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12

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF LOS ANGELES- CENTRAL DISTRICT**

15 F. CHARLES SANDS, Individually and On  
16 Behalf of All Others Similarly Situated,

17 Plaintiff,

18 vs.

19 SERVICE CORPORATION INTERNATIONAL,  
a Texas corporation, SCI CALIFORNIA  
20 FUNERAL SERVICES, INC., a California  
corporation, EDEN MEMORIAL PARK  
21 MANAGEMENT CO., a California corporation,  
EDEN MEMORIAL PARK ASSOCIATION, a  
22 California business entity, EDEN MEMORIAL  
PARK, a California business entity, JAMES R.  
23 BIBY, an individual and DOES 1 through 100.

24 Defendants.  
25  
26  
27  
28

**ORIGINAL FILED**

**SEP '14 2009**

**LOS ANGELES  
SUPERIOR COURT**

Case No. BC421528

ASSIGNED FOR ALL PURPOSES TO:  
Hon. Carl J. West – Dept. 311

**AMENDED CLASS ACTION COMPLAINT  
FOR:**

1. **Intentional Infliction of Emotional Distress**
2. **Negligence**
3. **Tortious Interference with Right to Dispose of Remains;**
4. **Tortious Interference with Dead Bodies;**
5. **Violations of Business & Professions Code § 17200;**
6. **Violations of the Consumer Legal Remedies Act;**
7. **Breach of Fiduciary Duty;**
8. **Equitable/Injunctive Relief;**
9. **Violations of Business & Professions Code § 17500; and**
10. **Fraud/Concealment/Non-Disclosure**

**DEMAND FOR JURY TRIAL**

1 Plaintiff F. Charles Sands ("Plaintiff"), by counsel and for a class of all others similarly  
2 situated hereby alleges, on knowledge as to himself, but otherwise on information and belief, as  
3 follows:

4 **NATURE OF ACTION**

5 1. This lawsuit challenges the morally despicable, fraudulent, unlawful and unfair  
6 business practices at Eden Memorial Park, a Jewish cemetery in Mission Hills, California. Defendants  
7 – who are the owners, operators and managers of Eden Memorial Park – have intentionally, willfully  
8 and secretly desecrated the remains of deceased individuals interred at Eden Memorial Park. The  
9 willful desecration of human remains has occurred, and continues to occur, as part of Defendants'  
10 pattern and practice of breaking concrete interment vaults with a backhoe and then dumping and/or  
11 discarding (i.e. "throwing away") the human remains. In some instances, this included the purposeful  
12 discarding of human skulls. Unfortunately, this is not the first time Defendant Service Corporation  
13 International has been charged with engaging in similar practices. In 2003, the State of Florida  
14 brought criminal charges against the company after groundskeepers at Menorah Gardens, another  
15 company owned and operated Jewish cemetery, testified to the accuracy of similar allegations.

16 2. At Eden Memorial Park, Defendants' pattern and practice of desecrating human  
17 remains arises in the context of Defendants plotting and selling interment areas without sufficient  
18 space to properly inter individuals in adjacent plots. The more plots Defendants "squeeze" into a  
19 cemetery, the more money Defendants make. This, however, causes interment vaults at Eden  
20 Memorial Park to encroach on and enter into adjacent interment plots for a number of foreseeable  
21 reasons, including, but not limited to, the negligent interring of vaults outside of their designated plot  
22 and natural earth movement. As a result, it is often the case at Eden Memorial Park that interring a  
23 recently deceased person cannot happen without moving an already interred vault in the adjacent plot.

24 3. Moving an already interred vault creates a number of profit complications for  
25 Defendants, including, but not limited to the following: *First*, under California law, Defendants  
26 cannot remove the remains of a deceased person from a plot without written consent of a family  
27 member and consent of the state cemetery board. *Second*, because of the cramped spaces at Eden  
28 Memorial Park, it is difficult to move a vault without disturbing other plots and the human remains

1 therein. *Third*, under Jewish tradition, the deceased are typically required to be interred within 24  
2 hours, thereby leaving little time to obtain consent to move an encroaching vault in an adjacent plot  
3 and giving Defendants a motive to desecrate human remains and commit other immoral acts rather  
4 than comply with the law.

5 4. Rather than go through the steps necessary to move an adjacent vault, Defendants'  
6 groundskeepers, instead, were repeatedly instructed by management to secretly break interment vaults  
7 with a backhoe to create space for the new vaults. This pattern and practice was not disclosed to  
8 Plaintiff and the Class Members before their loved ones were interred, or after their loved ones' vaults  
9 were desecrated. Defendants further have a pattern and practice of dumping the human remains which  
10 fall out of the broken vault. This pattern and practice was not disclosed to Plaintiff and the Class  
11 Members before their loved ones were interred, or after their loved ones' remains were dumped. The  
12 groundskeepers' actions are and have been conducted within the scope of their employment and with  
13 the full knowledge and ratification of the owners, operators and managers of Eden Memorial Park.

14 5. The actions of Defendants are morally despicable and have caused severe economic  
15 and non-economic damages to Plaintiff and the Class Members, as the class of persons is defined  
16 below.

17  
18 **PARTIES**

19 6. Plaintiff F. Charles Sands is a citizen of the state of California, and resident of Los Angeles  
20 County. Plaintiff's parents are interred at Eden Memorial Park, a Jewish cemetery located at 11500  
21 Sepulveda Blvd in Mission Hills, California ("Eden Memorial Park").

