

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

In the Matter of the Accusation Against:

Case Nos. A1 2011 250

**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**

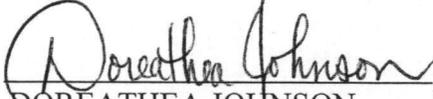
Respondents.

**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  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
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9 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE CEMETERY AND FUNERAL BUREAU**  
**STATE OF CALIFORNIA**  
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13 **ATLANTIS CREMATION AND BURIAL SERVICE,**  
**MELANIE K. MCCLOSKEY, PARTNER and**  
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15 **32086 Camino Capistrano #4,**  
**San Juan Capistrano, CA 92675**

16 **Funeral Establishment No. FD 1494**

17 **MELANIE K. MCCLOSKEY**  
**15237 Windjammer Way**  
18 **Lake Elsinore, CA 92530**

19 **Funeral Director License No. FDR 324**

20 Respondents.

Case No. A1 2011 250

OAH No. 2012110619

**STIPULATED SURRENDER  
OF LICENSES AND ORDER**

21  
22 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
23 proceeding that the following matters are true:

24 PARTIES

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

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

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

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

9 4. On or about April 16, 1992, the Cemetery and Funeral Bureau issued Funeral  
10 Establishment Number FD 1494 to Atlantis Cremation and Burial Service (Respondent Atlantis),  
11 a partnership, with Melanie K. McCloskey and George R. Oden, partners/owners. On May 31,  
12 1994, Respondent Atlantis reported a name change for the partners/owners from George R. Oden  
13 to Davell James Oden. Melanie K. McCloskey served as manager of Respondent Atlantis from  
14 April 16, 1992 to May 5, 2011. The Funeral Establishment License was in full force and effect at  
15 all times relevant to the charges brought herein, and will expire on April, 30, 2013, unless  
16 renewed.

#### 17 JURISDICTION

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

#### 24 ADVISEMENT AND WAIVERS

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



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

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

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

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

15 **ORDER**

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

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

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

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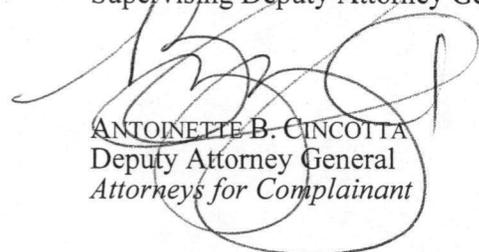
ENDORSEMENT

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**

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 ANTOINETTE B. CINCOTTA  
Deputy Attorney General  
4 State Bar No. 120482  
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12 In the Matter of the Accusation Against:  
13 **ATLANTIS CREMATION AND BURIAL SERVICE,**  
**MELANIE K. MCCLOSKEY, PARTNER and**  
14 **JAMES O. DAVELL, PARTNER**  
**32086 Camino Capistrano #4,**  
15 **San Juan Capistrano, CA 92675**  
16 **Funeral Establishment No. FD 1494**  
17 **and**  
18 **MELANIE K. MCCLOSKEY,**  
**A.K.A. MELANIE MELFI**  
19 **1040 Calle Negocio**  
20 **San Clemente, CA 92673**  
21 **Funeral Director License No. FDR 324**  
22 Respondents.

Case No. A1 2011 250

**ACCUSATION**

23  
24 Complainant alleges:

25 ///  
26 ///  
27 ///  
28 ///

1 **PARTIES**

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

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

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

15 **JURISDICTION**

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

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

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

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

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

16 11. Section 7736 states:

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

24 12. Section 7737 states:

25 "All securities purchased by the trustor for deposit in trust and all money received from the  
26 trustor for deposit in trust shall be placed in trust with a trustee within 30 days of their receipt by  
27 the funeral establishment pursuant to a trust agreement executed by the funeral establishment, the  
28 trustor and trustee which shall provide that the trustee shall hold the money or securities in trust

