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

In the Matter of the Accusation Against: **MICHAEL KENNY DAVIS** P.O. Box 37197 Albuquerque, NM 87176 Funeral Director License No. FDR 1762 and **ROSE CREMATORIUM;** 425 West Perkins Avenue McFarland, CA 93250 **MICHAEL KENNY DAVIS** P.O. Box 37197 Albuquerque, NM 87176 Crematory Establishment License No. CR 126 Crematory Manager License No. CRM 199 and **DEWEY JEROME STAFFORD** 3121 19th Street Bakersfield, CA 93301 Funeral Director License No. FDR 266 Respondents.	Case Nos. A1 2011 367 A1 2011 97 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 6, 2012, Complainant Lisa M. Moore, in her official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs[1/], filed Accusation Nos. A1 2011 367 and A1 2011 97 against Michael Kenny Davis; Rose Crematorium/Michael Kenny Davis; and Dewey Jerome Stafford before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

2. On or about July 26, 1999, the Bureau issued Funeral Director License Number FDR 1762 to Michael Kenny Davis (Respondent Davis). The Funeral Director License, which was in full force and effect at all times relevant to the charges brought herein, expired on August 31, 2012, and has not been renewed. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b), does not deprive the Bureau of its authority to institute or continue this disciplinary proceeding.

3. On or about April 4, 2003, the Bureau issued Crematory Establishment License Number CR 126 to Rose Crematorium; Michael Kenny Davis (Respondent Rose Crematorium). The Crematorium Establishment License was in full force and effect at all times relevant to the charges brought herein, but was cancelled prior to expiring on April 30, 2012. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b), does not deprive the Bureau of its authority to institute or continue this disciplinary proceeding.

4. On or about July 6, 2004, the Bureau issued Crematory Manager License Number CRM 199 to Respondent Davis. The Crematory Manager License, which was in full force and effect at all times relevant to the charges brought herein, expired on July 31, 2012, and has not been renewed. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b), does not deprive the Bureau of its authority to institute or continue this disciplinary proceeding.

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

5. On or about February 13, 1997, the Bureau issued Funeral Director License Number FDR 266 to Dewey J. Stafford (Respondent Stafford). The Funeral Director License, which was in full force and effect at all times relevant to the charges brought herein, expired on February 29, 2012 and is currently delinquent. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b), does not deprive the Bureau of its authority to institute or continue this disciplinary proceeding.

6. On or about June 26, 2012, Respondents Davis, Rose Crematorium and Stafford were served by Certified and First Class Mail copies of the Accusation Nos. A1 2011 367 and A1 2011 97, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondents' addresses of record which, pursuant to Business and Professions Code section 136- and California Code of Regulations, title 16, section 2304, is required to be reported and maintained with the Bureau. Respondents' addresses of record were and are:

Respondent Davis
P.O. Box 37197
Albuquerque, New Mexico 87176

Respondent Rose Crematorium
425 West Perkins Avenue
McFarland, CA 93250; and

Respondent Stafford
3121 19th Street
Bakersfield, CA 93301

7. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

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8 Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

9. Respondents, and each of them, failed to file a Notice of Defense within 15 days after service upon them of the Accusation, and therefore waived their respective rights to a hearing on the merits of Accusation Nos. A1 2011 367 and A1 2011 97.

10. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

11. Pursuant to its authority under Government Code section 11520, the Director finds Respondent is in default. The Director will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Director's offices regarding the allegations contained in Accusation Nos. A1 2011 367 and A1 2011 97, finds that the charges and allegations in Accusation Nos. A1 2011 367 and A1 2011 97 are separately and severally, found to be true and correct by clear and convincing evidence.

12. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement, for which both Respondents herein are jointly and severally responsible, is $36,129.79 as of December 18, 2012.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Davis has subjected his Funeral Director License No. FDR 1762, and Crematory Manager License No. CRM 199 to discipline; Respondent Rose Crematorium has subjected its Crematory Establishment License No. CR 126 to

discipline; and Respondent Stafford has subjected his Funeral Director License No. FDR 266 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Director of Consumer Affairs is authorized to revoke Respondent Davis' Funeral Director License, and Crematory Manager License; Respondent Rose Crematorium's Crematory Establishment License; and Respondent Stafford's Funeral Director License, based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

a. As to Respondent Davis

Unprofessional Conduct [pursuant to Code sections 7703 and 7707, and California Code of Regulations, title 16, section 1204(b)]; Cremating Human Remains Without Disposition Permits [pursuant to Code sections 9725, 9725.1 and 9787.2(b), for violating Health and Safety Code section 7055(a)]; Failure to Log Time and Date of Cremation [pursuant to Code section 9787.2 (b), for violating California Code of Regulations, title 16, section 2340(a)]; Unlawful Cremation of Non-Human Remains [pursuant to Code section 9787.2(b), for violating Health and Safety Code section 8344.5]; Failing to Put Client Funds into Trust [pursuant to Code sections 7737 and 7739]; Fraud [pursuant to Code section 7692]; Failing to Report Preneed Arrangements [pursuant to California Code of Regulations, title 16, section 1269]; and Failure to Exercise Supervision or Control [pursuant to California Code of Regulations, title 16, section 1204].

b. As to Respondent Rose Crematorium

Cremating Human Remains Without Disposition Permits [pursuant to Code sections 9725, 9725.1 and 9787.2(b), for violating Health and Safety Code section 7055(a)]; Failure to Log Time and Date of Cremation [pursuant to Code section 9787.2 (b), for violating California Code of Regulations, title 16, section 2340(a)].

c. As to Respondent Stafford

Failure to File Death Certificates and/or Disposition Permits [pursuant to Code sections 7703 and 7707, and California Code of Regulations, title 16, section 1204(b), for violating Health and Safety Code section 103050]; and Gross Negligence, Gross Incompetence,

or Unprofessional Conduct [pursuant to Code sections 7703 and 7707, and California Code of Regulations, title 16, section 1204(b)].

ORDER

IT IS SO ORDERED that Funeral Director License No. FDR 1762, and Crematory Manager License No. CRM 199, heretofore issued to Respondent Michael Kenny Davis, are revoked.

IT IS FURTHER ORDERED that Crematory Establishment License No. CR 126, heretofore issued to Respondent Rose Crematorium, is revoked.

IT IS FURTHER ORDERED that Funeral Director License No. FDR 266, heretofore issued to Respondent Dewey Jerome Stafford, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondents may serve respective written motions requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondents. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on MARCH 22, 2013.

It is so ORDERED FEB 21 2013

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

default decision_LIC.rtf
DOJ Matter ID:LA2011505964

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation Against: **MICHAEL KENNY DAVIS** P.O. Box 37197 Albuquerque, NM 87176 Funeral Director License No. FDR 1762 and **ROSE CREMATORIUM;** 425 West Perkins Avenue McFarland, CA 93250 **MICHAEL KENNY DAVIS** P.O. Box 37197 Albuquerque, NM 87176 Crematory Establishment License No. CR 126 Crematory Manager License No. CRM 199 and	Case Nos. A1 2011 367 A1 2011 97 **A C C U S A T I O N**

DEWEY JEROME STAFFORD
3121 19th Street
Bakersfield, CA 93301

Funeral Director License No. FDR 266

Respondents.

Complainant alleges:

PARTIES

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

2. On or about July 26, 1999, the Bureau issued Funeral Director License Number FDR 1762 to Michael Kenny Davis (Respondent Davis). The Funeral Director License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2012, unless renewed.

3. On or about April 4, 2003, the Bureau issued Crematory Establishment License Number CR 126 to Rose Crematorium; Michael Kenny Davis (Respondent Rose Crematorium). The Crematorium Establishment License was in full force and effect at all times relevant to the charges brought herein, but was cancelled prior to expiring on April 30, 2012.