22 7. Defendant Service Corporation International ("SCI") is a Texas corporation. SCI is a  
23 publically traded company listed on the New York Stock Exchange under the symbol "SCI." SCI  
24 individually participated, ratified, approved and/or directed the improper or illegal acts and omissions  
25 described herein. SCI provides death care services and products under the Dignity Memorial® brand  
26 name. At all times relevant hereto, Defendants owned, operated, managed and were responsible for all  
27 business decisions of and at Eden Memorial Park.

28 8. Defendant SCI California Funeral Services, Inc. ("SCI California") is a California

1 corporation authorized to do business and doing business in Los Angeles County. SCI California  
2 individually participated, ratified, approved and/or directed the improper or illegal acts and omissions  
3 described herein. Defendant SCI California maintains its principal place of business in Los Angeles  
4 County, California.

5 9. Defendant Eden Memorial Park Management Co. is a California corporation authorized to  
6 do business and doing business in Los Angeles County. Eden Memorial Park Management Co.  
7 individually participated, ratified, approved and/or directed the improper or illegal acts and omissions  
8 described herein.

9 10. Defendant Eden Memorial Park Association is a California business entity authorized to do  
10 and doing business in Los Angeles County. Eden Memorial Park Association individually participated,  
11 ratified, approved and/or directed the improper or illegal acts and omissions described herein.

12 11. Defendant Eden Memorial Park ("Eden Memorial Park, a California Business entity") is a  
13 California business entity authorized and doing business in Los Angeles County. Eden Memorial Park  
14 individually participated, ratified, approved and/or directed the improper or illegal acts and omissions  
15 described herein.

16 12. Defendant James R. Biby ("Biby") is an individual, a citizen of the State of California and  
17 on information and belief is a resident of the County of Los Angeles. Biby is the Market Director of SCI  
18 California and individually participated, ratified, approved and/or directed the improper or illegal acts  
19 and omissions described herein. At all relevant times, Defendant Biby, together with other employees  
20 of SCI and SCI California, undertook considerable efforts to cover-up the conduct alleged herein.

21 13. The true names and capacities of defendants DOES 1 through 100, inclusive, whether  
22 individual, plural, corporate, partnership, associate or otherwise, are not known to Plaintiff, who  
23 therefore sues said defendants by such fictitious names. Plaintiff is informed and believes and thereon  
24 alleges that each of the defendants designated herein as DOE are in some manner responsible for the  
25 acts and occurrences set forth herein. Plaintiff will ask leave of court to amend this Complaint to  
26 show the true names and capacities of defendants DOES 1 through 100, inclusive, as well as the  
27 manner in which each DOE defendant is responsible, when the same have been ascertained.

28 14. Plaintiff is informed and believes, and upon such basis alleges, that at all times herein

1 mentioned, each of the defendants herein was an agent, servant, employee, co-conspirator, partner,  
2 joint venturer, wholly owned and controlled subsidiary and/or alter ego of each of the remaining  
3 defendants, and was at all times acting within the course and scope of said agency, service,  
4 employment, conspiracy, partnership and/or joint venture.

5 15. Defendants, and each of them, aided and abetted, encouraged and rendered substantial  
6 assistance in accomplishing the wrongful conduct and their wrongful goals and other wrongdoing  
7 complained of herein. In taking action, as particularized herein, to aid and abet and substantially assist  
8 the commission of these wrongful acts and other wrongdoings complained of, each of the defendants  
9 acted with an awareness of its primary wrongdoing and realized that its conduct would substantially  
10 assist the accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

11 **JURISDICTION AND VENUE**

12 16. Venue is appropriate in the County of Los Angeles, and this Court has personal  
13 jurisdiction over the Defendants and each of them by reason of the facts that: (a) Defendants have  
14 transacted and conducted substantial business in the State of California, the County of Los Angeles,  
15 and the Central District; (b) the acts alleged herein occurred in the State of California and the County  
16 of Los Angeles; (c) Plaintiff's injury occurred in the State of California and the County of Los  
17 Angeles; and (d) the events giving rise to the claims at issue in this lawsuit arose in California,  
18 including within the County of Los Angeles and the Central District.

19 **FACTUAL BACKGROUND**

20 21. Plaintiff's and the Class Members' relatives are interred at Eden Memorial Park. In the  
21 Jewish culture, a cemetery, such as Eden Memorial Park, is sacred ground, and violating the ground  
22 through unearthing the dead is a sacrilege. Nonetheless, Defendants have intentionally, willfully and/or  
23 negligently owned, operated and managed Eden Memorial Park, and Defendants have a pattern and practice  
24 of desecrating graves, none of which was disclosed to Plaintiff or the Class Members either before or after  
25 the desecration occurred.

26 18. Defendants' intentional, willful and/or negligent ownership, operation and management  
27 of Eden Memorial Park relates in part to their having plotted and sold interment plots at Eden  
28

1 Memorial Park without sufficient space to ensure that the vaults and human remains in a plot do not  
2 encroach on an adjacent plot. As such, Defendants' conduct led to interment vaults at Eden Memorial  
3 Park encroaching on and entering into adjacent plots. This encroachment happened for a number of  
4 reasons known and/or foreseeable to Defendants, including the intentional or negligent interring of  
5 vaults outside their designated plot line and natural earth movement. Defendants never disclosed to  
6 Plaintiff, the Class Members, or their deceased relatives, in pre-need contracts sold to those same  
7 persons or otherwise, that Defendants were plotting and selling interment plots at Eden Memorial Park  
8 without sufficient space.

9 19. Defendants' conduct and the associated encroachment of vaults into adjacent interment  
10 plots further caused a situation at Eden Memorial Park where Defendants did not have space to inter  
11 the recently deceased persons in their proper plots. All of this was known and/or foreseeable to  
12 Defendants.

