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

In the Matter of the Accusation Against: **ATLANTIS CREMATION AND BURIAL SERVICE** **MELANIE K. MCCLOSKEY, PARTNER and** **DAVELL JAMES ODEN, PARTNER** **32086 Camino Capistrano #4,** **San Juan Capistrano, CA 92675** **Funeral Establishment No. FD 1494** **MELANIE K. MCCLOSKEY** **15237 Windjammer Way** **Lake Elsinore, CA 92530** **Funeral Director License No. FDR 324** Respondents.	Case Nos. A1 2011 250

DECISION AND ORDER

The attached Stipulated Surrender of Licenses and Order is hereby adopted as the Decision of the Director of Consumer Affairs in the above-entitled matter.

This Decision shall become effective on April 12, 2013.

IT IS SO ORDERED MAR 13 2013.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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BEFORE THE
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FOR THE CEMETERY AND FUNERAL BUREAU
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In the Matter of the Accusation Against: **ATLANTIS CREMATION AND BURIAL SERVICE, MELANIE K. MCCLOSKEY, PARTNER and DAVELL JAMES ODEN, PARTNER** **32086 Camino Capistrano #4,** **San Juan Capistrano, CA 92675** **Funeral Establishment No. FD 1494** **MELANIE K. MCCLOSKEY** **15237 Windjammer Way** **Lake Elsinore, CA 92530** **Funeral Director License No. FDR 324** Respondents.	Case No. A1 2011 250 OAH No. 2012110619 **STIPULATED SURRENDER OF LICENSES AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Lisa M. Moore (Complainant) is the Bureau Chief of the Cemetery and Funeral Bureau (Bureau). She brought this action solely in her official capacity and is represented in this

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matter by Kamala D. Harris, Attorney General of the State of California, by Antoinette B. Cincotta, Deputy Attorney General.

2. Melanie K. McCloskey (Respondent) is representing herself in this proceeding, and has chosen not to exercise her right to be represented by counsel.

3. On or about February 1, 1997, the Cemetery and Funeral Bureau issued Funeral Director License No. FDR 324 to Melanie K. McCloskey (Respondent). The Funeral Director License was in full force and effect at all times relevant to the charges brought in Accusation No. A1 2011 250 and expired on February 29, 2012.

4. On or about April 16, 1992, the Cemetery and Funeral Bureau issued Funeral Establishment Number FD 1494 to Atlantis Cremation and Burial Service (Respondent Atlantis), a partnership, with Melanie K. McCloskey and George R. Oden, partners/owners. On May 31, 1994, Respondent Atlantis reported a name change for the partners/owners from George R. Oden to Davell James Oden. Melanie K. McCloskey served as manager of Respondent Atlantis from April 16, 1992 to May 5, 2011. The Funeral Establishment License was in full force and effect at all times relevant to the charges brought herein, and will expire on April, 30, 2013, unless renewed.

JURISDICTION

5. Accusation No. A1 2011 250 was filed before the Director of Consumer Affairs (Director), for the Cemetery and Funeral Bureau (Bureau), and is currently pending against Respondents. The Accusation and all other statutorily required documents were properly served on Respondents on October 2, 2012. Respondents timely filed a Notice of Defense contesting the Accusation. A copy of Accusation No. A1 2011 250 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondent Melanie McCloskey, on behalf of herself and Respondent Atlantis, has carefully read, and understands the charges and allegations in Accusation No. A1 2011 250. Respondent McCloskey also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

7. Respondent McCloskey is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent McCloskey, on behalf of herself and Respondent Atlantis, voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent McCloskey, on behalf of herself and Respondent Atlantis, admits the truth of each and every charge and allegation in Accusation No. A1 2011 250, agrees that cause exists for discipline and hereby surrenders Funeral Director License No. FDR 324, and Funeral Establishment License No. FD 1494 for the Bureau's formal acceptance.

10. Respondent McCloskey understands that by signing this stipulation she enables the Director to issue an order accepting the surrender of her Funeral Director License and Funeral Establishment License without further process.

