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

In the Matter of the Accusation Against:

EVERGREEN MEMORIAL CARE, INC.
DBA EVERGREEN CEMETERY
204 North Evergreen Avenue
Los Angeles, CA 90033

Certificate of Authority No. 524,

and,

TONY SOO HOO
204 North Evergreen Avenue
Los Angeles, CA 90033
Cemetery Manager License No. CEM 251,

Respondents.

Case No. I-2017

OAH No. 2009080871

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective MARCH 11, 2010.

IT IS SO ORDERED this 11th day of February, 2010.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs Division
Department of Consumer Affairs

EDMUND G. BROWN JR.
Attorney General of California
GREGORY J. SALUTE
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Attorneys for Complainant

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

In the Matter of the Accusation and First Amended Petition to Revoke Probation Against: **EVERGREEN MEMORIAL CARE, INC.** **DBA EVERGREEN CEMETERY** **204 North Evergreen Avenue** **Los Angeles, CA 90033** **Certificate of Authority No. 524** **and** **TONY SOO HOO** **204 North Evergreen Avenue** **Los Angeles, CA 90033** **Cemetery Manager License No. CEM 251** Respondents.	Case No. I-2017 OAH No. L-2009080871 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibilities of the Cemetery and Funeral Bureau, Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Director of the Department of Consumer Affairs for his approval and adoption as the final disposition of the Accusation and First Amended Petition to Revoke Probation.

PARTIES

1. Rick Wallinder (Complainant) is the Bureau Chief, Cemetery and Funeral Bureau, Department of Consumer Affairs. He brought this action solely in his official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Nancy A. Kaiser, Deputy Attorney General.

2. Respondent Evergreen Memorial Care, Inc. dba Evergreen Cemetery and Respondent Tony Soo Hoo are represented in this proceeding by attorney Jeffrey E. Zinder, whose address is Zinder & Koch, 700 North Brand Blvd., Suite 400, Glendale, CA 91203.

3. On or about September 1, 1994, the Department of Consumer Affairs for the Cemetery and Funeral Bureau (Bureau) issued Certificate of Authority No. 524 to Evergreen Memorial Care, Inc. dba Evergreen Cemetery (Respondent Evergreen). The Certificate of Authority was in full force and effect at all times relevant to the charges brought in the Accusation and First Amended Petition to Revoke Probation No. I-2017 and will expire on January 1, 2010, unless renewed.

4. On or about September 1, 1994, the Bureau issued Certificate of Authority Number 525 to Evergreen Memorial Care, Inc. dba Woodlawn Cemetery, for operation of Woodlawn Cemetery, an existing cemetery located at 1715 Greenleaf Boulevard, Compton, California (Woodlawn Cemetery). Certificate of Authority Number 525 was revoked on March 22, 2001.

5. On or about December 27, 2004, the Bureau issued Cemetery Manager License Number CEM 251 to Tony Soo Hoo (Respondent Soo Hoo). The Cemetery Manager License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2009, unless renewed.

JURISDICTION

6. Accusation and First Amended Petition to Revoke Probation No. I-2017 was filed before the Director of the Department of Consumer Affairs (Director), and is currently pending against Respondents. The original Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent Evergreen on March 28, 2006. The Accusation and First Amended Petition to Revoke Probation was served on Respondents on May 8, 2009.

Respondents timely filed their Notices of Defense contesting the Accusation and First Amended Petition to Revoke Probation. A copy of the Accusation and First Amended Petition to Revoke Probation No. I-2017 is attached as **Exhibit A** and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondents have carefully read, fully discussed with counsel, and understand the charges and allegations in the Accusation and First Amended Petition to Revoke Probation No. I-2017. Respondents have also carefully read, fully discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondents are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation and First Amended Petition to Revoke Probation; the right to be represented by counsel at their own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their 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.

9. Respondents voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

10. Without admitting the violations alleged in the Accusation and First Amended Petition to Revoke Probation No. I-2017 and for the purpose of resolving the Accusation and First Amended Petition to Revoke Probation No. I-2017 without the expense and uncertainty of further proceedings in this matter, Respondents agree that, should Respondents come before the Bureau and/or the Director in any further or future proceedings, all of the charges and allegations set forth in the Accusation and First Amended Petition to Revoke Probation No. I-2017 shall be deemed proven without the necessity of further proof by Complainant.

