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*Attorneys for Plaintiff*  
7 *Cemetery and Funeral Bureau*

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SANTA CLARA**

11  
12 **Coordination Proceeding**  
**Special Title (Rules 3.501 CRC et seq.)**

Judicial Council Coordination Proceeding No.  
4686

13 **CALIFORNIA MASTER TRUST CASES**

**DECLARATION OF GEOFFREY WARD  
IN SUPPORT OF PLAINTIFF  
CEMETERY AND FUNERAL BUREAU'S  
PETITION FOR AN ORDER  
ACCEPTING RESIGNATION OF  
TRUSTEE AND FOR APPOINTMENT OF  
SUCCESSOR TRUSTEE**

14 Coordinated Actions:

15 Cemetery and Funeral Bureau, Department of  
16 Consumer Affairs v. California Master Trust,  
et al.

17 In the Matter of California Master Trust

Hearing Date: May 22, 2015  
Hearing Time: 9:00 a.m.  
Department: 1  
Judge: Hon. Peter H. Kirwan

19 Funeral Directors Service Corporation v.  
20 Department of Consumer Affairs, Cemetery  
and Funeral Bureau.

[Petition and Declaration of Phillip Harris,  
filed concurrently]

21 I, Geoffrey Ward, declare as follows:

22 1. I am a Deputy Attorney General, employed by the Department of Justice, State of  
23 California, counsel for Plaintiff Cemetery and Funeral Bureau (“Bureau”) in these coordinated  
24 proceedings. I am one of the attorneys responsible for litigating this action on behalf of the  
25 Cemetery and Funeral Bureau of the Department of Consumer Affairs, State of California, and  
26 am submitting this declaration in support of the Bureau’s petition for an order accepting the  
27 resignation of the California Master Trust’s trustee and for appointment of a successor trustee.  
28

1 Because this declaration is made for a limited purpose, it does not contain all of the information  
2 that I know about this matter. I have personal knowledge of the facts set forth in this declaration,  
3 and if called as a witness could testify competently to those facts.

4 2. There were 16 defendants named in Cemetery and Funeral Bureau's first amended  
5 complaint in the California Master Trust litigation. The Bureau has now settled with and  
6 dismissed all of them from this litigation. I am familiar with the contents of these settlements and  
7 with their dates of execution.

8 3. Through its settlement agreements, its stipulations regarding dismissal, and in a  
9 recent filing, a response to an order to show cause regarding dismissal, the Bureau has requested  
10 Department 1 of Santa Clara Superior Court to retain jurisdiction over the California Master Trust  
11 litigation in order to accept the appointment of a successor trustee for the Trust.

12 4. I have reviewed the discovery propounded by the Bureau on the defendants in this  
13 litigation and those defendants' discovery responses, including Comerica Bank's responses.

14 5. In response to the Bureau's first set of special interrogatories, Comerica Bank  
15 stated in response to special interrogatory number 9 that the Master Trust Agreement effective  
16 February 15, 2002 is the trust instrument for the California Master Trust.

17 6. In response to the Bureau's first set of requests for admission, Comerica Bank  
18 stated in response to request for admission number 4 that it has been the trustee of the California  
19 Master Trust since February 15, 2002.

20 7. Exhibit A to this declaration is a true and correct copy of the settlement agreement  
21 between the Bureau and the Funeral Directors Service Corporation (FDSC) and related parties  
22 that was executed on July 21, 2014.

23 8. Attached as Exhibit B to this declaration is a true and correct copy of the  
24 amendment to the settlement agreement between the Bureau and FDSC that was executed on  
25 November 12, 2014 .

26 9. The amended agreement between the Bureau and FDSC created a new section 3.5  
27 of the settlement agreement that provided in full: "Successor Trustee Selection. FDSC hereby  
28 assigns to the Bureau any right it may have under the Master Trust Agreement with Comerica or

1 under any other agreement regarding the California Master Trust to select a successor trustee of  
2 the trust and to modify or reform the Master Trust Agreement. The Bureau will petition the court  
3 to request the court to appoint a qualified successor trustee or receiver.”

4 10. Attached as Exhibit C to this declaration is a true and correct copy of a settlement  
5 agreement between the Bureau and Comerica Bank that was executed on October 12, 2014.

6 11. The settlement agreement between the Bureau and Comerica Bank provides that  
7 Comerica Bank would notice its resignation as trustee of the California Master Trust.

8 12. The settlement agreement between the Bureau and Comerica Bank also provides  
9 that the Cemetery and Funeral Bureau would select, with this Court’s approval, a successor  
10 trustee to administer the California Master Trust.

11 13. On or about October 21, 2014, consistent with its settlement agreement, Comerica  
12 Bank tendered its resignation as trustee of the California Master Trust to be effective as of the  
13 earlier of December 31, 2014 or the date the Court appointed a successor trustee.

14 14. On January 7, 2014, Comerica Bank agreed to extend its trusteeship of the  
15 California Master Trust in order to allow for additional time to select a successor trustee.

16 15. I declare under penalty of perjury under the laws of the State of California that the  
17 foregoing is true and correct and that this declaration was executed in Los Angeles on

18 April 13, 2015.

19   
20 GEOFFREY WARD

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**EXHIBITS TO DECLARATION OF GEOFFREY WARD**

<b>EXHIBIT</b>	<b>CONTENTS</b>
<b>A.</b>	Settlement agreement between the Bureau and the Funeral Directors Service Corporation (FDSC) and related parties executed on July 21, 2014.
<b>B.</b>	Amendment to the settlement agreement between the Bureau and FDSC executed on November 12, 2014.
<b>C.</b>	Settlement agreement between the Bureau and Comerica Bank executed on October 12, 2014.

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**Exhibit A**

**Settlement agreement between the Bureau and the Funeral Directors Service Corporation (FDSC) and related parties executed on July 21, 2014**

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by and between the CEMETERY AND FUNERAL BUREAU, DEPARTMENT OF CONSUMER AFFAIRS, STATE OF CALIFORNIA ("Bureau") and these parties:

1. California Funeral Directors Association ("CFDA"),
2. Funeral Directors Service Corporation ("FDSC"),
3. James E. Draper ("Draper"),
4. Mark E. Kuhn ("Kuhn"),
5. Leslie D. Peters ("Peters"), and
6. George F. Prather ("Prather").

Where this Agreement uses the capitalized word "Defendants" it means all of these six persons and entities and when it uses the word "parties" it means the Bureau and all of these six persons and entities. In addition, where this Agreement uses the term "Kuhn" or is included in the term "Defendants", it means Mark E. Kuhn, individually and as an officer and director of FDSC. For purposes of this Agreement, "Kuhn" shall not be construed to mean Mark E. Kuhn in his capacity as owner of Hillview Funeral Chapels ("Hillview"). This Agreement specifically does not include any settlement and/or release between the Bureau and Mark E. Kuhn doing business as Hillview Funeral Chapels, a sole proprietorship (Funeral Establishment License Number FD 527) ("Hillview"), located in Stanislaus County, California.

### RECITALS

A. The Bureau and Defendants are parties in an action originally filed in Los Angeles County Superior Court, *Cemetery and Funeral Bureau v. California Master Trust et. al.*, Los Angeles Superior Court Case Number BC459862, that is now part of Judicial Council Coordination Proceeding No. 4686, which is pending in the Santa Clara County Superior Court.