CONTINGENCY

11. This stipulation shall be subject to approval by the Director of Consumer Affairs or his designee. Respondent understands and agrees that counsel for Complainant and the staff of the Cemetery and Funeral Bureau may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent McCloskey, on behalf of herself and Respondent Atlantis, understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Surrender of Licenses and Disciplinary Order shall be of no force or effect, except for this

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paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Surrender of Licenses and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of Licenses and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Funeral Director License No. FDR 324 and Funeral Establishment License No. FD 1494, issued to Respondent Melanie K. McCloskey, are surrendered and accepted by the Director of Consumer Affairs.

1. The surrender of Respondent's Funeral Director License and Funeral Establishment License, and the acceptance of the surrendered licenses by the Bureau shall constitute the imposition of discipline against Respondents. This stipulation constitutes a record of the discipline and shall become a part of Respondents' license history with the Cemetery and Funeral Bureau.

2. Respondent McCloskey shall lose all rights and privileges as a Funeral Director and as a Funeral Establishment owner in California as of the effective date of the Director's Decision and Order.

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3. Respondent McCloskey shall cause to be delivered to the Bureau her pocket licenses and, if one was issued, her wall certificates on or before the effective date of the Decision and Order.

4. If Respondent McCloskey ever files an application for licensure or a petition for reinstatement in the State of California, the Bureau shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. A1 2011 250 shall be deemed to be true, correct and admitted by Respondent when the Director determines whether to grant or deny the petition.

5. Respondents shall pay the agency its costs of investigation and enforcement in the amount of $10,000.00 prior to issuance of a new or reinstated license.

6. Respondent McCloskey shall notify by mail all consumers who purchased preneed funeral agreements from Respondent Atlantis of the disciplinary action taken by the Bureau. Respondent shall also notify each consumer of the status of their individual preneed trust account, including the location of the trust funds and their ability to obtain a refund. For any preneed monies not placed in trust, Respondent shall notify the consumer of the name and address of the responsible party who sold the preneed funeral arrangement.

ACCEPTANCE

I have carefully read the Stipulated Surrender of Licenses and Order. I understand the stipulation and the effect it will have on my Funeral Director License, and my Funeral Establishment License. I enter into this Stipulated Surrender of Licenses and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 01-28-2013 Melanie McCloskey

MELANIE K. MCCLOSKEY
Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 1/28/2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

ANTOINETTE B. CINCOTTA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. A1 2011 250

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

In the Matter of the Accusation Against: **ATLANTIS CREMATION AND BURIAL SERVICE, MELANIE K. MCCLOSKEY, PARTNER and JAMES O. DAVELL, PARTNER** **32086 Camino Capistrano #4,** **San Juan Capistrano, CA 92675** **Funeral Establishment No. FD 1494** **and** **MELANIE K. MCCLOSKEY,** **A.K.A. MELANIE MELFI** **1040 Calle Negocio** **San Clemente, CA 92673** **Funeral Director License No. FDR 324** Respondents.	Case No. A1 2011 250 **ACCUSATION**

Complainant alleges:

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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.

2. On or about April 16, 1992, the Cemetery and Funeral Bureau issued Funeral Establishment Number FD 1494 to Atlantis Cremation and Burial Service (Respondent Atlantis), a partnership, with Melanie K. McCloskey and James O. Davell as partners/owners. Melanie K. McCloskey also served as manager of Respondent Atlantis from April 16, 1992 to May 5, 2011. The Funeral Establishment License was in full force and effect at all times relevant to the charges brought herein, and will expire on April, 30, 2013, unless renewed.

3. On or about February 1, 1997, the Cemetery and Funeral Bureau issued Funeral Director License Number FDR 324 to Melanie K. McCloskey, also known as Melanie Melfi, (Respondent McCloskey).. The Funeral Director License was in full force and effect at all times relevant to the charges brought herein and expired on February 29, 2012.

JURISDICTION

4. 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.

5. Section 118, subdivision (b), provides:

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

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6. Section 7686 provides:

"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, and the bureau shall have all the powers granted therein."

