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6 SEE SIGNATURE PAGE FOR ADDITIONAL
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

11 IN RE: LINCOLN MEMORIAL PARK
12 LITIGATION

MASTER CASE NO. BC 133 643
And Related And Consolidated Actions
Honorable Richard L. Fruin

13 THELMA BINFORD, et. al.,

CLASS ACTION

14 Plaintiffs,

**APPLICATION BY CLASS COUNSEL
FOR AN AWARD OF ATTORNEYS'
FEES, REIMBURSEMENT OF
EXPENSES, AND INCENTIVE
PAYMENTS FOR CLASS
REPRESENTATIVES; MEMORANDUM
OF POINTS AND AUTHORITIES; AND
DECLARATION OF MIKE ARIAS IN
SUPPORT THEREOF**

15 vs.

16 LINCOLN MEMORIAL PARK, INC., et al.,

17 Defendants.

Date: April 4, 2005
Time: 1:30 p.m.
Dept: 15

22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on April 4, 2005 at 1:30 p.m. or as soon thereafter as the
24 matter may be heard in Department 15 of the above entitled Court, located at 111 North Hill Street,
25 Los Angeles, California, Class Counsel will move the Court for an Order (1) Granting Class Counsel
26 an award of attorneys' fees and reimbursement of expenses plus interest; and, (2) Approving an
27 Incentive Award to the Representative Plaintiffs. This Application is based on the attached
28

1 Memorandum of Points and Authorities filed in support thereof, the attached Declarations of Mike
2 Arias, Esq., the pleadings and records on file in this action and such oral argument as may be
3 presented at the hearing on this application.

4 Dated: March 31, 2005

ARIAS, OZZELLO & GIGNAC, LLP

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By: _____
MIKE ARIAS
ARNOLD C. WANG
Co-Lead Counsel for Class Plaintiffs

STANBURY FISHELMAN, INC.
GEORGE STANBURY

CAPPELLO & NOEL, LLP
TROY THIELEMANN

LIEFF, CABRASER, HEIMANN &
BERNSTEIN, L.L.P.
MICHAEL W. SOBOL

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

By this Application, Class Counsel, acting on their own behalf and on behalf of the Class Representatives, apply to this Court for:

- (a) An award of attorneys’ fees in the amount of \$371,387.76 and expenses in the amount of \$319,524.53 plus interest thereon; and,
- (b) Approval of an Incentive Awards for the numerous Class Representatives in the total amount of \$65,000.00.

The Cemetery Defendants have agreed not to oppose this application for an award of attorneys’ fees and costs to Class Counsel and the Incentive Awards for the Class Representatives in these amounts. Class Counsel respectfully submit this Memorandum in support of their Application.

As the Court is aware, the settlement of this matter was preliminarily approved by the Court on September 24, 2004. That settlement provides, for the benefit of the Settlement Class, the establishment of settlement fund in the amount of \$1,600,879.25 with approximately \$620,000.00 earmarked for restoration of the cemetery by a Court approved and licensed contractor.

Class Counsel and counsel for Cemetery Defendants thoroughly investigated the facts of this case prior to and following the filing of the Class Complaints and the Model Class Complaint. Additionally, the parties have conducted extensive investigation and informal and formal discovery, including, but not limited to, extensive document review, written discovery, and consultation with experts. Further, Class Counsel and counsel for Cemetery Defendants engaged in substantive settlement discussions. The negotiations have been characterized as extremely hard bargaining and arm’s length negotiations throughout the entire process. The settlement was ultimately reached after settlement conferences were held before the Honorable Carl J. West.

II.

