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

In the Matter of the Accusation Against: **SOQUEL CEMETERY, INC.** **P.O. BOX 655** **SOQUEL, CA 95073** **Certificate of Authority License No. COA 357** **Gregory Irvin Smith, RMO (CEM 219)** **GREGORY IRVIN SMITH** **P.O. Box 655** **Soquel, CA 95073** **Cemetery Manager License No. CEM 219** **Certificate of Authority License No. COA 357** Respondent.	Case No. A1 2011 242 OAH No. 2012060316

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order are hereby adopted by the Director of Consumer Affairs and the Cemetery and Funeral Bureau as the Decision and Order in the above entitled matter.

This Decision shall become effective on Dec. 18, 2012.

It is so ORDERED NOV 19 2012.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General
KIM M. SETTLES
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Oakland, CA 94612-0550
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Facsimile: (510) 622-2270
Attorneys for Complainant

BEFORE THE
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FOR THE CEMETERY AND FUNERAL BUREAU
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **SOQUEL CEMETERY, INC.** **P.O. BOX 655** **SOQUEL, CA 95073** **Certificate of Authority License No. COA 357** **Gregory Irvin Smith, RMO (CEM 219)** **GREGORY IRVIN SMITH** **P.O. Box 655** **Soquel, CA 95073** **Cemetery Manager License No. CEM 219** **Certificate of Authority License No. COA 357** Respondent.	Case No. A1 2011 242 OAH No. 2012060316 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Lisa M. Moore (Complainant) is the Bureau Chief of the Cemetery and Funeral Bureau. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Kim M. Settles, Deputy Attorney General.

2. Respondents Soquel Cemetery, Inc, Gregory Irvin Smith, RMO, and Gregory Irvin Smith (Respondent) are represented in this proceeding by attorney Jennille A. Smith, whose address is: Jenille A. Smith, Smith & Zimmerman, 1300 Clay Street, Suite 600, Oakland, CA 94612.

3. On or about October 4, 2004, the Cemetery and Funeral Bureau issued Cemetery Manager License No. CEM 219 to Gregory Irvin Smith (Respondent). The Cemetery Manager License expired on October 31, 2009, and has not been renewed. The Cemetery Manager License is currently in "delinquent" status.

4. On or about December 4, 1973, the Cemetery and Funeral Bureau issued Certificate of Authority License No. COA 357 to Soquel Cemetery, Inc., Gregory Irvin Smith, RMO, (Respondent). The Certificate of Authority License expired on December 30, 2011, and has not been renewed. The Certificate of Authority License is currently in "cancelled" status.

JURISDICTION

5. Accusation No. A1 2011 242 was filed before the Director of Consumer Affairs (Director), for the Cemetery and Funeral Bureau (Bureau), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 28, 2012. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. A1 2011 242 is attached as exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. A1 2011 242. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel

the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. A1 2011 242.

10. Respondent agrees that his Cemetery Manager License and Certicate of Authority are subject to discipline and agrees to be bound by the Director's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Director of Consumer Affairs or his designee. Respondent understands and agrees that counsel for Complainant and the staff of the Cemetery and Funeral Bureau may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order are intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions,

negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Cemetery Manager License No. CEM 219 and Certificate of Authority License No. COA 357 issue to Respondent Gregory Irvin Smith (Respondent) are revoked.

1. Respondent shall lose all rights and privileges as a Cemetery Manager in California as of the effective date of the Director's Decision and Order.

2. Respondent shall lose all rights and privileges to operate a cemetery in California as of the effective date of the Director's Decision and Order.

3. Respondent shall cause to be delivered to the Bureau his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Bureau shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. A1 2011 242 shall be deemed to be true, correct and admitted by Respondent when the Director determines whether to grant or deny the petition.