11. Respondent Evergreen agrees that its Certificate of Authority and Respondent Soo Hoo agrees that his Cemetery Manager License are subject to discipline and they agree to be bound by the Director's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Director. Respondents understand and agree that counsel for Complainant and the staff of the Department of Consumer Affairs and Cemetery and Funeral Bureau may communicate directly with the Director regarding this stipulation and settlement, without notice to or participation by Respondents. By signing the stipulation, Respondents understand and agree that they may not withdraw their 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 his 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 and/or Bureau shall not be disqualified from further action by having considered this matter.

OTHER MATTERS

13. 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.

14. This Stipulated Settlement and Disciplinary Order is 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.

15. 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 Certificate of Authority No. 524 issued to Respondent Evergreen Memorial Care, Inc. dba Evergreen Cemetery (Respondent Evergreen) and Cemetery Manager License Number CEM 251 issued to Tony Soo Hoo (Respondent Soo Hoo) are revoked.

However, the revocations are stayed and Respondents are placed on probation for four (4) years on the following terms and conditions.

1. **Obey All Laws.** Respondents shall comply with all conditions of probation and obey all federal, state and local laws, and all rules and regulations governing the programs regulated by the Bureau.

2. **Quarterly Reports.** Respondents shall submit quarterly declarations under penalty of perjury, in a format designated by the Bureau, stating whether or not Respondents have been in compliance with all the conditions of probation. Respondents shall also submit such additional written reports and verifications of actions requested by the Bureau. Should the final probation reports not be made as directed, the period of probation shall be extended until such time as the final reports are made. Respondent Evergreen's quarterly reports shall state, in detail, the actions taken to actively pursue the sale or transfer of any and all interest in Woodlawn Cemetery, pursuant to paragraph 14, below, of this stipulation and order, to a Bureau-approved individual or entity who will subsequently obtain a new Certificate of Authority, if required by law.

3. **Interviews with Bureau Representative.** As necessary, Respondent Soo Hoo and Respondent Evergreen's corporate officers, directors, licensed employees and any personnel who perform any function related to the operation of the cemetery, or who deal with the public, shall appear in person for scheduled interviews with the Bureau Chief or other designated representative for the purpose of monitoring compliance with the terms of this decision.

4. **Out-of-State Residence or Operation.** Should Respondent Soo Hoo and/or Respondent Evergreen's corporate officers or directors leave California to reside or operate outside this state, he/she/they must notify the Bureau in writing of the dates of departure and return. Reporting in person may be waived if said individuals move out of the state. However, Respondents shall continue compliance with other terms of probation to retain California licensure. Periods of residency, business operation or employment outside California shall not reduce the probationary period.

5. **Completion of Probation.** Upon successful completion of probation, Respondents' Certificate of Authority and Cemetery Manager License, as applicable, will be fully restored.

6. **Violation of Probation.** Should Respondents violate probation in any respect, the Director, after giving Respondents notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an accusation or petition to revoke probation is filed against Respondents during probation, the Director and Bureau shall have continuing jurisdiction until the matter is final, and the probation shall be extended until the matter is final.

7. **License Issued During Probation.** Any license or registration or certificate issued to Respondents by the Bureau during the period of probation shall be issued as a probationary license or registration or certificate and is subject to all the terms and conditions set forth herein. Respondents must comply with terms and conditions herein and demonstrate no cause for disciplinary action or denial of an application.

8. **Cost Recovery.** Respondents shall pay the Bureau's actual and reasonable costs of investigation and enforcement of this matter, as follows: Respondent Soo Hoo shall pay costs in the amount of three thousand dollars ($3,000) and Respondent Evergreen shall pay costs in the amount of five thousand ($5,000). Said amounts shall be paid pursuant to a payment plan determined by the Bureau and shall be paid in full no later than six months prior to the end of probation. Probation shall not terminate until full payment has been made. Respondents' Certificate of Authority and Cemetery Manager License, as applicable, shall not be renewed until the cost recovery has been paid in full or Respondents are otherwise in compliance with a payment plan approved by the Bureau.

9. **Provision of Records.** Respondents shall provide specific records for Bureau inspection as required.