SUMMARY OF CLAIMS AND ALLEGATIONS

A. Background of the Case

The initial Class Action Complaint was filed on August 17, 1995, against Lincoln

1 Memorial Park Cemetery, Hollywood Cemetery Association and over 30 mortuaries. The
2 complexity and nature of these consolidated matters include: five (5) separate Class Actions
3 lawsuits; in excess of 100,000 punitive class members; in excess of 30 individual lawsuits with
4 more than 400 named plaintiffs. At the time of the filing of the lawsuit, Los Angeles County
5 Superior Court had a specific department which heard all Class Action matters, and as such, all
6 of the Class Actions and the Individual actions were assigned to Commissioner Bruce E.
7 Mitchell in Department 59 and were consolidated for pre-trial purposes. On October 15, 1996,
8 the United States Bankruptcy Court ordered that Plaintiffs' Motion For Relief From Automatic
9 Stay be granted for the sole purpose of proceeding with the litigation in state court and further
10 held that the Plaintiffs could proceed to judgment, and that any judgment could be enforced as
11 against the amount of insurance coverage available to the Real Parties in Interest. Following
12 several Demurrers and Motions To Strike, Class Plaintiffs filed their Second Revised Fifth
13 Amended Consolidated Class Action Complaint (the operative complaint) on May 22, 1997.
14 Following a settlement conference with Court of Appeal Justice John Trotter, Ret. in 1998, the
15 Mortuary Defendants settled with the Class Plaintiffs after three years of litigation. After
16 extensive discovery and briefing, the Court on January 19, 2000 certified the Cemetery Class.

17 It is alleged that for at least twelve years, beginning as early as 1983, the owners and
18 employees at Lincoln Memorial Park Cemetery ("Cemetery") engaged in conduct which
19 included the depletion of the Endowment Care Fund, the removal of water lines, the failure to
20 maintain the headstones, the use of headstones as curbstones, the failure to maintain the
21 mausoleum, the failure to maintain the grass, and the failure to maintain the fences. In addition,
22 the owners of the cemetery allegedly failed to maintain the Cemetery as a whole in a dignified
23 and respectful condition.

24 Defendants have denied and continue to deny each and all of the claims and contentions
25 alleged by the Class Plaintiffs, including whether a certifiable litigation class exists.

26 **B. Court Certified Class with 2 Subclasses**

27 The Court, on January 19, 2000, certified the Class with Subclasses defined as:

- 28 1. Maintenance Subclass: (Failure to properly maintain the cemetery); and
2. Encroachment Subclass: (Failure to provide appropriate grave space for

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which Defendants had a duty to provide.

C. Court Certified Causes of Action

The causes of action that were certified by the Court for the Subclasses are:

1. Maintenance Subclass: Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, Negligence and Negligence Per Se.
2. Encroachment Subclass: Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, Negligence and Negligence Per Se.

D. Court Defined Class Membership For Certification Of The Cemetery Class

The Court, in its Certification Order defined the class as follows:

The Following Persons May Be a Member of the Class:

Persons who are or were vested with the right, pursuant to California Health & Safety Code §7100, to control the disposition of the remains of any decedent who was buried at Lincoln Memorial Park Cemetery ("Lincoln"), located at 16701 South Central Avenue, Carson, California;

or

Persons who contracted with Lincoln Memorial Park for funeral or burial services of any decedent interred at Lincoln Memorial Park;

or

Persons who are close family members of any decedent interred at Lincoln; are relatives who lived in the household of the decedent at the time of death; or are qualified individuals with "exceptional circumstances," and who: (a) were aware of the death of the decedent; (b) were aware that funeral or burial services were being performed for the decedent; and (c) were among those on whose behalf or for whose benefit the funeral or burial services were performed.

Each Class member may be a member of the following subclasses:

- (a) All persons as described above, who had a decedent interred at Lincoln Memorial Park prior to August 10, 1995 and whose remains were not disinterred prior to May 29, 1995.
- (b) All persons as described above, who had a decedent buried at Lincoln Memorial Park prior to August 10, 1995.

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E. Court Defined the Class Period

The Court determined the Class Period for each of the Subclasses to be as follows:

1. Maintenance Subclass: The class period for this subclass is from May 29, 1995 through August 10, 1995;
2. Encroachment Subclass: The class period for this subclass is from the date of a burial to August 10, 1995.

