithstanding subdivision (b), the care and maintenance of each cemetery may vary depending upon the cemetery size, location, topography and type of interments.

. . . ."

18. Code of Regulations, title 16, section 2381 states:

"Pursuant to Section 9726 of the Code, the bureau may suspend or revoke the license of any cemetery licensee or the certificate of authority of any cemetery corporation which engages in misrepresentation, dishonest dealings or fraudulent conduct in connection with a trust or other agreement authorized by Health and Safety Code Section 8775, including but not limited to misrepresentations concerning the revocability of such instrument or the amount of commission or trust expenses to be paid or deducted thereunder."

COST RECOVERY

19. Section 125.3 provides, in part, that the Bureau may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case,

with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE
(Failure to Maintain Cemetery Property)
(Cal. Code Regs., title 16, § 2333, subd. (b))

20. Respondent Sunrise Memorial and Respondent Kamphausen, acting as Respondent Sunrise Memorial's officer, agent, employee, and/or manager, have subjected their Certificate of Authority and Cemetery Manager License, Cemetery Broker License, and Cemetery Branch Broker License, respectively, to discipline by failing to maintain the cemetery property in accordance with the law. (Cal. Code Regs., title 16, § 2333, subd. (b)). In particular, inspections of the cemetery grounds revealed that the grounds were in a state of poor maintenance and repair, including:

(a) Many upright monuments were broken or lying in pieces.

(b) There were missing faceplates on several of the crypt fronts on the outside mausoleum and one crypt was completely open.

(c) The sharing posts holding up the awning over the outside mausoleums were unsecured, moved when touched, with one post completely unattached and lying on the walkway.

(d) The grass was not mowed and many of the flat markers were all or partially not visible because of overgrowth and debris.

(e) The grass was not watered and, in some areas, had turned completely brown.

(f) The roadways were cracked and in a progressed state of disrepair and littered with fallen tree branches and landscape debris.

(g) The ceiling stripping on the inside mausoleum was hanging down and the floor carpet showed water leak spots with green mold.

(h) Complete sections in the back of the cemetery were completely unmaintained and many of the markers were visible amongst the overgrowth.

(i) The burial grounds were uneven and there were several areas of uneven and sunken grounds.

(j) Public areas were not cleared of trash and debris. For example, a stained and dirty mattress, approximately the size of a queen-sized mattress, was found in the breezeway of a mausoleum.

(k) In several areas, fallen trees and/or branches were lying on graves.

(l) There were multiple areas of dried, cracked, and uneven ground grave sections.

(m) There were holes and other damaged areas in both outside and inside walls and fences.

(n) The inside office mausoleum had moldy areas on the ceiling and carpet.

(o) The inside chapel mausoleum had an exposed electrical outlet lying on the carpet.

(p) An open concrete vault was observed sitting exposed on top of the grounds filled with debris.

21. During the Bureau's investigation, Respondent's cemetery manager admitted that Respondent Sunrise Memorial lacks the funds or staff to properly care for the cemetery grounds. He resigned his position as cemetery manager the next day (effective February 3, 2015).

SECOND CAUSE FOR DISCIPLINE
(Failure to Have Cemetery Maintenance Standards)
(Cal. Code Regs., title 16, § 2333, subd. (a))

22. Respondent Sunrise Memorial and Respondent Kamphausen, acting as Respondent Sunrise Memorial's officer, agent, employee, and/or manager, have subjected their Certificate of Authority and Cemetery Manager License, Cemetery Broker License, and Cemetery Branch Broker License, respectively, to discipline by failing to have cemetery maintenance standards to ensure the property is kept in a condition so as to prevent the cemetery's offensive deterioration, referenced in paragraph 21, above. (Cal. Code Regs., title 16, § 2333, subd. (a)).

THIRD CAUSE FOR DISCIPLINE
(Designation of Cemetery Manager)
(Bus. & Prof. Code § 9723, subd. (a))

23. Respondent Sunrise Memorial and Respondent Kamphausen, acting as Respondent Sunrise Memorial's officer, agent, employee, and/or manager, have subjected their Certificate of Authority and Cemetery Manager License, Cemetery Broker License, and Cemetery Branch Broker License, respectively, to discipline by failing to designate a licensed cemetery manager to

manage the cemetery. (Bus. & Prof. Code § 9723, subd. (a)). In particular, Respondent Sunrise Corporation's most recent cemetery manager resigned effective February 3, 2015. To date, Respondent has not designated a cemetery manager as required by Section 9723, subdivision (a).

FOURTH CAUSE FOR DISCIPLINE
(Approval to Share a Cemetery Manager)
(Cal. Code Regs., title 16, § 2326.5, subd. (a))

24. Respondent Sunrise Memorial and Respondent Kamphausen, acting as Respondent Sunrise Memorial's officer, agent, employee, and/or manager, have subjected their Certificate of Authority and Cemetery Manager License, Cemetery Broker License, and Cemetery Branch Broker License, respectively, to discipline by having Respondent Kamphausen serve as Respondent Sunrise Corporation's de facto cemetery manager without prior approval. (Cal. Code Regs., title 16, § 2326.5, subd. (a)). In particular, Respondent Kamphausen currently acts as a cemetery manager at three other cemeteries, which are not under common ownership with Respondent Sunrise Corporation. Nevertheless, Respondent Kamphausen is acting as Respondent Sunrise Corporation's de facto manager without prior approval, as required by Code of Regulations, title 16, section 2326.5, subdivision (a).

