

NO. _____

JEFFERSON CIRCUIT COURT
DIVISION _____

ROBIN THOMAS, TINA SEATON,
PAMELA WILKERSON and
EARL BRADLEY COOK

PLAINTIFFS

v.

CLASS ACTION COMPLAINT

ST. STEPHEN'S CEMETERY
ASSOCIATION
1808 S. Preston St.
Louisville, KY 40217

DEFENDANTS

Serve: Mark A. Holland
1808 S. Preston St.
Louisville, KY 40217

BRUCE D. ZIMMERMAN, SR., in his
capacity as President
of St. Stephen's Cemetery Association
1808 S. Preston St.
Louisville, KY 40217

HERB ZIMMERMAN, in his capacity as
Vice-President
and Director of St. Stephen's Cemetery
Association
1808 S. Preston St.
Louisville, KY 40217

TONY BOSTIC, in his capacity as Secretary
of St. Stephen's Cemetery Association
1808 S. Preston St.
Louisville, KY 40217

MARK HOLLAND, in his capacity as
Treasurer
of St. Stephen's Cemetery Association
1808 S. Preston St.
Louisville, KY 40217

WM BOSTIC SR., in his capacity as Director
of St. Stephen's Cemetery Association
1808 S. Preston St.
Louisville, KY 40217

JAMES NICHOLS, in his capacity as
Director
of St. Stephen's Cemetery Association
1808 S. Preston St.
Louisville, KY 40217

BARBARA ANN HOUSER
1808 S. Preston St.
Louisville, KY 40217
and
3171 S Mt Zion Rd
Pekin IN 47165

Unknown Defendants 1-3, in their capacity as
officers
of St. Stephen's Cemetery Association.
1808 S. Preston St.
Louisville, KY 40217

* * * * *

Plaintiffs, Robin Thomas, Tina Seaton, Pamela Wilkerson and Earl Bradley Cook, by Counsel, individually and on behalf of all others similarly situated, bring this Class Action Complaint against Defendants St. Stephen's Cemetery Association (hereinafter "Cemetery Association"), Bruce D. Zimmerman, Sr., Herb Zimmerman, Tony Bostic, Mark Holland, WM Bostic Sr., James Nichols, Barbara Ann Houser and Unknown Defendants 1-3. In support thereof, Plaintiff alleges as follows:

INTRODUCTION

1. This is a civil action on behalf of Plaintiff and a Class consisting of individual citizens of the United States of America who purchased cemetery plots, headstones, burial services

and other products from Defendants (hereinafter the “Class”).

2. Defendants charged Plaintiffs and members of the proposed Class fees for cemetery and funeral services, and gained the trust of Plaintiffs, and then engaged in grossly negligent behavior, including losing records related to the location of bodies, burying bodies in improper locations, failing to follow Kentucky cemetery laws for the proper interment of bodies or cremated remains, and failing to provide headstones and other burial services, in violation of the Kentucky Consumer Protection Act, Ky. Rev. Stat. § 367.170, et. seq., and Kentucky common law.

PARTIES

3. Plaintiff Robin Thomas is a citizen of the State of Kentucky, residing in Louisville, which lies in Jefferson County, Kentucky. She purchased funeral and burial services and products from Defendants at St. Stephen’s Cemetery.

4. Plaintiff Tina Seaton is a citizen of the State of Kentucky, residing in Louisville, which lies in Jefferson County, Kentucky. She purchased funeral and burial services and products from Defendants at St. Stephen’s Cemetery.

5. Plaintiff Pamela Wilkerson is a citizen of the State of Tennessee, residing in Lebanon, which lies in Wilson County, Tennessee. She purchased funeral and burial services and products from Defendants at St. Stephen’s Cemetery.

6. Plaintiff Earl Bradley Cook is a citizen of the State of Tennessee, residing in Lebanon, which lies in Wilson County, Tennessee. He purchased funeral and burial services and products from Defendants at St. Stephen’s Cemetery.

7. Defendant St. Stephen’s Cemetery Association is a Kentucky corporation having its principal place of business at 1808 S. Preston St., Louisville, KY 40217. It maintains a registered agent in Louisville, and a board of directors, including Defendants Bruce D.

Zimmerman, Sr., Herb Zimmerman, Tony Bostic, Mark Holland, WM Bostic Sr., James Nichols, Sr., Herb Zimmerman and Tony Bostic. The directors of Cemetery Association are hereinafter referred to collectively as the “Officer Defendants.”