5. If and when Respondent's license is reinstated, he shall pay to the Director costs associated with its investigation and enforcement pursuant to Business and Professions Code secion 125.3 in the amount of $4,000.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Director. Nothing in this provision shall be construed to prohibit the Director from reducing the amount of cost recovery upon reinstatement of the license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. A1 2011 242 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jennille A. Smith. I understand the stipulation and the effect it will have on my Cemetery Manager License, and Certificate of Authority License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 10/24/2012

GREGORY IRVIN SMITH
Respondent

I have read and fully discussed with Respondent Gregory Irvin Smith the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 10/24/2012

Jennille A. Smith
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order are hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 10/25/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

Kim M. Settles

KIM M. SETTLES
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. A1 2011 242

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

In the Matter of the Accusation Against: SOQUEL CEMETERY, INC. P.O. Box 655 Soquel, CA 95073 Certificate of Authority License No. COA 357 Gregory Irvin Smith-RMO (CEM 219) GREGORY IRVIN SMITH 116 Magnolia Santa Cruz, CA 95062 Cemetery Manager License No. CEM 219 Respondents.	Case No. A1 2011 242 **ACCUSATION**

Complainant alleges:

PARTIES

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

[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.

2. On or about October 4, 2004, the Cemetery and Funeral Bureau issued Cemetery Manager License Number CEM 219 to Gregory Irvin Smith ("Respondent Smith" or "Cemetery Manager"). The Cemetery Manager License expired on October 31, 2009, and has not been renewed.

3. On or about December 4, 1973, the Cemetery and Funeral Bureau issued Certificate of Authority License Number COA 357 to Soquel Cemetery, Inc., with Gregory Irvin Smith listed as Cemetery Manager ("Respondent Soquel Cemetery" or "Cemetery"). The Certificate of Authority License was canceled on December 30, 2011.

JURISDICTION

4. This Accusation is brought before the Director 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.

5. Section 9725 states:

"Upon grounds provided in this article [Article 6 (commencing with section 9725)], 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."

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

STATUTORY/REGULATORY PROVISIONS

7. Section 9725.1 states, in pertinent part:

"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."

8. Section 9650, subdivision (a), of the Code states:

"Each cemetery authority shall file with the bureau annually, on or before June 1, or within five months after close of their fiscal year provided approval has been granted by the bureau as provided for in Section 9650.1, a written report in a form prescribed by the bureau . . ."

9. Health and Safety Code section 8300 states, in pertinent part:

"(b) The cemetery authority's power includes, but is not limited to, the following:

"(8) Making and enforcing rules and regulations for all other purposes deemed necessary by the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises, and the principles, plans, and ideals on which the cemetery is conducted."

10. Health and Safety Code section 8725 states:

"Every cemetery authority which now or hereafter maintains a cemetery may place its cemetery under endowment care and establish, maintain, and operate an endowment care fund. Endowment care and special care funds consisting of trust funds created by irrevocable trust agreements may be commingled for investment and the income therefrom shall be divided between the endowment care and special care funds in the proportion that each fund contributed to the principal sum invested. Special care funds derived from trusts created by a revocable agreement shall not be commingled for investment and shall be accounted for separately from all other funds. The funds may be held in the name of the cemetery authority or its directors or in the name of the trustees appointed by the cemetery authority."

11. Health and Safety Code section 8726 states:

"The principal of all funds for endowment care shall be invested and the income only may be used for the care, maintenance, and embellishment of the cemetery in accordance with the provisions of law and the resolutions, bylaws, rules and regulations or other actions or instruments of the cemetery authority and for no other purpose. Endowment and special care

funds shall be maintained separate and distinct from all other funds and the trustees shall keep separate records thereof."

12. Health and Safety Code section 8731 states, in pertinent part:

"(c)(1) Each member of the board of trustees shall provide signatory acknowledgment of understanding of the role of a trustee in managing trust funds in the following areas:

"(A) Trustee duties, powers, and liabilities as contained in Part 4 (commencing with Section 16000) of Division 9 of the Probate Code.