1 for the purposes for which deposited and that the trustee, upon the signature of a majority of such  
2 trustees, shall deliver the corpus of the trust to the funeral establishment upon the filing of a  
3 certified copy of the death certificate or other satisfactory evidence of the death of the  
4 beneficiary, together with satisfactory evidence that the funeral establishment has furnished the  
5 merchandise and services, provided, however, that (1) in the case of a trust agreement between  
6 any of the trustees set forth in Section 7736 and a recipient of public assistance, under the  
7 provisions of subdivision (a) of Section 11158 or paragraph (1) of subdivision (e) of Section  
8 12152 of the Welfare and Institutions Code, and provided the value limitations of those sections  
9 are not exceeded, such trust agreement may further provide that it is irrevocable, and (2) in all  
10 other cases such trust agreement shall further provide that at any time before the funeral  
11 establishment has furnished the merchandise and services provided for in the contract the trustor  
12 or the legally appointed representative may in writing demand and receive the return of the corpus  
13 of the trust, together with any income accrued in the trust, less the revocation fee provided for in  
14 Section 7735; provided, however, that if and when the trustor becomes otherwise eligible, or in  
15 order to become eligible, for public social services, as provided in Division 9 (commencing with  
16 Section 10000) of the Welfare and Institutions Code, he or she may agree, at his or her option,  
17 that the trust shall be irrevocable in order to avail himself or herself of the provisions of Section  
18 11158 or Section 12152 of the Welfare and Institutions Code. The delivery of the corpus of the  
19 trust and the accumulated income to the funeral establishment performing the services, trustor or  
20 beneficiary pursuant to the terms of this article and the trust agreement herein referred to, shall  
21 relieve the trustee of any further liabilities with regard to those funds or income therefrom.”

22 13. Section 7739 provides:

23 “Any person willfully violating the provisions of this article or any of them shall be  
24 punishable either by imprisonment in a county jail for a period not exceeding six months, or by  
25 fine not exceeding five hundred dollars (\$500), or by both imprisonment and fine, or by  
26 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, or  
27 two or three years. If the violator is a funeral establishment licensee, he or she shall also be  
28 subject to disciplinary action as provided in Article 6 (commencing with Section 7686).”



1 funeral establishment license to make such designation shall constitute a ground for disciplinary  
2 action.

3 "...."

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

5 "(a) Delivery of merchandise within the meaning of Business and Professions Code Section  
6 7741 shall mean actual personal delivery to a purchaser, trustor or beneficiary of funeral  
7 merchandise that is used or is intended to be used in connection with a preneed arrangement or  
8 any agreement collateral thereto. Any payment or payments received for funeral merchandise,  
9 where actual personal delivery of that merchandise will be delayed, shall be held in a trust as  
10 provided in Business and Professions Code, Division 3, Chapter 12, Article 9, until that  
11 merchandise is actually and personally delivered to, and is in the immediate possession of, the  
12 purchaser.

13 "...."

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

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

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

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

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

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

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

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

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

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

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

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

20           “(1) A copy of the death certificate or other satisfactory evidence of the death; copies of all  
21 documents required as specified under Sections 7685 and 7685.2, Division 3, Chapter 12, Article  
22 5.5 of the Business and Professions Code; a copy of the final arrangements (itemized); and a copy  
23 of the final statement to the family.