13 20. Rather than disclose these problems to Plaintiff and the Class Members, fully comply  
14 with California law, and treat remains of the deceased with dignity, respect and due care, Defendants  
15 instead, among other things:

- 16 a) Secretly broke and opened interment vaults;
- 17 b) Secretly dumped and desecrated human remains, including but not limited to skulls,  
18 from interment vaults that were improperly broken or opened, in order to cover up their  
19 wrongful acts;
- 20 c) Secretly interred human remains in locations other than the plot in which the remains  
21 were to be properly interred;
- 22 d) Secretly plotted and sold interment plots on top of already scattered human remains,  
23 and thereafter secretly interred the recently deceased on top of those scattered human  
24 remains;
- 25 e) Secretly "lost" the human remains of individuals without disclosing to family members  
26 or others that the deceased was not in fact interred in his or her designated plot;
- 27 f) Secretly interred relatives of Class Members in the wrong plots;
- 28 g) Intentionally, recklessly, and/or negligently misinformed Class Members as to the state

1 and condition of interment plots, vaults, interments, and human remains; and

2 h) Intentionally, recklessly, and/or negligently published, disseminated, circulated and/or  
3 placed before the public, either directly or indirectly, statements that were untrue,  
4 deceptive and/or misleading regarding the business patterns and practices at Eden  
5 Memorial Park.

6 21. Defendants never disclosed the above patterns and practices to Plaintiff and the Class  
7 Members, either prior to interment or after the commission of the wrongful and immoral conduct  
8 described herein. Instead, Defendants took considerable steps to fraudulently conceal their nefarious  
9 activities by, among other things, threatening employees and witnesses with retaliation and the loss of  
10 their employment. The actions, patterns and practices of Defendants as described herein are morally  
11 despicable and have no place in a civilized society. The actions, patterns and practices of Defendants  
12 were further intentional, willful, reckless and/or negligent and have caused severe economic and non-  
13 economic damages to Plaintiff and the Class Members.

14 **CLASS ACTION ALLEGATIONS**

15 22. Plaintiff brings this class action on behalf of himself and the following ascertainable  
16 classes of similarly situated persons (collectively referred to herein as the "Class" or "Class  
17 Members"):

18 (a) All persons who purchased interment plots at Eden Memorial Park;  
19 and/or

20 (b) All persons who were aware that funeral or cemetery services were  
21 being performed for a family member at Eden Memorial Park, and/or

22 (c) All persons on whose behalf or for whose benefit funeral or  
23 cemetery services were performed at Eden Memorial Park.

24 23. Excluded from the Class is any person or entity in which any judge, justice or judicial  
25 officer presiding over this matter and members of their immediate families and judicial staff, have any  
26 controlling interest. Excluded from the Class is any partner or employee of Class Counsel.

27 24. This class action is brought pursuant to California Code of Civil Procedure Section 382  
28

1 and/or California Civil Code § 1781. Plaintiff reserves the right to modify the Class description and  
2 the Class based on the results of discovery.

3 25. Numerosity: The proposed class is so numerous that individual joinder of all its  
4 members is impracticable. While the exact number and identities of the Class Members are unknown  
5 at this time, such information can be ascertained through appropriate investigation and discovery, and  
6 is believed to be in the tens of thousands. The disposition of the claims of the Class Members in a  
7 single class action will provide substantial benefits to all parties and to the Court.

8 26. Typicality: Plaintiff's claims are typical of the claims of all Class Members in that  
9 Plaintiff and Class Members suffered similar damages resulting from a single, continuing course of  
10 conduct by Defendants – as described herein. Each class member asserts the same legal causes of  
11 action.

12 27. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect  
13 the interests of the Class. Plaintiff has retained counsel with substantial experience in prosecuting  
14 complex lawsuits and class action litigation. Plaintiff's counsel has been responsible for hundreds of  
15 millions of dollars in settlements and verdicts on behalf of Plaintiffs throughout the country.  
16 Plaintiff's counsel has substantial experience in matters of this kind, having litigated numerous  
17 lawsuits arising out of the Menorah Gardens cemetery scandal in Florida. Plaintiff and his counsel are  
18 committed to vigorously prosecuting this action on behalf of the Class, and have the financial  
19 resources to do so. Neither Plaintiff nor his counsel have any interests adverse to the Class.

20 28. Superiority of Class Action and Impracticability of Individual Actions: Plaintiff and the  
21 members of the Class suffered, and will continue to suffer, harm as a result of Defendants' unlawful,  
22 fraudulent and unfair conduct. A class action is superior to other available methods for the fair and  
23 efficient adjudication of the controversy. Individual joinder of all members of the Class is impractical.  
24 Even if individual Class Members had the resources to pursue individual litigation, it would be unduly  
25 burdensome to the courts in which the individual litigation would proceed. Individual litigation  
26 magnifies the delay and expense to all parties in the court system of resolving the controversies  
27 engendered by Defendants' common course of conduct. The class action device allows a single court  
28 to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling

1 of all Class Members' claims in a single forum. The conduct of this action as a class action conserves  
2 the resources of the parties and of the judicial system, and protects the rights of the Class Members.  
3 Adjudication of individual Class Members' claims with respect to Defendants would, as a practical  
4 matter, be dispositive of the interests of other members not parties to the adjudication, and could  
5 substantially impair or impede the ability of other Class Members to protect their interests. Moreover,  
6 individual lawsuits may result in adjudications that would create inconsistent standards whereby  
7 Defendants would be required to disinter remains on the one hand and leave the same remains in place  
8 on the other hand.

