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

11 In the Matter of the Accusation Against:	Case No. A1 2015 195
12 MOUNT EDEN CEMETERY ASSOCIATION	
13 aka Mount Eden Cemetery	
14 2440 Depot Rd.	ACCUSATION
15 Hayward, CA 94545	
16 Certificate of Authority No. COA 646	
Respondent.	

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18 Complainant alleges:

19 **PARTIES**

- 20 1. Lisa M. Moore (Complainant) brings this Accusation solely in her official capacity as
21 the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs.¹
22 2. On or about May 22, 2013, the Cemetery and Funeral Bureau issued Certificate of
23 Authority Number COA 646 to Mount Eden Cemetery Association, aka Mount Eden Cemetery
24 (Respondent). The Certificate of Authority was in full force and effect at all times relevant to the

25
26 ¹ Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and was
27 vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the Cemetery
28 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.

1 charges brought herein and will expire on May 31, 2016, unless renewed.

2 **JURISDICTION**

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

6 4. Section 9725 of the Code states:

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

10 **STATUTES AND REGULATIONS**

11 5. Section 9725.1 of the Code states:

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

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

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

20 6. California Health and Safety Code section 8726 states:

21 The principal of all funds for endowment care shall be invested and the income only may be
22 used for the care, maintenance, and embellishment of the cemetery in accordance with the
23 provisions of law and the resolutions, bylaws, rules and regulations or other actions or
24 instruments of the cemetery authority and for no other purpose. Endowment and special care
25 funds shall be maintained separate and distinct from all other funds and the trustees shall keep
26 separate records thereof.

27 7. California Health and Safety Code section 8738 states:

28 An endowment care cemetery is one which has deposited in its endowment care fund the

1 minimum amounts heretofore required by law and shall hereafter have deposited in its
2 endowment care fund at the time of or not later than completion of the initial sale not less than the
3 following amounts for plots sold or disposed of:

4 (a) Four dollars and fifty cents (\$4.50) a square foot for each grave.

5 (b) Seventy dollars (\$70) for each niche.

6 (c) Two hundred twenty dollars (\$220) for each crypt; provided, however, that for
7 companion crypts, there shall be deposited two hundred twenty dollars (\$220) for the first crypt
8 and one hundred ten dollars (\$110) for each additional crypt.

9 (d) Seventy dollars (\$70) for the cremated remains of each deceased person scattered in the
10 cemetery at a garden or designated open area that is not an interment site subject to subdivision

11 (a).

12 8. California Health and Safety Code section **8738.1** states:

13 In addition to the requirements of Section 8738 any endowment care cemetery hereafter
14 established shall also have deposited in its endowment care fund the additional sum of twenty-
15 five thousand dollars (\$25,000), or thirty-five thousand dollars (\$35,000) if established on or after
16 January 1, 1977, before disposing of any plot or making any sale thereof.

17 9. California Health and Safety Code section **8738.2** states:

18 The endowment care fund under the provisions of this code shall be kept separate and apart
19 from all other cemetery funds. Separate records and books shall be kept of the endowment care
20 fund. The amount to be deposited in the endowment care fund shall be separately shown on the
21 original purchase agreement and a copy delivered to the purchaser. In the sale of cemetery
22 property, no commission shall be paid a broker or salesman on the amount deposited by the
23 purchaser in the fund.

24 10. California Health and Safety Code section **8739.1** states:

25 Any cemetery established, on or after September 7, 1955, or excluded from the exemption
26 provided in subdivision (c) of Section 8250 by virtue of paragraph (2) of such subdivision, shall
27 be an endowment care cemetery.

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1 11. California Health and Safety Code section **8746** states:

2 Any person, partnership, corporation, association, or his, her, or its agents or
3 representatives, who shall violate any of the provisions of this article, except as provided in
4 Section 8785, or make any willful or false statement appearing on a sign, contract, agreement,
5 receipt, statement, literature or other publication shall be guilty of a misdemeanor.

6 12. California Health and Safety Code section **8750** states:

7 Endowment care funds shall not be used for any purpose other than to provide through
8 income only for the reserves authorized by law and for the endowment care of the cemetery in
9 accordance with the resolutions, by-laws, rules and regulations or other actions or instruments of
10 the cemetery authority.

11 13. California Health and Safety Code section **8785** states:

12 Any person, partnership, or corporation administering, managing, or having responsibility
13 for endowment care or special care funds who violates the provisions of this chapter relating to
14 the collection, investment, or use of those funds shall be punished either by imprisonment in a
15 county jail for a period not exceeding six months or by fine not exceeding five hundred dollars
16 (\$500), or by both such imprisonment and fine, or by imprisonment pursuant to subdivision (h) of
17 Section 1170 of the Penal Code for 16 months, or two or three years. If the violator is a cemetery
18 licensee or the holder of a certificate of authority, he, she, or it shall be subject to disciplinary
19 action as provided in Article 6 (commencing with Section 9725) of Chapter 19 of Division 3 of
20 the Business and Professions Code.

21 **FIRST CAUSE FOR DISCIPLINE**

22 (Improper Expenditure and Maintenance of Endowment Fund Corpus)

23 14. Respondent is subject to disciplinary action under Business and Professions Code
24 section 9725.1(a) and under Health and Safety Code section 8785, in that Respondent has
25 violated laws pertaining to the collection, investment, or use of endowment care funds. The
26 circumstances are as follows:

27 15. In or about 1993, Respondent established an endowment care fund. By 2011, the
28 fund corpus amounted to approximately \$430,000.00. Respondent, however, removed and failed

1 to account for the corpus of the fund. By July, 2012, the corpus balance was reduced to
2 approximately \$270,043.00. By January, 2013, all of the funds had been removed from the
3 account. Respondent's actions violated applicable law, as follows:

4 a. Respondent failed, in violation of Health and Safety Code section 8726, to segregate
5 its endowment care funds and use only the income from the fund for care, maintenance, and
6 embellishment of the cemetery.

7 b. Respondent failed, in violation of Health and Safety Code section 8738.2, to
8 segregate the endowment care funds from all other cemetery funds.

9 c. Respondent failed, in violation of Health and Safety Code section 8750, to limit its
10 use of endowment care funds to the purpose of providing, through income, for Respondent's
11 reserves and for endowment care of the cemetery.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Failure to Have Minimum Endowment Care Fund)

14 16. Respondent is subject to disciplinary action under Business and Professions Code
15 sections 9725.1(a) and under Health and Safety Code sections 8738 and 8785, in that Respondent
16 failed maintain an adequate endowment care fund as required by law. The circumstances are as
17 follows:

18 17. On or about October, 2012, Respondent deposited \$35,000.00 into its endowment
19 care fund in order to comply with Health and Safety Code section 8738.1. However, near in time
20 to when the Bureau issued Certificate of Authority Number COA 646 in May, 2013, Respondent
21 removed the money from its endowment care fund and thereafter failed to keep the required
22 minimum amount in the endowment care fund as required by law.

23 **PRAYER**

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

26 1. Revoking or suspending Certificate of Authority License Number COA 646, issued to
27 Mount Eden Cemetery Association, aka Mount Eden Cemetery

28 2. Ordering Respondent to pay the Cemetery and Funeral Bureau the reasonable costs of

1 the investigation and enforcement of this case, pursuant to Business and Professions Code section
2 125.3;

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

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5 DATED: November 10, 2015 *Lisa M. Moore*

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

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