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

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

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

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

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

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

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

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

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

28



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

3 **FACTS**

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

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

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

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

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

1 Respondent McCloskey reported to L.B. at that time that there was about \$20,000.00 in preneed  
2 accounts held by Respondent Atlantis. L.B. stated to the Bureau's investigator that he had started  
3 writing preneed contracts on behalf of Respondent Atlantis the second week he was there.  
4 Respondent McCloskey advised L.B. that if Respondent Atlantis is inspected, to tell the Bureau  
5 that Respondent Atlantis does not have any preneed contracts. L.B. told the Bureau's investigator  
6 that the money from the preneed contracts written since the sale of Respondent Atlantis in April  
7 2010, were being held in a savings account, and not a trust account. L.B. advised the Bureau's  
8 investigator that there was approximately \$12,000.00 of preneed contract money in that savings  
9 account. L.B. also advised the Bureau's investigator that \$600.00 from the preneed contracts  
10 account had been used to pay the Bureau for Respondent Atlantis' delinquent funeral  
11 establishment license in July 2011, and that the bank took \$1,362.00 from the preneed contracts  
12 account to cover overdrafts from Respondent Atlantis' business checking account which was held  
13 in the same bank. L.B. provided the Bureau's investigator with thirteen files concerning preneed  
14 contracts written by Respondent McCloskey from 1998 to 2010 on behalf of Respondent Atlantis.  
15 L.B. also provided the Bureau's investigator with files concerning forty-three preneed contracts  
16 written by him and another salesman, W.L. on behalf of Respondent Atlantis between April, 2010  
17 and August, 2011. None of the preneed files contain an individual trustor or beneficiary ledger, a  
18 cash receipts journal, a cash disbursement journal, a general accounts ledger with monthly  
19 postings, a copy of the death certificate, records of all monies received from the trust, records of  
20 all monies received from the family, the Veterans Administration or Social Security or any other  
21 source to be applied to the final bill, records of all credits to the individual trustor or beneficiary,  
22 and/or the final accounting to the family with the cancelled check or withdrawal slip showing the  
23 amount refunded to the trustor.

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

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

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

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Respondent McCloskey - Misrepresentation or Fraud)**

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

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

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

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

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

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

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

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

28 ///

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

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

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Respondent Atlantis – Failure to Properly Maintain Preneed Monies)**

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

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Respondent McCloskey – Failure to Properly Maintain Preneed Monies)**

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

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Respondent Atlantis – Failure to Report Preneed Contracts)**

22 32. Respondent Atlantis is subject to disciplinary action under sections 7703 and 7739 in  
23 that Respondent Atlantis falsely reported to the Bureau that Respondent Atlantis was subject to  
24 non-reporting status and failed to report the preneed contracts to the Bureau in violation of section  
25 7746 and California Code of Regulations, title 16, section 1269, as set forth in paragraphs 22  
26 through 28, which are incorporated here by this reference.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Respondent McCloskey – Failure to Report Preneed Contracts)**

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

8 **SIXTH CAUSE FOR DISCIPLINE**

9 **(Respondent Atlantis – Failure to Designate a Funeral Director)**

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

15 **SEVENTH CAUSE FOR DISCIPLINE**

16 **(Respondent McCloskey – Failure to Designate a Funeral Director)**

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

22 **EIGHTH CAUSE FOR DISCIPLINE**

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

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

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1 **NINTH CAUSE FOR DISCIPLINE**

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

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

7 **DISCIPLINE CONSIDERATIONS**

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

15 39. To determine the degree of discipline, if any, to be imposed on Respondent Atlantis  
16 and Respondent McCloskey, Complainant alleges that on or about April 20, 2001, in a prior  
17 action, the Bureau issued Citation Number IC 2001 12 to Respondents McCloskey and Atlantis  
18 for failing to use the required embalming authorization form in violation of section 1214, a Class  
19 B violation, and for failing to have the price ranges on the Casket Price List match the price  
20 ranges on the General Price List in violation of California Code of Regulations, title 16, section  
21 1258.1, a separate Class B violation. The Bureau ordered Respondents to stop such unlawful  
22 practices. That Citation is now final.

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

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

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

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

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

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

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

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

#### 18 PRAYER

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
20 and that following the hearing, the Director of Consumer Affairs issue a decision:

- 21 1. Revoking or suspending Funeral Director License Number FDR 324, issued to  
22 Melanie K. McCloskey;
- 23 2. Revoking or suspending Funeral Establishment Number FD 1494 issued to Atlantis  
24 Cremation and Burial Service;
- 25 3. Ordering Respondent McCloskey and Respondent Atlantis to pay the Bureau the  
26 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
27 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

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

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