9       29. Common Questions of Law and Fact Predominate: There is a well defined community  
10 of interest between Plaintiff and the Class. There are questions of law and fact common to Plaintiff  
11 and the Class, and those questions substantially predominate over any questions that may affect  
12 individual Class Members. Common questions of law and fact include, but are not limited to, the  
13 following:

- 14       a) Whether Defendants plotted and sold interment plots at Eden Memorial Park without  
15       sufficient space;
- 16       b) Whether Defendants disclosed in pre-need contracts that they were plotting and selling  
17       interment plots at Eden Memorial Park without sufficient space.
- 18       c) Whether Defendants secretly broke interment vaults that encroached on other grave  
19       sites;
- 20       d) Whether Defendants dumped and desecrated the subject human remains in order to  
21       cover up their wrongful acts and make room for the bodies of the recently deceased;
- 22       e) Whether Defendants secretly interred humans remains in locations other than the plot  
23       in which the remains were to be properly interred;
- 24       f) Whether Defendants secretly plotted and sold interment plots on top of already  
25       scattered human remains, and thereafter secretly interred the recently deceased on top  
26       of those scattered human remains;
- 27       g) Whether Defendants secretly "lost" the human remains of individuals without  
28       disclosing to family members or others that the deceased was not in fact interred in his

- 1 or her designated plot;
- 2 h) Whether Defendants interred individuals in the wrong plots;
- 3 i) Whether Plaintiff and Class Members are subject to irreparable harm;
- 4 j) Whether injunctive relief is appropriate and in the public interest,
- 5 k) What type of court supervised injunction or equitable relief is appropriate
- 6 under what circumstances;
- 7 l) Whether Defendants' conduct is malicious and involved willful and
- 8 wanton misconduct;
- 9 m) Whether Defendants could foresee that their conduct was substantially certain to cause
- 10 mental anguish;
- 11 n) Whether Defendants intentionally, recklessly, and/or negligently misinformed Class
- 12 Members as to the state and condition of interment plots, vaults, interments and human
- 13 remains; and
- 14 o) Whether Defendants knowingly made, published, disseminated, circulated and placed
- 15 before the public, either directly or indirectly, statements that were untrue, deceptive or
- 16 misleading regarding the business patterns and practices of and at Eden Memorial Park.

17

18 **FIRST CAUSE OF ACTION FOR INTENTIONAL INFLECTION OF**

19 **EMOTIONAL DISTRESS**

20 (AGAINST ALL DEFENDANTS)

21 30. Plaintiff restates and re-alleges each and every allegation in the paragraphs 1 through

22 29 as if fully set forth herein.

23 31. Defendants' conduct as described herein was extreme and outrageous, and was so

24 extreme as to exceed all bounds of that usually tolerated in a civilized society.

25 32. Defendants' conduct as described herein was committed with the intent to cause, or

26 reckless disregard of causing, emotional distress to Plaintiff and the Class Members.

27 33. Plaintiff and the Class Members suffered and continue to suffer from severe or extreme

28 emotional distress, which was actually and proximately caused by the Defendants' outrageous conduct

1 as set forth herein.

2 34. Defendants undertook the aforesaid illegal acts intentionally or with conscious  
3 disregard of the rights of Plaintiff and the Class Members, and did so with fraud, oppression and/or  
4 malice. This despicable conduct subjected Plaintiff and the Class Members to cruel and unjust  
5 hardship so as to justify an award of punitive damages in an amount sufficient to deter such wrongful  
6 conduct in the future. Therefore, Plaintiff and the Class Members are also entitled to punitive  
7 damages against Defendants in an amount to be determined at trial.

8  
9 **SECOND CAUSE OF ACTION FOR NEGLIGENCE**

10 (AGAINST ALL DEFENDANTS)

11 35. Plaintiff restates and re-alleges each and every allegation in the paragraphs 1 through  
12 29 as if fully set forth herein.

13 36. By accepting the care, custody and control of the remains of those individuals interred  
14 at Eden Memorial Park, Defendants undertook a duty of care to Plaintiff and the Class Members.  
15 Defendants' duty to Plaintiffs and the Class Members included but was not limited to the following:

- 16 a) Not to break and open interment vaults;
- 17 b) Not to dump and desecrate human remains;
- 18 c) Not to inter humans remains in locations other than the plot in which the remains were  
19 to be properly interred;
- 20 d) Not to plot and sell interment plots on top of already scattered human remains, and  
21 thereafter inter the recently deceased on top of those scattered human remains;
- 22 e) Not to lose the human remains of individuals without disclosing to family members or  
23 others that the deceased was not in fact interred in his or her designated plot;
- 24 f) Not to inter relatives of Class Members in the wrong plots;
- 25 g) Not to intentionally, recklessly, and/or negligently misinform Class Members as to the  
26 state and condition of interment plots, vaults, interments, and human remains;
- 27 h) Not to intentionally, recklessly, and/or negligently publish, disseminate, circulate  
28 and/or place before the public, either directly or indirectly, statements that were untrue,

1 deceptive and/or misleading regarding the business patterns and practices at Eden  
2 Memorial Park.

- 3 i) To use reasonable care in all aspects of their cemetery business.  
4 j) To handle and inter human remains in a proper and dignified manner;  
5 k) To hire and retain persons qualified and capable of providing proper cemetery and  
6 funeral related services;  
7 l) To properly supervise their employees and make sure they were using reasonable care  
8 in providing the Plaintiffs and Class with appropriate cemetery and funeral services;  
9 m) To inspect, audit and correct the cemetery spacing problems and related problems at the  
10 Eden Memorial Park;  
11 n) To correct the numerous problems discussed in this complaint after Defendants knew  
12 or should have known of the problems; and  
13 o) To warn and inform the Plaintiffs and the Class Members of the problems at Eden  
14 Memorial Park discussed in this complaint before Plaintiffs and the Class Members  
15 purchased cemetery plots and/or after Defendants discovered or should have discovered  
16 the problem.