"(2) The signatory acknowledgment shall be retained by the cemetery authority during the duration of the trustee's term of office."

13. Health and Safety Code section 8734 states, in pertinent part:

"(a) Except as provided in subdivisions (b), (c), and (d), the board of trustees or corporate trustee of an endowment care fund or one or more special care funds shall file a fidelity bond executed by an admitted surety insurer with the Cemetery and Funeral Bureau in the amount of fifty thousand dollars ($50,000), guaranteeing payment to each such fund of any monetary loss incurred by the fund occasioned by acts of fraud or dishonesty by the trustees or trustee. The board of trustees or corporate trustee of both an endowment care fund and one or more special care funds need file only one such bond."

14. Health and Safety Code section 8738 provides that an endowment care cemetery is on which has deposited in its endowment care fund the minimum amounts heretofore required by law and shall deposit in its endowment care fund at the time of, or not later than completion of the initial site, not less that the following amounts for plots sold or disposed of: $4.50 a square foot for each grave, $75 for each niche, and $220 for each crypt.

15. Health and Safety Code section 8777 states:

"All money or property received by a cemetery authority for deposit in a special care fund shall be placed in the custody of the trustee or trustees thereof within 30 days after receipt by the cemetery authority. The corpus of special care trusts shall be invested and reinvested and kept invested as authorized by Section 8778."

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16. California Code of Regulations, title 16, section 2326 states, in pertinent part:

"(a) Certificate of Authority. Applications for a certificate of authority to operate a cemetery shall be filed on the form furnished by the bureau at the principal office of the bureau. In addition to the payment of the fees required by Section 2311 of these rules, each application shall be accompanied by the following:

"(1) A certified copy of:

"(H) Endowment care trust agreement executed by the board of directors of the cemetery authority."

COST RECOVERY

17. Section 125.3 of the Code provides, in pertinent part, that the Director 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.

FIRST CAUSE FOR DISCIPLINARY ACTION
Unprofessional Conduct
(Bus. & Prof. Code §9725.1(a))

18. Respondents have subjected their licenses to disciplinary action under Code section 9725 .1, subdivision (a), in that they failed to comply with Code section 9650, subdivision (a), for the following because on December 8, 2011, a final audit of Respondent Soquel Cemetery performed by the Bureau showed that no Endowment Care Fund (ECF) and Special Care Fund (SCF) Reports (Annual Reports) were submitted for the years 2006, 2007, 2008, 2009, and 2010.

SECOND CAUSE FOR DISCIPLINARY ACTION
Unprofessional Conduct
(Bus. & Prof. Code §9725.1(a))

19. Respondents have subjected their licenses to disciplinary action under Code section 9725 .1, subdivision (a), in that they failed to comply with Health and Safety Code section 8276 in the following respects:

a. The charges made by the cemetery authority for ECF contributions were not consistent with its published price lists. The Cemetery charged variable amounts of ECF contributions to its clients.

b. After the Cemetery entered into a sale agreement with Temple Beth El Jewish Community (TBE), and sold 302 graves to TBE, the Cemetery Management did not uniformly charge and collect ECF contributions in the endowment section of the cemetery,

THIRD CAUSE FOR DISCIPLINARY ACTION
Unprofessional Conduct
(Bus. & Prof. Code §9725.1(a))

20. Respondents have subjected their licenses to disciplinary action under Code section 9725 .1, subdivision (a), in that Respondents failed to comply with Health and Safety Code sections 8738 and 8777 in the following respects:

a. The Cemetery Management did not deposit ECF contributions upon the completion of the initial sales.

b. The Cemetery Management borrowed a large sum of ECF monies that were not settled in the same fiscal year.

c. The Cemetery Management did not collect ECF contributions on the sale of 302 graves to the Jewish congregation.

d. As of the end of May 31, 2006, ECF contributions not deposited in an ECF trust account totaled $24,684, and pre-need monies in the amount of $18,420.00 were not deposited in an SCF Trust account within 30 days of the receipt of the funds.