10. **Evidence of Knowledge.** Within 60 days of the date of the decision, Respondents shall provide evidence satisfactory to the Bureau that Respondent Evergreen's corporate officers, corporate directors, licensed employees and any personnel who perform any function related to the operation of the cemetery, or who deal with the public, are knowledgeable in the laws and regulations governing the cemetery industry, and that the appointed third party administrator, as described in paragraph 13, below, of this stipulation and order, has provided training in both

English and Spanish to the employees working at Evergreen Cemetery in the procedures to be followed in preparing a grave site. As part of the training, Respondents shall give each employee written procedures, in English, Spanish, and/or any other language to ensure employees understand the procedures, on the proper procedures to follow when preparing a grave for burial and discovering that the grave is already occupied. All employees of Respondent Evergreen shall certify that they understand these procedures. Within 60 days of the decision date, Respondents shall provide the Bureau with a copy of these written procedures and a copy of the certifications by each employee that he/she understands the procedures. Respondents shall also implement a daily record of all interments and shall make available upon request to any Bureau representative or designee, all interment records and sales records of interment spaces or of interment rights.

11. **Plot Maps.** Respondents shall provide current maps to any Bureau representative, or the Bureau's designee, upon request.

12. **Interment Procedures.** Respondents shall provide interment procedures to any Bureau representative, or its designee, upon request, including but not limited to interment records and the procedures used to maintain a record of plots sold, plots available for sale, and plots where interments have already taken place.

13. **Third Party Oversight of Evergreen.** During the period of probation, Respondent Evergreen shall retain at its sole expense a Bureau-approved third party administrator who will provide general oversight to the cemetery and the designated cemetery manager to ensure compliance with all laws and regulations governing cemetery practice. Prior to the effective date of the decision, Respondent Evergreen shall inform the Bureau of the name of the proposed third party administrator.

14. **Transfer of Woodlawn Cemetery**. Respondent Evergreen shall use its best efforts to sell or transfer any and all interest in Woodlawn Cemetery to a Bureau pre-approved transferee. Said transferee must meet the qualifications for and obtain a new Certificate of Authority, if required by law. Woodlawn Cemetery may not be transferred or sold to any current or former employee, officer or director of Evergreen Memorialcare, Inc., Evergreen Cemetery or Woodlawn Cemetery or to any of their agents. Said transferee shall manage and maintain

Woodlawn Cemetery and make Woodlawn Cemetery available for public visitation. Said transferee shall be responsible for providing reasonable and adequate maintenance for the property including, but not limited to, care of the lawn, fences, road, buildings, mausoleum, markers, watering of the grounds and repair of sprinkler and water systems as needed.

15. **Third Party Supervision of Woodlawn Pending Transfer.** Respondent shall retain/maintain at its sole expense a Bureau-approved third party administrator to supervise maintenance of Woodlawn Cemetery, until Woodlawn Cemetery is transferred or sold pursuant to paragraph 14, above, of this stipulation and order, and a new certificate of authority is issued, if required by law. Said third party administrator shall be responsible for reasonable and adequate maintenance of Woodlawn Cemetery, including but not limited to, care of the lawn, fences, road, buildings, mausoleum, markers, watering of grounds, and repair of sprinkler and water systems as needed. Said third party administrator shall make Woodlawn Cemetery available for public visitation between the hours of 9:00 a.m. to 3:00 p.m. for a minimum of five days a week.

16. **Disposition of Pre-Need Obligations at Woodlawn Cemetery.** Respondents shall abide by any final resolution of the consolidated matter, entitled In Re Woodlawn Memorial Park Litigation, Los Angeles Superior Court, Case No. BC277267 (hereinafter "the civil action"), to the extent that it does not conflict with the terms and conditions set forth in this stipulation and order. There shall be no sales of lots, vaults, or niches at Woodlawn Cemetery. However, a pre-need contract right holder may file a Petition with the Bureau, under the authority of California Business and Professions Code Sections 9630 and 9718 and California Code of Regulations, title 16, Section 2332, to seek authorization allowing for the fulfillment of a contract right to burial at Woodlawn Cemetery. Within 60 days of the date of the decision, a form Petition that is substantially similar to the Petition used in the civil action to fulfill preneed rights shall be prepared by Respondents and provided to the Bureau for review and approval. Respondent shall provide any preneed contract holder, upon request, with a Bureau-approved form Petition that may be used to Petition the Bureau.