17 37. Defendants breached each of the above duties, and were negligent by failing to use  
18 reasonable care in virtually all aspects of their cemetery business, including but not limited to those set  
19 forth below:

- 20 a) Breaking and opening interment vaults;  
21 b) Dumping and desecrating human remains;  
22 c) Interring humans remains in locations other than the plot in which the remains were to  
23 be properly interred;  
24 d) Plotting and selling interment plots on top of already scattered human remains, and  
25 thereafter interring the recently deceased on top of those scattered human remains;  
26 e) Losing the human remains of individuals without disclosing to family members or  
27 others that the deceased was not in fact interred in his or her designated plot;  
28 f) Interring relatives of Class Members in the wrong plots;

- 1 g) Intentionally, recklessly, and/or negligently misinforming Class Members as to the  
2 state and condition of interment plots, vaults, interments, and human remains;
- 3 h) Intentionally, recklessly, and/or negligently publishing, disseminating, circulating  
4 and/or placing before the public, either directly or indirectly, statements that were  
5 untrue, deceptive and/or misleading regarding the business patterns and practices at  
6 Eden Memorial Park.
- 7 i) Failing to use reasonable care in all aspects of their death care business.
- 8 j) Handling and interring human remains in a improper and undignified manner;
- 9 k) Hiring and retaining persons not qualified and not capable of providing proper funeral  
10 cemetery related services;
- 11 l) Not properly supervising their employees and making sure they were using reasonable  
12 care in providing the Plaintiffs and Class with appropriate interment services;
- 13 m) Not inspecting, audit and/or correcting the cemetery spacing problems and related  
14 problems at Eden Memorial Park;
- 15 n) Not correcting the numerous problems identified in this complaint after Defendants  
16 knew or should have known of the problem; and
- 17 o) Not warning and informing the Plaintiffs and the Class Members of the problems at  
18 Eden Memorial Park discussed in this complaint before Plaintiffs and the Class  
19 Members purchased cemetery plots and after Defendants discovered or should have  
20 discovered the problem.

21 38. Defendants knew, should have known or could reasonably foresee that their wrongful  
22 acts and omissions would injure the Plaintiffs and the Class.

23 39. Defendants' conduct as described herein was extreme and outrageous, and was so  
24 extreme as to exceed all bounds of that usually tolerated in a civilized society.

25 40. Plaintiff and the Class Members are suffering from severe or extreme emotional  
26 distress, and Defendants' negligence was a substantial factor in causing Plaintiff's and the Class  
27 Members' severe or extreme emotional distress.

28 41. As a direct and proximate result of the negligence of Defendants, Plaintiff and the

1 Class Members suffered and continue to suffer the economic and non-economic damages.

2 42. Defendants' failure to use reasonable care and their negligence in this case amount to  
3 outrageous behavior that is not tolerated in our civilized society and community.

4 43. Defendants' acts and omissions amount to gross negligence tantamount to willful,  
5 wanton, and reckless conduct against the interests of the Plaintiff and the class members.

6 44. Defendants knew or should have known that their serious failure to use reasonable care  
7 herein would result in damage to Plaintiff and the Class Members.

8  
9 **THIRD CAUSE OF ACTION FOR TORTIOUS INTERFERENCE WITH RIGHT TO**

10 **DISPOSE OF REMAINS**

11 (AGAINST ALL DEFENDANTS)

12 45. Plaintiff restates and re-alleges each and every allegation in the paragraphs 1 through  
13 29 as if fully set forth herein.

14 46. By reason of the relationship of Plaintiff and the Class Members, on the one hand, and  
15 decedents, on the other hand, Plaintiff and the Class Members were at all times herein mentioned  
16 entitled to control their respective decedent's remains.

17 47. Defendants have intentionally, willfully, recklessly and/or negligently interfered with  
18 Plaintiff's and the Class Members' rights to control the remains of their respective decedents, contrary  
19 to the wishes and beliefs of Plaintiff and the Class Members, by committing the acts described herein.

20 48. This interference was intentional, willful, reckless and/or negligent in that Defendants  
21 actions herein are illegal, improper, and immoral and in that Defendants failed to inform Plaintiff and  
22 the Class Members of the acts described herein prior to or after committing the tortious activity.

23 49. Defendants' disposition of human remains is and was repugnant, offensive, and  
24 insulting to Plaintiff and the Class Members, to their beliefs, and to a civilized society, and learning of  
25 Defendants' conduct described herein caused and continues to cause the Plaintiff and the Class  
26 Members extreme mental anguish and disgust and disturbed their peace of mind causing them to  
27 become permanently sick in mind and body.

28 50. As a direct and proximate result of the intentional, willful, reckless, and/or negligent

1 acts of Defendants, Plaintiff and the Class Members suffered and continue to suffer the economic and  
2 non-economic damages.

3 51. Defendants undertook the aforesaid illegal acts intentionally or with conscious  
4 disregard of the rights of Plaintiff and the Class Members, and did so with fraud, oppression and/or  
5 malice. This despicable conduct subjected Plaintiff and the Class Members to cruel and unjust  
6 hardship so as to justify an award of punitive damages in an amount sufficient to deter such wrongful  
7 conduct in the future. Therefore, Plaintiff and the Class Members are also entitled to punitive  
8 damages against Defendants in an amount to be determined at trial.

9  
10 **FOURTH CAUSE OF ACTION FOR TORTIOUS INTERFERENCE WITH DEAD BODIES**

11 (AGAINST ALL DEFENDANTS)

12 52. Plaintiff restates and re-alleges each and every allegation in the paragraphs 1 through  
13 29 as if fully set forth herein.