B. The Bureau and FDSC are also parties in an action originally filed in Sacramento County Superior Court, *Funeral Directors Service Corporation v. Department of Consumer Affairs*, Sacramento Superior Court Case Number 34-2010-80000715, which is also included as part of Judicial Council Coordination Proceeding No. 4686.

C. Together, these two lawsuits will be referred to as the "Actions." Through this Agreement, the parties intend to fully resolve all claims between them arising out of or related to the Actions.

D. The Defendants deny and contest all of the Bureau's claims in Case No. BC459862. The Bureau also denies and contests all of the FDSC's claims in Case No. 34-2010-80000715. The parties will not construe the Defendants' execution of this Agreement and their payment of monetary consideration under it as an admission of liability or of responsibility.

## AGREEMENT

The parties agree as follows:

1. **Benefit of Counsel.** Each party has obtained legal counsel's advice before entering into this Agreement. Each party executes this Agreement with the full knowledge of its significance and with the express intention of affecting its legal consequences.

2. **Settlement Payment.** Defendants will pay to the Bureau, through their insurer Underwriters at Lloyds of London, the total sum of Four Hundred Thousand Dollars (\$400,000.) Defendants will pay by check or negotiable instrument made payable to the Cemetery and funeral Bureau, Department of Consumer Affairs within 60 days of the Court's order approving this Agreement as a good faith settlement under California Code of Civil Procedure Section 877.6.

3. **Permanent Injunction.**

3.1. CFDA and FDSC will not engage in any of the following actions and will stipulate to an injunction prohibiting them from engaging in the following actions:

3.1.1. Administering or managing any preneed funeral trusts in the State of California or entering into any contracts or agreements to do so.

3.1.2. Offering to provide or providing any preneed funeral trust services in the State of California, including as an administrator, sponsor, trustee, manager, operator, or referral agent, or entering into any contracts or agreements to do so. However, vendors may advertise preneed funeral arrangement services at CFDA's conventions, trade shows, or newsletters.

3.1.3. Advertising, marketing, or soliciting preneed funeral trust services.

3.1.4. Advertising the "California Master Trust".

3.1.5. Using, selling, assigning, or advertising FDSC's trademark, "California Master Trust", except as set forth in this paragraph 4.4 of this Agreement.

3.1.6. Acting as fiduciaries for any business, entity, or organization providing any preneed funeral trust administrative services or trust administration services in the State of California or enter into any contracts or agreements to do so.

3.2. CFDA and FDSC agree that, concurrently with this Agreement, they shall enter into the Stipulation for Entry of Final Judgment of Permanent Injunction against California Funeral Directors Association and Funeral Directors Service Corporation, attached hereto as Exhibit "1."

3.3. Defendants Prather, Peters, Kuhn and Draper will not be used or identified as a trustee or administrator for any preneed funeral trust and will not act as an administrator or trustee for any preneed funeral master trust. Notwithstanding the provisions of this paragraph, funeral establishments in which Defendants Prather, Peters, Kuhn or Draper work and/or that

these individual defendants own as a sole owner, partner, or sole shareholder of a corporation may enter into preneed funeral arrangements for the funeral establishment's customers subject to applicable laws and regulations.

**Resignation, Termination of Current Trustee, and Assignment and Delegation To A Successor Trustee.**

3.3 Resignation. Bureau and FDSC agree to file a joint petition with the Court to request the Court to approve the appointment of a qualified successor trustee or receiver and to require Comerica Bank to serve as the trustee until the substitution of the successor trustee or receiver. Once a successor trustee or receiver has been approved by the Court and is substituted, FDSC will resign as the administrator of the California Master Trust within 90 days of the Court's order approving the appointment of a successor trustee or receiver.

3.4 Termination of current trustee. Prior to its resignation and upon approval of the appointment of a successor trustee or receiver by the Court, FDSC will terminate Comerica Bank as trustee by giving Comerica Bank 90 days' advance written notice as provided for in its "Master Trust Agreement of California Master Trust" with Comerica Bank. The notice will also include a statement regarding the possibility of reasonable extensions of time to substitute a successor trustee or receiver as provided for in its "Master Trust Agreement of California Master Trust" with Comerica Bank and will include a copy of the Court's order approving the appointment of a successor trustee or receiver. A copy of the written notice will be provided by FDSC to the Bureau at the same time it is served upon Comerica Bank.

3.5 Assignment and Delegation of Duties. Prior to resignation, FDSC assigns all contracts of which it is a party to the current or successor trustee or receiver of the California Master Trust and delegates all of its duties under those contracts to that current or successor trustee or receiver.

3.6 Use of Trademark. FDSC assigns to the current or successor trustee or receiver the use of FDSC's trademark "California Master Trust™" as needed for the reasonable administration of the trust, free of charge and without the necessity to seek further consent from FDSC.

3.7 Website. CFDA and FDSC will take down the web site, [www.californiamastertrust.com](http://www.californiamastertrust.com), within 30 days of the effective date of this Agreement as defined in paragraph 22 of this Agreement.

3.8 Notice. FDSC will provide notice of its resignation and the transfer of administrative duties to all affected funeral establishments at least 30 days prior to FDSC's resignation pursuant to section 3.3, hereinabove. FDSC will consult with the Bureau and obtain the Bureau's approval for this notice's contents.

4. **Recordkeeping Assistance.**

4.1. To the extent these records exist and are in the possession or control of CFDA or FDSC, CFDA or FDSC will provide the Bureau with any records showing FDSC's disbursements, including vendor payments, from January 1, 2000 to the present. The parties'

understanding is that records from January 1, 2007 to the present are available in electronic format, and will be provided in electronic format. CFDA and FDSC will arrange to give the Bureau access to or copies of any remaining records kept on paper where only paper records exist.

4.2. CFDA and FDSC agree to use their best efforts to assist the Bureau with identifying all preneed trust accounts currently held in the California Master Trust, and with identifying all accounts that have been serviced, revoked, or cancelled between January 1, 2000 and the present, including providing, where available, electronic data regarding individual accounts. This will include assisting in identifying deceased beneficiaries, if any, whose funeral services have not been provided.

4.3. CFDA and FDSC will assist the Bureau in identifying any funeral establishments who are currently enrolled in the California Master Trust who are no longer in business or no longer licensed to perform funeral services.

5. **Cooperation.**

5.1. Defendants shall fully cooperate and assist the California Attorney General's Office, Department of Consumer Affairs, or the Bureau in their prosecution of the remaining lawsuits against the remaining defendants in the case *Cemetery and Funeral Bureau v. California Master Trust*, including the following.

5.1.1. Providing declarations regarding the facts, events, and occurrences known to the declarant that are at issue in the Actions.

5.1.2. Meeting and conferring in good faith about making witnesses available for depositions, court proceedings, and trial, according to a reasonable schedule, including making themselves available at a mutually agreed-upon time and place for depositions, court proceedings, or trial.

5.1.3. Upon request, providing last-known contact information for any potentially relevant former directors, officers, and employees.

5.2. Defendants shall take no actions that will hinder or interfere with other parties' performance of any duties pursuant to any settlement agreement with the Bureau and will cooperate with the Bureau in the resolution of any California Master Trust-related issues identified by the Bureau or its representatives. This includes directing all agents and parties to contracts under their control to provide the Bureau with any information required by this Agreement, at no cost to the Bureau.