STATUTORY AUTHORITIES

7. Section 7616.2 states:

"A licensed funeral establishment shall at all times employ a licensed funeral director to manage, direct, or control its business or profession. . . ."

8. Section 7692 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."

9. Section 7703 states:

"Violation of any of the provisions of this chapter or of the rules and regulations adopted pursuant to this chapter constitutes a ground for disciplinary action."

10. Section 7735 states:

"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; provided, however, that any payment made or securities deposited pursuant to this article shall be released upon the death of the person for whose benefit the trust was established as provided in

Section 7737. The income from the trust may be used to pay for a reasonable annual fee for administering the trust, including a trustee fee to be determined by the bureau, and to establish a reserve of not to exceed 10 percent of the corpus of the trust as a revocation fee in the event of cancellation on the part of the beneficiary. The annual fee for trust administration may be recovered by withdrawals from accumulated trust income, provided that total withdrawals for this purpose shall not exceed the amount determined by the bureau. In no case shall the total amount withdrawn in a year for trust administration exceed the total amount of posted trust income for the immediate 12 preceding months. In addition to annual fees and reserves authorized by this section, a trustee may, at its election, pay taxes on the earnings on any trust pursuant to Section 17760.5 of the Revenue and Taxation Code. In no event, however, shall taxes paid on the earnings of any trust be considered part of the fees or reserves authorized by this section. All remaining income shall be accumulated in trust.

"None of the corpus of the trust shall be used for payment of any commission nor shall any of the corpus of the trust be used for other expenses of trust administration, or for the payment of taxes on the earnings of the trust."

11. Section 7736 states:

"For the purposes of this article the term 'trustee' shall mean any banking institution or trust company legally authorized and empowered by the State of California to act as trustee in the handling of trust funds or not less than three persons one of whom may be an employee of the funeral establishment; the word 'trustor' shall mean any person who pays the money or deposits the securities used for those preneed arrangements; the term 'beneficiary' shall be the person for whom the funeral services are arranged; the words 'corpus of the trust' shall include all moneys paid and securities delivered by the trustor pursuant to the provisions of the article."

12. Section 7737 states:

"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 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, provided, however, that (1) in the case of a trust agreement between any of the trustees set forth in Section 7736 and a recipient of public assistance, under the provisions of subdivision (a) of Section 11158 or paragraph (1) of subdivision (e) of Section 12152 of the Welfare and Institutions Code, and provided the value limitations of those sections are not exceeded, such trust agreement may further provide that it is irrevocable, and (2) in all other cases such trust agreement shall further provide that at any time before the funeral establishment has furnished the merchandise and services provided for in the contract the trustor or the legally appointed representative may in writing demand and receive the return of the corpus of the trust, together with any income accrued in the trust, less the revocation fee provided for in Section 7735; provided, however, that if and when the trustor becomes otherwise eligible, or in order to become eligible, for public social services, as provided in Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, he or she may agree, at his or her option, that the trust shall be irrevocable in order to avail himself or herself of the provisions of Section 11158 or Section 12152 of the Welfare and Institutions Code. The delivery of the corpus of the trust and the accumulated income to the funeral establishment performing the services, trustor or beneficiary pursuant to the terms of this article and the trust agreement herein referred to, shall relieve the trustee of any further liabilities with regard to those funds or income therefrom."

13. Section 7739 provides:

"Any person willfully violating the provisions of this article or any of them shall be punishable either by imprisonment in a 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 pursuant to subdivision (h) of Section 1170 of the Penal Code 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)."

14. Section 7746 provides:

"(a) Notwithstanding any other provision of law, a funeral establishment that is otherwise exempt from the requirement of filing an annual preneed trust report or whose preneed trust funds are reported in a combined preneed annual preneed trust report, shall annually file a declaration of nonreporting status with the bureau.

"(b) The declaration shall be filed on or before May 1 of each year and shall also be filed upon the transfer of ownership or the cessation of business.

"(c) The declaration shall be filed on a form provided by the bureau and shall include, but shall not be limited to, both of the following:

"(1) The basis upon which the funeral establishment is exempt from the annual trust reporting requirement.

"(2) The specific kind and nature of the exempt preneed arrangements, if any, in which the funeral establishment engages.