F. Notice Was Sent to the Class Members

Notice of the Class Certification was sent to the class members along with an opt-out form. Out of the thousands of potential class members, over 120 plaintiffs filed requests for exclusion from the Class.

G. Court Assigned the Entire Matter to Judge Parkin in May 2001

On May 11, 2001, the court assigned the Class Action and all of the Individual Cases, for all purposes, to Judge Robert Parkin (Ret.) sitting by assignment in Department N of the Los Angeles Superior Court in Compton. On July 13, 2001, Judge Parkin set the Class Action trial for October 2, 2001. On August 2, 2001, at the start of an individual trial, Judge Parkin, in the course of reviewing Motion in Limine No. 4, became aware that the Class Plaintiffs had stipulated to only pursue the Real Parties In Interest's insurance policies. Real Parties In Interest had previously filed for bankruptcy protection in 1996 and since the only assets available to Petitioners are the insurance policies, Judge Parkin opined that the coverage cases should be prosecuted first, even on the eve of the sixth year of the litigation. In doing so, Judge Parkin stayed the Class Action trial and all of the Individual trials until the insurance coverage disputes have been resolved. The underlying cases remained stayed until the Individual Plaintiffs, on the eve of their Declaratory Relief trial in 2003, settled with all of the insurance carriers. Judge Fruin set the trial date for this matter for April 26, 2004, which was continued to June 7, 2004 and then continued to June 21, 2004. This matter was thereafter resolved in a mediation, which resulted in a settlement with the remaining three carriers in the Class Action. On September 24, 2004, this Court preliminarily approved the settlement with the Cemetery Defendants and approved a *cy pres* settlement plan.

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III.

ARGUMENT**A. Class Counsel Are Entitled to an Award of Attorneys' Fees and Reimbursement of Their Expenses Where Their Efforts Have Conferred Substantial Benefits on the Class**

The Supreme Court has long recognized that “a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to reasonable attorney’s fees from the fund as a whole.” *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *See, e.g., Alyeska Pipeline Service Co. v. Wilderness Society* (1975) 421 U.S. 240, 257; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 392; *Central R.R. & Banking Co. of Georgia v. Pettus*, (1885) 113 U.S. 116; *Trustees v. Greenough* (1882) 105 U.S. 527, 532-37; *Camden I Condominium Ass’n v. Dunkle* (11th Cir. 1991) 946 F.2d 768, 771-72.

Courts have long permitted a party preserving or recovering a fund for the benefit of others to recover the party’s costs, including reasonable attorneys’ fees, from the fund itself or from those enjoying the benefit conferred. *See, Alyeska Pipeline Service Co. v. Wilderness Society* (1975) 421 U.S. 240. Thus, it is the recognized rule that “a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys’ fees.” *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. This rule, known as the “common fund doctrine,” is firmly rooted in American case law. *See, e.g., Trustees v. Greenough* (1882) 105 U.S. 527; *Central Railroad & Banking Co. v. Pettus* (1885) 113 U.S. 116.

The purpose of the common fund doctrine is to avoid unjust enrichment and “to spread litigation costs among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent, supra*, 557 F.2d at 769. Otherwise, the beneficiaries would be unjustly enriched. *Florida v. Dunne* (9th Cir. 1990) 915 F.2d 542, 545; *Blum v. Stenson* (1984) 465 U.S. 886; *Paul, Johnson, Alston & Hunt v. Graulity* (9th Cir. 1989) 886 F.2d 268; *Six (6) Mexican Workers v. Arizona Citrus Growers* (9th Cir.1990) 904 F.2d 1301.

