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LOS ANGELES
SUPERIOR COURT

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

IN RE: WOODLAWN MEMORIAL PARK
LITIGATION

CASE NO. BC 227267

Judge: Honorable Peter D. Lichtman
Mediator: Honorable Victoria G. Chaney

SANDRA D. LINDSEY, LYNDA S.
STALLWORTH, RAY C. HAWTHORNE,
MARTIN KRATT, VONSHEENA
FLANNAGAN, HELEN KROG, LESSIE
BROWN, TRAVISTINE WHEELER,
DEBRA GARCIA, on behalf of themselves
and all others similarly situated and as private
attorneys general on behalf of the general
public,

**ORDER CONDITIONALLY
CERTIFYING SETTLEMENT
CLASSES AND GRANTING MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Plaintiffs,

v.

WOODLAWN MEMORIAL PARK; an
unknown California business entity; et al.,

Defendants.

1 On October 8, 2003, this Court conducted a preliminary approval hearing to
2 evaluate the proposed settlement agreement ("Settlement Agreement") between the proposed
3 Settlement Class (as defined herein) and Sunset Cemetery Association, Montgomery
4 Management Co., Francis Montgomery II, Evergreen Memorial Care, Inc. (dba Woodlawn
5 Memorial Park), and Glenn Wong (collectively, the "Parties"). Mike Arias, Alvin L. Pittman,
6 Phillip A. Bucknor, Jr., James M. Kenna, and Douglas C. Wicks appeared on behalf of the
7 proposed Consolidated Settlement Class. Jeffrey E. Zinder, Paul R. Ayers, and Jeffrey L.
8 Richardson appeared on behalf Evergreen and/or Mr. Wong. Craig R. Breitman appeared on
9 behalf of Sunset Cemetery Association, Montgomery Management Co., and Francis Montgomery
10 II. Jeffrey P. Spencer appeared on behalf of the Hayes and Green plaintiffs. Andrew J.
11 Spielberger appeared on behalf of the Lewis and Anderson plaintiffs. Kathleen M.K. Carter
12 appeared on behalf of Hobbs-J.S. Williams Mortuary. Lee E. Burrows appeared on behalf of
13 Steel Mortuary, Inc. and Harrison-Ross Funeral Home, Inc. Paul Ash appeared on behalf of
14 Willie F. Houston dba Peoples Funeral Home and Adams Funeral Home. Felicia Ford specially
15 appeared.

16 This Court has carefully considered the propriety of conditional certification of
17 the proposed Settlement Class and the Parties' joint request for preliminary approval of the
18 Settlement Agreement set forth in the motion for preliminary approval filed with this Court.
19 The Court has presided over numerous hearings and ruled on numerous motions presented to it.
20 The Court is fully informed and in a position to weigh and evaluate, has weighed and evaluated,
21 and will continue to weigh and evaluate, the claims and defenses, the procedural and substantive
22 barriers to trial and verdict, and the value of the claims for settlement purposes.

23 Upon the pending motion for preliminary approval, this Court, having read, heard,
24 and considered all papers, pleadings, arguments, and evidence submitted, and good cause
25 appearing therefore, now finds and orders as follows:
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FINDINGS

1. Conditional certification for settlement purposes of the proposed Settlement Class defined herein and in the Settlement Agreement is appropriate under California Code of Civil Procedure Section 382 and Federal Rule of Civil Procedure 23(a)(1)-(4). In light of the settlement, and for purposes of the determination of preliminary approval of the settlement, the Court makes the findings set forth herein.

2. The Settlement Agreement is clearly within the range of possible approval as fair, reasonable, and adequate. The Agreement appears at this stage to be the product of arm's-length, serious, informed, non-collusive, and non-overreaching negotiations, which followed vigorously-contested litigation.

3. In evaluating the propriety of the proposed Settlement Class, the Court notes the existence of substantial discovery and investigation. Class Counsel conducted informal and formal discovery and extensive investigations, including written discovery, extensive document review, site inspections, and consultations with experts. Class Counsel also participated in the deposition of investigator Dan Redman of the DCA and reviewed the DCA reports prepared by Mr. Redmond and Shirley Moody, which reports contained information (in text and exhibits) regarding the nature and extent of the alleged wrongdoing at the cemetery. The reviewed DCA reports also included contained statements obtained from cemetery owner Mr. Wong and cemetery employees Regina Bausley and Roilando Sanchez and findings by the Riverside County deputy coroner of the archaeological dig at certain parts of the cemetery. Class Counsel also reviewed thousands of pages of documents from the State of California regarding the operations of the cemetery. This Court conducted videotaped site inspections at the cemetery on June 14, 2000 and on March 29, 2001. The June 14 inspection included an examination of each and every headstone. The March 29 inspection included a walk-through and deposition testimony by Mr. Redmond.

4. This Court has continued to supervise the preliminary restoration efforts at the cemetery and all counsel have received reports concerning the efforts at uncovering markers and the discovery of any suspected artifacts. Log books have been maintained and present at

1 each status conference of all the probing and repairs done at the cemetery. This procedure
 2 provided all counsel with an ongoing diary of the events and circumstances at cemetery since the
 3 imposition of the stay on formal discovery.

4 5. None of the criticisms by the objectors (the "Objectors") warrant the denial
 5 of preliminary approval.¹

6 A. The Objectors suggest that actual payments under the settlement
 7 can range from nearly \$5 million (if 6,000 claims are submitted)² to more than
 8 \$16.5 million (if 50,000 or more claims are submitted). But that is the function of
 9 claims-made settlements. That frequently-used structure is neither illusory nor
 10 unfair. In many ways, the claims-made structure is more equitable than fixed-sum
 11 "walkaway" class settlements.