"(d) The declaration shall be verified by the funeral establishment's owner, a partner, or in the case of a corporation, by the president or vice president."

REGULATIONS

15. California Code of Regulations, title 16, section 1204 states in relevant 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 bureau within ten (10) days of the effective date of the designation.

"(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.

". . . ."

16. California Code of Regulations, title 16, section 1262 states in relevant part:

"(a) Delivery of merchandise within the meaning of Business and Professions Code Section 7741 shall mean actual personal delivery to a purchaser, trustor or beneficiary of funeral merchandise that is used or is intended to be used in connection with a preneed arrangement or any agreement collateral thereto. Any payment or payments received for funeral merchandise, where actual personal delivery of that merchandise will be delayed, shall be held in a trust as provided in Business and Professions Code, Division 3, Chapter 12, Article 9, until that merchandise is actually and personally delivered to, and is in the immediate possession of, the purchaser.

". . . ."

17. California Code of Regulations, title 16, section 1265 states:

"The annual fee for administering a trust, as provided in Business and Professions Code, Division 3, Chapter 12, Article 9, Section 7735, may be recovered by withdrawals from current trust income, but total withdrawals in any year shall not exceed four percent (4%) of the trust balance on December 31 of that year, or on the cancellation or maturity date during that year, of all payments deposited into trust, plus all prior years accumulated income. Any remaining current income shall be accumulated in trust."

18. California Code of Regulations, title 16, section 1267 states:

"Each funeral establishment charged with the reporting of pre-need funds hereunder shall at all times maintain or cause the trustee of the pre-need trust to maintain in California and available for inspection by the bureau during reasonable working hours, complete financial records of all pre-need contracts and arrangements, which records shall be established and maintained in accordance with generally accepted accounting principles. Such records shall include the following, provided, however, that records may otherwise be established and maintained in accordance with generally accepted accounting principles:

"(a) An individual trustor contract, plan or agreement.

"(b) An individual trustor or beneficiary ledger account which shall set forth the amount of the contract, all payments received, all income prorated in accordance with the ratio which the trust corpus of the account bears to the entire corpus invested as set forth in Section 1265.

"(c) A cash receipts journal which shall show each payment received and shall be totaled monthly.

"(d) A cash disbursement journal which will show each withdrawal for an investment in compliance with 1263 and each disbursement to the funeral establishment for a serviced account or to the individual trustor on a cancelled account, and all withdrawals for documented expenses.

"(e) In the case where a checking account is used to deposit payments received or disbursements to the funeral establishment and/or the funeral director, a trustor or an investment, it shall be designated as a trust fund account, and be reported as such. It shall be reconciled each month with the balance shown in the trust account by accounting for checks not yet presented and outstanding, bank deposits not shown on the bank statements, and other adjustments required.

"(f) A general ledger which shall be posted monthly with respect to all accounts controlling the fiduciary relationship with the individual trusters. Such postings shall occur within ninety (90) days after the close of each business month.

"(g) A portfolio of all investments related to the trust funds.

"(h) Records for serviced accounts shall include but not be limited to:

"(1) A copy of the death certificate or other satisfactory evidence of the death; copies of all documents required as specified under Sections 7685 and 7685.2, Division 3, Chapter 12, Article 5.5 of the Business and Professions Code; a copy of the final arrangements (itemized); and a copy of the final statement to the family.

"(2) All monies received from the trust; all monies received from the family; and all monies received from the Veterans Administration or Social Security or any other source to be applied to the final bill.

"(3) A record showing credit for each of the above.

"(i) Records for cancelled accounts shall include but not be limited to:

"(1) A record of all income earned and documented expenses taken including a revocation fee as stated in Section 7735, Division 3, Chapter 12, Article 9, of the Business and Professions Code.

"(2) A copy of the final accounting to the family with the cancelled check or withdrawal slip showing the amount refunded to the trustor.

"(j) All of the foregoing records shall be retained for a period of one (1) year after the account has been cancelled or serviced and audited by the bureau and compliance with all recommendations made and audit exceptions resolved or seven (7) years from the date of service or cancellation, whichever comes first.