5.3. CFDA and FDSC will cooperate with the trustee of the Trust, and any settlement administrator, receiver, or successor trustee, as applicable.

5.4. Defendants will make their best efforts to respond within 10 days, and in no event later than 30 days, to all inquiries, reporting requests, or verifications from the Bureau or its representative that are necessary to monitor compliance with this Agreement.

5.5. Defendants shall neither take nor charge the Bureau or any settlement administrator, receiver, or successor trustee any compensation or fees for any services that they provide pursuant to this Agreement.

5.6. Defendants shall provide to the Bureau or its representatives, upon the Bureau's reasonable request, any additional documents that the Defendants have in their possession, custody or control relating to the Actions.

5.7. Defendants agree to maintain and not destroy any evidence relevant to the Actions in any form, including, but not limited to, evidence in written, electronic and recorded formats. Defendants agree to preserve said evidence for at least five years from the execution of this Agreement. Prior to destruction of any evidence relevant to this matter, Defendants agree to provide the Bureau and the Attorney General's Office with at least 30 days' notice of the intent to destroy such evidence.

6. **Approvals as Conditions Precedent.**

6.1. This Agreement is conditioned upon the following:

6.1.1. The Court approving this Agreement as a good faith settlement under California Code of Civil Procedure Section 877.6; and,

6.1.2. The Business, Consumer Services and Housing Agency of the State of California approving this Agreement. When the Bureau Chief of the Bureau has executed this Agreement, this Agreement will be final and binding, and this condition fully satisfied.

6.2. In the event that these two approvals are not completed before 5 p.m. on Sept. 26, 2014, this Agreement will be null and void. However, before Sept. 26, 2014, the parties, through a written agreement, may extend the time for obtaining these two approvals.

7. **Release.**

7.1. Release by Bureau: Except for purposes of enforcement of this Agreement's obligations and terms, the Bureau releases Defendants, along with their predecessors, successors, members, partners, subsidiaries, officers, directors, principals, employees, attorneys, representatives, and insurance companies, of and from any and all claims, demands, causes of action, obligations, liens, taxes, damages, losses, costs, attorneys' fees, and expenses of any kind and nature whatsoever, known or unknown that in any way relate to or arise out of the Actions.

7.1.1. This release may not be construed to extend to any other defendant named in the Actions, including Hillview. Specifically, this release does not extend to the Bureau's claim against Hillview, as set forth in the Third Cause of Action of the Bureau's First Amended Complaint in *Cemetery and Funeral Bureau v. California Master Trust et. al.*, Los Angeles Superior Court Case Number BC459862, that is now part of Judicial Council Coordination Proceeding No. 4686, which is pending in the Santa Clara County Superior Court.

7.2. Release by Defendants: Defendants release the Bureau and the Department of Consumer Affairs and any of their agents, officers, employees, successors, assigns, representatives, attorneys or other affiliated agencies from any and all claims, demands, causes of action, obligations, liens, taxes, damages, losses, costs, attorneys' fees, and expenses of any kind and nature whatsoever, known or unknown which in any way related to or arising out of the Actions.

7.3. Waiver: Each party acknowledges that there is a risk that after executing this Agreement they may incur, suffer or sustain injury, loss, damage, costs, attorneys' fees, or expenses that are in some way caused by or connected with the persons, entities, or matters released in this Agreement, or which are unknown and unanticipated at the time this Agreement is signed, or which are not presently capable of being ascertained; and further, that there is a risk that such damages as are known may become more serious than any of them now expects or anticipates. Nevertheless, each of the parties acknowledges that this Agreement has been negotiated and agreed upon and in light of that realization, and each of them expressly waives all rights each may have in such unsuspected claims. In doing so, each party has had the benefit of counsel, has been advised of, understands, and knowingly and specifically waives their rights under California Civil Code Section 1542, which provides as follows:

"A general release does not extend to the claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The Bureau specifically does not waive any rights, including its rights under California Civil Code Section 1542, with regard to any claim the Bureau has or may have in the future against Hillview.

## 8. COVENANT NOT TO SUE.

8.1. Within 10 days of the date of payment as provided in paragraph 2 of this Agreement, the Bureau will dismiss Defendants with prejudice from Los Angeles County Superior Court, Case No. BC459862, except the Bureau will not dismiss its claim against Hillview as set forth in the Bureau's Third Cause of Action in its First Amended Complaint; and the Bureau agrees never to commence or prosecute any action against any party released in paragraph 7.1 of this Agreement based upon the claims, demands, causes of action, obligations, damages or liabilities released in this Agreement.

8.2. Within 10 days of the effective date of this Agreement as defined in paragraph 22 of this Agreement, FDSC will dismiss the Bureau with prejudice from *Funeral Directors Service Corporation v. Department of Consumer Affairs*; and Defendants agree to never commence or prosecute any action against the Bureau and any party released in paragraph 7.2 of this Agreement based upon the claims, demands, causes of action, obligations, damages or liabilities released in this Agreement.

8.3. This Agreement may be pled as a full and complete defense to any action or other proceeding, and as a basis for abatement of, or injunction against such action. Nothing in this paragraph, however, shall preclude either party from bringing an action to enforce this Agreement.

9. **STATEMENTS REGARDING SETTLEMENT**

This Agreement is not confidential. The Bureau agrees that it will share its press release in advance of any publication with Defendants' representative.

10. **ATTORNEYS' FEES**

The parties hereto acknowledge and agree that each of them will bear their own costs, expenses, and attorneys' fees.

11. **WARRANTY**

The parties warrant and represent that they have the ability and right to release the matters identified and released herein, and have not assigned any claim or right, which is herein released. Additionally, each party warrants that the person executing this Agreement on its behalf has authority to bind the party. Defendants understand and acknowledge that the Bureau has the authority to bind the Bureau only. This Agreement does not bind any other government agency.

12. **CONSTRUCTION OF AGREEMENT**

This Agreement is the product of negotiation and preparation by the parties to this Agreement and their respective attorneys. The parties therefore expressly acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or another, or its attorneys, and will be construed accordingly.

13. **GOVERNING LAW**

This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of California, and in a court of competent jurisdiction within the State of California.

14. **BINDING EFFECT**

This Agreement shall be binding on each of the parties' successors, transferees, and assignees, if any. CFDA and FDSC agree to provide a copy of this Agreement to any potential new owner, shareholders, board members or officers before changing control of the entities or selling or transferring the ownership or control of the entities. Compliance with this Agreement shall be included as a term and condition of any sale or transfer agreement between CFDA and FDSC and any potential new owner.

15. **SEVERABILITY**

If any provision or any part of this Agreement is for any reason held to be invalid, unenforceable, or contrary to any public policy, law, statute or ordinance, then the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

16. **ENTIRE AGREEMENT**

This Agreement constitutes the parties' entire understanding regarding these matters. There are no other written or oral representations, warranties, agreements, arrangements, or undertakings between them relating to this Agreement's matters that are not fully expressed. This Agreement may only be modified by a written agreement signed by the parties.

Any written or oral representations, warranties, agreements, arrangements, or undertakings between the Bureau and Hillview shall be deemed as unrelated to this Agreement and shall have no bearing on this Agreement.

