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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

11 IN RE: LINCOLN MEMORIAL PARK
LITIGATION
12
13 THELMA BINFORD, et. al.,
Plaintiffs,
14
15 vs.
16 LINCOLN MEMORIAL PARK, INC., et al.,
Defendants.
17
18 AND RELATED AND CONSOLIDATED
ACTIONS

MASTER CASE NO. BC 133 643
Honorable Richard L. Fruin

CLASS ACTION
NOTICE OF ORDER APPROVING
NOTICE OF CLASS ACTION
SETTLEMENT

19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE THAT: on February 7, 2005, the Court entered an Order
21 approving the Notice of Class Action Settlement. A copy of the Court's Order is attached hereto.

22 DATED: February 10, 2005

23 ARIAS, OZZELLO & GIGNAC, LLP


24 By: _____
25 MIKE ARIAS
26 MARK A. OZZELLO
27 ARNOLD C. WANG
28 Attorneys for Sherrills Class Plaintiffs
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ORIGINAL FILED
FEB - 7 2005
LOS ANGELES
SUPERIOR COURT

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

13 IN RE: LINCOLN MEMORIAL PARK
14 LITIGATION

15 THELMA BINFORD, et. al.,
16 Plaintiffs,

17 vs.

18 LINCOLN MEMORIAL PARK, INC., et al.,
19 Defendants.

20 AND RELATED AND CONSOLIDATED
21 ACTIONS

22 MASTER CASE NO. BC 133 643
23 Honorable Richard L. Fruin

24 **CLASS ACTION**

25 **ORDER APPROVING NOTICE OF
26 CLASS ACTION SETTLEMENT**

27 Date: February 7, 2005
28 Time: 3:00 p.m.
Dept: 15

29 The Court held a hearing regrading the Notice of Class Action Settlement in the above-
30 referenced matter on February 7, 2005. The Court, having reviewed and considered the Notice of
31 Class Action Settlement, hereby approves the Notice of Class Action Settlement, which is attached
32 hereto as Exhibit "A."

33 **IT IS SO ORDERED.**

34 Dated: February 7, 2005

35 
36 HONORABLE RICHARD L. FRUIN
37 JUDGE OF THE SUPERIOR COURT

EXHIBIT "A"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

IN RE: LINCOLN MEMORIAL PARK LITIGATION

LEAD CASE NO. BC 133 643

THELMA BINFORD, et al., on behalf of themselves
and all others similarly situated and as private attorneys
general on behalf of the general public,
Plaintiffs,

NOTICE OF CLASS ACTION
SETTLEMENT

v.
LINCOLN MEMORIAL PARK, et al.,
Defendants.

TO: ALL PERSONS RELATED TO INDIVIDUALS BURIED AT LINCOLN MEMORIAL PARK AND ALL PERSONS WHO CONTRACTED FOR SUCH BURIALS

THIS NOTICE MAY AFFECT YOUR RIGHTS -- PLEASE READ IT CAREFULLY

I. WHY SHOULD I READ THIS NOTICE

The purpose of this Notice is to inform you that your rights may be affected by the proceedings in a class action lawsuit pending in the Los Angeles County Superior Court in the State of California (the "Court"). This Notice is provided by Order of the Court.

A class action lawsuit is now pending on behalf of relatives of individuals buried at Lincoln Memorial Park ("Lincoln"), which is located at 16701 South Central Avenue, Carson, California.

The class action lawsuit alleges that defendants: (a) failed to maintain the cemetery; and, (b) improperly allowed the encroachment of grave spaces by subsequent burials.

The defendants deny that any of these allegations are true or that members of the settlement class have been injured or are entitled to any damages. The settlement does not constitute an admission of liability by any of the defendants. The Court has not yet ruled, one way or the other, on the merits of plaintiffs' claims.

A settlement has now been reached with former owners of Lincoln, and the Court has granted preliminary approval to the settlement. The total amount of the Settlement Fund is \$1,650,879.25, which will help pay for costs of the litigation, attorneys' fees, claims administration, and other expenses associated with this matter. The remaining portion of the Settlement Fund will be used for substantial repairs, improvements, and restoration of Lincoln, instead of being distributed to individual members of the settlement class. Since this litigation involves Defendants' alleged failure to maintain the cemetery, it is appropriate that the Settlement Fund be used for the restoration of the cemetery grounds.

This Notice summarizes essential information concerning the settlement and your potential rights under the settlement. The fact that you are receiving this Notice does not necessarily mean that you are a member of the settlement class or that you are entitled to any benefits.