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17. **Annual Endowment Care Fund Reports.** Respondent Evergreen shall file with the Bureau annually endowment care fund reports for Evergreen Cemetery and Woodlawn Cemetery in the form and including the content required by California law.

18. **Ethics.** Within 30 days of the effective date of this decision, Respondents shall submit for prior Bureau approval a course of ethics which will be completed and Respondents shall provide proof of completion, within the first year of probation, by all corporate officers, corporate directors, licensed employees and any personnel who perform any function related to the operation of the cemetery, or who deal with the public. The ethics course may not be an Internet course. Within the 30 days of the effective date of this decision, Respondent Evergreen shall inform the Board the names and positions of the corporate officers, corporate directors, licensed employees and personnel taking the ethics course .

19. **Maintenance of Records in State of California.** All records pertinent to Evergreen Cemetery or Woodlawn Cemetery and relating thereto shall be maintained in the State of California. Any records that have been removed from California shall be returned within five (5) days of the effective date of this decision, and the Bureau shall be notified of the place where the records are being maintained.

20. **Institutional trustee.** Evergreen Memorialcare, Inc. shall maintain the endowment care funds and special care funds of Woodlawn Cemetery and Evergreen Cemetery with an institutional trustee.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jeffrey E. Zinder. I understand the stipulation and the effect it will have on my Certificate of Authority. I enter into this Stipulated Settlement and Disciplinary

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Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director.

DATED: 12/16/2009

EVERGREEN MEMORIAL CARE, INC. DBA
EVERGREEN CEMETERY
Respondent

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jeffrey E. Zinder. I understand the stipulation and the effect it will have on my Cemetery Manager 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.

DATED: 12/16/2009

TONY SOO HOO
Respondent

I have read and fully discussed with Respondents Evergreen Memorial Care, Inc. dba Evergreen Cemetery and Tony Soo Hoo the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 12/16/09

JEFFREY E. ZINDER
Attorney for Respondents

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director.

Dated: 12/18/09

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
GREGORY J. SALUTE
Deputy Attorney General

N. Kaiser

NANCY A. KAISER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation and First Amended Petition to Revoke Probation No. I-2017

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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 and First Amended Petition to Revoke Probation Against: **EVERGREEN MEMORIAL CARE, INC.** dba Evergreen Cemetery 204 North Evergreen Avenue Los Angeles, CA 90033 **Certificate of Authority No. 524** **TONY SOO HOO** 204 N. Evergreen Avenue Los Angeles, CA 90033 **Cemetery Manager License No. CEM 251** Respondents.	Case No. I-2017 **ACCUSATION AND FIRST AMENDED PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Richard L. Wallinder, Jr. (Complainant) brings this Accusation and First Amended Petition to Revoke solely in his official capacity as the Bureau Chief of the Cemetery and Funeral Bureau (Bureau), Department of Consumer Affairs.[1]

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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

2. On or about September 1, 1994, the Bureau issued Certificate of Authority Number 524 to Evergreen Memorial Care, Inc. dba Evergreen Cemetery (Respondent Evergreen), for operation of Evergreen Cemetery, an existing cemetery located at 204 North Evergreen Avenue, Los Angeles, California (Evergreen Cemetery or the cemetery). The Certificate of Authority was in full force and effect at all times relevant to the charges brought herein and will expire on January 1, 2010, unless renewed.

3. On or about September 1, 1994, the Bureau issued Certificate of Authority Number 525 to Evergreen Memorial Care, Inc. dba Woodlawn Cemetery, for operation of Woodlawn Cemetery, an existing cemetery located at1715 Greenleaf Boulevard, Compton, California (Woodlawn Cemetery). Certificate of Authority Number 525 was revoked on March 22, 2001.

4. On or about December 27, 2004, the Bureau issued Cemetery Manager License Number CEM 251 to Tony Soo Hoo (Respondent Soo Hoo). The Cemetery Manager License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2009, unless renewed.

JURISDICTION

5. This Accusation and First Amended Petition to Revoke Probation is brought before the Director, Department of Consumer Affairs (Director), under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

6. Section 477 states, in part:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

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the Cemetery and Funeral Programs. Effective January 1, 2001, the regulatory agency is designated as the Cemetery and Funeral Bureau.

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

7. Section 118, subdivision (b), provides that the suspension/expiration/ surrender/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.

