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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: **SUTTER STREET MEMORIAL CHAPEL, INC.** **520 N. SUTTER STREET** **STOCKTON, CA 95202** **FRANK BORGES, PRES.** **MICHAEL HERRING, VP., MANAGER** **Funeral Establishment License No. FD 2006** **MICHAEL CHARLES HERRING** **299 S. Bern Avenue** **Stockton, CA 95215** **Funeral Director License No. FDR 2266** Respondent.	Case No. A1 2013 270 **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.[1]

[1] Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and was vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the Cemetery (continued...)

2. On or about March 20, 2009, the Cemetery and Funeral Bureau issued Funeral Establishment License Number FD 2006 to Sutter Street Memorial Chapel, Inc., Frank Borges, President, Michael Charles Herring, Vice President, Kerri Herring, Trustee/CFO, Cathleen Borges, Secretary, and Michael Herring, Manager (Respondent Sutter Street Memorial). The Funeral Establishment License expired on July 10, 2013, and has not been renewed.

3. On or about May 15, 2002, the Cemetery and Funeral Bureau issued Funeral Director License Number FDR 2266 to Michael Charles Herring (Respondent Herring). 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, 2014, unless renewed.

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 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. The proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, 1 and the bureau shall have all the powers granted therein."

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 7700 of the Code states:

> "Using profane, indecent, or obscene language in the course of the preparation for burial, removal, or other disposition of, or during the funeral service for, human remains, or within the immediate hearing of the family or relatives of a deceased, whose remains have not yet been interred or otherwise disposed of constitutes a ground for disciplinary action."

(...continued)
Board and the Board of Funeral Directors and Embalmers, and consolidated the functions into the Cemetery and Funeral Programs. Effective January 1, 2001, the regulatory agency is designated as the Cemetery and Funeral Bureau.

8. Section 7704 of the Code states that the 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.

9. Section 7707 of the Code states that:

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

10. Section 7711 of the Code states that:

> "When a funeral establishment, funeral director or embalmer has had his, or her, or its license suspended, canceled, or revoked by the bureau, the bureau, upon written application by the licensee affected, upon not less than 10 days' notice to all parties of record in the particular case, and after hearing all evidence offered in support of and in opposition to that application, may, in its discretion, and upon those terms as it may deem just, reinstate the applicant."

11. Section 7737 of the Code states that:

> 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 1115800 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.

12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

13. Title 16, California Code of Regulations Section 1269 (a) provides as follows:

> (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.

14. Title 16, California Code of Regulations Section 1274 provides as follows:

> If, for any reason, a licensed funeral establishment or licensed funeral director is unable to perform the funeral services prior to or upon the death of the beneficiary of a pre-need trust agreement, then the trustees shall pay all trust corpus and net income to the beneficiary, trustor or the legal representative of either the beneficiary or trustor without the imposition of any revocation charge.

FACTUAL BACKGROUND

15. On or about July 17, 2013, the Bureau opened an investigation against Sutter Street Memorial Chapel, Inc. when their license expired. During the investigation, the Bureau was informed that on or about May 2, 2013, the assets of Sutter Street Memorial Chapel were sold to Buck Kamphausen, owner of Casa Bonita Funeral Home. On or about May 14, 2013, the property for Sutter Street Memorial Chapel was sold. On August 1, 2013, and September 5, 2013, inspections of preneed records for Sutter Street Memorial Chapel were performed at Casa Bonita Funeral Home located at 2500 Cemetery Lane, Stockton, CA 95204, which disclosed numerous violations as set forth more specifically below.

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FIRST CAUSE FOR DISCIPLINE
(Failure to Submit Pre-need Reports)

16. Respondents are subject to disciplinary action pursuant to Business and Professions Code section 7704 in conjunction with Title 16, California Code of Regulations Section, 1269 (a) in that they failed to submit a written verified or audited preneed reports as follows:

a. Respondents failed to submit Pre-need Reports, for the periods ending 2012 and 2013, to the Bureau despite the fact that Sutter Street Memorial Chapel had pre-need trust funds.

b. Respondents failed to submit a final Pre-need Report within thirty days of the cessation of its business.

SECOND CAUSE FOR DISCIPLINE
(Failure to refund Pre-need funds)

17. Respondents are subject to disciplinary action pursuant to Business and Professions Code section 7704 in conjunction with Title 16, California Code of Regulations Section 1274, in that Respondents failed to refund the pre-need trust accounts following the closure of Sutter Street Memorial Chapel.

THIRD CAUSE FOR DISCIPLINE
(Failure to Deposit Pre-need funds into a Trust)

18. Respondents are subject to disciplinary action pursuant to Business and Professions Code section 7737 an inspection revealed that Respondents failed to deposit money received from seven consumers into a trust within thirty days of the receipt of said money.

FOURTH CAUSE FOR DISCIPLINE
(Misrepresentation and/or Fraud)

19. Respondent Herring is subject to disciplinary action pursuant to Business and Professions Code section 7692 in that on or about September 20, 2013, Respondent Herring informed the Bureau that he would refund the money received for three preneed accounts which has not been trusted to the consumers, but he failed to do so.

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FIFTH CAUSE FOR DISCIPLINE
(Gross Negligence and/or Unprofessional Conduct)

20. Respondents are subject to disciplinary action pursuant to Business and Professions Code section 7707 for gross negligence, gross incompetence, or unprofessional conduct for failing to comply with the pre-need trust laws as more specifically stated above in paragraphs 14, 15, 16, 17, and 18, above. Additionally Respondent Herring used un-professional and profane language during the inspections on August 1, 2013 and September 5, 2013.

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:

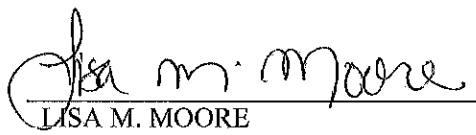
1. Revoking or suspending Funeral Establishment License Number FD 2006, issued to Sutter Street Memorial Chapel, Inc., Frank Borges, Pres., and Michael Charles Herring V.P.;

2. Revoking or suspending Funeral Director License Number FDR 2266, issued to Michael Charles Herring;

3. Ordering Sutter Street Memorial Chapel, Inc. and Michael Charles Herring 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;

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

DATED: April 16, 2014



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

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