"The required books and records for more than one (1) licensed funeral establishment may be centrally maintained at a single location in California with notification to the bureau or the main office as defined in Section 1204(c)(2), provided that a monthly summary of all financial transactions pertaining to each individual trust account for each licensed funeral establishment is available, at each such establishment during reasonable working hours, to the bureau or its authorized representatives; and provides further that the monthly summary contains sufficient information from which the current balance of each individual trustor's account or each individual trustor's share of any commingled trust account may be identified."

19. California Code of Regulations, title 16, section 1269 states in relevant part:

"(a) Each licensed funeral establishment and licensed funeral director who enters into any pre-need 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 21 P-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 one hundred twenty (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.

" . . .

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

"(1) Amounts collected pursuant to pre-need 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 show the financial condition of the trust funds."

". . . ."

20. California Code of Regulations, title 16, section 1277 states:

"'Preneed arrangement,' 'preneed agreement' or 'preneed' is written instruction regarding goods or services or both goods and services for final disposition of human remains when the goods or services are not provided until the time of death, and may be either unfunded or paid for in advance of need."

COST RECOVERY

21. Section 125.3, subdivision (a), 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."

FACTS

22. On or about April 9, 2010, Respondent Atlantis was sold to L.B. and L.V. Neither L.B. nor L.V. has ever been licensed by the Bureau. Neither Respondent Atlantis nor Respondent McCloskey filed a declaration of nonreporting status with the Bureau at the time of the transfer of ownership of the establishment. Respondent McCloskey remained as the designated manager of Respondent Atlantis until May 5, 2011, at which time she filed a disassociation from Respondent Atlantis.

23. On May 18, 2011, one year and thirty-nine days after she transferred ownership of Respondent Atlantis, Respondent McCloskey signed under penalty of perjury a 2010 Preneed Funeral Trust Fund Declaration of Non-Reporting Status on behalf of Respondent Atlantis for the time period January 1, 2010 and ending April 9, 2010, which was filed with the Bureau. In this Declaration, Respondent stated that Respondent Atlantis "does not have any pre-need sales of funeral goods or services." (Emphasis in original.) That was not true.

24. Between May 5, 2011 and June 1, 2011, a period of thirty-one days, Respondent Atlantis had no licensed funeral director managing the funeral establishment.

25. On or about June 1, 2011, J.W., a licensed Funeral Director, replaced Respondent McCloskey as the manager of Respondent Atlantis. Shortly after he became manager, J.W. discovered thirteen certificate of deposit accounts in a bank holding money from preneed contracts with Respondent McCloskey's name on these accounts, doing business as Respondent Atlantis. Respondent also found thirteen preneed contracts written by Respondent McCloskey on behalf of Respondent Atlantis. None of these preneed contracts had ever been reported to the Bureau. On or about June 7, 2011, J.W. reported these preneed contracts to the Bureau.

26. On or about August 10, 2011, during an investigation by the Bureau into the business practices of Respondent Atlantis, L.B. told the Bureau's investigator that he became an owner of Respondent Atlantis in April 2010. L.B. advised the Bureau's investigator that Respondent McCloskey showed him about eleven preneed files she had written, and that