17. **ENFORCEABILITY**

The parties stipulate that pursuant to California Code of Civil Procedure Section 664.6, in the event of breach of this Agreement, the court may, upon motion, enter judgment pursuant to the terms of this settlement, and the parties agree to request the Santa Clara County Superior Court to retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of this settlement.

18. **NON-WAIVER**

The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

19. **HEADINGS**

Headings used in this Agreement are for convenience of reference only and shall not be considered a part of this Agreement or construed to affect its provisions' interpretation.

20. **FURTHER ASSURANCES**

The parties agree to execute such other documents and take such other action as may be necessary to further the Agreement's purposes, including cooperating in filing a stipulation or a proposed order to adopt a stipulation with the Court.

21. COUNTERPARTS

This Agreement may be executed in counterparts and by facsimile copy, which, when taken together, may act as an original.

22. EFFECTIVE DATE

Subject to the conditions precedent listed in paragraph 6 of this Agreement being satisfied, this Agreement takes effect when the last party signs it and upon approval of this Agreement as a good faith settlement under California Code of Civil Procedure Section 877.6.

AGREED:

DATED: July 21, 2014

Lisa Moore  
LISA MOORE, BUREAU CHIEF,  
CEMETERY AND FUNERAL  
BUREAU, DEPARTMENT OF CONSUMER  
AFFAIRS

DATED: June 27, 2014

Jack P. Jensen  
CALIFORNIA FUNERAL DIRECTORS  
ASSOCIATION  
By: JACK P. JENSEN  
Its: PRESIDENT

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
FUNERAL DIRECTORS SERVICE  
CORPORATION  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
MARK E. KUHN

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
LESLIE D. PETERS

21. COUNTERPARTS

This Agreement may be executed in counterparts and by facsimile copy, which, when taken together, may act as an original.

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AGREED:

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
LISA MOORE, BUREAU CHIEF,  
CEMETERY AND FUNERAL  
BUREAU, DEPARTMENT OF CONSUMER  
AFFAIRS

DATED: June 27, 2014

  
\_\_\_\_\_  
CALIFORNIA FUNERAL DIRECTORS  
ASSOCIATION  
By: JACK P. JENSEN  
Its: PRESIDENT

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
FUNERAL DIRECTORS SERVICE  
CORPORATION  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
MARK E. KUHN

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
LESLIE D. PETERS

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AGREED:

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
LISA MOORE, BUREAU CHIEF,  
CEMETERY AND FUNERAL  
BUREAU, DEPARTMENT OF CONSUMER  
AFFAIRS

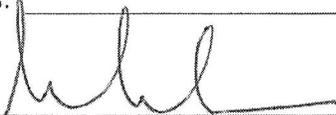
DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
CALIFORNIA FUNERAL DIRECTORS  
ASSOCIATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: 6/26, 2014

\_\_\_\_\_  


\_\_\_\_\_  
FUNERAL DIRECTORS SERVICE  
CORPORATION

By: Mark Kuhn

Its: President

DATED: 6/26, 2014

\_\_\_\_\_  


\_\_\_\_\_  
MARK E. KUHN

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
LESLIE D. PETERS

21. COUNTERPARTS

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22. EFFECTIVE DATE

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AGREED:

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
LISA MOORE, BUREAU CHIEF,  
CEMETERY AND FUNERAL  
BUREAU, DEPARTMENT OF CONSUMER  
AFFAIRS

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
CALIFORNIA FUNERAL DIRECTORS  
ASSOCIATION  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
FUNERAL DIRECTORS SERVICE  
CORPORATION  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
MARK E. KUHN

DATED: 6/27, 2014

Leslie D. Peters  
\_\_\_\_\_  
LESLIE D. PETERS

DATED: 6-26, 2014

  
\_\_\_\_\_  
GEORGE F. PRATHER

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
JIM E. DRAPER

APPROVED AS TO FORM:

DATED:

KAMALA D. HARRIS  
Attorney General of California

By: \_\_\_\_\_  
NANCY A. KAISER, Deputy Attorney  
General  
*Attorneys for Plaintiff CEMETERY AND  
FUNERAL BUREAU, DEPARTMENT OF  
CONSUMER AFFAIRS*

DATED:

LAW OFFICES OF GRACE J. BERGEN

By: \_\_\_\_\_  
Grace J. Bergen  
*Counsel for CFDA, FDSC, MARK E.  
KUHN, LESLIE PETERS, GEORGE  
PRATHER, JIM DRAPER*

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DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
GEORGE F. PRATHER

DATED: 6-27, 2014

  
\_\_\_\_\_  
JIM E. DRAPER

APPROVED AS TO FORM:

DATED:

KAMALA D. HARRIS  
Attorney General of California

By:

\_\_\_\_\_  
NANCY A. KAISER, Deputy Attorney  
General  
*Attorneys for Plaintiff CEMETERY AND  
FUNERAL BUREAU, DEPARTMENT OF  
CONSUMER AFFAIRS*

DATED:

LAW OFFICES OF GRACE J. BERGEN

By:

\_\_\_\_\_  
Grace J. Bergen  
*Counsel for CFDA, FDSC, MARK E.  
KUHN, LESLIE PETERS, GEORGE  
PRATHER, JIM DRAPER*

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DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
GEORGE F. PRATHER

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
JIM E. DRAPER

APPROVED AS TO FORM:

DATED: 7/25/14

KAMALA D. HARRIS  
Attorney General of California

By: N Kaiser  
NANCY A. KAISER, Deputy Attorney  
General  
*Attorneys for Plaintiff CEMETERY AND  
FUNERAL BUREAU, DEPARTMENT OF  
CONSUMER AFFAIRS*

DATED: June 27, 2014

LAW OFFICES OF GRACE J. BERGEN

By: Grace J. Bergen  
Grace J. Bergen  
*Counsel for CFDA, FDSC, MARK E.  
KUHN, LESLIE PETERS, GEORGE  
PRATHER, JIM DRAPER*

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**Exhibit B**

**Amendment to the settlement agreement between the Bureau and FDSC executed on  
November 12, 2014**

**FIRST AMENDMENT  
TO  
THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This First Amendment to the Settlement Agreement and Mutual Release ("First Amendment to the Agreement") is entered into by and between the CEMETERY AND FUNERAL BUREAU, DEPARTMENT OF CONSUMER AFFAIRS, STATE OF CALIFORNIA ("Bureau") and these parties:

1. California Funeral Directors Association ("CFDA"),
2. Funeral Directors Service Corporation ("FDSC"),
3. James E. Draper,
4. Mark E. Kuhn,
5. Leslie D. Peters, and
6. George F. Prather.

Where this First Amendment to the Agreement uses the capitalized word "Defendants" it means all of these six persons and entities and when it uses the word "parties" it means the Bureau and all of these six persons and entities.

**BACKGROUND**

A. The Bureau and Defendants are parties in an action originally filed in Los Angeles County Superior Court, entitled *Cemetery and Funeral Bureau v. California Master Trust et. al.*, Los Angeles Superior Court Case Number BC459862, that is now part of Judicial Council Coordination Proceeding No. 4686, which is pending in the Santa Clara County Superior Court.

B. The Bureau and FDSC are or were also parties in an action originally filed in Sacramento County Superior Court, *Funeral Directors Service Corporation v. Department of Consumer Affairs*, Sacramento Superior Court Case Number 34-2010-80000715, which is also included as part of Judicial Council Coordination Proceeding No. 4686.