The Court in *Paul, Johnson, Alston & Hunt v. Graulity* (9th Cir. 1989) 886 F.2d 268, 271 explained as follows:

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“Since the Supreme Court’s 1885 decision in *Central Railroad & Banking Co. of Ga. v. Pettus*, 113 U.S. 116, S.Ct. 387, 218 L.Ed. 915 (1885), it is well settled that the lawyer who creates a common fund is allowed an extra reward, beyond that which he has arranged with his client, so that he might share the wealth of those upon whom he has conferred a benefit. (Citation omitted). The amount of such a reward is that which is deemed ‘reasonable’ under the circumstances.” (Emphasis added)

As a variation of the common fund doctrine, the state courts of California also recognize the “substantial benefit rule.”¹ Under the substantial benefit rule, an award of attorneys’ fees is justified when a party, proceeding in a representative capacity, obtains a result which creates a "substantial benefit" of a pecuniary or non-pecuniary nature. *Serrano v. Priest* (1977) 20 Cal.3d 25, 38. The substantial benefit theory rests on the principle that those who have been “enriched” at another’s expense should bear their fair share of the cost incurred in producing the benefit. *Save El Toro Ass’n Days* (1979) 98 Cal. App.3d 544, 548. As the California Supreme Court observed as follows:

“In such circumstance, the court, in the exercise of its equitable discretion, thereupon may decree that under dictates of justice those receiving the benefit should contribute to the costs of its production.”

Serrano, supra, 20 Cal.3d at 38.

In this case, there is no dispute among the parties as to the entitlement of Class Counsel to the payment of attorneys’ fees and the reimbursement of expenses plus interest. Similarly, there can be no question that the litigation of this action by Class Counsel resulted in a substantial benefit to the Plaintiff Class. Accordingly, under the substantial benefit rule, this Court should grant the Application by Class Counsel for an award of attorneys’ fees and reimbursement of expenses in the amount requested.

Following the lead of the federal district courts, California courts have employed two different methods for computing appropriate attorneys’ fees in substantial benefit class actions. The first method and the one which has gained more recent support, is to calculate attorneys’ fees as a straight percentage of the value of the settlement.²

¹ The Ninth circuit has found that “Federal and California Law [are] indistinguishable with respect to the substantial benefit doctrine.” *Lewis v. Anderson* (9th Cir. 1982) 692 F.2d 1267, 1270.

² Here, and as discussed in more detail below, Class Counsel seek fees calculated at 30% of the settlement fund.

1 The second method is the "lodestar/multiplier" method. *See, Dunk v. Ford Motor Co.* (1996)
 2 48 Cal. App.4th 1794, 1809 [endorsing use of lodestar/multiplier method where value of settlement
 3 is not a "certain or easily calculable sum of money."] Under this method, attorneys' fees are
 4 calculated by multiplying the number of hours of time expended by the reasonable hourly rates of
 5 the timekeepers to create a "lodestar" and then enhancing the lodestar by a multiplier which accounts
 6 for the risks associated with the case. As the Ninth Circuit recognized in *Paul, Johnson, Alston &*
 7 *Hunt*, "either method [percentage of the settlement or lodestar/ multiplier] may, depending upon the
 8 circumstances, have its place in determining what would be reasonable compensation for creating
 9 a common fund." *Paul, Johnson, Alston & Hunt* 886 F.2d at 272.

10 **B. The Attorneys' Fees and Expenses Requested by Class Counsel Are a Reasonable**
 11 **Percentage of the Value of the Settlement**

12 **1. The Amount Of The Requested Fee Is Reasonable**

13 The expert or leading authority on class action litigations *Newberg on Class Actions* (4th Ed.,
 14 pg. 63-64), stated as follows:

15 "[W]hen defendants agree to settle with the class for a certain sum and,
 16 in addition, to pay class counsel's attorneys' fees in a sum to be
 17 determined by the court up to a specified limit to which the defendants
 18 will not object, the court may conditionally approve that arrangement
 19 subject to any objections raised by class members at the settlement
 20 hearing.³ Generally, an evidentiary hearing for fee determination is
 21 obviated in a common fund case if no class members object to the level
 22 of fees requested and class counsel furnishes sufficient underlying
 23 factual data to permit the court to make a reasonable fee award."⁴