Respondent McCloskey reported to L.B. at that time that there was about $20,000.00 in preneed accounts held by Respondent Atlantis. L.B. stated to the Bureau's investigator that he had started writing preneed contracts on behalf of Respondent Atlantis the second week he was there. Respondent McCloskey advised L.B. that if Respondent Atlantis is inspected, to tell the Bureau that Respondent Atlantis does not have any preneed contracts. L.B. told the Bureau's investigator that the money from the preneed contracts written since the sale of Respondent Atlantis in April 2010, were being held in a savings account, and not a trust account. L.B. advised the Bureau's investigator that there was approximately $12,000.00 of preneed contract money in that savings account. L.B. also advised the Bureau's investigator that $600.00 from the preneed contracts account had been used to pay the Bureau for Respondent Atlantis' delinquent funeral establishment license in July 2011, and that the bank took $1,362.00 from the preneed contracts account to cover overdrafts from Respondent Atlantis' business checking account which was held in the same bank. L.B. provided the Bureau's investigator with thirteen files concerning preneed contracts written by Respondent McCloskey from 1998 to 2010 on behalf of Respondent Atlantis. L.B. also provided the Bureau's investigator with files concerning forty-three preneed contracts written by him and another salesman, W.L. on behalf of Respondent Atlantis between April, 2010 and August, 2011. None of the preneed files contain an individual trustor or beneficiary ledger, a cash receipts journal, a cash disbursement journal, a general accounts ledger with monthly postings, a copy of the death certificate, records of all monies received from the trust, records of all monies received from the family, the Veterans Administration or Social Security or any other source to be applied to the final bill, records of all credits to the individual trustor or beneficiary, and/or the final accounting to the family with the cancelled check or withdrawal slip showing the amount refunded to the trustor.

27. On or about August 16, 2011, during the ongoing investigation by the Bureau into the business practices of Respondent Atlantis, L.V. told the Bureau's investigator that one of the selling points to get him to become an owner of Respondent Atlantis was the fact that it had $20,000.00 in preneed contracts. L.V. provided the Bureau's investigator with a copy of Respondent Atlantis' Combined Checking and Savings Statement from Bank of America dated

July 29, 2011. According to the Bank of America statement, Respondent Atlantis' checking account balance as of July 29, 2011 was $.00, and the balance in the preneed account, also in the name of Respondent Atlantis, was $10,035.40. According to the Bank of America statement, the highest balance on Respondent Atlantis' preneed account was $18,657.89, on October 29, 2010.

28. On or about September 29, 2011, Respondent McCloskey advised the Bureau's investigator that she sold about five preneed contracts on behalf of Respondent Atlantis, and that she placed the preneed money in certificate of deposits in the name of each purchaser.

FIRST CAUSE FOR DISCIPLINE

(Respondent McCloskey - Misrepresentation or Fraud)

29. Respondent McCloskey is subject to disciplinary action under section 7692 in that she engaged in misrepresentation or fraud in the conduct of Respondent Atlantis, and the profession of a funeral director as set forth in paragraphs 22 through 28, which are incorporated here by this reference, as follows:

a. Respondent McCloskey failed to report the sale of the preneed contracts by or on behalf of Respondent Atlantis to the Bureau;

b. Respondent McCloskey maintained preneed contract money held by or on behalf of Respondent Atlantis in certificate of deposit accounts in its own name;

c. Respondent McCloskey falsely reported to the Bureau that Respondent Atlantis had no preneed contracts, when in fact Respondent Atlantis did have preneed contracts;

d. Respondent McCloskey maintained preneed contract money in a bank account in her own name, doing business as Respondent Atlantis;

e. Respondent Atlantis maintained preneed contract money in a bank account in the name of Respondent Atlantis;

f. Respondent McCloskey allowed Respondent Atlantis to misappropriate money from the preneed contract account;

g. Respondent Atlantis failed to maintain appropriate records concerning the preneed contracts;

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h. Respondent McCloskey directed the new owners of Respondent Atlantis to advise the Bureau that Respondent Atlantis had no preneed contracts, when in fact Respondent Atlantis did have preneed contracts; and

i. Respondent McCloskey advised the investigator for the Bureau that she had sold five preneed contracts on behalf of Respondent Atlantis, when in fact Respondent McCloskey had sold at least thirteen preneed contracts on behalf of Respondent Atlantis.

SECOND CAUSE FOR DISCIPLINE

(Respondent Atlantis – Failure to Properly Maintain Preneed Monies)

30. Respondent Atlantis is subject to disciplinary action under sections 7703 and 7739 in that Respondent Atlantis failed to deposit and hold in trust preneed contract money within 30 days of their receipt in violation of sections 7735 and 7737, and California Code of Regulations, title 16, sections 1262 and 1265 as set forth in paragraphs 22 through 28, which are incorporated here by this reference.

