

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR BROWARD  
COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 01-21376 CA 08

JOAN LIGHT, SHIRLEY EISENBERG,  
CAROL PRISCO, and GLORIA ZIMMER.

Plaintiffs,

-vs-

SCI FUNERAL SERVICES OF FLORIDA,  
INC., a Florida corporation d/b/a MENORAH  
GARDENS & FUNERAL CHAPELS, SERVICE  
CORPORATION INTERNATIONAL, a Texas  
Corporation, MENORAH PARTNERSHIP, a  
Florida General Partnership, and SHARON  
GARDENS LIMITED PARTNERSHIP, a Florida  
Limited Partnership,

Defendants.

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**PLAINTIFFS' FOURTH AMENDED CLASS REPRESENTATION COMPLAINT  
AND DEMAND FOR JURY TRIAL**

Plaintiffs, JOAN LIGHT, SHIRLEY EISENBERG, CAROL PRISCO and GLORIA ZIMMER, on behalf of themselves and all others similarly situated, hereby sue the Defendants, SCI FUNERAL SERVICES OF FLORIDA, INC., a Florida corporation d/b/a MENORAH GARDENS & FUNERAL CHAPELS, SERVICE CORPORATION INTERNATIONAL, a Texas corporation, MENORAH PARTNERSHIP, a Florida general partnership and SHARON GARDENS LIMITED PARTNERSHIP, a Florida Limited Partnership and allege:

**GENERAL ALLEGATIONS**

1. This is an action for damages in excess of \$15,000.00
2. At all times relevant hereto, Plaintiff JOAN LIGHT was a resident of Broward County, Florida. Light's mother and father, Edith and Sam Berenson, married 65 years, purchased side-by-side burial plots at Menorah Gardens for their internment upon death.

Defendants did not bury the Berensons side-by-side; instead, they secretly buried the Berensons head to toe.

3. At all times relevant hereto, Plaintiff SHIRLEY EISENBERG was a resident of Palm Beach County, Florida. Eisenberg's cousin, Manny Goodstein, purchased two burial plots at Menorah Gardens after his wife Ann's death, the couple was to be buried side-by-side upon Manny's death. When Manny died he was placed apart from Ann. Instead of Manny being side-by-side with his wife, several deceased persons remains separated the couple. Further, after Manny's death, Defendants egregiously sold Eisenberg a double headstone for both Manny and Ann. But the headstone could not possibly serve its purpose, Manny and Ann were separated.

4. At all times relevant hereto, Plaintiff CAROL PRISCO was a resident of New York. Prisco's father, Meyer Goldstein, purchased two burial plots at Menorah Gardens so that he and his wife could be interred side-by-side. After Meyer Goldstein died, and was buried, it was found that there would be insufficient space for his wife upon her death. Ms. Prisco was forced to undergo the painful disinterment of her father's remains, ship the remains to New York, and purchase new burial plots so that her parents could be properly buried.

5. At all times relevant to, Plaintiff GLORIA ZIMMER is and was a resident of Palm Beach County, Florida. In 1996 she purchased a pre-need contract for four burial plots for herself and her family members from MENORAH GARDENS. A copy of her pre-need contract is attached as Exhibit "A" to this complaint. GLORIA ZIMMER would not have purchased these plots if she was aware of the problems outlined in this complaint.

6. At all times relevant hereto, Defendant SCI FUNERAL SERVICES OF FLORIDA, INC. ("SCI FLORIDA"), was a Florida corporation authorized to do business and doing business in Miami-Dade, Broward and Palm Beach counties.

7. Defendant SCI FLORIDA maintains its principal place of business in Broward County, Florida.

8. At all times relevant hereto, Defendant SERVICE CORPORATION INTERNATIONAL ("SCI"), was a Texas corporation.

9. At all times relevant hereto, MENORAH PARTNERSHIP, was and is a Florida General Partnership authorized to do business and doing business in Palm Beach County and Broward County, Florida. Prior to its acquisition by Defendants SCI FLORIDA and SCI in 1995, MENORAH PARTNERSHIP owned and operated the Palm Beach County Menorah Gardens Cemetery. At all times since the acquisition in 1995, Defendant SCI FLORIDA has operated the Palm Beach County Menorah Gardens Cemetery, but MENORAH PARTNERSHIP continues to own certain property within the said cemetery. Defendant SCI FLORIDA has acquired all the assets and assumed all the liabilities of MENORAH PARTNERSHIP and is therefore responsible for all liability imposed on MENORAH PARTNERSHIP as a result of the claims made against MENORAH PARTNERSHIP in this complaint.