C. Together, these two lawsuits will be referred to as the "Actions."

D. The Bureau and Defendants entered into a settlement agreement and mutual release (the "Agreement") to fully resolve all claims between them arising out of or related to the Actions. The Agreement became effective upon approval of the Agreement as a good faith settlement under California Code of Civil Procedure Section 877.6. On September 30, 2014, the Court executed the Order granting the Defendants' Application for Good Faith Settlement pursuant to Civil Code section 877.6 with regard to the Actions.

C. The parties are modifying the Agreement by this First Amendment to the Agreement to ensure the orderly transition of the administration of the California Master Trust from Comerica Bank ("Comerica"), as trustee, and FDSC, as administrator, to a successor trustee or receiver.

D. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Agreement.

### AGREEMENT

The parties agree as follows:

1. Modifications.

a. The following sections are added to the Agreement:

"3.1.7. The Permanent Injunction against CFDA and FDSC set forth in Section 3.1 of the Agreement shall become effective upon the court's order appointing a successor trustee or receiver to the trust. Upon the execution of this First Amendment to the Agreement, the parties' counsel shall execute on the parties' behalf a First Amended Stipulation for Entry of Final Judgment of Permanent Injunction in accordance with this provision."

"3.1.8. The parties authorize their respective counsel to stipulate on their behalf to the entry of the First Amended Final Judgment of Permanent Injunction attached to the First Amended Stipulation for Entry of Final Judgment of Permanent Injunction as Exhibit A thereto."

b. Sections 3.3<sup>1</sup> through 3.8 of the Agreement are deleted in their entirety and replaced with the following:

i. "3.4 Assignment and Delegation of Duties and Resignation.

Within 60 days of the court's order appointing a successor trustee or receiver, FDSC shall assign all contracts regarding the California Master Trust of which it is a party and delegate all of its duties under those contracts to the successor trustee or receiver of the California Master Trust. Within 10 days of said assignment and delegation of duties, FDSC shall resign as the administrator of the California Master Trust "

ii. "3.5 Successor Trustee Selection. FDSC hereby assigns to the Bureau any right it may have under the Master Trust Agreement

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<sup>1</sup> There are two sections erroneously numbered 3.3 in the Agreement. This modification applies to the second section 3.3, which is on page 3 of the Agreement and has the heading Resignation. The second section 3.3 is renumbered 3.4 in this First Amendment to the Agreement.

with Comerica or under any other agreement regarding the California Master Trust to select a successor trustee of the trust and to modify or reform the Master Trust Agreement. The Bureau will petition the court to request the court to appoint a qualified successor trustee or receiver."

- iii. "3.6 Use of Trademark. Upon the court's order appointing a successor trustee or receiver, FDSC shall assign to the successor trustee or receiver the use of FDSC's trademark 'California Master Trust™' as needed for the reasonable administration of the trust, free of charge and without the necessity to seek further consent from FDSC."
- iv. "3.7 Website. Within 60 days of the effective date of the Agreement, CFDA and FDSC shall remove all content of the website, [www.californiamastertrust.com](http://www.californiamastertrust.com), except for the CMT On-Line members only portion, which provides member firms access to online forms and statement of accounts. Upon the court's order appointing a successor trustee or receiver, CFDA and FDSC will assign the website [www.californiamastertrust.com](http://www.californiamastertrust.com) to the successor trustee or receiver."
- v. "3.8 FDSC will provide notice of its resignation and the transfer of administrative duties to all affected funeral establishments at least 30 days prior to FDSC's resignation pursuant to section 3.4, hereinabove. FDSC will consult with the Bureau and obtain the Bureau's approval for this notice's contents."

2. Approvals as Conditions Precedent.

a. This First Amendment to the Agreement is conditioned upon the Business, Consumer Services and Housing Agency of the State of California approving this First Amendment to the Agreement. When the Bureau Chief of the Bureau has executed this First Amendment to the Agreement, it will be final and binding, and this condition fully satisfied.

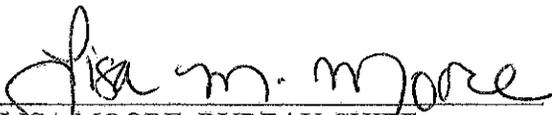
b. In the event that the foregoing approval is not completed within 60 days from the submittal of Defendants' executed signature pages to the Bureau, this First Amendment to the Agreement will be null and void. However, the parties, through a written agreement, may extend the time for obtaining the approvals.

3. Counterparts. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this First Amendment to the Agreement, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

4. Effective Date. Subject to the conditions precedent listed in paragraph 3 herein, this First Amendment to the Agreement takes effect when the last party signs it.

AGREED:

DATED: Nov. 12, 2014

  
LISA MOORE, BUREAU CHIEF,  
CEMETERY AND FUNERAL  
BUREAU, DEPARTMENT OF CONSUMER  
AFFAIRS

AGREED:

DATED: November 5, 2014



CALIFORNIA FUNERAL DIRECTORS  
ASSOCIATION

By: H. W. Ragsdale, III

Its: President

DATED: \_\_\_\_\_, 2014

FUNERAL DIRECTORS SERVICE  
CORPORATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

MARK E. KUHN

DATED: \_\_\_\_\_, 2014

LESLIE D. PETERS

DATED: \_\_\_\_\_, 2014

GEORGE F. PRATHER

DATED: \_\_\_\_\_, 2014

JAMES E. DRAPER

AGREED:

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
CALIFORNIA FUNERAL DIRECTORS  
ASSOCIATION

By: \_\_\_\_\_  
Its: \_\_\_\_\_

DATED: 10/4/, 2014

\_\_\_\_\_  
FUNERAL DIRECTORS SERVICE  
CORPORATION

By:   
Its: President

DATED: 11/4/, 2014

\_\_\_\_\_  
MARK E. KUHN

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
LESLIE D. PETERS

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
GEORGE F. PRATHER

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
JAMES E. DRAPER

AGREED:

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
CALIFORNIA FUNERAL DIRECTORS  
ASSOCIATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
FUNERAL DIRECTORS SERVICE  
CORPORATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
MARK E. KUHN

DATED: 11/5, 2014

  
\_\_\_\_\_  
LESLIE D. PETERS

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
GEORGE F. PRATHER

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
JAMES E. DRAPER

AGREED:

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
CALIFORNIA FUNERAL DIRECTORS  
ASSOCIATION

By: \_\_\_\_\_  
Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
FUNERAL DIRECTORS SERVICE  
CORPORATION

By: \_\_\_\_\_  
Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
MARK E. KUHN

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
LESLIE D. PETERS

DATED: 10-4, 2014

  
\_\_\_\_\_  
GEORGE F. PRATHER

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
JAMES E. DRAPER

AGREED:

DATED: \_\_\_\_\_, 2014

CALIFORNIA FUNERAL DIRECTORS  
ASSOCIATION

By: \_\_\_\_\_  
Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

FUNERAL DIRECTORS SERVICE  
CORPORATION

By: \_\_\_\_\_  
Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

MARK E. KUHN

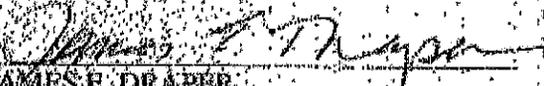
DATED: \_\_\_\_\_, 2014

LESLIE D. PETERS

DATED: \_\_\_\_\_, 2014

GEORGE F. PRATHER

DATED: NOV 4, 2014

  
JAMES E. DRAPER

APPROVED AS TO FORM:

DATED: 11/12/14

KAMALA D. HARRIS  
Attorney General of California

By: N Kaiser  
NANCY A. KAISER, Deputy Attorney  
General  
*Attorneys for Plaintiff* CEMETERY AND  
FUNERAL BUREAU, DEPARTMENT  
OF CONSUMER AFFAIRS

DATED: NOV. 5, 2014

LAW OFFICES OF GRACE J. BERGEN

By: Grace J. Bergen  
Grace J. Bergen  
*Counsel for Defendants* CFDA, FDSC,  
MARK E. KUHN, LESLIE PETERS,  
GEORGE PRATHER, JIM DRAPER

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**Exhibit C**

**Settlement agreement between the Bureau and Comerica Bank executed on October 12, 2014**

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by and between the CEMETERY AND FUNERAL BUREAU, DEPARTMENT OF CONSUMER AFFAIRS, STATE OF CALIFORNIA ("Bureau") and COMERICA BANK ("Comerica").

### RECITALS

A. The Bureau and Comerica are parties in an action originally filed in Los Angeles County Superior Court entitled, *Cemetery and Funeral Bureau v. California Master Trust et. al.*, Los Angeles County Superior Court, Case Number BC459862, which is one of three cases coordinated in Judicial Council Coordination Proceeding No. 4686. Judicial Council Coordination Proceeding No. 4686 is pending in the Santa Clara County Superior Court.

B. The Bureau is also an intervenor in an action originally filed in Santa Clara County Superior Court entitled, *In the Matter of the California Master Trust*, Santa Clara County Superior Court Case Number 1-09-PR-165181, in which Comerica is the Respondent. This case is also coordinated in Judicial Council Coordination Proceeding No. 4686. Comerica is not a party to the third case coordinated in Judicial Council Coordination Proceeding No. 4686.

C. Through this Agreement, the parties intend to fully resolve all claims between them arising out of or related to Los Angeles County Superior Court, Case Number BC459862 and Santa Clara County Superior Court Case Number 1-09-PR-165181. These two cases will be referred to as the "Actions."

C. Comerica denies and contests all of the Bureau's claims in Case Number BC459862 and all of Petitioner's claims in Case Number 1-09-PR-165181. The parties will not construe Comerica's execution of this Agreement and its payment of monetary consideration under it as an admission of liability or of responsibility.

### AGREEMENT

The parties agree as follows:

1. **Benefit of Counsel.** Each party has obtained legal counsel's advice before entering into this Agreement. Each party executes this Agreement with the full knowledge of its significance and with the express intention of affecting its legal consequences.

2. **Settlement Payment.**

2.1. Comerica shall pay to the Bureau the total sum of **\$1,000,000**. Said payment shall not be derived from the funds of the California Master Trust. Comerica will pay by check or negotiable instrument made payable to the Cemetery and Funeral Bureau, Department of Consumer Affairs within 60 days after the Effective Date of this Agreement. Said payment may be used for any of the following purposes, subject to applicable legal limitations:

2.1.1. Restitution for damages allegedly suffered by trustors (customers) of the California Master Trust (Trust) or funeral establishments participating in the Trust caused by any alleged misconduct at issue;

2.1.2. Compensation to a settlement administrator, receiver, or successor trustee to administer a restitution fund;

2.1.3. Reimbursement of the Bureau's investigative and enforcement costs;

2.1.4. Reimbursement of the Bureau's attorneys' fees, costs, and expenses;

2.1.5. Deposit into a consumer protection account (e.g., revolving account, trust account, special fund) for use in accordance with the laws governing such an account; or

2.1.6. Consumer protection enforcement by the Bureau or the Department of Consumer Affairs.

2.2. The above referenced payment shall be sent to: Attention Lisa Moore, Bureau Chief, Cemetery and Funeral Bureau, Department of Consumer Affairs, 1625 North Market Blvd., Suite S-208, Sacramento, CA 95834.

### **3. Resignation and Transfer of California Master Trust Assets**

3.1. Comerica has advised the Bureau that it has ceased acting as a trustee for any preneed funeral trust in the State of California save and except for the California Master Trust. Comerica has no present intent to act as a trustee for any preneed funeral trust in the future. As such, except as set forth in sections 3.2 and 3.2.4 of this Agreement, Comerica will not intentionally serve or enter into a contract to serve as the trustee of a preneed funeral trust in California within fifteen (15) years of the Effective Date, without first obtaining the Bureau's consent. Should Comerica inadvertently accept such an assignment within fifteen years of the Effective Date, it shall, upon its own discovery of the violation and/or notification from the Bureau or a third party, promptly resign. If the Bureau is required to institute legal action against Comerica to enforce this agreement for violation of this section, the Bureau shall be entitled to reasonable attorneys' fees and costs.

3.2. Notwithstanding the terms of the Master Trust Agreement of the California Master Trust effective as of February 15, 2002, Comerica hereby agrees to resign as the trustee of the California Master Trust. In that regard, Comerica will give notice of its resignation as trustee of the California Master Trust within 15 days after this Agreement's Effective Date, but will continue to serve as trustee until the Court approves the appointment of a qualified successor trustee or receiver. Comerica's resignation will become effective on the appointment of a successor trustee or receiver or as of December 31, 2014, whichever shall occur earlier. The Period between the Effective Date of this Agreement and the earlier of December

31, 2014 or the appointment of a successor trustee or receiver shall hereinafter be referred to as the "Tail Period". In the event that the Court fails to approve a successor trustee or receiver prior to December 31, 2014, the parties, through a written agreement, may extend the time for Comerica to serve as trustee pending the Court's approval of a successor trustee or receiver provided, however, in such event Comerica will be paid trustee's fees under Business and Professions Code Section 7735 and California Code of Regulations, Title 16, Section 1265, together with such other costs as Comerica reasonably incurs in connection with such activities, including but not limited to any and all attorneys' fees related thereto incurred after the Tail Period. Also, nothing herein shall obligate Comerica to continue to act as a trustee after December 31, 2014.

3.2.1. The Bureau will select the successor trustee or receiver and petition the Court for approval of the entity selected.

3.2.2. Prior to the successor trustee's or receiver's appointment, the entity appointed will waive in writing any and all claims against Comerica that are subject to the Bureau's release as stated in section 8.1 of this Agreement. The Parties will jointly request that the order appointing such successor trustee shall specifically include the waiver of any and all such claims against Comerica.

3.2.3. Upon the appointment of a successor trustee or receiver, Comerica shall transfer the California Master Trust's assets to it. The successor trustee or receiver will provide to all affected funeral establishments notice of its appointment and of the transfer of trusteeship duties.

3.2.4. Comerica shall not receive any compensation from the California Master Trust for its services after this Agreement's Effective Date, save and except for any services provided by Comerica after the Tail Period as provided for in Section 3.2. The foregoing shall not in any way prevent or prohibit Comerica from using trust funds to pay the following ongoing administrative expenses of the trust: annual filing fees to the Cemetery and Funeral Bureau; income taxes to the Internal Revenue Service; fees for the services of investment advisors; fees to accountants; fees to accounts administrators, and attorneys' fees for legal matters unrelated to the Actions, at any time prior to the successor trustee's or receiver's appointment.