24 This is precisely what is taking place in the present action. The Cemetery Defendants have agreed
 25 not to oppose Class Counsels' Fee and Expense Application in the amount of \$690,912.29.
 26 If Class Counsels' fee request is analyzed as a percentage of the value of the settlement, then the
 27 amount of attorneys' fees sought is clearly reasonable. At the time of the distribution of the Notice
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3 *Newberg* citing *Prandini v. National Tea Co.*, (3rd Cir. 1977) 577 F.2d 1015 (Prandini I) (disapproved of by, *Evans v. Jeff D.* (1986) 475 U.S. 717; and, (overruling recognized by, *Ashley v. Atlantic Richfield Co.* (3rd Cir. 1986) 794 F. 2d 128; and (overruling recognized by, *Lake v. First Nationwide Bank* (E.D. Pa. 1994) 156 F.R.D. 615; and (overruling recognized by, *In re FPI/Agretech Securities Litigation*, (9th Cir. 1997) 105 F. 3d 469; and, (overruling recognized by, *Collier v. Montgomery County Housing Authority* (E.D. Pa. 2000) 192 F.R.D. 176.

4 *Estien v. Christian* (3rd Cir. 1975) 507 F.2d 61, 64: "[t]he information necessary to apply the above fee standards can be supplied by affidavits, stipulations or a hearing.." *See also*, *Newberg* Chapter 11:29 fn. 9 citing *Estien*.

1 of Proposed Settlement of Class Action, each member of the Class was notified that Class Counsel
2 intended to seek an award of attorneys' fees and reimbursement of expenses, which were advanced
3 in this Action, plus interest thereon in the amount of \$699,000.00. All of the expenses were
4 necessary and reasonably related to protecting the interests of the Class and should be reimbursed.
5 (See, Declaration of Mike Arias ¶3.)

6 To date, the attorneys' fees incurred in this matter by all Class Counsel total over
7 \$2,800,000.00. And the expenses reasonably related to protecting the interest of the Class total
8 \$319,524.53. Although Class Counsel have incurred actual fees totaling over \$2,800,000.00, Class
9 Counsel have agreed to discount that amount and thereby seek only \$371,387.76 in attorneys' fees,
10 which is 30% of the settlement fund. See, Arias Decl. at ¶3.

11 2. The Contingent Nature of the Representation

12 From the outset to the present, prosecution of this action has involved significant financial
13 risk for Class Counsel. Each Class Counsel undertook this matter solely on a contingent basis, with
14 no guarantee of recovery and once counsel undertook this litigation on behalf of the Class, they
15 committed to pursue it to its conclusion. See, Arias Decl. at ¶3.

16 The commencement and prosecution of class action litigation is an inherently high risk
17 proposition due to: (1) the contingent nature of Class Counsels' representation; and (2) the great
18 barriers to achieving success on the merits posed by procedural issues unique to class action
19 litigation. As a result, some courts have recognized that the contingent nature of the attorneys' fees
20 is an important factor to be considered in determining the appropriateness of a requested fee. See,
21 Detroit v. Grinnell Corp. (2d Cir. 1974) 495 F.2d 448, 470.

22 Courts have long recognized that [class action litigation] "is notably difficult and notoriously
23 uncertain." Lewis v. Newman (S.D.N.Y. 1973) 59 F.R.D. 525, 528. Despite the most vigorous and
24 competent efforts of Class Counsel, success on the merits is never guaranteed. When success is
25 achieved, a substantial award is warranted. As the court recognized in McKittrick v. Gardner (4th
26 Cir. 1967) 378 F.2d 872, 875:

27 "The effective lawyer will not win all of his cases, and any determination
28 of the reasonableness of his fees in those cases in which his client
prevails must take account the lawyer's risk of receiving nothing for his
services. Charges on the basis of a minimal hourly rate are surely
inappropriate for a lawyer who has performed creditably when payment

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of any fee is so uncertain.”