THIRD CAUSE FOR DISCIPLINE

(Respondent McCloskey – Failure to Properly Maintain Preneed Monies)

31. Respondent McCloskey is subject to disciplinary action under section 7703 in that she failed to deposit and hold in trust preneed contract money within 30 days of her receipt in violation of sections 7735 and 7737, and California Code of Regulations, title 16, sections 1262, and 1265, as set forth in paragraphs 22 through 28, which are incorporated here by this reference.

FOURTH CAUSE FOR DISCIPLINE

(Respondent Atlantis – Failure to Report Preneed Contracts)

32. Respondent Atlantis is subject to disciplinary action under sections 7703 and 7739 in that Respondent Atlantis falsely reported to the Bureau that Respondent Atlantis was subject to non-reporting status and failed to report the preneed contracts to the Bureau in violation of section 7746 and California Code of Regulations, title 16, section 1269, as set forth in paragraphs 22 through 28, which are incorporated here by this reference.

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FIFTH CAUSE FOR DISCIPLINE

(Respondent McCloskey – Failure to Report Preneed Contracts)

33. Respondent McCloskey is subject to disciplinary action under section 7703 in that she falsely reported to the Bureau that Respondent Atlantis was subject to non-reporting status and she failed to report the preneed contracts to the Bureau in violation of section 7746 and California Code of Regulations, title 16, sections 1269, as set forth in paragraphs 22 through 28, which are incorporated here by this reference.

SIXTH CAUSE FOR DISCIPLINE

(Respondent Atlantis – Failure to Designate a Funeral Director)

34. Respondent Atlantis is subject to disciplinary action under sections 7703 and 7739 in that Respondent Atlantis failed to designate a licensed funeral director to manage the establishment between May 5, 2011 and June 1, 2011 in violation of section 7616.2 and California Code of Regulations, title 16, section 1204, as set forth in paragraphs 22 through 28, which are incorporated here by this reference.

SEVENTH CAUSE FOR DISCIPLINE

(Respondent McCloskey – Failure to Designate a Funeral Director)

35. Respondent McCloskey is subject to disciplinary action under section 7703 in that she failed to designate a licensed funeral director to manage the establishment between May 5, 2011 and June 1, 2011 in violation of section 7616.2 and California Code of Regulations, title 16, section 1204, as set forth in paragraphs 22 through 28, which are incorporated here by this reference.

EIGHTH CAUSE FOR DISCIPLINE

(Respondent Atlantis – Failure to Maintain Proper Preneed Contract Records)

36. Respondent Atlantis is subject to disciplinary action under sections 7703 and 7739 in that Respondent Atlantis failed to maintain proper preneed contract records in violation of California Code of Regulations, title 16, section 1267, as set forth in paragraphs 22 through 28, which are incorporated here by this reference.

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NINTH CAUSE FOR DISCIPLINE

(Respondent McCloskey – Failure to Maintain Proper Preneed Contract Records)

37. Respondent McCloskey is subject to disciplinary action under section 7703 in that she failed to maintain proper preneed contract records in violation of section California Code of Regulations, title 16, section 1267, as set forth in paragraphs 22 through 28, which are incorporated here by this reference.

DISCIPLINE CONSIDERATIONS

38. To determine the degree of discipline, if any, to be imposed on Respondent Atlantis and Respondent McCloskey, Complainant alleges that on or about September 17, 1996, in a prior action, the Bureau issued Citation Number IC 1996 31 to Respondents McCloskey and Atlantis for providing funeral director services on at least eleven occasions without a contract in violation of section 7685.2, which each constitute a separate Class B violation. The Bureau ordered Respondents to stop such unlawful practices, and assessed a fine of $2,500.00. That Citation is now final.

39. To determine the degree of discipline, if any, to be imposed on Respondent Atlantis and Respondent McCloskey, Complainant alleges that on or about April 20, 2001, in a prior action, the Bureau issued Citation Number IC 2001 12 to Respondents McCloskey and Atlantis for failing to use the required embalming authorization form in violation of section 1214, a Class B violation, and for failing to have the price ranges on the Casket Price List match the price ranges on the General Price List in violation of California Code of Regulations, title 16, section 1258.1, a separate Class B violation. The Bureau ordered Respondents to stop such unlawful practices. That Citation is now final.