4. **Legal Expenses.** Upon this Agreement's Effective Date, Comerica shall cease using funds from the California Master Trust to pay any of its legal expenses relating to the Actions.

5. **Accounting.**

5.1. Comerica agrees to arrange for the transmittal to the Bureau and to a successor trustee or receiver of the electronic database of account records in the Trust currently maintained by the trust accounts administrator, Essential Planning Group ("EPG"), in the format in which the database is presently maintained (the "EPG Database"). If and to the extent special or proprietary software is necessary to view the EPG Database, such software will be provided to the Bureau along with the EPG Database. The EPG Database will include the following data for

individual accounts in the Trust, but only to the extent such information presently exists in the database:

- a. The names of the purchaser and beneficiary;
- b. The beneficiary's social security number, if recorded;
- c. The preneed arrangement's contract number;
- d. Whether the preneed arrangement was guaranteed or non-guaranteed;
- e. The date the preneed arrangement was entered into;
- f. The amount paid by purchaser of the preneed arrangement;
- g. The amount deposited into the Trust;
- h. The current account balance for active accounts; and
- i. The identity and location of the funeral establishment contracting with the individual purchaser.

5.2. Comerica agrees to provide to the Bureau and to a successor trustee or receiver the current statements of accounts for all accounts comprising the California Master Trust in PDF format in the form attached hereto as Exhibit 1, including but not limited to these accounts:

5.2.1. Account M04846, California Master Trust – Funeral Directors Service Corporation – Consolidated;

5.2.2. Account 1055055560, California Master Trust – Funeral Directors Service Corporation – Operating Account;

5.2.3. Account 1055044458, California Master Trust – Funeral Directors Service Corporation – Ferguson-Wellman;

5.2.4. Account 1055035020, California Master Trust – Funeral Directors Service Corporation – Note;

5.2.5. Account 1055035011, California Master Trust – Funeral Directors Service Corporation – Munder.

5.3. To the best of its knowledge and the information available to it through EPG, Comerica agrees to identify to the Bureau all funeral establishments who are enrolled or have previously been enrolled in the Trust from 2002 to the present who are or were unable to perform the contracted funeral services and whose preneed funeral arrangements have not been transferred to another funeral establishment.

5.4. Comerica agrees to submit to the Bureau the records and identifications in this section 5 within 60 days of this Agreement's Effective Date. All data provided electronically to the Bureau shall be in the format in which it is presently maintained by EPG and Comerica, along with any special or proprietary software is necessary to view the EPG Database.

**6. Cooperation re Bureau's Prosecution of Actions.**

6.1. Comerica shall reasonably cooperate and assist the California Attorney General's Office, Department of Consumer Affairs, or the Bureau in their prosecution of the Actions against the remaining defendants in the Actions, including the following:

6.1.1. Providing declarations from its then-current employees regarding the facts, events, and occurrences within the personal knowledge of such declarant that are at issue in the Actions.

6.1.2. Meeting and conferring in good faith about making its then-current employees available for depositions, court proceedings, and trial, according to a reasonable schedule, including making themselves available at a mutually agreed-upon time and place for depositions, court proceedings, or trial. To the extent the Bureau requests current Comerica employees to appear and testify at deposition and/or trial, the Bureau shall reimburse Comerica for its out of pocket expenses associated with making such employees available pursuant to and consistent with the requirements of the California Code of Civil Procedure.

6.1.3. Upon request, providing last-known contact information for any potentially relevant former directors, officers, and employees subject to such employees' privacy rights. Comerica agrees to request authorization for the release of such information and, if not granted by such employee, Comerica will so advise the Bureau.

6.2. Comerica shall take no actions that will hinder or interfere with other parties' performance of any duties pursuant to any settlement agreement with the Bureau and will cooperate with the Bureau in the resolution of any California Master Trust-related issues identified by the Bureau or its representatives. This includes directing all agents and parties to contracts under its control to provide the Bureau with any information required by this Agreement, at no cost to the Bureau.

6.3. Comerica will reasonably cooperate with any settlement administrator, receiver, or successor trustee, as applicable.

6.4. Comerica will make its best efforts to respond within 10 business days, and in no event later than 30 days to all inquiries, reporting requests, or verifications from the Bureau or its representative that are necessary to monitor compliance with this Agreement. If Comerica is unable to respond in full to the request within 30 days, it will so advise the Bureau and the Parties will mutually agree to an appropriate accommodation.

6.5. Comerica shall neither take nor charge the Bureau or any settlement administrator, receiver, or successor trustee or the Trust any compensation or fees for any services that they provide pursuant to this Agreement, except trustee fees, attorneys' fees and costs for the services provided outside the Tail Period, as provided in Section 3.2, and except for the payment of trust administration expenses as otherwise provided 3.2.4.

6.6. Comerica will make the Trust's records available for inspection by the Bureau during reasonable working hours in accordance with California Code of Regulations, Title 16, Section 1267.

6.7. Comerica shall provide to the Bureau or its representatives, upon the Bureau's reasonable request, copies of any additional documents that Comerica has in its possession, custody or control relating to the Actions, provided, however, that nothing herein shall require Comerica to turn over any privileged documents, including those documents protected by the attorney-client or work product privileges.

6.8. Comerica agrees to maintain and not destroy any evidence relevant to the Actions in any form, including, but not limited to, evidence in written, electronic and recorded formats. Comerica agrees to preserve said evidence for at least five years from the Effective Date of this Agreement. Comerica shall have no obligation to maintain any records related to the Action in excess of five years unless otherwise agreed in writing. Moreover, Comerica shall be relieved of such obligation to maintain any documents previously produced to the Bureau in connection with the Action. Moreover, Comerica shall not be obligated to maintain any documents protected by any privilege, including but not limited to any attorney-client or work product privileges.

7. **Approvals as Conditions Precedent to the Effectiveness of this Agreement.**

7.1. This Agreement is conditioned upon, and shall be final and binding on both Parties upon the occurrence of, the following events:

7.1.1. The execution of this Agreement by Comerica, and by the Chief of the Bureau with the approval of the Business, Consumer Services and Housing Agency of the State of California, and,

7.1.2. Upon the entry of a final, nonappealable order by the Court confirming the Agreement as a good faith settlement under California Code of Civil Procedure Section 877.6.

7.2. In the event that these two approvals are not completed before 5 p.m. on the 120<sup>th</sup> day from the date Comerica submits its executed signature page of this Agreement to the Bureau for its signature, this Agreement will be null and void. However, before the 120<sup>th</sup> day, the parties, through a written agreement, may extend the time for obtaining these two approvals.

8. **Release.**

8.1. Release by Bureau: Except for purposes of enforcement of this Agreement's obligations and terms, the Bureau to the fullest extent allowed by law releases Comerica along with Comerica's successors, subsidiaries, members, partners, shareholders, officers, directors, principals, employees, attorneys, representatives, and insurance companies, of and from any and all claims, demands, causes of action, obligations, liens, damages, losses, costs, attorneys' fees, and expenses of any kind and nature whatsoever, known or unknown that in any way relate to or arise out of the Bureau's claims in *Cemetery and Funeral Bureau v. California Master Trust et. al.*, Los Angeles County Superior Court, Case Number BC459862 or the Bureau's claims in intervention in *In the Matter of the California Master Trust*, Santa Clara County Superior Court Case Number 1-09-PR-165181, including but not limited to claims

brought by the Bureau under Business & Professions Code Section 125.5(b) for restitution to persons injured as a result of the violations alleged by the Bureau. The Bureau does not release Comerica from any claims brought by Petitioner Hillside Memorial Park and Mortuary in *In the Matter of the California Master Trust*, Santa Clara County Superior Court Case Number 1-09-PR-165181.