II. AM I A MEMBER OF THE SETTLEMENT CLASS

The settlement class, as defined by the Court, includes the following:

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, 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 Memorial Park; 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.

III. WHAT IS A CLASS ACTION?

A class action is a type of lawsuit in which one or a few named plaintiffs bring suit on behalf of all the members of a similarly-situated group to recover damages for all members of the group without the necessity of each member filing an individual lawsuit or appearing as an individual plaintiff. Class actions are useful in courts where the claims raise basic issues of law or facts that are common to all members of the class, thereby making it fair to bind all class members to the orders and the judgment in the case, without the necessity of hearing essentially the same claims over and over. Use of the class action eliminates the necessity of filing multiple lawsuits, and assures that all class members are bound by the results of a single lawsuit.

IV. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT

The Court has granted preliminary approval to the proposed settlement. The settlement has not yet been granted final approval by the Court. Final approval will take place only after a fairness hearing, at which class members will have an opportunity to comment on the proposed settlement. The Court has set a fairness hearing for April 4, 2005 at 1:30 p.m. in Department 15 of the Los Angeles Superior Court, located at 111 North Hill Street, Los Angeles, California.

The proposed settlement makes available up to approximately \$675,000.00 in potential benefits to address claims relating to Lincoln. The money will go toward a limited restoration of the cemetery by a Court-approved and licensed contractor. Subject to certain terms and conditions, the proposed settlement provides the following potential benefits:

1. Full restoration of the roadways of the cemetery, which would include repairs of all cracks and complete slurry coat from entrance to exit;
2. Re-seeding of the entire cemetery grounds with perennial seed;
3. New fencing around the cemetery perimeter where existing fence is inadequate (on the north, west, and south sides of the cemetery), including ivy to be put on the newly installed fence area and also on the existing fence area where needed;
4. New wrought-iron fences to be installed above the cement wall on the east side of the cemetery, approximately sixteen lineal feet by six feet high with meshing, to prevent animals from entering; and,
5. New entrance sign which states the name of the memorial park.

In exchange for the benefits described above, members of the settlement will be deemed to have given a complete release and/or assignment as to all of their claims arising from Lincoln. If the Court grants final approval to the settlement, the Court will enter a final judgment and dismiss all such claims with prejudice.

V. CAN I EXCLUDE MYSELF (OR OPT OUT) FROM THE SETTLEMENT CLASS

Notice was mailed, published in the Los Angeles Times, the LA Sentinel and the Wave and posted at the cemetery in March of 2000. The Notice provided the following:

"If you remain in the Class, and do not request exclusion as explained below, you will be bound by any and all determinations or judgments in the litigation, whether favorable or unfavorable to the Class, including any judgment ultimately rendered in the action If you do not wish to be included in the Class, you may request to be excluded. To do so, you must send the enclosed Exclusion Form postmarked no later than May 26, 2000."

If you did not opt-out of the Class by May 26, 2000, you will be bound by any and all determinations or judgments in the litigation.

VI. CAN I OBJECT TO THE CLASS SETTLEMENT

If you are member of the settlement class, you may appear at the appropriate hearing and/or file a written statement, commenting on or objecting to the proposed settlement. Any written comments or objections must be in the form of a statement sworn to under penalty of perjury. The statement must include your name and address (the name and address of your attorney, if you have one, is insufficient), the name of the decedent involved, and the basis of your comments or objections. All comments or objections must be filed with the Clerk of the Los Angeles Superior Court in Department 15, located at 111 North Hill Street, Los Angeles, California, 90012 and mailed to the counsel below:

Counsel for Settlement Class
Mike Arias, Esq.
Arias, Ozzello & Gignac, LLP
6701 Center Drive West
Suite 1400
Los Angeles, California 90045
www.aogllp.com

To be timely, your comments or objections must be filed with the Court and postmarked on or before March 29, 2005. If you do not file an objection in this manner and by this deadline, you will waive your right to object. You may choose to engage the services of an attorney, at you own expense, to pursue your objection, in which case your attorney must file a notice of appearance with the Court by March 29, 2005, and mail copies to class counsel listed above.

If the settlement is not approved by the Court or is later reversed on duly noticed appeal, the benefits provided by the settlement will not be provided, and you will not be bound by the releases in that settlement, and the lawsuit will proceed in Court as active litigation.

VII. WHO REPRESENTS THE SETTLEMENT CLASS

Joetta D. Brown, Tracy Moore, Solisa Matthews-Sherrills, Dalina Miller, Regina Winston, Thelma Binford, and Emma Smith are the Class Representatives for the Cemetery Class who have represented the interests of class members over the course of this litigation. These plaintiffs all are related to decedents buried at Lincoln.