8. 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."

9. 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."

10. Section 9727 states:

"The bureau may suspend or revoke the license of any cemetery licensee who, within the immediately preceding three years, has done any of the following:

. . .

(d) Acted or conducted himself or herself in a manner which would have warranted the denial of his or her application for a cemetery license, or for a renewal thereof."

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11. Health and Safety Code section 7052 states, in part:

"(a) Every person who willfully mutilates, disinters, removes from the place of interment . . . any remains known to be human, without authority of law, is guilty of a felony. This section does not apply to any person who, under authority of law, removes the remains for reinterment, or performs a cremation."

12. Health and Safety Code section 8277 states, in part:

"Every contract of a cemetery authority, including contracts executed in behalf thereof by a cemetery broker or salesperson, which provides for the sale by the cemetery authority of an interment plot or any service or merchandise, shall be in writing and shall contain all of the agreements of the parties. The contract shall include and disclose the following:

. . .

(c) An itemized statement of charges including, as applicable, the following:

. . .

(8) Space and location sold."

COST RECOVERY

13. Section 125.3, subdivision (a), states, in part:

"Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . . upon request of the entity bringing the proceedings may request the administrative law judge may 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."

ACCUSATION

FACTUAL SUMMARY

14. Evergreen Cemetery is a corporately owned, private cemetery, located in Los Angeles, California. Brian Van Renesse (Van Renesse) is the acting cemetery general manager of Evergreen Cemetery. Evergreen Cemetery's manager of record is Respondent Soo Hoo.

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15. On or about June 22, 2006, Bureau Field Representatives, Dan Redmond (Field Representative Redmond) and Steve Allen, inspected the Evergreen Cemetery and discovered bone fragments in the "spoils pile" or excess grave dirt pile located at the cemetery. The cemetery's backhoe operator indicated that the remains came from graves that he had dug on the cemetery grounds. The bone fragments were turned over to the Los Angeles County Coroner's office for identification. The bone fragments were determined to be human. Field Representative Redmond directed Van Renessee not to tamper with the pile until the Bureau was able to identify the remains and further instruct the cemetery on how to proceed.

16. On or about August 1, 2006, Field Representative Redmond met with Respondent Soo Hoo and asked for records of all interments from June 15, 2006, and June 22, 2006. The investigator identified three locations that had interments for that week. Respondent Soo Hoo provided copies of the interment contracts for the three interments. The contracts provided did not have an exact grave location on them. Respondent Soo Hoo and Van Renessee took the investigator to the grave locations, although there was some confusion on the part of Respondent Soo Hoo and Van Renessee as to exactly where the specific graves were located.

17. On or about August 1, 2006, Field Representative Redmond discovered that the Evergreen Cemetery's spoils pile had changed since the Bureau's inspection on June 22, 2006. Van Renesee stated that dirt had been added to the spoils pile since the Bureau's last visit, but nothing had been removed.

18. In or about April 2008 and May 2008, remains were obtained from Evergreen Cemetery from a large mound of dirt on cemetery property. The cemetery was ordered by the Bureau to sift through the large mound of dirt to locate additional bones. The cemetery gave the Los Angeles Coroner's office 23 bags ranging in size from large zip-loc bags to small trash bags. Most bags had dates on them ranging from April 14, 2008, to May 29, 2008. The Los Angeles County Coroner's office's analysis determined that most of the bones were human, and that the remains of at least five different humans were found in the sample. Therefore, a minimum of five individuals had been affected by their graves being disturbed.

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FIRST CAUSE FOR DISCIPLINE

(Mutilation of Graves)

19. The licenses of Respondents Evergreen and Soo Hoo are subject to disciplinary action for unprofessional conduct pursuant to Section 9725.1, subdivision (a), for violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of Health and Safety Code section 7052, in that Respondents willfully mutilated, disinterred, and/or removed human remains from their graves, without authority of law, and dumped the remains in the cemetery's spoils pile, in order to re-use graves, as set forth in paragraphs 15, 17, and 18, above.

SECOND CAUSE FOR DISCIPLINE

(Failure to comply with contract requirements)

20. The licenses of Respondents Evergreen and Soo Hoo are subject to disciplinary action under Section 9725.1, subdivision (a), for violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of Health and Safety Code Section 8277, subdivision (c)(8), by failing to enter the exact location of the grave space sold on written interment contracts, as described in paragraph 16, above.