14 53. Defendants' owed Plaintiff and the Class Members a duty to exercise reasonable and  
15 proper care when handling the remains of Plaintiff's and the Class Members' family members and/or  
16 the remains of those decedents to whom Plaintiff and Class Members were entitled to immediate  
17 custody and possession of the remains. The duty includes, but is not limited to, those set forth in  
18 paragraph 36 above.

19 54. Defendants' conduct, including but not limited to the conduct described in paragraphs  
20 1-29 and 37 above, was malicious and intentional. Defendants' conduct demonstrates an entire want  
21 of care or attention to duty and great indifference to the remains, property and property rights of  
22 others. Defendants' conduct is outrageous and goes beyond all bounds of decency in a civilized  
23 society.

24 55. Defendants' conduct has directly and proximately caused and continues to cause  
25 economic and non-economic damages to Plaintiff and the Class Members. Plaintiff and the Class  
26 Members have and will continue to suffer extreme mental anguish, distress and suffering. Plaintiff  
27 and the Class Members have and will also suffer damages including but not limited to costs necessary  
28 to properly find, identify and handle the subject remains.

1           56. Defendants' could foresee that their wrongful acts and omissions would damage the  
2 Plaintiff and the Class Members in the manner set forth above.

3           57. Defendants undertook the aforesaid illegal acts intentionally or with conscious  
4 disregard of the rights of Plaintiff and the Class Members, and did so with fraud, oppression and/or  
5 malice. This despicable conduct subjected Plaintiff and the Class Members to cruel and unjust  
6 hardship so as to justify an award of punitive damages in an amount sufficient to deter such wrongful  
7 conduct in the future. Therefore, Plaintiff and the Class Members are also entitled to punitive  
8 damages against Defendants in an amount to be determined at trial.

9  
10                           **FIFTH CAUSE OF ACTION FOR VIOLATION OF BUSINESS AND**  
11                           **PROFESSIONS CODE § 17200 ET. SEQ.)**

12           (AGAINST SCI, SCI CALIFORNIA, EDEN MEMORIAL PARK MANAGEMENT CO., EDEN  
13           MEMORIAL PARK ASSOCIATION, EDEN MEMORIAL PARK AND DOES 1-100)

14           58. Plaintiff restates and re-alleges each and every allegation in the paragraphs 1 through  
15 29 as if fully set forth herein.

16           59. Defendants conduct described above constitutes an "unlawful" business practice within  
17 the meaning of the UCL, and violated numerous California statutes, including but not limited to:

- 18           a) Health & Safety Code § 7051, by removing parts of human remains from places where  
19 they have been interred, and doing so with malice and wantonness.  
20           b) Health & Safety Code § 7500 *et seq.*, by removing the remains of a deceased person  
21 from a cemetery without the requisite legal authorization and consent.  
22           c) Business & Professions Code § 7735.5, by not clearly stating in preneed funeral  
23 contracts that benefits were unavailable or limited by the patterns and practices of  
24 Defendants described above.  
25           d) Business & Professions Code § 9725.1, for violating or attempting to violate, directly  
26 or directly, or assisting in or abetting the violation of laws governing the disposition of  
27 human remains, operation of cemeteries, and/or the sale of cemetery property, and for  
28 negligence in performing acts related to the operation of a cemetery.

1 e) California Civil Code § 1709-1710 for misrepresenting, or failing to disclose, the  
2 patterns and practices of Defendants described above.

3 60. Defendants' conduct in failing to disclose the above-described problems to Plaintiff  
4 and the Class described above also constitutes a "fraudulent" business practice within the meaning of  
5 the UCL.

6 61. Plaintiff and each Class Member suffered an injury in fact and lost money or property  
7 as result of the Defendants' unlawful and/or fraudulent business practices.

8 62. Plaintiff, on behalf of himself and the Class Members, seeks restitution and  
9 disgorgement of all moneys received by Defendants through the unlawful and fraudulent conduct  
10 described above.

11 63. Plaintiff, on behalf of himself and the Class Members, seeks a temporary, preliminary  
12 and/or permanent injunction from this Court prohibiting Defendants from engaging in the patterns and  
13 practices described herein.

14  
15 **SIXTH CAUSE OF ACTION FOR VIOLATIONS OF THE CONSUMER**

16 **LEGAL REMEDIES ACT**

17 (AGAINST SCI, SCI CALIFORNIA, EDEN MEMORIAL PARK MANAGEMENT CO., EDEN  
18 MEMORIAL PARK ASSOCIATION, EDEN MEMORIAL PARK AND DOES 1-100)

19 64. Plaintiff restates and re-alleges each and every allegation contained in paragraphs 1  
20 through 29 above as if fully set forth herein.

21 65. This count is brought pursuant to the Consumer Legal Remedies Act, Civil Code  
22 sections 1740, *et seq.* ("CLRA"). Plaintiffs bring this action on their own behalf and on behalf of each  
23 Class Member, all of whom are similarly situated consumers within the meaning of Civil Code §  
24 1781.

25 66. California Civil Code § 1770(a)(14) provides that it is unlawful for any person in a  
26 transaction that results in the sale of goods or services to a consumer to represent "that a transaction  
27 confers or involves rights, remedies, or obligations which it does not have or involve, or which are  
28 prohibited by law."





1 **NINTH CAUSE OF ACTION FOR VIOLATIONS OF BUSINESS AND PROFESSIONS**

2 **CODE § 17500, ET. SEQ.**

3 (AGAINST ALL DEFENDANTS)

4 83. Plaintiff restates and re-alleges each and every allegation contained in paragraphs 1  
5 through 29 and 70 through 73 above as if fully set forth herein.