8.1.1. This release shall not be construed to extend to any other defendant named in the Actions.

8.2. Release by Comerica: Comerica releases the Bureau and the Department of Consumer Affairs and each of its agents, officers, employees, successors, assigns, representatives, attorneys or other affiliated agencies from any and all claims, demands, causes of action, obligations, liens, taxes, damages, losses, costs, attorneys' fees, and expenses of any kind and nature whatsoever, known or unknown which in any way related to or arising out of the *Cemetery and Funeral Bureau v. California Master Trust et. al.*, Los Angeles County Superior Court, Case Number BC459862 and *In the Matter of the California Master Trust*, Santa Clara County Superior Court Case Number 1-09-PR-165181.

8.3. Waiver: Each party acknowledges that there is a risk that after executing this Agreement they may incur, suffer or sustain injury, loss, damage, costs, attorneys' fees, or expenses that are in some way caused by or connected with the persons, entities, or matters released in this Agreement, or which are unknown and unanticipated at the time this Agreement is signed, or which are not presently capable of being ascertained; and further, that there is a risk that such damages as are known may become more serious than any of them now expects or anticipates. Nevertheless, each of the parties acknowledges that this Agreement has been negotiated and agreed upon and in light of that realization, and each of them expressly waives all rights each may have in such unsuspected claims. In doing so, each party has had the benefit of counsel, has been advised of, understands, and knowingly and specifically waives its rights under California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO THE CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

## 9. COVENANT NOT TO SUE.

9.1. Within 15 calendar days of the date that the Bureau receives the payment as provided in section 2 of this Agreement and subject to those funds clearing the bank and becoming available for disbursement by the Bureau, the Bureau will dismiss Comerica with prejudice from Los Angeles County Superior Court, Case No. BC459862; and the Bureau agrees never to commence or prosecute any action against Comerica based upon the claims, demands, causes of action, obligations, damages or liabilities released in this Agreement.

9.2. This Agreement may be pled as a full and complete defense to any action or other proceeding, and as a basis for abatement of, or injunction against such action. Nothing in this paragraph, however, shall preclude either party from bringing an action to enforce this Agreement.

10. **STATEMENTS REGARDING SETTLEMENT**

This Agreement is not confidential. The Bureau agrees that it will share its press release, which will not be inconsistent with the terms of this Agreement, in advance of any publication with Comerica's representative. Nothing in this Agreement shall constitute an approval by the California Attorney General's Office or the California Department of Consumer Affairs of Comerica's business practices, and Comerica shall make no representation or claim to the contrary.

11. **COSTS AND ATTORNEYS' FEES**

The parties hereto acknowledge and agree that each of them will bear their own costs, expenses, and attorneys' fees, except as otherwise provided in Sections 3.2 and 3.2.4 of this Agreement, and provided further that nothing in this Agreement affects Comerica's rights to retain and/or receive any of its attorneys' fees and costs from the Trust not expressly waived herein.

12. **WARRANTY**

The parties warrant and represent that they have the ability and right to release the matters identified and released herein, and have not assigned any claim or right, which is herein released. Additionally, each party warrants that the person executing this Agreement on its behalf has authority to bind the party. Comerica understands and acknowledges that the Bureau has the authority to bind the Bureau only. This Agreement does not bind any other government agency.

13. **CONSTRUCTION OF AGREEMENT**

This Agreement is the product of negotiation and preparation by the parties to this Agreement and their respective attorneys. The parties therefore expressly acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or another, or its attorneys, and will be construed accordingly.

14. **GOVERNING LAW**

This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of California, and in a court of competent jurisdiction within the State of California.

15. **BINDING EFFECT**

This Agreement shall be binding on each of the parties' successors, transferees, and assignees, if any.

16. **SEVERABILITY**

If any provision or any part of this Agreement is for any reason held to be invalid, unenforceable, or contrary to any public policy, law, statute or ordinance, then the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

17. **ENTIRE AGREEMENT**

This Agreement constitutes the parties' entire understanding regarding these matters. There are no other written or oral representations, warranties, agreements, arrangements, or undertakings between them relating to this Agreement's matters that are not fully expressed. This Agreement may only be modified by a written agreement signed by the parties.

18. **ENFORCEABILITY**

The parties stipulate that pursuant to California Code of Civil Procedure Section 664.6, in the event of breach of this Agreement, the court may, upon motion, enter judgment pursuant to the terms of this settlement, and the parties agree to request the Santa Clara County Superior Court to retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of this settlement, notwithstanding any dismissal of Comerica from the Actions or dismissal of the Actions in their entirety.

19. **NON-WAIVER**

The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

20. **HEADINGS**

Headings used in this Agreement are for convenience of reference only and shall not be considered a part of this Agreement or construed to affect its provisions' interpretation.

21. **FURTHER ASSURANCES**

The parties agree to execute such other documents and take such other action as may be reasonably be necessary to further the Agreement's purposes, including cooperating in filing a stipulation or a proposed order to adopt a stipulation with the Court.

22. COUNTERPARTS

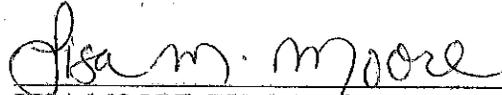
The parties understand and agree that this Agreement may be executed in counterparts and that Portable Document Format (PDF) and facsimile copies of this Agreement, including Portable Document Format (PDF) and facsimile signatures thereto, when taken together, shall have the same force and effect as the originals.

23. EFFECTIVE DATE

The Effective Date as used herein shall be the last date upon which each of the conditions present within Paragraph 7.1.1 and 7.1.2 of this Agreement are completed.

AGREED:

DATED: September 2, 2014

  
\_\_\_\_\_  
LISA MOORE, BUREAU CHIEF,  
CEMETERY AND FUNERAL BUREAU,  
DEPARTMENT OF CONSUMER AFFAIRS,  
STATE OF CALIFORNIA

AGREED:

DATED: 8/28/, 2014

  
\_\_\_\_\_  
COMERICA BANK  
By: SUSAN C. WIKSTROM  
Its: SE. VICE Pres / Assoc General Counsel

APPROVED AS TO FORM:

DATED: Sept. 2, 2014

KAMALA D. HARRIS  
Attorney General of California

By:   
\_\_\_\_\_  
NANCY A. KAISER, Deputy Attorney  
General  
*Attorneys for Plaintiff CEMETERY AND  
FUNERAL BUREAU, DEPARTMENT OF  
CONSUMER AFFAIRS*

APPROVED AS TO FORM:

DATED: 8/28, 2014

BUCHALTER NEMER  
A Professional Corporation

By:   
\_\_\_\_\_  
RICHARD C. DARWIN  
Attorneys for COMERICA BANK, as Trustee  
of the CALIFORNIA MASTER TRUST