THIRD CAUSE FOR DISCIPLINE

(Negligence)

21. The licenses of Respondents Evergreen and Soo Hoo are subject to disciplinary action for unprofessional conduct pursuant to Section 9725.1(b), in that Respondents were negligent in performing acts related to the operation of a cemetery for the reasons stated in paragraphs 15 through 20, above.

FOURTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

22. The licenses of Respondents Evergreen and Soo Hoo are subject to disciplinary action for unprofessional conduct pursuant to Section 9725.1, for the reasons stated in paragraphs 15 through 21, above.

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FIFTH CAUSE FOR DISCIPLINE

(Acts Which Would Have Warranted Denial of License)

23. The licenses of Respondents Evergreen and Soo Hoo are subject to disciplinary action pursuant to Section 9727, subdivision (d), in that Respondents acted or conducted themselves in a manner which would have warranted the denial of his or her application for a cemetery license, or for a renewal thereof, for the reasons stated in paragraphs 15 through 22, above.

DISCIPLINE CONSIDERATIONS

Re: Respondent Evergreen

24. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges the following:

a. On or about March 22, 2001, in a prior disciplinary action entitled *In the Matter of Accusation Against Evergreen Memorial Care, Inc. dba Woodlawn Cemetery, Certificare of Authority No. 525, and Evergreen Memorial Care, Inc. dba Evergreen Cemetery, Certificate of Authority No. 524,* Cemetery and Funeral Bureau Case No. I-2017, Evergreen Memorial Care Inc.'s Certificate of Authority to operate Woodlawn Cemetery No. 525 was revoked and its Certificate of Authority to operate Evergreen Cemetery No. 524 was revoked, with the revocation stayed and placed in a five-year probation pursuant to a stipulated disciplinary action.

i. The discipline against Evergreen Memorial Care, Inc. dba Woodlawn Cemetery, Certificare of Authority No. 525, and Evergreen Memorial Care, Inc. dba Evergreen Cemetery, Certificate of Authority No. 524, was based on an accusation filed against Evergreen Memorial Care, Inc., for grave desecration, unlawful interment of more than one body in a single grave without proper authority, failure to properly dispose of human remains, failure to inter cremated remains, failure to keep adequate records of ownership of transfer of plots, and unlawful expenditure of Woodlawn Cemetery's and Evergreen Cemetery's endowment funds. The accusation was amended several times resulting in the issuance of a Fourth Amended Accusation, which was resolved by a stipulated settlement. The stipulated settlement was

adopted by the Director effective March 22, 2001, attached as **Exhibit A**. That decision is now final and is incorporated by reference as if fully set forth.

ii. During the period of probation, on March 17, 2006, a petition to revoke probation was filed against Respondent Evergreen's Certificate of Authority No. 524. As a result, the probationary period has been automatically extended and shall not expire until this Accusation and First Amended Petition to Revoke has been acted upon by the Director.

b. On or about November 1, 2001, in a criminal proceeding entitled *The People of the State of California v. Evergreen Memorial Care, Inc., aka Woodlawn Cemetery*, in the Superior Court of California, Los Angeles County, Case No. TA059473, Evergreen Memorial Care, Inc., was convicted on its plea of nolo contendere of violating Penal Code section 182(a)(1) (criminal conspiracy), a felony, Health and Safety Code section 8113.5(a) (unlawful burial of multiple bodies in single plot), a misdemeanor, and Health and Safety Code section 7103 (failure to inter within reasonable time), a misdemeanor. Evergreen Memorial Care, Inc. was sentenced to two years summary probation and ordered to pay fines and penalties of $3,240, to pay restitution to the Woodlawn Cemetery's endowment trust fund in the amount of $96,760, and to transfer ownership of Woodlawn Cemetery to an approved third party.

FIRST AMENDED PETITION TO REVOKE PROBATION

AGAINST EVERGREEN MEMORIAL CARE, INC.

25. In a disciplinary action entitled *In the Matter of Accusation Against Evergreen Memorial Care, Inc. dba Woodlawn Cemetery and Evergreen Memorial Care, Inc., dba Evergreen Cemetery*, Accusation No. I-2017 was filed against Respondent before the Director of Consumer Affairs by the Cemetery and Funeral Bureau. The accusation was amended several times resulting in the issuance of a Fourth Amended Accusation, which was resolved by a stipulated settlement. The stipulated settlement was adopted by the Director effective March 22, 2001.