4. On or about July 6, 2004, the Bureau issued Crematory Manager License Number CRM 199 to Respondent Davis. The Crematory Manager License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2012, unless renewed.

[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.

5. On or about February 13, 1997, the Bureau issued Funeral Director License Number FDR 266 to Dewey J. Stafford (Respondent Stafford). The Funeral Director License, which was in full force and effect at all times relevant to the charges brought herein, expired on February 29, 2012 and is currently delinquent.

JURISDICTION

6. 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.

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.

STATUTORY PROVISIONS

8. Section 7686 of the Code states, in pertinent part, that the Bureau may suspend or revoke licenses, after proper notice and hearing to the licensee, if the licensee has been found guilty by the bureau of any of the acts or omissions constituting grounds for disciplinary action. The proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, 1 and the bureau shall have all the powers granted therein.

9. Section 7692 of the Code provides in full: "Misrepresentation or fraud in the conduct of the business or the profession of a funeral director or embalmer constitutes a ground for disciplinary action."

10. Section 7703 of the Code states:

"Violation of any of the provisions of this chapter [the Funeral Directors and Embalmers Law] or of the rules and regulations adopted pursuant to this chapter constitutes a ground for disciplinary action."

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11. Section 7704 of the Code states that violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of human remains constitutes a ground for disciplinary action.

12. Section 7707 of the Code provides in full: "Gross negligence, gross incompetence or unprofessional conduct in the practice of funeral directing or embalming constitutes a ground for disciplinary action."

13. Section 7735 of the Code provides in relevant part that funeral establishments may enter into "preneed arrangements" for people to pay for funeral services in advance, but only if the contract for this preneed arrangement requires that all money paid shall be held in trust:

"No funeral establishment licensed under the laws of the State of California, or the agents or employees of a funeral establishment, shall enter into or solicit any preneed arrangement, contract, or plan, hereinafter referred to as 'contract,' requiring the payment to the licensee of money or the delivery to the licensee of securities to pay for the final disposition of human remains or for funeral services or for the furnishing of personal property or funeral merchandise, wherein the use or delivery of those services, property or merchandise is not immediately required, unless the contract requires that all money paid directly or indirectly and all securities delivered under that agreement or under any agreement collateral thereto, shall be held in trust for the purpose for which it was paid or delivered until the contract is fulfilled according to its terms . . ."

14. Section 7737 of the Code provides in relevant part that a funeral establishment must place all money received for a preneed arrangement in trust within 30 days of receipt:

"All securities purchased by the trustor for deposit in trust and all money received from the trustor for deposit in trust shall be placed in trust with a trustee [a bank or trust company] within 30 days of their receipt by the funeral establishment pursuant to a trust agreement executed by the funeral establishment, the trustor and trustee which shall provide that the trustee shall hold the money or securities in trust for the purposes for which deposited and that the trustee, upon the signature of a majority of such trustees, shall deliver the corpus of the trust to the funeral establishment upon the filing of a certified copy of the death certificate or other satisfactory

evidence of the death of the beneficiary, together with satisfactory evidence that the funeral establishment has furnished the merchandise and services . . . ."

15. Section 7739 of the Code provides that violations of the statutes governing preneed arrangements are crimes as well as bases for Bureau disciplinary action.

"Any person willfully violating the provisions of this article or any of them shall be punishable either by imprisonment in the county jail for a period not exceeding six months, or by fine not exceeding five hundred dollars ($500), or by both imprisonment and fine, or by imprisonment in the state prison for 16 months, or two or three years. If the violator is a funeral establishment licensee, he or she shall also be subject to disciplinary action as provided in Article 6 (commencing with Section 7686)."

16. Section 9725 of the Code 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."

17. Section 9725.1 of the Code 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."

18. Section 9787.2 of the Code states:

"A crematory shall at all times employ a licensed crematory manager to manage, supervise, and direct its operations.