10. At all times relevant, SHARON GARDENS LIMITED PARTNERSHIP, was and is a Florida Limited Partnership authorized to do business and doing business in Broward County, Florida. Prior to its acquisition by Defendants SCI FLORIDA and SCI in 1995, SHARON GARDENS LIMITED PARTNERSHIP owned and operated the Broward County Menorah Gardens Cemetery. At all times since the acquisition in 1995, Defendants SCI FLORIDA and SCI have operated the Broward County Menorah Gardens Cemetery, but SHARON GARDENS LIMITED PARTNERSHIP continues to own certain property within the said cemetery. Defendant SCI FLORIDA has acquired all the assets and assumed all the liabilities of SHARON GARDENS LIMITED PARTNERSHIP and is therefore responsible for all liability imposed on SHARON GARDENS LIMITED PARTNERSHIP as a result of the claims made against SHARON GARDENS LIMITED PARTNERSHIP in this complaint.

11. This court has personal jurisdiction over Defendants pursuant to the Florida Long-Arm Statute and due process because:

- a. Defendants have committed wrongful acts and omissions within the state and in Broward County by desecrating remains as described herein in Florida and committing the statutory violations described herein in Florida,
- b. Defendants have caused injury to Plaintiffs in Florida that arose out of the acts or omissions that occurred inside and outside of the State of Florida during the relevant period of time, namely, the desecration of remains as described herein; and

- c. Defendants have engaged in substantial and not isolated activity with the state by maintaining offices, employees, and/or registered agents in Florida, selling numerous products and services in Florida, advertising products in Florida, or entering into contracts in Florida.

12. At all times relevant hereto, Defendants owned, operated, managed and were responsible for all business decisions of Menorah Gardens & Funeral Chapels located at: 20955 Biscayne Boulevard, North Miami Beach, Florida 33180; 21100 W. Griffin Road, Ft. Lauderdale, Florida 33332; 6800 W. Oakland Park Boulevard, Sunrise, Florida 33313; 2305 W. Hillsboro Boulevard, Deerfield Beach, Florida 33442; and 9321 Memorial Park Road, West Palm Beach, Florida 33412.

13. From 1975 to the present, Plaintiffs and the class purchased burial contracts from the Defendants to provide for the burial of themselves or their relatives at Menorah Gardens & Funeral Chapels, which at all relevant times were operated as Jewish Cemeteries.

14. The remains of Plaintiffs' relatives were buried at Menorah Gardens & Funeral Chapels at one of the foregoing locations.

15. From 1975 to the present, Defendants have woefully failed to properly handle the remains of Plaintiffs' relatives and the relatives of class members and Defendants have completely mishandled the cemetery.

16. From 1975 to the present, Defendants have buried remains in the wrong location and buried remains in a manner that encroach on other plots. Defendants also plotted and sold burial areas without sufficient space. This conduct created a situation where Defendants did not have space to place bodies in their proper location.

17. Rather than disclose these problems to Plaintiffs and the class, Defendants secretly desecrated the subject remains in order to cover up their wrongful acts and make room for the bodies. More specifically, Defendants, inter alia:

- a. Secretly broke and opened burial vaults and dumped remains in a wooded area where the remains may have been consumed by wild animals;
- b. Secretly buried remains in locations other than the location purchased;
- c. Secretly crushed down burial vaults in order to make room for other vaults;

- d. Buried remains on top of the other rather than side-by-side;
- e. Secretly dug up and moved remains;
- f. Secretly buried remains head to foot rather than side-by-side;
- g. Secretly mixed body parts and remains from different individuals; and
- h. Otherwise failed to exercise reasonable care in handling the subject remains.

18. Each Defendant participated in the wrongful acts herein. Defendants also acted in joint enterprise, joint venture and as each other's agent within the course and scope of said agency.