See also, Meshel v. Nutri/System, Inc. (E.D. Pa. 1984) 102 F.R.D. 135, 140 [”The contingent nature of the fee must be taken into account by us in fixing the final fee.”]

California courts have also held that the agreement of the named plaintiffs to enter a contingency fee arrangement for the benefit of the class they represent is another factor in the requested attorney fee award. *See, Glendora Community Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465.

Class Counsel’s representation in the present action was contingent upon their ability to recover Class Plaintiffs’ damages in an amount beneficial to the Plaintiff Class. Having achieved such a result, Class Counsel should receive a percentage of the fund for their efforts as they pursued this litigation on a purely contingent basis, bearing all of the risk, not only for their time but also for the costs they incurred on behalf of the Class. Additionally, Class Counsel invested significant time and money in this litigation, with a significant risk of little or no recovery, forgoing alternative work, and as a result secured a recovery for the Class.

3. The Benefits Achieved for the Class

Courts consistently have recognized that the benefits achieved for the class upon whose behalf the action was brought is a major factor to be considered in evaluating the reasonableness of attorneys’ fees. As the court explained in *In re King Resources Co. Securities Litigation* (D. Col. 1976) 420 F. Supp. 610, 630:

“While other factors are of substantial importance in determining reasonable attorney fees, the amount of the recovery, and end result achieved are of primary importance, for these are the true benefit to the client.”

As discussed above, substantial benefits have been achieved for the Class. Class Counsel should be rewarded for producing those results with a minimum of wasted effort.

4. Experience, Reputation and Ability of Counsel

As demonstrated by their past experience in pursuing class actions on behalf of consumers, Class Counsel possess considerable expertise in litigating class action matters. The law firm of Arias, Ozzello & Gignac, LLP has been involved as lead counsel, liaison counsel, or co-counsel in well over 100 class actions. The other three co-lead counsel law firms, Stanbury Fishelman, Inc.,

1 Cappello & Noel, LLP, Lieff, Cabraser, Heimann & Bernstein, L.L.P., have each handled numerous
 2 class actions during the past ten years. *See*, Arias Decl. at ¶2.

3 The quality of opposing counsel is also a factor to be considered in evaluating the work
 4 performed by Class Counsel. *In re King Resources Co. Securities Litigation, supra.* at 634; *Arenson*
 5 *v. Board of Trade* (N.D. Ill. 1974) 372 F. Supp, 1349, 1354. In this action, the Mortuary Defendants
 6 were represented by a myriad of experienced and highly-skilled attorneys, and the Cemetery
 7 Defendants were also represented by experienced counsel.

8 **5. Factors Considered By California Courts**

9 Whether relying on the percentage or loadstar method for determining a fee award in Class
 10 Actions, California courts consider the same basic factors. Each factor is considered as appropriate.
 11 *See, Department of Transportation v. Yuki* (1995) 31 Cal. App. 4th 1754, 1771. The relevant factors
 12 include: (1) the result Class Counsel obtained; (2) the time and labor required of the attorneys; (3)
 13 the contingent nature of the case and the delay in payment to Class Counsel; (4) the extent to which
 14 the nature of the litigation precludes the other employment by Class Counsel; (5) the experience,
 15 reputation and ability of the attorneys who performed the services, the skill they displayed in the
 16 litigation, and the novelty, complexity and difficulty of the case; and (6) the informed consent of the
 17 clients to the fee agreement. *See also, Serrano v. Priest* (1977) 20 Cal. 3d. 225, 49; *Dunk v. Ford*
 18 *Motor Co.* (1996) 48 Cal. App. 4th 1794, 1810 fn.21; *Glendora, supra*, 155 Cal.App.3d at 474. All
 19 the above factors are present in the instant matter.