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"(a) Every crematory shall designate a licensed crematory manager to manage the crematory, 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 crematory manager shall be responsible for exercising direct supervision and control over the operations, employees, and agents of the crematory 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 crematory manager or the licensed crematory to exercise that supervision or control shall constitute a ground for disciplinary action.

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

19. Health and Safety Code section 7055, subdivision (a), states, in pertinent part:

"(a) Every person, who for himself or herself or for another person, inters or incinerates a body or permits the same to be done, or removes any remains, other than cremated remains, from the primary registration district in which the death or incineration occurred or the body was found, except a removal by a funeral director in a funeral director's conveyance or an officer of a duly accredited medical college engaged in official duties with respect to the body of a decedent who has willfully donated his or her body to the medical college from that registration district or county to another registration district or county, or within the same registration district or county, without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred or in which the body was found; or removes interred human remains from the cemetery in which the interment occurred, or removes cremated remains from the premises on which the cremation occurred without the authority of a removal permit is guilty of a misdemeanor..."

20. Health and Safety Code section 8344.5 states:

"A crematory regulated by the Cemetery and Funeral Bureau shall knowingly cremate only human remains in cremation chambers, along with the cremation container, personal effects of the

deceased, and no more than a negligible amount of chlorinated plastic pouches utilized for disease control when necessary."

21. Health and Safety Code section 103050 states, in pertinent part:

"(a) No person shall dispose of human remains unless both of the following has occurred:

"(1) There has been obtained and filed with a local registrar a death certificate, as provided in Chapter 6 (commencing with Section 102775).

"(2) There has been obtained from a local registrar a permit for disposition.

"(b) (1) Notwithstanding subdivision (a), neither a death certificate nor a permit for disposition shall be required to transport human remains from California to an adjacent state for disposition in that state when all of the following circumstances exist:

"(A) The remains are found within 50 miles of the California border and the nearest licensed funeral establishment is within 20 miles of the border in the adjacent state, and the remains are released to that funeral establishment.

"(B) The coroner with jurisdiction over the area in which the remains were found authorizes their release pursuant to paragraph

"(2) The coroner may release the remains to a licensed out-of-state funeral establishment without a death certificate or permit for disposition when he or she determines that all of the following conditions exist:

"(A) No forensic interest in the remains exists.

"(B) A reasonable certainty exists that the cause of death will be provided either by the primary physician, or by a review of medical records by the coroner or medical examiner."

REGULATORY PROVISIONS

22. California Code of Regulations, title 16, section 1204, states, in part:

"(a) Any person, association, partnership, corporation or other organization licensed and conducting business as a funeral establishment shall designate a licensed funeral director to manage the establishment, and shall report the designation to the Board within 10 days of the effective date of the designation.

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"(b) The designated managing licensed funeral director of a licensed funeral establishment shall be responsible for exercising such direct supervision and control over the conduct of said funeral establishment as is necessary to ensure full compliance with the Funeral Directors and Embalmers Law, the provisions of this chapter and the applicable provisions of the Health and Safety Code. Failure of the designated managing licensed funeral director and/or the licensed funeral establishment to exercise such supervision or control, or failure of the holder of the funeral establishment license to make such designation shall constitute a ground for disciplinary action."

23. California Code of Regulations, title 16, section 1269 requires funeral establishments entering into preneed arrangements to disclose the details of those arrangements to the Bureau:

"(a) Each licensed funeral establishment and licensed funeral director who enters into any preneed arrangements, contracts or plans described in and subject to the provisions of Article 9, Chapter 12, Division 3 of the Business and Professions Code shall file with the Bureau annually on or before May 1 of each year and upon transfer of license or cessation of business, a written, verified or audited report, on form 21P-4A (1/94) prescribed and furnished by the Bureau, pertaining to funds received and held under such arrangements, contracts or plans. Firms utilizing a fiscal year accounting system may request permission, in writing to the Bureau Chief, to file said report on a fiscal year basis and, if permission is granted, said report shall then be filed with the Bureau no later than 120 days from the date of the close of said fiscal year.