19. At all times relevant hereto, Defendants acted by and through their employees, agents, apparent agents and representatives, who were acting within the course and scope of their employment, agency, apparent agency and representation and in the furtherance of Defendants' interests.

20. Defendant SCI is the parent corporation of Defendant SCI FLORIDA. SCI individually participated, ratified, approved and directed the improper or illegal acts and omissions described herein.

21. Plaintiffs seek damages for damages related to problem burials, spacing problems and the matters set forth in this complaint from acts that occurred from January 1, 1975 until the present.

22. Plaintiffs have retained the undersigned counsel and are obligated to pay them reasonable attorneys' fees and costs.

23. Pursuant to Fla.Stat. § 497.517, Plaintiffs, upon prevailing, may recover reasonable attorneys' fees and costs

24. All conditions precedent to bringing this action have been met.

### CLASS ACTION ALLEGATIONS

25. Pursuant to Rule 1.220 Plaintiffs JOAN LIGHT, SHIRLEY EISENBERG, CAROL PRISCO, and GLORIA ZIMMER on behalf of themselves and all others similarly situated, bring this class action on behalf of themselves, individually, and on behalf of the class defined as:

All persons with burial plots or family members buried at Menorah Gardens & Funeral Chapels in Florida.

26. The class excludes all persons whose claims have been reduced to judgment or have been settled as of the date the class is certified and all Defendants' officers, directors, subsidiaries, or any other person related to, affiliated with or employed by Defendants.

### NUMEROSITY

27. This class is so numerous that joinder of all members is impracticable if not impossible. Although the exact number of class members cannot be properly determined without discovery and notification to the class, the Plaintiffs are informed and believe that this class has at least one thousand members.

### COMMONALITY

28. There are numerous questions of law and fact that are common to the claims of the Plaintiffs and members of this class against the Defendants, and these questions of law or fact common to the members of the class predominate over any questions affecting only individual members. Among these questions are the following:

- a. Whether Defendants committed the desecration of remains and wrongful acts alleged herein;
- b. Whether Plaintiffs and class members are subject to irreparable harm;
- c. Whether Plaintiffs and class members have no adequate remedy at law;
- d. Whether injunctive relief is appropriate and in the public interest,
- e. What type of court supervised injunction or equitable relief is appropriate under what circumstances;

- f. Whether Plaintiffs and class members are entitled to the requested injunction and equitable relief;
- g. Whether Defendants' conduct is malicious and involved willful and wanton misconduct;
- h. Whether Defendants could foresee that their conduct was substantially certain to cause mental anguish;
- i. Whether Defendants violated Chapter 497, Fla.Stat.;
- j. Whether Defendants knowingly made, published, disseminated, circulated and placed before the public, either directly or indirectly, statements that were untrue, deceptive or misleading with respect to pre-need contracts they sold to Plaintiffs and class members;
- k. Whether Defendants failed to maintain Menorah Gardens & Funeral Chapels in a reasonable condition in violation of Fla.Stat. § 497.03 and Fla. Admin. Code R. 3F-6.002; and
- l. Whether Defendants breached the contracts entered into with Plaintiffs and class members.

#### **TYPICALITY**

29. The claims of the Plaintiffs, who are the representatives of the class herein, are typical of the claims of each class member in that the Plaintiffs and class members suffered similar damages resulting from a single, continuing course of conduct by Defendants – desecration of human remains at Menorah Gardens & Funeral Chapels, missing decedents or burial plots that are not available for use. Each class member asserts the same legal cause of action.

#### **FAIR AND ADEQUATE REPRESENTATION**

30. The undersigned counsel are competent counsel experienced in class action litigation, mass torts and litigation involving cemeteries. Counsel will fairly and adequately protect the interests of the class.

31. Plaintiffs are adequate representatives of the class and will fairly and adequately protect the interests of the class. Plaintiffs are committed to the vigorous prosecution of this

action and have no conflict with other class members.

**RULE 1.220(b)(1) REQUIREMENTS**

32. Certification is appropriate under Rule 1.220(b)(1) because the prosecution of separate claims or defenses by or against members would create a risk of:

- a. Inconsistent or varying adjudications concerning individual members of the class which would establish incompatible standards of conduct for the party opposing the class; and
- b. Adjudications concerning individual members of the class which would, as a practical matter, be dispositive of the interest of other members of the class who are not parties to the adjudications or substantially impair or impede the ability of other members of the class who are not parties to the adjudications to protect their interests.