FOURTH CAUSE FOR DISCIPINARY ACTION
Unprofessional Conduct
(Bus. & Prof. Code § 9725.1(a))

21. Respondents have subjected their licenses to disciplinary action under Code section 9725 .1, subdivision (a), in that Respondents failed to comply with Health and Safety Code sections 8725 and 8726 by commingling funds, as follows:

a. The Cemetery does not have separate ECF and SCF Trust accounts. Only one general account exists for all cemetery expenditures.

b. ECF contributions and pre-need sales were not reconcilable with any bank statements.

c. ECF contributions were not accurately charged to sales executed by the cemetery.

d. There was no evidence of an irrevocable trust agreement being set by a welfare authority, as reported in the 2005 annual ECF and SCF Annual Report as the reason for commingling.

FIFTH CAUSE FOR DISCIPLINARY ACTION
Unprofessional Conduct
(Bus. & Prof. Code § 9725.1(a))

22. Respondents have subjected their licenses to disciplinary action under Code section 9725 .1, subdivision (a), in that Respondents failed to comply with Health and Safety Code sections 8731, subdivision (c)(1), and (2), and 8734 and California Code of Regulations, title 16, section 2326, subdivision (a)(1)(H), as follows:

a. The Cemetery Management did not deposit ECF monies upon the completion of the final sales.

b. The Cemetery Management borrowed a large sum of ECF monies that were not settled during the same fiscal year.

c. The Cemetery Management showed no evidence of collecting ECF contributions on the sale of 302 graves to the Jewish congregation.

d. An amount of $95,381.50 was not deposited and entrusted in an ECF trust account.

e. An amount of $18,420.00 representing pre-need sales executed by the cemetery was not entrusted in a Special Care Trust account.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking or suspending Cemetery Manager License Number CEM 219, issued to Gregory Irvin Smith;

2. Revoking or suspending Certificate of Authority License Number COA 357, issued to Soquel Cemetery, Inc.;

3. Ordering Gregory Irvin Smith 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

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

DATED: February 21, 2012

Lisa M. Moore

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

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accusation.rtf

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
Cemetery and Funeral Bureau
1625 N Market Blvd., Ste S-208
Sacramento, CA 95834
P 916-574-7870 | F 916-928-7988 | web www.cfb.ca.gov

DECLARATION OF SERVICE BY MAIL

RE: Soquel Cemetery, Inc. & Gregory I. Smith No. A1 2011 242

I, Ellis M. Kjer declare that I am over 18 years of age, and not a party to the within cause; my business address is 1625 North Market Blvd., Suite S-208, Sacramento, California, 95834. I served a true copy of the attached

Decision and Order
Stipulated Settlement and Disciplinary Order
Accusations A1 2011 242

on each of the following, by placing the same in an envelope (or envelopes) addressed (respectively) as follows:

First Class U.S. Mail & Certified U.S. Mail to:

Soquel Cemetery, Inc.
Gregory I. Smith
P.O. Box 655
Soquel, CA 95073

First Class Mail to:

Kim M. Settles, DAG
Office of the Attorney General
California Department of Justice
P.O. Box 70550
Oakland, CA 94612-0550

Jenille A. Smith
Attorney at Law
SMITH & ZIMMERMAN
1300 Clay St., Ste 600
Oakland, CA 94612-1427

Cemetery and Funeral Bureau
Attn: Richard Fisher
1625 North Market Blvd., Suite S-208
Sacramento, California, 95834

Cemetery and Funeral Bureau
Attn: Jeff Brown
1625 North Market Blvd., Suite S-208
Sacramento, California, 95834

Each said envelope was then, on November 29, 2012, sealed and deposited in the United States mail at Sacramento, the county in which I am employed, with the postage thereon fully prepaid.

Executed on November 29, 2012, at Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct.

Ellis M. Kjer
Declarant