"(b) The report required under this Article shall accompany the forms of assignment or transfer of a funeral establishment license. The report required hereunder upon cessation of business as a licensed funeral establishment shall be submitted thirty (30) days prior to such cessation of business.

"(c) In cases where trust corpus is deposited in individual savings accounts, and not commingled for investment purposes, the Bureau may require a verified report. Said requirement of verification shall be deemed complied with by a verification under penalty of perjury by the owner, partners, or, in the case of a corporation, by the president or vice-president and one other officer thereof and, in addition thereto, all reports must contain a verification under penalty of

perjury executed by at least two (2) trustees not employed by the funeral establishment and, in the case of a banking institution or trust company legally authorized to act as a trustee within the meaning of Section 7736 of Article 9, Chapter 12, Division 3, of the Business and Professions Code, a verification under penalty of perjury on behalf of such trustee by an authorized representative of said trustee.

"(d) In cases where trust funds have been commingled for purposes of investment, the Bureau may require, in addition to the written report required by subsection (a) of this section, an independent audit report prepared and signed by a Certified Public Accountant or Public Accountant, currently licensed in the State of California, which certifies compliance with the provisions of Article 9, Chapter 12, Division 3 of the Business and Professions Code and the provisions of this Article.

"(e) All written reports required under this section shall include, but are not limited to, a statement setting forth:

"(1) Amounts collected pursuant to preneed arrangements, contracts or plans, or any agreements collateral thereto;

"(2) Amounts deposited with the trustee and held in trust;

"(3) Amounts of authorized expenditures of income allocable to individual accounts, itemized as to the nature of expenditures;

"(4) Amount of authorized expenditures of income paid, itemized as to the nature of expenditure; and

"(5) Separately, the total amount of such trust funds invested in each of the investments authorized by law and the amount of cash on hand not invested which statement actually shows the financial condition of the trust funds."

24. California Code of Regulations, title 16, section 1275 has detailed requirements for preneed arrangements:

"A preneed trust contract within the meaning of Article 9, Chapter 12, Division 3, of the Business and Professions Code shall include but not be limited to the following information:

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"(a) The name and address of the trustor.

"(b) The name and address of the beneficiary.

"(c) The names and addresses of the trustees.

"(d) The name, address and phone number of the funeral establishment.

"(e) A sequential number which shall be continuous and in order of issue.

"(f) A copy of the completed funeral arrangements forms including, but not limited to, the following:

"(1) A description of the merchandise and services selected which is sufficiently detailed to identify them; and

"(2) Any disclosure of prices or itemization of services or merchandise, which is required to be provided pursuant to State or Federal law, rule or regulation then in effect.

"(g) A statement that earned annual income is being credited to the account and that administrative expenses, if charged, are paid from income only.

"(h) A statement, in clear nontechnical language, that the contract is either a guaranteed preneed contract or that it is a nonguaranteed preneed contract, and, if guaranteed only in part, the services or merchandise included in the guarantee shall be specified. This statement shall be printed in bold face type and shall be located on the first page of the contract.

"(1) If the contract is guaranteed, there shall be included in the contract a complete explanation of all the terms and conditions limiting the guarantee.

"(2) If the contract is not guaranteed, there shall be included in the contract a complete explanation of how the trust balance will be applied to pay for services and merchandise provided at the beneficiary's death and that there may be additional payments required or a refund due.

"(i) A statement that the trustees of the trust will deliver the corpus of the trust and net income to the funeral establishment filing a certified copy of the Death Certificate and evidence that said funeral establishment has furnished the merchandise and services. (Corpus of the Trust means all monies paid and all securities delivered pursuant to this prearrangement contract.)

"(j) A statement that the amount of revocation fee to be charged in the event of revocation, shall in no event exceed ten percent (10%) of the paid-in corpus and is chargeable

against earned income only; and a statement that no revocation fee may be charged if the funeral establishment is unable to perform substantially according to the terms of the agreement.