33. More specifically the rights of class members to burial plots are overlapping; remains of class members' families are buried in plots owned by other class members; and, remains of class members' families should have been buried in plots now owned by other class members.

34. Under these circumstances, it is not possible for the rights of class members to be determined individually without disposing of or substantially affecting the rights of other class members as to property or remains.

35. Moreover, individual lawsuits may result in adjudications that would create inconsistent standards whereby Defendants would be required to disinter remains on the one hand and leave the same remains in place on the other hand.

**RULE 1.220(b)(2) REQUIREMENTS**

36. Certification is appropriate under Rule 1.220(b)(2) because Defendants have acted in a manner generally applicable to all class members thereby making injunctive or declaratory relief concerning the class as a whole appropriate.

37. More specifically Defendants have: desecrated remains; placed remains in incorrect locations; and affected property rights relating to burial plots. Thus, Defendants have

acted in a manner that creates uncertainty as to the location of the remains in a way that applies generally to the class.

**RULE 1.220(b)(3) REQUIREMENTS**

38. The common questions set forth above predominate over individual issues and a class action is superior. The class members have an interest in class adjudication rather than individual adjudication because of the overlapping rights. It is highly desirable to concentrate the resolution of these claims in this single forum because it is in close proximity to the cemetery and the situs of the wrongful conduct. Management of the class will be less difficult than individual lawsuits.

**COUNT I**  
**TORTIOUS INTERFERENCE WITH DEAD BODIES**

39. Plaintiffs reallege and adopt paragraphs 1 through 38 as if fully set forth herein.

40. Defendants owed Plaintiffs a duty to exercise reasonable and proper care when handling the remains of class members' families. That duty includes, but is not limited to the following:

- a. Not disturbing the remains without consent of the class members;
- b. Burying the remains in the proper location and orientation;
- c. Handling and burying the remains in a proper and dignified manner;
- d. Not removing, mishandling, mutilating or causing improper burial of the subject remains; and
- e. Otherwise not desecrating remains.

41. Defendants breached this duty because they intentionally did the following:

- a. Secretly broke and opened burial vaults and dumped remains in a wooded area where the remains may have been consumed by wild animals;
- b. Secretly buried remains in locations other than the location purchased;

- c. Secretly crushed down burial vaults in order to make room for other vaults;
- d. Buried decedents on top of each other rather than side-by-side;
- e. Secretly dug up and moved remains;
- f. Secretly buried remains head-to-foot rather than side-by-side;
- g. Secretly mixed body parts and remains from different individuals; and
- h. Otherwise failed to exercise reasonable care in handling the subject remains.

42. Defendants' conduct was malicious and intentional. Defendants' conduct demonstrates an entire want of care or attention to duty and great indifference to the remains, property and property rights of others. Defendants' conduct is outrageous and goes beyond all bounds of decency in a civilized society.

43. Defendants' conduct has directly and proximately caused economic and non-economic damages to the Plaintiffs and class members. Plaintiffs and class members have suffered or will suffer extreme mental anguish, distress and suffering. Plaintiffs and class members have also suffered damages including but not limited to expenses necessary to properly find, identify and handle the subject remains.

44. Defendants could foresee that their wrongful acts and omissions would damage the Plaintiffs and class members in the manner set forth herein.

45. Plaintiffs intend to seek amendment to add a claim for punitive damages pursuant to Fla.Stat. § 768.72.

WHEREFORE, Plaintiffs respectfully request:

- a. An order certifying the class and appointing the undersigned counsel as lead counsel for the class;
- b. Compensatory damages, costs and interest; and
- c. Any and all such further relief that the Court deems just and proper.