FIFTH CAUSE FOR DISCIPLINE
(Misrepresentations)
(Bus. & Prof. Code § 9726, subds. (a), (b), (c) and (i); and
Cal. Code Regs., title 16, § 2381)

25. Respondent Sunrise Memorial and Respondent Kamphausen, acting as Respondent Sunrise Memorial's officer, agent, employee, and/or manager, have subjected their Certificate of Authority and Cemetery Manager License, Cemetery Broker License, and Cemetery Branch Broker License, respectively, to discipline by failing to designate Respondent Kamphausen as Respondent Sunrise Memorial's cemetery manager. Respondents had a duty to disclose that Respondent Kamphausen is Respondent Sunrise Memorial's cemetery manager, pursuant to Business and Professions Code section 9723, subdivision (a). Respondents' failure to designate Respondent Kamphausen as Respondent Sunrise Memorial's cemetery manager, therefore, constitutes repeated false statements and misrepresentations. Respondents made and continue to make these misrepresentations, by omission, to avoid the consequences of violating California

Code of Regulations, title 16, section 2326.5, subdivision (a), as well as risking discipline to Respondent Kamphausen's Cemetery Manager License, Cemetery Broker License, and Cemetery Branch Broker License. (Bus. & Prof. Code § 9726, subds. (a), (b), (c) and (i); and Cal. Code Regs., title 16, § 2381).

SIXTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct – Violating the Law)
(Bus. & Prof. Code § 9725.1, subd. (a))

26. Respondent Sunrise Memorial and Respondent Kamphausen, acting as Respondent Sunrise Memorial's officer, agent, employee, and/or manager, have subjected their Certificate of Authority and Cemetery Manager License, Cemetery Broker License, and Cemetery Branch Broker License, respectively, to discipline for unprofessional conduct by violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of the Cemetery Act (Business and Professions Code section 9600 *et seq.*) and any regulation adopted thereunder. (Bus. & Prof. Code § 9725.1, subd. (a)). The circumstances are set forth in further detail in paragraphs 21 through 26, above.

SEVENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct – Negligence)
(Bus. & Prof. Code § 9725.1, subd. (b))

27. Respondent Sunrise Memorial and Respondent Kamphausen, acting as Respondent Sunrise Memorial's officer, agent, employee, and/or manager, have subjected their Certificate of Authority and Cemetery Manager License, Cemetery Broker License, and Cemetery Branch Broker License, respectively, to discipline for unprofessional conduct by acting negligently in performing acts related to the operation of a cemetery. (Bus. & Prof. Code § 9725.1, subd. (b)). The circumstances are set forth in further detail in paragraphs 21 through 23, above.

/////

/////

/////

/////

/////

/////

DISCIPLINE CONSIDERATIONS

28. To determine the degree of discipline, if any, to be imposed on Respondent Sunrise Memorial's Certificate of Authority Number COA 39. Complainant alleges the following prior discipline by the Bureau:

a. On December 23, 2005, the Bureau issued Citation Number 1 2005 292 against Respondent Sunrise Memorial's Certificate of Authority for violating Section 9650. The citation carried a $2,000 fine. Respondent Sunrise Memorial paid the fine on January 27, 2006.

b. On September 21, 2007, the Bureau issued Citation Number 1 2007 256 against Respondent Sunrise Memorial's Certificate of Authority for violating Section 9650. The citation carried a $1,200 fine. Respondent Sunrise Memorial paid the fine on September 26, 2007.

c. On November 18, 2011, the Bureau issued Citation Number 1C 2011 211 against Respondent Sunrise Memorial's Certificate of Authority for violating Section 9650. The citation carried a $2,000 fine. Respondent Sunrise Memorial paid the fine on December 12, 2011.

d. On November 9, 2012, the Bureau issued Citation Number 1C 2012 220 against Respondent Sunrise Memorial's Certificate of Authority for violating Section 9650. The citation carried a $2,000 fine. Respondent Sunrise Memorial paid the fine on November 29, 2012.

e. On December 13, 2013, the Bureau issued Citation Number 1C 2013 274 against Respondent Sunrise Memorial's Certificate of Authority for violating Code of Regulations, title 16, section 2388. The citation carried a $2,000 fine. Respondent Sunrise Memorial paid the fine on May 12, 2014.

f. On November 24, 2014, the Bureau issued Citation Number 1C 2014 254 against Respondent Sunrise Memorial's Certificate of Authority for violating Code of Regulations, title 16, section 2388. The citation carried a $2,000 fine. Respondent Sunrise Memorial paid the fine on January 23, 2015.

/////

/////

/////

/////

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Second Amended Accusation and, following the hearing, the Director of the Department of Consumer Affairs issue a decision:

1. Revoking or suspending Certificate of Authority Number COA 39, issued to Respondent Sunrise Memorial Cemetery Association, Inc.;

2. Revoking or suspending Cemetery Manager License Number CEM 259, issued to Respondent Buck Kamphausen;

3. Revoking or suspending Cemetery Broker License Number CEB 441, issued to Respondent Buck Kamphausen;

4. Revoking or suspending Cemetery Branch Broker License Number CBB 120441, issued to Respondent Buck Kamphausen;4.1. Ordering Respondents to pay the Cemetery and Funeral Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

5. Taking such other and further action as deemed necessary and proper.

DATED: December 14, 2015

LISA M. MOORE
Bureau Chief
Cemetery and Funeral Bureau
Department of Consumer Affairs
State of California
Complainant

SF2015900359