8. Defendant Barbara Ann Houser (“Houser”) was the cemetery’s caretaker for more than two decades, and was paid by the Cemetery Association and its board of directors to promote and manage the cemetery’s services and products, including the selling of funeral plots, headstones, burials, cemetery maintenance and other products. Upon information and belief, Barbara Ann Houser is a resident of Jefferson County, Ky. or Washington County, Indiana. All events giving rise to the allegations in this complaint occurred in Jefferson County while Ms. Houser was a resident of Jefferson County.

9. Officer Defendants are liable for the wrongful acts of Defendant St. Stephen’s due to his/her relationship with St. Stephen’s.

10. St. Stephen’s is liable for the wrongful acts of the Officer Defendants due to its relationship with the officer defendants.

11. St. Stephen’s as well as the Officer Defendants are liable for the wrongful conduct of Houser due to their relationship with her.

JURISDICTION AND VENUE

12. This Court has jurisdiction over both the parties and the subject matter of this class action proceeding because a substantial number of the events related to Plaintiff’s claims transpired in Jefferson County, Kentucky.

13. Jefferson Circuit Court is the appropriate venue for this action because the events giving rise to the Complaint and the damages suffered occurred in this County.

CLASS ACTION ALLEGATIONS

14. This action may be brought and properly maintained as a class action pursuant to the provisions of Kentucky Rule of Civil Procedure 23. Plaintiff brings this action on behalf of himself and a class of all others similarly situated.

15. Plaintiff brings this class action on behalf of the following class:

All individual citizens of the United States of America who purchased burial plots and funeral services at St. Stephen's Cemetery from Defendants from 1987 to present.

Subclass 1 – lost remains

All individual citizens of the United States of America whose loved ones were buried or interred at St. Stephen's Cemetery from 1987 to present, and whose remains can no longer be located.

Subclass 2 – improper internment

All individual citizens of the United States of America whose loved ones were buried or interred at St. Stephen's Cemetery from 1987 to present, and whose remains were improperly interred or improperly maintained, including, but not limited to, improper maintenance of loved ones' headstones and the grounds surrounding their loved ones' graves, in violation of Kentucky law.

Subclass 3 – failure to provide headstones

All individual citizens of the United States of America whose loved ones who purchased headstones from Defendants from 1987 to present, and who did not receive the headstones they purchased.

16. In accordance with Kentucky Rule of Civil Procedure 23, the Class and subclasses are so numerous that joinder of all members is impracticable. While the exact number is not known at this time, it is generally ascertainable by appropriate discovery, and it is believed the class includes hundreds of members.

17. In accordance with Kentucky Rule of Civil Procedure 23, there are questions of law and fact common to the Class and which predominate over any individual issues. Common questions of law and fact include, without limitation:

a. Whether Defendants owed a duty to the class members to provide appropriate

- funeral and burial services under the applicable statutes and law;
- b. Whether Defendants violated the Kentucky Consumer Protection Act, Ky. Rev. Stat. § 367.170, et. seq. (“KCPA”);
 - c. Whether Defendants lost or mismanaged information related to burial plots and funeral services, or failed to provide burial and funeral services that it promised to class members;
 - d. Whether Defendants violated the above Kentucky laws by charging fees to Class members for services that they failed to perform, or that they performed negligently, including improper interment of bodies pursuant to KRS § 307.300, et. seq., and whether Class and subclass members were given reasonable notice to next of kin regarding disinterment and proper reinterment.
 - e. Whether Defendants were unjustly enriched by charging for services that they failed to provide;
 - f. Whether Plaintiffs are entitled to declaratory judgment to prevent Defendants from continuing to mismanage the cemetery and its services in the future;
 - g. The policies and procedures developed by the Defendants regarding the burial of bodies in the cemetery, and the performance of certain funeral services including the selling of plots, headstones, and funerals that were purchased by Putative Class members;
 - h. Defendant’s vicarious liability for the actions of its employees, including but not limited to former caretaker and Defendant Barbara Houser;
 - i. The legal relationships among the Defendants; and/or
 - j. The extent of damages caused by Defendants’ willful violations.

18. Plaintiffs' claims are typical of the Class. As with members of the Class, Plaintiffs were unfairly, deceptively and/or unlawfully overcharged for funeral and burial services in violation of state statute. Plaintiff's interests coincide with, and are not antagonistic to, those of the other class members.