26. Pursuant to the stipulation, Certificate of Authority No. 525 issued to Evergreen Memorial Care, Inc., dba Woodlawn Cemetery, was revoked.

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27. The stipulation also provided that Certificate of Authority No. 524 issued to Evergreen Memorial Care, Inc., dba Evergreen Cemetery, was revoked, however, the revocation of Certificate No. 524 was stayed and placed on probation for five (5) years on various terms and conditions. A copy of the stipulation and order are attached as **Exhibit A** and incorporated by reference. The stipulation included the following terms and conditions:

a. Condition No. 1 [Stipulation, page 4, paragraph B(1)]

"1. Obey All Laws

Respondent shall comply with all federal, state and local laws including those governing the programs regulated by the Department of Consumer affairs, Cemetery and Funeral Bureau."

b. Condition No. 17 [Stipulation, page 12, paragraph B(17)]

"17. Transfer of Woodlawn Cemetery

Respondent shall sell or transfer any and all interest in Woodlawn Cemetery to a Bureau pre-approved third party within 270 days of the effective date of this order. Said third party must meet the qualifications for and obtain a new Certificate of Authority. Woodlawn Cemetery may not be transferred or sold to any current or former employee, officer or director of Evergreen Memorialcare Inc., Evergreen Cemetery or Woodlawn Cemetery or to any of their agents. Said third party shall manage and maintain Woodlawn Cemetery and make Woodlawn Cemetery available for public visitation. Said third party shall be responsible for providing reasonable and adequate maintenance of the property including, but not limited to, care of the lawn, fences, road, buildings, mausoleum, markers, watering of the grounds and repair of sprinkler and water systems as needed. There shall be no interments at Woodlawn Cemetery. Until transfer or sale of the Woodlawn Cemetery to a Bureau-approved third party and issuance of a new Certificate of Authority, respondent must comply with the requirements set forth above in Paragraph B, subsection 16 of this stipulation."

28. Respondent subsequently filed a petition to amend the decision requesting additional time to comply with Terms 11 and 17 of the probation. On January 30, 2002, the petition was granted and Respondent was given through March 18, 2002, to comply. A copy of the order is attached as **Exhibit B** and incorporated by reference.

GROUNDS FOR REVOKING PROBATION

29. Grounds exist for revoking probation and reimposing the order of revocation of Respondent Evergreen's Certificate of Authority in that it failed to comply with the following probation conditions:

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FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

30. Respondent Evergreen's probation is subject to revocation because it failed to comply with Probation Condition 1 (Obey All Laws), in that it failed to obey all laws, in that it violated Section 9725.1, and Health and Safety Code sections 7052 and 8277, as set forth in paragraphs 19 through 23, and 27, above.

SECOND CAUSE TO REVOKE PROBATION

(Failure to transfer Woodlawn Cemetery)

31. Respondent Evergreen's probation is subject to revocation because it failed to comply with Probation Condition 17 (Transfer Woodlawn Cemetery), in that Respondent Evergreen failed to sell or transfer any and all interest in Woodlawn Cemetery pursuant to paragraphs 27 and 28, above.

PRAYER

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

1. Revoking or suspending Certificate of Authority Number 524, issued to Evergreen Memorial Care, Inc. dba Evergreen Cemetery;

2. Revoking or suspending Cemetery Manager License number CEM 251 issued to Tony Soo Hoo;

3. Revoking the probation that was granted by the Director in Case No. I-2017 and imposing the disciplinary order that was stayed, thereby revoking Certificate of Authority Number 524, issued to Evergreen Memorial Care, Inc., dba Evergreen Cemetery;

4. Ordering Evergreen Memorial Care, Inc. and Tony Soo Hoo, jointly and severally, 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;

5. Ordering Evergreen Memorial Care, Inc., to transfer Evergreen Cemetery to Bureau-approved third parties;

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6. Barring interments at Evergreen Memorial Care, Inc.; and,

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

DATED: 4/28/07

RICHARD L. WALLINDER, JR.
Bureau Chief
Cemetery and Funeral Bureau
Department of Consumer Affairs
State of California
Complainant