"(k) In immediate proximity to the space reserved for the purchaser's signature, in a size equal to at least ten point (10-point) bold type, the following statement: "All funds received will be deposited with the trustees within thirty (30) days and held in a trust which is fully refundable upon fifteen (15) days' written notice except when the beneficiary is the recipient of public assistance, as provided in the Welfare and Institutions Code and this trust agreement has been designated as being irrevocable thereunder."

25. California Code of Regulations, title 16, section 2340, subdivision (a)(7) provides, in pertinent part, that each crematory licensee who operates a crematory shall keep a record of all remains cremated, including, among other things, the date and time of cremation.

COST RECOVERY AND RESTITUTION

26. Section 125.3, subdivision (a), of the Code states, in pertinent 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."

27. Section 11519(d) of the Government Code provides, in pertinent part, that the Registrar may require restitution of damages suffered as a condition of probation in the event probation is ordered.

Bureau Complaint No. I-2011-367

28. On or about August 23, 2011, a complaint was received by the Bureau alleging that Aaron Davis Rose Funeral Home had picked up three deceased persons from the Kern County Coroner's Office (KCCO) and transported these bodies after stacking one of them on top of another in the transporting vehicle. Photographs depicting this violation were taken by an employee of the KCCO and submitted to the Bureau as proof thereof.

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FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

29. Respondent Davis, as Funeral Director of Aaron Davis Rose Funeral Home on or about August 23, 2011, is subject to disciplinary action under sections 7703 and 7707 of the Code, and California Code of Regulations, title 16, section 1204, subdivision (b), for engaging in unprofessional conduct by committing the acts set forth in particularity in paragraph 28 above.

Bureau Complaint No. I-2011-97

30. Pursuant to an investigation conducted by the Bureau, it was established that between January 1, 2011 and June 30, 2011, Respondents Rose Crematorium and Davis cremated the remains of 110 (out of 136) decedents without disposition permits. In 107 of those instances, the disposition permits were filed after the bodies had already been cremated. In the remaining three cases, as of October 2011, no disposition permits had ever been filed.

31. In furtherance of the same investigation as set forth in paragraph 30 above, it was also determined that on two instances between January 1, 2011 and June 30, 2011, Respondents Rose Crematorium and Davis failed to log the date and time of two decedents that had been cremated at Respondents' facility, as required by law.

32. Pursuant to the same investigation as set forth in paragraph 30 above, it was further determined that Respondents Rose Crematorium and Davis had also been knowingly and unlawfully using its cremation chambers to cremate the remains of drugs that had been seized by the Kern County Sheriff's Department (KCSD) at its (KCSD's) request.

SECOND CAUSE FOR DISCIPLINE

(Cremating Human Remains Without Disposition Permits)

33. Respondents Rose Crematorium and Davis are subject to disciplinary action under Code sections 9725, 9725.1 and 9787.2, subdivision (b), for violating Health and Safety Code section 7055, subdivision (a), by committing the acts set forth in particularity in paragraph 30 above.

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THIRD CAUSE FOR DISCIPLINE

(Failure to Log Time and Date of Cremation)

34. Respondents Rose Crematorium and Davis are subject to disciplinary action under section 9787.2, subdivision (b) of the Code, for violating California Code of Regulations, title 16, section 2340, subdivision (a), by committing the acts set forth in particularity in paragraph 31 above.

FOURTH CAUSE FOR DISCIPLINE

(Unlawful Cremation of Non-Human Remains)

35. Respondents Rose Crematorium and Davis are subject to disciplinary action under section 9787.2, subdivision (b) of the Code, for violating Health and Safety Code section 8344.5, by committing the acts set forth in particularity in paragraph 32 above.