19. In accordance with Kentucky Rule of Civil Procedure 23, Plaintiffs will fairly and adequately represent and protect the interests of the Class.

20. Plaintiffs have retained counsel experienced in the prosecution of class action litigation and counsel will adequately represent the interests of the Class.

21. Plaintiffs and their counsel are aware of no conflicts of interests between Plaintiff and absent Class members or otherwise;

22. Plaintiffs have or can acquire adequate financial resources to assure that the interests of the Class will not be harmed; and

23. Plaintiffs are knowledgeable concerning the subject matter of this action and will assist counsel to vigorously prosecute this litigation.

24. In accordance with Kentucky Rule of Civil Procedure 23, the class litigation is an appropriate method for fair and efficient adjudication of the claims involved. Class action treatment is superior to all other available methods for the fair and efficient adjudication of the controversy alleged herein; it will permit a large number of individual citizens of the State of Kentucky to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort and expense that numerous individual actions would require. Class action treatment will also permit the adjudication of relatively small claims by certain class members, who could not individually afford to litigate a complex claim against a large corporate defendant. Further, even for those class members who could afford to

litigate such a claim, it would still be economically impractical, as the cost of litigation is almost certain to exceed any recovery they would obtain.

25. Plaintiffs are unaware of any difficulty likely to be encountered in the management of this case that would preclude its maintenance as a class action.

STATEMENT OF FACTS

26. Plaintiffs Robin Thomas, Tina Seaton, Pamela Wilkerson and Earl Bradley Cook purchased burial plots and funeral services from Defendants, and trusted Defendants with the important task of burying their loved ones and maintaining graves and headstones. They were later told by Defendants that some of their loved ones' bodies could not be located, were located in different locations from the actual plots they had purchased, and/or were improperly interred.

27. Defendants Cemetery Association, Officer Defendants, and Houser, by and through their agents, servants, employees and/or ostensible agents, negligently and/or recklessly vandalized, destroyed, ran over with vehicles, and distributed the final resting place of Plaintiffs' loved ones by acts of commission and/or omission, and such negligence and/or reckless conduct was a substantial factor in causing or bringing about the damages sustained by the Plaintiffs.

28. Defendants, by and through their agents, servants, employees and/or ostensible agents, through negligence and/or recklessness, lost and/or were unable to locate and/or were unable to locate for a period of time the remains of Plaintiffs' loved ones, by acts of commission and/or omission, and such negligence and/or reckless acts were a substantial factor in causing or bringing about the damages sustained by the Plaintiffs.

29. The Cemetery Association recorded gross receipts of \$416,256 on its 2014 tax return, and total assets of \$809,853. The Cemetery Association also purchased liability insurance during this same time period.

30. Although Plaintiffs paid money to Defendants for multiple burial plots and funeral services, Defendants failed to perform the services they promised, and/or provided Plaintiffs with inaccurate and misleading information about the location of bodies, the maintenance of graves and headstones, and the manner in which bodies had been interred.

COUNT I
VIOLATION OF KY. REV. STAT. § 422.317(1)
THE KENTUCKY CONSUMER PROTECTION ACT

Plaintiffs, individually and on behalf of all others similarly situated, for this Count, allege the following:

31. Plaintiffs repeat, reallege, and incorporates by reference each of the foregoing paragraphs of this Complaint as if fully set forth herein.

32. This Count is a class action claim brought pursuant to the Kentucky Consumer Protection Act, Ky. Rev. Stat. § 367.170, et. seq. (“KCPA”).

33. Pursuant to Ky. Rev. Stat. § 367.170(1), the KCPA provides that “(u)nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

34. Privity existed between Plaintiffs and Defendants, and between Class members and Defendants.

35. In connection with the furnishing of burial and funeral services to Plaintiffs and members of the proposed Class, Defendants, through their employees, agents and representatives, violated KCPA by engaging in the following unfair or deceptive acts or practices:

- a. failing to properly provide funeral and burial services by Defendants;
- b. failing to disclose to Plaintiffs the location of the remains of Plaintiffs’ loved ones’ bodies, and in some cases burying multiple bodies in a single plot;

- c. collecting money from Plaintiffs for funeral plots, headstones, burial services and other products that Defendants then failed to provide and/or perform, or performed negligently in violation of the terms of the purchase agreements; and/or
- d. losing or misplacing records related to the location of Plaintiffs' loved ones, and/or burying and interring remains in improper or wrong locations, and/or failing to maintain funeral plots and headstones.