12 B. The Objectors suggest that the option to convert the comprehensive
 13 settlement to a restoration-only settlement is unfair. Specifically, they contend the
 14 modified release (in a restoration-only settlement) disposes of class claims that are
 15 entirely unrelated to the restoration. The Objectors misread the Settlement
 16 Agreement. Section 8.7.2 of the Agreement expressly states that, in the event of
 17 modification, the scope of the "Settled Claims" shall be changed and limited to
 18 claims that relate to "any purported obligation or duty by Defendants and/or
 19 Defendants' Insurers to clean up, restore, or maintain Woodlawn." Despite the
 20 Objectors' suggestions to the contrary, in a restoration-only settlement, all other
 21 class claims remain viable (and presumably will be prosecuted by Class Counsel).

22 C. The Objectors suggest that Class Counsel will discourage the
 23 submission of more than 6,000 claims, but they offer no supporting evidence.
 24 Moreover, that suggestion ignores this Court's role in approving the notice

25
 26 ¹ This Court observes that the Objectors may or may not have standing.

27 ² This amount consists of \$2.7 million (for 6,000 approved claims), \$1.35 million
 28 (maximum requested attorneys' fees and costs), \$548,000 (for restoration), \$150,000 (for notice
 and administration), and \$90,000 (maximum incentive payments).

1 program. Pursuant to the terms of the settlement and this Order, the settling
2 parties will file a motion for approval of the notice program set forth in the
3 Agreement. In connection therewith, this Court will independently evaluate the
4 sufficiency of the proposed notice program. There is no opportunity for Class
5 Counsel to discourage claims, much less any evidence that they would even try to
6 do so.

7 D. The Objectors suggest that, if 50,000 claims are received, each
8 class member will receive only \$31.00. The Objectors misread the Settlement
9 Agreement. Section 10.6.8 permits the conversion of the claims made fund to a
10 common fund "if the number of approved claims is between 10,000 and 20,000."
11 If 50,000 claims were received -- which is not between 10,000 and 20,000 --
12 Section 10.6.8 would not apply, and there would be no conversion.

13 E. If a common fund is created, the Objectors presume that the
14 attorneys' fees will be deducted from that fund. The Objectors misread the
15 Settlement Agreement. The award of Class Counsel's attorneys' fees and costs is
16 not paid from the common fund.

17 F. The Objectors criticize the limit on the aggregate amount of cash
18 payments to any single claimant or for any single decedent. The Settlement
19 Agreement is a hard-fought compromise of strongly disputed claims. In the
20 settlement context, a maximum cap of \$5,200 (if 3,000 claims), \$4,320 (if 5,000
21 claims), or \$2,320 (if 50,000 claims) is neither unfair, inadequate, nor
22 unreasonable. If any class member believes he or she can do better through
23 individual litigation, he or she can opt out.

24 G. The Objectors challenge the potential incentive awards to each
25 approved class representative. This contention is premature. The motion for
26 preliminary approval does not request the award of any incentive payments. In
27 connection with the motion for final approval, this Court will consider the
28 proposed class representatives and any request for incentive payments (up to the

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caps set forth in the Settlement Agreement). At that time, any person with standing can oppose that request or any other aspect of the settlement.

H. The Objectors suggest that the cash payments under the settlement are less than the jury verdicts in the *Angeles Abbey* litigation. That comparison is not persuasive. Angeles Abbey involved a different cemetery; it involved different and more serious claims; it is a jury verdict (not a settlement); and it did not address the complex insurance coverage issues that are addressed and resolved in this insurance carrier funded settlement.

I. The Objectors suggest that this Court must simultaneously consider the propriety of preliminary approval and the proposed notice program. That simply is not correct. Here, this Court will fully consider the propriety of the proposed notice program in connection with a separate motion.

6. This Court also observes that the Honorable Victoria G. Chaney actively participated in the class and individual settlement negotiations. Through Judge Chaney's hundreds of hours of involvement, this Court has considerable insight into the settlement process.

ORDER

GOOD CAUSE APPEARING THEREFOR,

IT IS HEREBY ORDERED that:

- 1. The Settlement Agreement is preliminarily approved.
- 2. The Settlement Class is conditionally certified, for settlement purposes only, as a voluntary class pursuant to California Code of Civil Procedure Section 382 and Federal Rule of Civil Procedure 23(b)(3).

3. The Settlement Class is defined as follows:

"[A]ll Persons who: (1) are or were vested with the right, pursuant to California Health & Safety Code Section 7100, to control the disposition of the remains of any decedent buried at Woodlawn; (2) contracted with any Person for present or pre-need funeral and/or burial services at Woodlawn; (3) are grandparents, parents, spouse, siblings, children, grandchildren of any decedent buried at Woodlawn; and/or (4) are close family members who lived in the household of the decedent at the time of death (within the meaning set forth in *Christensen v. Superior Court*, 54 Cal. 3d 868 (1991) and

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its progeny). Excluded from the Settlement Class are all Persons to the extent that they properly and timely opt out pursuant to Section 7 of this Agreement.

4. A hearing on the proposed notice program shall be held on a date to be announced, in Department 322 of the above-entitled Court.

5. A hearing on good faith settlement determination shall be held on a date to be announced, in Department 322 of the above-entitled Court.

6. A final approval hearing shall be held on a date to be announced, in Department 322 of the above-entitled Court, at which hearing members of the Settlement Class, or their counsel, may support or oppose the settlement, and proponents of the settlement may explain, describe, and defend the settlement's terms and conditions.

NOV 12 2003

PETER D. LICHTMAN

Dated: _____

The Honorable Peter D. Lichtman
Judge of the Superior Court