6 84. As a solicitation to Plaintiff and the Class Members to patronize the products and/or  
7 services provided by Defendants, and as a material part thereof, Defendants made various  
8 representations to Plaintiff and the Class Members, including but not limited to, that the remains of  
9 loved ones would be handled in a dignified and respectful manner. The representations appeared  
10 habitually in written documents which were, on information and belief, provided to Plaintiff and the  
11 Class Members, as well as were located on the website of Defendants, and were made in other written  
12 forms. In making representations to Plaintiff and the Class Members, Defendants concealed and failed  
13 to disclose their true practices as outlined above. The representations and/or failures to disclose by  
14 Defendants were made as part of a continuing scheme and were part of an ongoing campaign to  
15 falsify, mislead as to, or otherwise unlawfully advertise the products or services of Defendants. See In  
16 re Tobacco II Cases, 46 Cal. 4th 298 (2009).

17 85. Plaintiff and the Class Members are informed and believe the affirmative  
18 representations made by Defendants were false when made as Defendants did not believe them to be  
19 true when they were made and/or the representations were made with a reckless disregard as to  
20 truthfulness. As alleged above, it was also the policy, practice, and intended program of Defendants to  
21 act mishandle human remains. Indeed, as outlined above, Defendants were already engaging in  
22 undignified and disrespectful acts and were instructing their employees to continue those practices.  
23 Furthermore, in addition to the representations of Defendants being false, the representations were  
24 also misleading as they failed to disclose the ongoing and rampant practices of Defendants in  
25 mistreating burial vaults, burial plots and human remains. Plus, they failed to disclose the ongoing  
26 and rampant practices whereby Defendants were intentionally and/or recklessly leaving insufficient  
27 space between burial plots, and that Defendants had a pattern and practicing of intentionally breaking  
28 burial vaults and then disposing of the human remains therein. At all times, Defendants knew, but

1 failed to disclose, the above, despite the facts that these acts were happening weekly or more  
2 frequently for years.

3 86. Defendants fraudulently failed to disclose that if Plaintiff and the Class, and their  
4 family members, purchased a plot at Eden Memorial Park there was a substantial risk that the burial  
5 vault and human remains interred therein will be disturbed and/or broken when Defendants attempted  
6 to inter an individual in the adjacent plot, due to the insufficient spacing between burial plots at Eden  
7 Memorial Park. Defendants further fraudulently concealed, and failed to disclose, that if Plaintiff's  
8 and the Class Members' family member's burial vault was disturbed or broken, there was a substantial  
9 risk that their remains would fall out and be discarded, and done so without any disclosure to Plaintiff  
10 and the Class Members. All of this was contrary to the representations that the handling of the bodies  
11 would be dignified.

12 87. As a result of the fiduciary relationship and the relationship of trust and confidence  
13 between Plaintiff and the Class Members, on the one hand, and the Defendants, on the other hand, the  
14 materiality of the information, the fact that the information was solely within Defendants' knowledge  
15 and could not be discovered by Plaintiff and the Class, and/or as a result of the business operated by  
16 Defendants, including the various licenses they were required to hold, Defendants owed numerous  
17 duties to Plaintiff and the Class Members to provide candid, honest, and forthright communications to  
18 Plaintiffs, including as to the conditions of the burial plots, the conditions of the loved ones interred in  
19 burial plots, any disturbances within individual or collective burial plots, and the overall practices and  
20 procedures engaged in by Defendants to maintain the property and burial plots in question.  
21 Defendants also had a duty to disclose this information because they made affirmative statements that  
22 were misleading without the disclosure of this information, including but not limited to habitual  
23 representations that they were "committed to maintaining a beautiful and peaceful environment for  
24 [Plaintiff and the Class Members] loved one's final resting place that will last for many generations to  
25 come" and that Defendants' Dignity Memorial brand comes with an "assurance of quality, value,  
26 caring service and exceptional customer satisfaction." Nonetheless, in defiance of these duties,  
27 Defendants engaged in repeated acts of false advertising and wrongful conduct as outlined above to  
28 the material detriment of Plaintiffs and which was contrary to these representations and the impression

1 they were intending to portray to the public.

2 88. Defendants' advertising alleged herein was committed with the intent to directly or  
3 indirectly mislead Plaintiff, the Class and the public and in fact was untrue and/or misleading and  
4 likely to deceive Plaintiff, the Class and the public. In making and disseminating the statement(s)  
5 herein alleged, Defendants knew, or by the exercise of reasonable care should have known, that the  
6 statement(s) was/were untrue or misleading and so acted in violation of Business and Professions  
7 Code Section 17500.

8 89. Unless restrained by this court, Defendants will continue to engage in untrue and  
9 misleading advertising, as alleged above, in violation of Business and Professions Code Section  
10 17500. Plaintiff and the Class have no adequate remedy at law in that unless restrained Defendants  
11 will continue to engage in untrue and misleading advertising, as alleged above, in violation of  
12 Business and Professions Code Section 17500.

13 90. Plaintiff and the Class Members suffered material loss of money and property as a  
14 result of the false advertising engaged in by Defendants by virtue of the loss of the value of the fees  
15 and/or other monies paid to Defendants, which Plaintiff and the Class would not have paid had they  
16 known of the false advertising engaged in by Defendants. Plaintiff and the Class have also suffered  
17 material emotional distress and other damage due to the false advertising conduct by Defendants. The  
18 material loss was caused directly by the acts of Defendants in false advertising the products/services in  
19 question as otherwise Plaintiff and the Class would never have patronized the business of Defendants,  
20 nor would they have paid fees or continued to patronize the business in question.