20 **C. Class Counsel Request an Incentive Award Payment**

21 Class Counsel request an incentive award for the Class Representatives for the Cemetery⁵
 22 and for the Mortuary⁶ as they aided not only class counsel, but the entire class. Courts have
 23 recognized that Class Representatives should be awarded compensation for consulting work with

24 _____
 25 ⁵ Joetta D. Brown, Tracy Moore, Solisa Matthews-Sherrills, Dalina Miller, Regina Winston, Thelma
 Binford, and Emma Smith. *See*, Arias Decl., at ¶4.

26 ⁶ Delina Miller, Robbie Keys, Herman Mitchell, Audrey Smith, Virgie Simon, Sharon Holloway, Rose
 27 Johnson, Willie Hunter, Frankie Bates, Juantia Cullen Austin, Ida McGowan, Bernice Wimbley,
 Dorothy Jones, Esther Allen, Claudia Washington, Rosa Cook, Tonette Brown, Anita Adams, Carolyn
 28 Reeves, Roosevelt Hudson, Albert Moore, Regina Winston, Lorena Smith, Solisa Matthews-sherrills,
 Louis Barber, Ruby L. Jones, Bessie Williams, Dora Daniel, Cheryl A. Hester, and Geraldine Brooks.
See, Arias Decl., at ¶5.

1 Class Counsel or otherwise should receive an incentive payment for undertaking the burdens of a
2 Class Representative for the benefit of the Class. The Court in Brotherton v. Cleveland, M.D., et al.
3 (2001) 141 F. Supp.2d 907, 913 recognized that courts routinely approve incentive awards to
4 compensate named plaintiffs for the services they provided and the risks they incurred during the
5 course of the class action litigation. The decision to award incentive payments to the Class
6 representatives is within the trial court's discretion. See, In re Mego Financial Corp. Securities
7 Litigation (9th Cir. 2000) 213 F.3d 454, 462. The Class Representatives in both the Cemetery and
8 Mortuary sub-classes have devoted a significant amount of their time in assisting Class Counsel both
9 in the prosecution of this matter, and the settlement process. By way of example:

- 10 • Each of the cemetery and mortuary class representatives responded to pre-certification
11 discovery. That discovery included over 1,200 special interrogatories and over 500
12 requests for production of documents.
- 13 • Each of the cemetery and mortuary class representatives submitted to a deposition that
14 lasted at least a day and in some instances two days.
- 15 • Each of the cemetery class representatives responded to post-certification discovery,
16 that discovery included 836 special interrogatories, 207 requests for production of
17 documents and 68 requests for admissions.
- 18 • Each of the cemetery class representatives attended numerous conferences with class
19 counsel in preparation for the motion for class certification, and prior to each of the
20 numerous settlement conferences.
- 21 • Each of the cemetery class representatives participated in conference calls prior to the
22 motion for preliminary approval and attended, in person, or telephonically, the hearing
23 regarding the motion for preliminary approval of the cemetery settlement.

24 See, Arias Decl., at ¶6.

25 Therefore, it is requested that an incentive award in the amount of \$1,000.00 be awarded
26 to each of the 30 Mortuary Class Representatives and an amount of \$5,000.00 to be awarded to
27 each of the seven Cemetery Class Representatives, for a total of \$65,000.00 in incentive
28 payments to the class representatives. See, Arias Decl., at ¶7.

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IV.

CONCLUSION

For all the foregoing reasons, and on the basis of the authorities cited herein, Class Counsel respectfully request that the Court grant this Application in its entirety.

Dated: March 31, 2005

ARIAS, OZZELLO & GIGNAC, LLP

By: _____

MIKE ARIAS
ARNOLD C. WANG
Co-lead counsel for Class Plaintiffs

STANBURY FISHELMAN, INC.
GEORGE STANBURY

CAPPELLO & NOEL, LLP
TROY THIELEMANN

LIEFF, CABRASER, HEIMANN &
BERNSTEIN, L.L.P.
MICHAEL W. SOBOL

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DECLARATION OF MIKE ARIAS

I, MIKE ARIAS, declare:

1. I am an attorney at law, duly licensed to practice before all courts in the States of California, New York, New Jersey and the District of Columbia. I am a partner in the firm of Arias, Ozzello & Gignac, LLP. I am co-lead counsel for the Class in this matter. I am personally familiar with the matters stated herein and if called upon to testify, I could and would testify accordingly.