**COUNT II**  
**INTENTIONAL OR RECKLESS INFLICTION OF EMOTIONAL DISTRESS**

46. Plaintiffs reallege and adopt paragraphs 1 through 45 as if fully set forth herein.

47. Defendants have deliberately or recklessly inflicted mental suffering on Plaintiffs and the class.

48. Defendants have engaged in outrageous, willful, wanton or reckless conduct because they did the following:

- a. Secretly broke and opened burial vaults and dumped remains in a wooded area where the remains may have been consumed by wild animals;
- b. Secretly buried remains in locations other than the location purchased;
- c. Secretly crushed down burial vaults in order to make room for other vaults;
- d. Buried decedents on top of each other rather than side-by-side;
- e. Secretly dug up and moved remains;
- f. Secretly buried remains head-to-foot rather than side-by-side;
- g. Secretly mixed body parts and remains from different individuals; and
- h. Otherwise failed to exercise reasonable care in handling the subject remains.

49. Defendants' conduct was malicious, intentional or reckless. Defendants' conduct demonstrates an entire want of care or attention to duty and great indifference to the remains, property and property rights of others. Defendants' conduct is outrageous and goes beyond all bounds of decency in a civilized society.

50. Defendants' conduct was malicious because the aforementioned acts involved willful, wanton or reckless misconduct.

51. Defendants knew or should have known that severe emotional distress to the class members would follow from their willful, wanton or reckless conduct and Defendants acted with

reckless disregard for the mental suffering that they could foresee their conduct was substantially certain to cause.

52. Plaintiffs and the class have suffered severe emotional distress.

53. The emotional distress was directly and proximately caused by Defendants' conduct.

54. Plaintiffs intend to seek amendment to add a claim for punitive damages pursuant to Fla.Stat. § 768.72.

WHEREFORE, Plaintiffs respectfully request:

- a. An order certifying the class and appointing the undersigned counsel as lead counsel for the class;
- b. Compensatory damages, costs and interest; and
- c. Any and all such further relief that the Court deems just and proper.

**COUNT III**  
**EQUITABLE/INJUNCTIVE RELIEF**

55. Plaintiffs adopt and reallege paragraphs 1 through 54, including sub-parts, along with Counts VI and VII as if fully set forth herein.

56. Plaintiffs and the class request equitable and injunctive relief to ascertain the location and disposition of the remains of their family members.

57. Injunctive relief is in the public interest. The proper disposition of human remains is sacred and extremely important and the public has a strong interest in insuring that these matters are conducted properly.

58. The foregoing injunction is appropriate because it is necessary to insure that class members' family members are properly laid to rest.

59. Equity supports the requested injunctive relief because Defendants:

- a. Secretly broke and opened burial vaults and dumped remains in a wooded area where the remains may have been consumed by wild animals;
- b. Secretly buried remains in locations other than the location purchased;
- c. Secretly crushed down burial vaults in order to make room for other vaults;

- d. Buried decedents on top of each other rather than side-by-side;
- e. Secretly dug up and moved remains;
- f. Secretly buried remains head-to-foot rather than side-by-side;
- g. Secretly mixed body parts and remains from different individuals; and
- h. Otherwise failed to exercise reasonable care in handling the subject remains.

60. As a direct and proximate result of the aforementioned wrongful acts and omissions of Defendants, Plaintiffs and class members are uncertain as to the location and disposition of their family members' remains.

61. Plaintiffs and those similarly situated are subject to irreparable harm. Specifically, the severe mental distress suffered by Plaintiffs and the class by Defendants' conduct cannot and will not be abated without the requested injunction.

62. Plaintiffs and class members have no adequate remedy at law. Without the requested relief they will not be able to ascertain the disposition of their family members and abate their mental suffering.

63. Plaintiffs request a permanent injunction that requires Defendants to fund a court supervised program that provides for surveying, testing, monitoring and studying of the cemetery and disturbed remains to ascertain the disposition of the subject remains and to insure their proper disposition.

WHEREFORE, Plaintiffs JOAN LIGHT, SHIRLEY EISENBERG, CAROL PRISCO and GLORIA ZIMMER, on behalf of themselves and all others similarly situated and the Class, demand:

- a. An order certifying the class and appointing the undersigned counsel as counsel for the class;
- b. An injunction as set forth above;
- c. An award of costs and interest; and
- d. Any and all such further relief as this Court deems just and proper.