Bureau Complaint No. I-2011-450

36. Pursuant to an investigation conducted by the Bureau, it was established that between January 1, 2011 and June 30, 2011, Respondent Stafford, while acting as Funeral Director of Davis Funeral Home, located at 425 West Perkins Avenue, McFarland, California, 93250, failed to file death certificates and disposition permits as required by law prior to cremating the remains of 110 (out of 136) decedents. In 107 of those instances, the death certificates and disposition permits were both filed after the bodies had already been cremated. In the remaining three cases, as of October 2011, no death certificates or disposition permits had ever been filed.

FIFTH CAUSE FOR DISCIPLINE

(Failure to File Death Certificates and/or Disposition Permits)

37. Respondent Stafford is subject to disciplinary action under sections 7703 and 7707 of the Code, and California Code of Regulations, title 16, section 1204, subdivision (b), for violating Health and Safety Code section 103050, by committing the acts set forth in particularity in paragraph 36 above.

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SIXTH CAUSE FOR DISCIPLINE

(Gross Negligence, Gross Incompetence, or Unprofessional Conduct)

38. Respondent Stafford is subject to disciplinary action under sections 7703 and 7707 of the Code, and California Code of Regulations, title 16, section 1204, subdivision (b), for engaging in gross negligence, gross incompetence, or unprofessional conduct by committing the acts set forth in particularity in paragraph 36 above.

Complaint No. I-2012-120

39. Pursuant to a complaint investigated by the Bureau, it was determined that while acting as Funeral Director of Aaron Davis Rose Funeral Home prior to the date said establishment was sold in or around November 2011, Respondent Davis accepted preneed monies from one or more consumers, failed to notify the Bureau that he had done so, and then unlawfully failed to place those funds into trust.

SEVENTH CAUSE FOR DISCIPLINE

(Failing to Put Client Funds into Trust)

40. By committing the acts set forth in particularity in paragraph 39 above, Respondent Davis is subject to disciplinary action under sections 7737 and 7739 of the Code because he failed to place his clients' funds for preneed arrangements into trust and failed to pay those funds back when his business was sold in or around November 2011.

EIGHTH CAUSE FOR DISCIPLINE

(Fraud)

41. By committing the acts set forth in particularity in paragraph 39 above, Respondent Davis is subject to disciplinary action under section 7692 because he accepted payments from clients for preneed funeral arrangements and then sold one or more of his subject funeral establishments without informing the subsequent purchaser of such funeral establishments that he had accepted such funds and/or refunding those payments to such clients.

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NINTH CAUSE FOR DISCIPLINE

(Failing to Report Preneed Arrangements)

42. By committing the acts set forth in particularity in paragraph 39 above, Respondent Davis is subject to disciplinary action under California Code of Regulations, title 16, section 1269 because he failed to report preneed funeral arrangements to the Bureau, and then failed to place his clients' funds that had been paid for those preneed arrangements into trust.

TENTH CAUSE FOR DISCIPLINE

(Failure to Exercise Supervision or Control)

43. By committing the acts set forth in particularity in paragraph 39 above, Respondent Davis is subject to disciplinary action under California Code of Regulations, title 16, section 1204 for failing to supervise and to control his funeral establishment to ensure full compliance with state law.

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 Funeral Director License FDR 1762 issued to Michael Kenny Davis;

2. Revoking or suspending Crematory Establishment License No. CR 126 issued to Rose Crematorium;

3. Revoking or suspending Crematory Manager License No. CRM 199 issued to Michael Kenny Davis;

4. Revoking or suspending Funeral Director License FDR 266 issued to Dewey Jerome Stafford;

5. Ordering restitution of all damages according to proof suffered by any consumer as a condition of Respondent Davis' probation, if probation is ordered;

6. Ordering restitution of all damages according to proof suffered by any consumer as a condition of restoration of any licenses issued to Respondent Davis, in the event his licenses are suspended or revoked;

7. Ordering Respondents Michael Kenny Davis and Dewey Jerome Stafford 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;

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

DATED: June 6, 2012

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