21 **TENTH CAUSE OF ACTION FOR FRAUD/CONCEALMENT/NON-DISCLOSURE**

22 (AGAINST ALL DEFENDANTS)

23 91. Plaintiff restates and re-alleges each and every allegation contained in paragraphs 1  
24 through 29, 70 through 73 and 84 through 90 above as if fully set forth herein.

25 92. Defendants intentionally, recklessly, and/or negligently represented, concealed and/or  
26 failed to disclose the material facts set forth above. Defendants' representations described above were  
27 in fact false. The true facts include the fact that Defendants do not provide dignified and respectful  
28 service and that Defendants are not committed to maintaining a beautiful and peaceful environment

1 for Plaintiff and the Class Members loved one's final resting place and that Defendants services lack  
2 quality, value and caring for the reasons set forth above. Defendants' statements were made with the  
3 intent to deceive Plaintiff and the Class Members.

4 93. Plaintiff and the Class Members, at the time these representations were made by the  
5 Defendant and at the time the Plaintiff and the Class Members took the actions herein alleged, were  
6 ignorant of the falsity of the Defendants' representations and believed them to be true. Plaintiff and  
7 the Class Members relied on Defendants' representations and had Plaintiff and the Class Members  
8 known of the known the actual facts, Plaintiff and the Class Members would not have taken the  
9 actions they did, including but not limited to purchasing burial plots at Eden Memorial Park and  
10 entrusting Defendants with the remains of their loves ones. Plaintiff and the Class Members' reliance  
11 on the Defendants representations was justified.

12 94. Defendants' concealments and non-disclosure of material facts as set forth above were  
13 made with the intent to induce the Plaintiff and the Class Members to act in the manner herein alleged  
14 in reliance thereon.

15 95. Plaintiff and the Class Members, at the time these failures to disclose and suppressions  
16 of facts occurred, and at the time the Plaintiff and the Class Members took the actions herein alleged,  
17 were ignorant of the existence of the facts that the Defendants suppressed and failed to disclose. If the  
18 Plaintiff and the Class Members had known of Defendants' concealments and failures to disclose  
19 material facts, they would not have taken the actions they did, including but not limited to purchasing  
20 burial plots at Eden Memorial Park and entrusting Defendants with the remains of their loves ones.  
21 Plaintiff and the Class Members' reliance was justified and reasonable as they had no basis to doubt  
22 the original representations made to them, nor did they have reason to believe they were being mislead  
23 or material facts were being concealed from them.

24 96. As a direct and proximate result of the above Plaintiff and the Class Members have  
25 suffered economic and non-economic damages in an amount to be proven at trial.

26 97. Defendants undertook the aforesaid illegal acts intentionally or with conscious  
27 disregard of the rights of Plaintiff and the Class Members, and did so with fraud, oppression and/or  
28 malice. This despicable conduct subjected Plaintiff and the Class Members to cruel and unjust

1 hardship so as to justify an award of punitive damages in an amount sufficient to deter such wrongful  
2 conduct in the future. Therefore, Plaintiff and the Class Members are also entitled to punitive  
3 damages against Defendants in an amount to be determined at trial.

4  
5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs prays for judgment against Defendants, and each of them, as follows:

7  
8 **ON THE FIRST CAUSE OF ACTION**

- 9 a. An Order certifying that the action be maintained as a class action under California Code  
10 of Civil Procedure § 382;
- 11 b. For damages and/or restitution, with the exact amount to be proven at trial;
- 12 c. For punitive damages in an amount sufficient to punish the Defendants and to deter  
13 them from engaging in wrongful conduct in the future;
- 14 d. For interest and costs of suit incurred herein;
- 15 e. For attorneys' fees incurred herein; and
- 16 f. For such other and further relief as the Court may deem just and proper.

17  
18 **ON THE SECOND CAUSE OF ACTION**

- 19 a. An Order certifying that the action be maintained as a class action under California Code  
20 of Civil Procedure § 382;
- 21 b. For damages and/or restitution, with the exact amount to be proven at trial;
- 22 c. For interest and costs of suit incurred herein;
- 23 d. For attorneys' fees incurred herein; and
- 24 e. For such other and further relief as the Court may deem just and proper.

25  
26 **ON THE THIRD CAUSE OF ACTION**

- 27 a. An Order certifying that the action be maintained as a class action under California Code  
28 of Civil Procedure § 382;





- 1 e. For attorneys' fees incurred herein; and  
2 f. For such other and further relief as the Court may deem just and proper.

3 **ON TENTH CAUSE OF ACTION**

- 4 a. An Order certifying that the action be maintained as a class action under California Code  
5 of Civil Procedure § 382;  
6 b. For damages, rescission, and/or restitution, with the exact amount to be proven at trial;  
7 c. For punitive damages in an amount sufficient to punish the Defendants and to deter  
8 them from engaging in wrongful conduct in the future;  
9 d. An award of suitable equitable, injunctive and declaratory relief;  
10 e. For costs of suit incurred herein;  
11 f. For attorneys' fees incurred herein; and  
12 g. For such other and further relief as the Court may deem just and proper.

13 Dated: September 14, 2009

EAGAN O'MALLEY & AVENATTI, LLP

14  
15 By: 

MICHAEL J. AVENATTI

Attorneys for Plaintiff F. Charles Sands, on behalf of  
17 himself and all others similarly situated

18  
19 **DEMAND FOR TRIAL BY JURY**

20 Plaintiff demands a trial by jury on all causes so triable.

21  
22 Dated: September 14, 2009

EAGAN O'MALLEY & AVENATTI, LLP

23  
24 By: 

MICHAEL J. AVENATTI

Attorneys for Plaintiff F. Charles Sands, on behalf of  
26 himself and all others similarly situated  
27  
28