40. To determine the degree of discipline, if any, to be imposed on Respondent Atlantis and Respondent McCloskey, Complainant alleges that on or about July 2, 2004, in a prior action, the Bureau issued Citation Number IC 2004 78 to Respondent Atlantis for falsifying a death certificate in violation of section 7707, and ordered Respondent to stop such unlawful practices and assessed a fine of $1,001.00. That Citation is now final.

41. To determine the degree of discipline, if any, to be imposed on Respondent Atlantis and Respondent McCloskey, Complainant alleges that on or about July 2, 2004, in a prior action, the Bureau issued Citation Number IC 2004 79 to Respondent McCloskey for falsifying a death certificate in violation of section 7707, and ordered Respondent to stop such unlawful practices and assessed a fine of $1,001.00. That Citation is now final.

42. To determine the degree of discipline, if any, to be imposed on Respondent Atlantis and Respondent McCloskey, Complainant alleges that on or about September 24, 2004, in a prior action, the Bureau issued Citation No. IC 2004 103 to Respondent Atlantis for gross negligence, gross incompetence or unprofessional conduct by maintaining blank death certificates signed by a certifying physician in violation of section 7707, a Class A violation. The Bureau ordered Respondent Atlantis to stop such unlawful practices and assessed a fine of $1,001.00. That Citation is now final.

43. To determine the degree of discipline, if any, to be imposed on Respondent Atlantis and Respondent McCloskey, Complainant alleges that on or about September 24, 2004, in a prior action, the Bureau issued Citation No. IC 2004 104 to Respondent McCloskey for maintaining blank death certificates signed by a certifying physician in violation of California Code of Regulations, title 16, section 1204, a Class B violation. The Bureau ordered Respondent McCloskey to stop such unlawful practices and assessed a fine of $501.00. That Citation is now final.

44. To determine the degree of discipline, if any, to be imposed on Respondent Atlantis and Respondent McCloskey, Complainant alleges that on or about April 15, 2011, in a prior action, the Bureau issued Citation No. IC 2011 24 to Respondent Atlantis for moving the location of its cremation and burial service without notifying the Bureau in violation of section 7628 and California Code of Regulations, title 16, section 1213. The Bureau ordered Respondent Atlantis to submit to the Bureau within 30 days the completed Application for Assignment of Funeral Establishment along with the applicable fee. That Citation is now final.

45. To determine the degree of discipline, if any, to be imposed on Respondent Atlantis and Respondent McCloskey, Complainant alleges that on or about April 15, 2011, in a prior

action, the Bureau issued Citation No. IC 2011 151 to Respondent McCloskey: (1) for failing to exercise such supervision and control as is necessary to ensure compliance with the laws and regulations governed by the Bureau when Respondent Atlantis moved the location of its cremation and burial service without notifying the Bureau in violation of California Code of Regulations, title 16, section 1204, a Class B violation; and (2) for selling Respondent Atlantis to new owners who provided funeral services without the required documented training or a funeral director's license in violation of section 7628. The Bureau ordered Respondent McCloskey to submit to the Bureau within 30 days the completed Application for Assignment of Funeral Establishment along with the applicable fee, and assessed a fine of $501.00. The fine remains unpaid.

46. To determine the degree of discipline, if any, to be imposed on Respondent Atlantis and Respondent McCloskey, Complainant alleges that on or about October 21, 2011, in a prior action, the Bureau issued Citation No. IC 2011 416 to Respondent Atlantis for gross negligence, gross incompetence or unprofessional conduct in adding charges on contracts for goods/services not included on the General Price List such as, an additional crematory fee, and an additional pacemaker removal fee in violation of section 7707. The Bureau ordered Respondent Atlantis to stop such unlawful practices. That Citation is now final.

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 Number FDR 324, issued to Melanie K. McCloskey;

2. Revoking or suspending Funeral Establishment Number FD 1494 issued to Atlantis Cremation and Burial Service;

3. Ordering Respondent McCloskey and Respondent Atlantis to pay the Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: August 16, 2012

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

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