The representative plaintiffs and the settlement class are represented by Mike Arias, Esq., Arias, Ozzello & Gignac, LLP; George Stanbury, Esq., Stanbury Fishelman, Inc.; Troy Thielemann, Esq., Cappello & Noel, LLP; Michael W. Sobol, Esq., Loeff, Cabraser, Heimann & Bernstein, LLP.

VIII. WHAT FEES AND COSTS ARE INVOLVED

If eligible, members of the settlement class may participate without incurring any legal fees. In connection with the final approval hearing on April 4, 2005, settlement class counsel will make a request to the Court for attorneys' fees of approximately \$387,000.00 and costs award of approximately \$312,000.00 on or before March 21, 2005. Also, settlement class counsel will make a request to the Court for an incentive award, not to exceed an aggregate total of \$65,000.00, for the Class Representatives for the Cemetery Class listed in Section VII as well as for each of the Class Representatives for the Mortuary Class for their representation of the class throughout this litigation. The requests for attorneys' fees and costs and the incentive awards are subject to Court approval. If the Court reduces or disapproves any portion of the attorneys' fees, costs or incentive awards, those funds will go toward the restoration of the cemetery.

To date, settlement class counsel have not received any payment for their services in conducting this action on behalf of the representative plaintiffs and the members of the settlement class, nor have counsel been reimbursed for their out-of-pocket expenses. The requested attorneys' fees will compensate counsel for their efforts in achieving the settlement for the benefit of the settlement class and for their risk in undertaking this representation on a wholly contingent basis.

IX. HOW DO I OBTAIN ADDITIONAL INFORMATION

This Notice is intended only to provide a summary of the circumstances surrounding the litigation, the terms of the proposed settlement, and related matters. You may seek the advice and guidance of your own private attorney, at your own expense, if you desire. For more detailed information, you may review the pleadings, records, and other papers on file in this litigation, which may be inspected during regular business hours at the Clerk's office, Los Angeles County Superior Court, located at 111 North Hill Street, Los Angeles, California. You may review the Motion for Preliminary Approval; the Order preliminarily approving the settlement; the Motion for Attorneys' Fees, Costs and Incentive Awards; and, the settlement agreement by logging onto www.dmaclaction.com or upon written request to Settlement Class Counsel. You may review Class Counsel's Motion for Attorneys' Fees, Costs and Incentive Awards after March 21, 2005

by logging onto www.dmaaction.com. You may also call (310) 216-7180 to obtain additional information regarding the settlement. You will not receive any further notice in the event that the settlement is approved and/or is terminated or modified under the terms of the settlement agreement.

PLEASE DO NOT ADDRESS QUESTIONS OR REQUESTS FOR INFORMATION TO THE COURT.

DATED: February 7, 2005

HONORABLE RICHARD L. FRUIN, JR.
LOS ANGELES COUNTY SUPERIOR COURT JUDGE

ARIAS, OZZELLO & GIGNAC, LLP

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of eighteen and am not a party to the within action; my business address is 6701 Center Drive West, Suite 1400, Los Angeles, California 90045.

On **February 15, 2005**, I served the foregoing document described as: **NOTICE OF ORDER APPROVING NOTICE OF CLASS ACTION SETTLEMENT** on the interested parties in this action by transmitting [] the original [✓] a true copy thereof as follows:

SEE ATTACHED SERVICE LIST

[] **(BY FAX)** I hereby certify that this document was served by facsimile delivery on the parties listed herein at their most recent fax number of record in this action on _____.

[] **(BY FEDERAL EXPRESS)** I am "readily familiar" with this firm's practice of collection and processing correspondence for express mailing. Under that practice, Federal Express packages are enclosed in a sealed envelope with a packing slip attached thereto with postage thereon fully prepaid. The packages are deposited in the office of the building for Federal Express pickup in the ordinary course of business.

[✓] **BY E-MAIL:** I hereby certify that this document was served by e-mail delivery on the parties listed herein at their most recent e-mail of record in this action on **February 15, 2005**, from Los Angeles, California.

[] **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee named herein.

[] **(BY MAIL), as follows:** I deposited the envelopes for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, the sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business, with postage thereon fully prepaid at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **February 15, 2005**, at Los Angeles, California.

Rosario Mostorino
Type or Print Name


Signature

IN RE: LINCOLN MEMORIAL PARK
THIRTEENTH AMENDED MASTER SERVICE LIST
Revised: May 17, 2004

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