KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General
DAVID E. BRICE
Deputy Attorney General
State Bar No. 269443
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-8010
Facsimile: (916) 327-8643
E-mail: David.Brice@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Accusation Against: **SINCLAIR FAMILY CREMATION & BURIAL SERVICE** **10906 Wethersfield Drive** **Mather, CA 95655** **Funeral Establishment License No. FD 2177** **THOMAS MATTHEW BARTEL** **6335 Sunrise Blvd.** **Citrus Heights, CA 95610** **Funeral Director License No. FDR 3616** **Embalmer License No. EMB 8761** Respondents.	Case No. A1-2014-150 **ACCUSATION**

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, Department of Consumer Affairs.

2. On or about September 12, 2013, the Cemetery and Funeral Bureau issued Funeral Establishment License Number FD 2177 to Sinclair Family Cremation & Burial Service, a Partnership; Thomas Matthew Bartel, Partner and Manager; Deidre Sinclair, Partner (Respondent

Sinclair). The Funeral Establishment License was in full force and effect at all times relevant to the charges brought herein, expired on September 30, 2014, and has not been renewed.

3. On or about May 16, 2013, the Cemetery and Funeral Bureau issued Funeral Director License Number FDR 3616 to Thomas Matthew Bartel (Respondent Bartel). The Funeral Director License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2015, unless renewed. On or about February 19, 2002, the Cemetery and Funeral Bureau issued Embalmer License Number EMB 8761 to Respondent Bartel. The Embalmer License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2015, unless renewed.

STATUTORY PROVISIONS

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

5. Section 7686 of the Code states, in pertinent part:

> "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."

6. Section 7692 of the Code states:

> "Misrepresentation or fraud in the conduct of the business or the profession of a funeral director or embalmer constitutes a ground for disciplinary action."

7. Section 7704 of the Code states:

> "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."

8. Section 7707 of the Code states:

> "Gross negligence, gross incompetence or unprofessional conduct in the practice of funeral directing or embalming constitutes a ground for disciplinary action."

9. Section 118, subsection (b), of the Code states, in pertinent part, that the suspension, expiration, or forfeiture a license shall not deprive the board of its authority to take disciplinary action against the licensee.

HEALTH AND SAFETY CODE

10. Section 102775 of the Health and Safety Code states:

"Each death shall be registered with the local registrar of births and deaths in the district in which the death was officially pronounced or the body was found, within eight calendar days after death and prior to any disposition of the human remains."

REGULATIONS

11. Section 1204, subsection (b), of Title 16 of the California Code of Regulations states:

"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."

12. Section 1214 of Title 16 of the California Code of Regulations states, in pertinent part:

"Except as otherwise provided in Health and Safety Code Section 7304, human remains shall not be embalmed without the express authorization of a person having the legal right to control disposition of the remains. Such authorization shall be secured by use of the form prescribed by the bureau,... The form shall be used in the exact form set forth ... without additions, substitutions, or amendments."

13. Section 1223.1 of Title 16 of the California Code of Regulations states, in pertinent part, that a "licensed funeral establishment may share a preparation and/or a storage room with other licensed funeral establishments, upon approval by the bureau," but only under certain conditions.

COST RECOVERY

14. 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

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or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

FACTUAL BACKGROUND

15. On or about December 28, 2013, decedent AJL passed away at Sutter Hospital in Sacramento. On or about December 29, 2013, Respondent Sinclair received the remains of decedent AJL from the hospital. The remains were stored at J. Morris Company, Inc. (Morris), a storage facility. AJL's remains were stored at Morris until on or about May 2, 2014, when they were transported to Nor-Cal Crematory and cremated on May 3, 2014. During that intervening four month period, Respondents did not register the death of AJL with the local registrar of births and deaths and did not embalm the remains. However, Respondents charged AJL's family for an embalming and for storage fees. Respondents also had two different members of the deceased's family sign modified authorization forms for disposition with or without embalming.

FIRST CAUSE FOR DISCIPLINE

(Misrepresentation or Fraud in conduct of business of funeral director or embalmer)

16. Respondents Sinclair and Bartel are subject to disciplinary action under Code section 7692 in that Respondents committed misrepresentation or fraud as follows:

a. Respondent Bartel, as funeral director for Sinclair, represented to AJL's daughter that he had embalmed AJL's remains at Morris on or about January 27, 2014. Respondent Sinclair charged for the embalming. Respondent Sinclair does not have a preparation room for embalming. Morris does not allow embalming at its facility and is not an approved preparation facility for embalming. An investigator examined AJL's body and found that it had not been embalmed. Respondents committed misrepresentation or fraud because AJL's family was charged for an embalming but none had occurred.

SECOND CAUSE FOR DISCIPLINE

(Gross negligence, gross incompetence or unprofessional conduct in the practice of funeral directing or embalming)

17. Respondents Sinclair and Bartel are subject to disciplinary action under Code section 7707 in that they committed gross negligence, gross incompetence or unprofessional conduct in

the practice of funeral directing or embalming by charging for an embalming that did not occur, as set forth in subparagraph (a) of paragraph 16 above.

THIRD CAUSE FOR DISCIPLINE

(Failure to register death with local registrar within eight days)

18. Respondents Sinclair and Bartel are subject to disciplinary action under Health and Safety Code section 102775, by and through Code section 7704, in that they failed to register a death with the local registrar of births and deaths within eight calendar days after death, as set forth in paragraph 15 above.

FOURTH CAUSE FOR DISCIPLINE

(Failure to exercise supervision and control to ensure full compliance with law)

19. Respondent Thomas Matthew Bartel is subject to disciplinary action under title 16 of the California Code of Regulations section 1204, subsection (b), in that he failed to exercise such direct supervision and control over the conduct of the funeral establishment as necessary to ensure full compliance with the Funeral Directors and Embalmers Law, by allowing the funeral establishment to charge for embalming that did not occur and failing to register a death within eight days, as set forth in paragraph 15 and subparagraph (a) of paragraph 16 above.

FIFTH CAUSE FOR DISCIPLINE

(Performing embalming when not approved)

20. Respondents Sinclair and Bartel are subject to disciplinary action under title 16 of the California Code of Regulations section 1223.1, by and through Code section 7704, in that they charged for an embalming when not approved to perform embalming and represented an embalming had occurred in a place where not approved to do so, as set forth in paragraph 15 and subparagraph (a) of paragraph 16 above.

SIXTH CAUSE FOR DISCIPLINE

(Failure to obtain authorization for disposition on form approved by the bureau)

21. Respondents Sinclair and Bartel are subject to disciplinary action under title 16 of the California Code of Regulations section 1214, by and through Code section 7704, in that they failed to obtain the authorization for disposition with or without embalming on the form

prescribed by the bureau and were not approved to perform embalming, as set forth in paragraph 15 and subparagraph (a) of paragraph 16 above.

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 Establishment License Number FD 2177, issued to Sinclair Family Cremation & Burial Service, a Partnership; Thomas Matthew Bartel, Partner and Manager; Deidre Sinclair, Partner;

2. Revoking or suspending Funeral Director License Number FDR 3616, issued to Thomas Matthew Bartel;

3. Revoking or suspending Embalmer License Number EMB 8761, issued to Thomas Matthew Bartel;

4. Ordering Sinclair Family Cremation & Burial Service and Thomas Matthew Bartel to pay the Cemetery and Funeral Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: Feb. 17, 2015

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

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