2. The partners of Arias, Ozzello & Gignac, LLP have been engaged in the representation of plaintiffs class action lawsuits in the insurance, employment, banking, securities, consumer fraud, antitrust, toxic and other cemetery/mortuary fields since 1990. During that time, our firm has been involved in the representation of plaintiffs in more than 100 different class action cases and has been certified to act as Class Counsel both in the Superior Court of the State of California and in federal district courts of various jurisdictions throughout the country. A complete narrative of our firm's qualifications may be viewed at www.aogllp.com. The other three co-lead counsel law firms, Stanbury Fishelman, Inc., Cappello & Noel, LLP, Lieff, Cabraser, Heimann & Bernstein, L.L.P., have each handled numerous class actions during the past ten years.

3. Class Counsel have spent thousands of hours prosecuting this matter. I have reviewed each of the summary fee reports that were submitted to me by each Class Counsel for the attorneys and legal personnel who worked on the case, and I have also reviewed each of their expense reports. To date the combined attorneys' fees in this matter by Class Counsel total over \$2,800,000.00 and expenses incurred by class counsel total \$319,524.53. Although Class Counsel have incurred actual fees totaling over \$2,800,000.00, Class Counsel have agreed to discount that amount and thereby seek only \$371,387,76 in attorneys' fees and expenses in the amount of \$319,524.53.

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4. There are 10 Cemetery Class Representatives that aided not only the attorneys, but the entire class. The Class Representatives in this matter are Joetta D. Brown, Tracy Moore, Solisa Matthews-Sherrills, Dalina Miller, Regina Winston, Thelma Binford, and Emma Smith

5. There are 30 Mortuary Class Representatives that aided not only the attorneys, but the entire class. The Class Representatives in this matter are Delina Miller, Robbie Keys, Herman Mitchell, Audrey Smith, Virgie Simon, Sharon Holloway, Rose Johnson, Willie Hunter, Frankie Bates, Juantia Cullen Austin, Ida McGowan, Bernice Wimbley, Dorothy Jones, Esther Allen, Claudia Washington, Rosa Cook, Tonette Brown, Anita Adams, Carolyn Reeves, Roosevelt Hudson, Albert Moore, Regina Winston, Lorena Smith, Solisa Matthews-sherrills, Louis Barber, Ruby L. Jones, Bessie Williams, Dora Daniel, Cheryl A. Hester, and Geraldine Brooks.

6. The Class Representatives in both the Cemetery and Mortuary sub-classes have devoted a significant amount of their time in assisting Class Counsel both in the prosecution of this matter, and the settlement process. By way of example:

- (a) Each of the cemetery and mortuary class representatives responded to pre-certification discovery. That discovery included over 1,200 special interrogatories and over 500 requests for production of documents;
- (b) Each of the cemetery and mortuary class representatives submitted to a deposition that lasted at least a day and in some instances two days;
- (c) Each of the cemetery class representatives responded to post-certification discovery, that discovery included 836 special interrogatories, 207 requests for production of documents and 68 requests for admissions;
- (d) Each of the cemetery class representatives attended numerous conferences with class counsel in preparation for the motion for class certification, and prior to each of the numerous settlement conferences; and,

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(e) Each of the cemetery class representatives participated in conference calls prior to the motion for preliminary approval and attended, in person, or telephonically, the hearing regarding the motion for preliminary approval of the cemetery settlement.

7. Therefore, it is requested that an incentive award in the amount of \$1,000.00 be awarded to each of the 30 Mortuary Class Representatives and an amount of \$5,000.00 to be awarded to each of the seven Cemetery Class Representatives, for a total of \$65,000.00 in incentive payments to the class representatives.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21st day of March, 2005, at Los Angeles, California.

MIKE ARIAS
Declarant