36. As a direct and proximate result of Defendant's unfair and/or deceptive acts or practices, Plaintiffs and Class were damaged.

37. Defendants offered its services and products to Plaintiffs and the Putative Class members for personal, family or household purposes pursuant to Ky. Rev. Stat. § 367.220.

38. Plaintiffs and the class members are consumers within the meaning of the law.

39. Defendants at all times acted in violation of Kentucky common law and statutory law. This conduct reflects a deliberate indifference to Plaintiffs and the class members' rights, entitling Plaintiffs and the Putative Class to an award of punitive damages.

40. In the event Plaintiffs are the prevailing party, Plaintiff also seeks a reasonable attorney's fee and costs.

41. Plaintiffs and the Class are entitled to equitable relief, including restitutionary disgorgement of monies unfairly, deceptively and/or unlawfully collected by Defendants and an injunction prohibiting Defendants from engaging in the same or similar practices described herein in the future.

COUNT II
UNJUST ENRICHMENT

Plaintiffs, individually and on behalf of all others similarly situated, for this Count, allege

the following:

42. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing paragraphs of this Complaint as if fully set forth herein.

43. To the detriment of Plaintiffs and the Class, Defendants have been, and continue to be, unjustly enriched as a result of their wrongful conduct alleged herein.

44. Plaintiffs and the Class conferred a benefit on Defendants when Defendants overcharged Plaintiffs and Class for burial and funeral services that they failed to perform or that they performed negligently.

45. Defendants unfairly, deceptively, unjustly and/or unlawfully accepted said benefits, which under the circumstances, would be unjust to allow Defendants to retain.

46. Plaintiff and the Class, therefore, seek disgorgement of all wrongfully obtained profits received by Defendants as a result of their inequitable conduct as more fully stated herein.

COUNT III
NEGLIGENCE AND NEGLIGENCE PER SE

Plaintiffs, individually and on behalf of all others similarly situated, for this Count, allege the following:

47. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing paragraphs of this Complaint as if fully set forth herein.

48. Defendants, by and through their agents, servants, employees and/or ostensible agents, had a fiduciary duty to Plaintiffs and has breached that duty by acts of commission and/or omission, and such breach was a substantial factor in causing or bringing about the damages sustained by the Plaintiffs.

49. Defendants, by and through their agents, servants, employees and/or ostensible agents, were negligent in their care and treatment of Plaintiffs' loved ones' remains by acts of commission and/or omission, and such negligence was a substantial factor in causing or bringing about the damages sustained by the Plaintiffs.

50. Defendants, by and through their agents, servants, employees and/or ostensible agents, breached their duties to Plaintiffs regarding burial and/or burial place marker services. Such breach brought about damages to the Plaintiffs as described herein.

51. Defendants, by and through their agents, servants, employees and/or ostensible agents, were negligent per se regarding burial and/or burial place marker services. On information and belief, Defendants violated KRS 525.115 (violation of graves), KRS 381.697 (maintenance of cemeteries) KRS 367.970 (ninety-day completion date on installing foundations-excusable delay), and such negligence was a substantial factor in causing or bringing about the damages sustained by the Plaintiffs.

52. Plaintiffs were the type of people intended to be protected by the above mentioned statutes.

53. The violation of these statutes caused the type of harm they were intended to prevent.

54. Plaintiffs assert a private right of action for the violation of these statutes pursuant to KRS 446.070.

55. That by reason of the foregoing, the Plaintiffs has been damaged in an amount far in excess of any minimum dollar amount necessary to invoke the jurisdiction of this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the members of the Class, demands judgment as follows:

- A. A determination that this action is a proper class action for compensatory, consequential, and statutory damages as alleged herein;
- B. For pre-judgment interest from the date of filing this suit;
- C. For reasonable attorney's fees and expenses;
- D. For immediate injunctive relief, including but not limited to, the appointment of a receiver for St. Stephen's.
- E. Full accounting of the final resting place of all people buried at St. Stephens.
- F. A preliminary injunction enjoining Defendants and all others, known and unknown, from continuing to take unfair, deceptive, illegal and/or unlawful action as set forth in this Complaint; and
- G. Such other and further relief as this Honorable Court finds just and proper under the circumstances.

JURY DEMAND

1. WHEREFORE, as to each of the foregoing matters, Plaintiffs demand a trial by jury on all issues so triable as a matter of right.

Dated: April 1, 2017

Respectfully submitted,

Gray & White

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