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

In the Matter of the Accusation Against: **MCA FUNERAL HOME;** **FOUAD KHATIB, PRESIDENT** 1755 Catherine Street Santa Clara, CA 95050 **Funeral Establishment License No. FD 2206** Respondent.	Case No. A1 2018 230

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Director of Consumer Affairs and the Cemetery and Funeral Bureau as the Decision and Order in the above entitled matter.

This Decision shall become effective on March 3, 2019.

It is so ORDERED February 1, 2019.

RYAN MARCROFT
Deputy Director, Legal Affairs
Department of Consumer Affairs

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Attorney General of California
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In the Matter of the Accusation Against: **MCA FUNERAL HOME;** **FOUAD KHATIB, PRESIDENT** 1755 Catherine Street Santa Clara, CA 95050-4627 **Funeral Establishment License No. FD 2206** Respondent.	Case No. A1 2018 230 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Sandra Patterson (Complainant) brings this action solely in her official capacity as the Acting Bureau Chief of the Cemetery and Funeral Bureau (Bureau). She is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Aspasia A. Papavassiliou, Deputy Attorney General.

2. MCA Funeral Home (Respondent), with Fouad Khatib as President, is represented in this proceeding by attorney Omair M. Farooqui, whose address is: Palo Alto Legal Group, P.C.; 1023 Corporation Way, 2nd Floor; Palo Alto, CA 94303.

3. On or about June 4, 2014, the Bureau issued Funeral Establishment License No. FD 2206 to Respondent. The Funeral Establishment License was in full force and effect at all times relevant to the charges brought in Accusation A1 2018 230, and will expire on June 30, 2019, unless renewed.

JURISDICTION

4. Accusation No. A1 2018 230 was filed before the Director of Consumer Affairs and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 14, 2018. Respondent timely filed its Notice of Defense contesting the Accusation.

5. A copy of Accusation No. A1 2018 230 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. A1 2018 230. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on its 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 voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. A1 2018 230.

10. Respondent agrees that its Funeral Establishment License is subject to discipline and agrees to be bound by the probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Director of Consumer Affairs or the Director's 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 settlement, without notice to or participation by Respondent or its counsel. By signing the stipulation, Respondent understands and agrees that it may not withdraw its 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 Settlement and Disciplinary Order shall be of no force or effect, except for this 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 Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary 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 Settlement and Disciplinary 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 Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Funeral Establishment License No. FD 2206 issued to Respondent MCA Funeral Home is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall comply with all conditions of probation and obey all federal, state and local laws, and all rules and regulations governing the programs regulated by the department.

2. **Quarterly Reports.** Respondent shall submit quarterly declarations under penalty of perjury, in a format designated by the Bureau, stating whether or not Respondent has been in compliance with all the conditions of probation. Respondent shall also submit such additional written reports and verifications of actions requested by the Bureau. Should the final probation report not be made as directed, the period of probation shall be extended until such time as the final report is made.

3. **Interview with Bureau Representative.** As necessary, Respondent shall appear in person for scheduled interviews with the Bureau Chief or other designated representative for the purpose of monitoring compliance with the terms of this decision.

4. **Out-of-State Residence or Operation.** Should Respondent leave California to reside or operate outside this state, Respondent must notify the Bureau in writing of the dates of departure and return. Reporting in person may be waived if the Respondent moves out of the state. However, Respondent shall continue compliance with other terms of probation to retain California licensure. Periods of residency, business operation or employment outside California shall not reduce the probationary period.

5. **Completion of Probation.** Upon successful completion of probation, Respondent's license will be fully restored.

6. **Violation of Probation.** Should Respondent violate probation in any respect, the Director of the Department of Consumer Affairs, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an Accusation or Petition to Revoke Probation is filed against Respondent during

probation, the Bureau shall have continuing jurisdiction until the matter is final, and the probation shall be extended until the matter is final.

7. **License Issued During Probation.** Any license or registration issued to Respondent by the Bureau during the period of probation shall be issued as a probationary license or registration and is subject to all the terms and conditions set forth herein. Respondent must comply with terms and conditions herein and demonstrate no cause for disciplinary action or denial of an application.

8. **Designation of Managing Funeral Director.** Respondent shall complete the Bureau's Notification of Change form to designate a licensed funeral director as manager within 10 days of the effective date of this decision. Any future changes to the designated managing funeral director shall be reported to the Bureau within 10 days of such change as defined by California Code of Regulations section 1213.

9. **Change of Corporate Officers.** Respondent shall complete the Bureau's Notification of Change form to correctly reflect any and all newly associated corporate officers within 10 days of the effective date of this decision. Any future changes to the corporate officers shall be reported to the Bureau within 10 days of such change as defined by California Code of Regulations section 1213.

10. **Cost Recovery.** Respondent shall pay the Bureau's actual and reasonable costs of investigation and enforcement of this matter in the amount of $2,000.00. Said amount shall be paid within the first year of probation. Probation shall not terminate until full payment has been made. Respondent's license shall not be renewed until the cost recovery has been paid in full or Respondent is otherwise in compliance with a payment plan approved by the Bureau.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Omair M. Farooqui. I understand the stipulation and the effect it will have on my Funeral Establishment License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the

Decision and Order of the Director of the Department of Consumer Affairs.

DATED: 12/20/2018

FOUAD KHATIB for MCA FUNERAL HOME
Respondent

Munther Qtaish
Secretary and Chairman of the Board of Trustees

I have read and fully discussed with Respondent MCA Funeral Home the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 12/21/2018

OMAIR M. FAROOQUI
Attorney for Respondent

ENDORSEMENT

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

Dated: 12/21/2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

ASPASIA A. PAPAVASSILIOU
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. A1 2018 230

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BEFORE THE
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In the Matter of the Accusation Against: **MCA FUNERAL HOME;** **FOUAD KHATIB, PRESIDENT** 1755 Catherine Street Santa Clara, CA 95050 **Funeral Establishment License No. FD 2206** Respondent.	Case No. A1 2018 230 **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 (Bureau), Department of Consumer Affairs.

2. On or about June 4, 2014, the Bureau issued Funeral Establishment License No. FD 2206 to MCA Funeral Home (Respondent), with Fouad Khatib as President. The Funeral Establishment License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on June 30, 2019, unless renewed.

JURISDICTION

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

4. Section 118, subdivision (b), of the Code states:

"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."

5. Section 7686 of the Code provides that 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, and that the proceedings shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code.

6. Section 7703 of the Code provides that violations of Bureau statutory provisions or regulations constitute a ground for disciplinary action.

STATUTES AND REGULATIONS

7. Section 7616.2 of the Code states, in pertinent part that, a licensed funeral establishment shall at all times employ a licensed funeral director to manage, direct, or control its business or profession.

8. California Code of Regulations, title 16, section 1204 states:

"(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."

9. California Code of Regulations, title 16, section 1213, subdivision (a), states:

"Where there is a change in the corporate officers or the designated managing licensed funeral director of a funeral establishment, such change, including the names and titles of the new corporate officers or the name of the new designated managing licensed funeral director, shall be reported to the bureau, in writing, within ten (10) days of such change on the form NC1 (12/93) prescribed by the bureau accompanied by the fee fixed by this division."

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Bureau 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.

FACTUAL BACKGROUND

11. Respondent's designated managing funeral director, Mostafa Masri FDR 3699, stopped working at Respondent's establishment in late 2015, and Respondent failed to notify the Bureau of a replacement. The Bureau discovered the lack of a designated managing funeral director during an inspection of Respondent's establishment on or around December 21, 2016. Since then, the Bureau sent numerous letters to Respondent requesting documentation that a new

designated managing funeral director had been appointed but Respondent failed to comply with the requests.[1] The Bureau also issued two citations to Respondent as follows:

(a) On or about October 9, 2017, the Bureau issued Citation No. IC 2017 297 to Respondent for failure to designate a licensed funeral director as manager (Cal. Code Regs., tit. 16, § 1204) and failure to report a change of manager (Cal. Code Regs., tit. 16, § 1213). No fine was assessed.

(b) On or about January 23, 2018, the Bureau issued Citation No. IC 2018 7 to Respondent for the same violations and a $200 fine was assessed. Respondent paid the fine on or about, March 27, 2018, but still failed to designate a new licensed managing funeral director.

CAUSE FOR DISCIPLINE

(Failure to Employ, Designate, or Report Change of Licensed Managing Funeral Director)
(Bus. & Prof. Code, § 7616.2; Cal. Code Regs., tit. 16, §§ 1204 and 1213)

12. Respondent has subjected its Funeral Establishment License to discipline in that it failed to employ, designate, or report a change of a licensed managing funeral director (Bus. & Prof. Code, § 7616.2; Cal. Code Regs., tit. 16, §§ 1204 and 1213). The circumstances are set forth in paragraph 11, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Director of the Department of Consumer Affairs issue a decision:

1. Revoking or suspending Funeral Establishment License No. FD 2206, issued to MCA Funeral Home;

2. Ordering MCA Funeral Home 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; and,

[1] In or around July of 2017, the Bureau received a Notification of Change application to change all four of the corporate officers, but the application did not list a change of managing funeral director. The application was deemed deficient because none of the listed individuals seeking association had completed Live Scan electronic fingerprinting, and as a result, no changes were made to the Bureau's records.

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

DATED: November 6, 2018

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

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