**COUNT IV**  
**VIOLATION OF FLA.STAT. § 497.445, FALSE STATEMENTS AND**  
**REPRESENTATIONS CONCERNING A PRE-NEED CONTRACT**

64. Plaintiffs reallege and adopt paragraphs 1 through 45 and 55 through 63 as if fully set forth herein.

65. This cause of action is brought pursuant to Fla.Stat. § 497.527 and for damages and equitable relief.

66. Defendants knowingly made, published, disseminated, circulated and placed before the public, either directly or indirectly, statements that were untrue, deceptive or misleading with respect to pre-need contracts it sold to Plaintiffs or their deceased family member(s) and class members.

67. Defendants represented to Plaintiffs, or their deceased family member(s) and class members that the specifically identified burial plots at Menorah Gardens & Funeral Chapels would be the final resting place for the remains of the Plaintiffs, their deceased family member(s), Plaintiffs' relatives and class members and their relatives. Defendants further represented that they and the cemetery were well suited and prepared to properly maintain the remains of class members' loved ones.

68. These statements were untrue and in violation of Fla.Stat. § 497.445.

69. As a direct and proximate result of Defendants' untrue, deceptive or misleading statements concerning their pre-need contracts, Plaintiffs and class members have sustained or will sustain damages described in paragraph 39, and Count III and are unsure of the disposition of the subject remains.

WHEREFORE, Plaintiffs JOAN LIGHT, SHIRLEY EISENBERG, CAROL PRISCO and GLORIA ZIMMER, on behalf of themselves and all others similarly situated and the Class, demand.

- a. An order certifying the class and appointing undersigned counsel as counsel for the Class;
- b. Damages in accordance with Fla Stat § 497.527;

- c. Equitable relief in accordance with Fla.Stat. § 497.527 and as set forth in Count III.
- d. An award of costs, interest and attorney fees pursuant to Florida Law and Fla.Stat. § 497.517; and
- e. Any and all such further relief as this Court deems just and proper.

**COUNT V**  
**VIOLATION OF FLA. STAT. § 497.103, FAILURE TO MAINTAIN**  
**CEMETERY IN A REASONABLE CONDITION**

70. Plaintiffs reallege and adopt paragraphs 1 through 44 and 54 through 62 as if fully set forth herein.

71. This cause of action is brought pursuant to Fla.Stat. § 497.527 for damages and equitable relief.

72. Defendants had a statutory duty, pursuant to Fla. Admin. Code R. 3F-6.002, Florida Funeral and Cemetery Services Regulations, and through Fla.Stat. § 497.103 to maintain Menorah Gardens & Funeral Chapels in a reasonable and dignified condition.

73. Defendants breached that duty by committing the acts described herein.

74. As a direct and proximate result of Defendants' untrue, deceptive or misleading statements concerning their pre-need contracts, Plaintiffs and class members have sustained or will sustain damages described in paragraph 39, and Count III and are unsure of the disposition of the subject remains.

WHEREFORE, Plaintiffs JOAN LIGHT, SHIRLEY EISENBERG, CAROL PRISCO and GLORIA ZIMMER, on behalf of themselves and all others similarly situated and the Class, demand:

- a. An order certifying the class and appointing undersigned counsel as counsel for the Class;
- b. Damages in accordance with Fla.Stat. § 497.527,
- c. Equitable relief in accordance with Fla.Stat. § 497.527 and as set forth in Count III,

- d. An award of costs, interest and attorneys' fees pursuant to Florida law and Fla.Stat. § 497.517; and
- e. Any and all such further relief as this Court deems just and proper.

**COUNT VI**  
**VIOLATION OF FLORIDA STATUTE §501.201, ET.SEQ.**  
**FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**

75. Plaintiffs readopt and reallege paragraphs 1 through 45 and 55 through 63 as though fully set forth herein.

76. This is an action for relief under section 501.201, *et.seq.*, Florida Statutes (The Florida Deceptive and Unfair Trade Practices Act).

77. Section 501.203(7), Florida Statutes defines "Consumer" as "an individual; child, by and through its parent or legal guardian; firm; association; joint venture; partnership; estate; trust; business trust; syndicate; fiduciary; corporation; or any other group or combination." Plaintiffs and the Class members are "Consumers" within the meaning of §501.203(7), Florida Statutes.

78. Section 501.203(8), Florida Statutes defines "Trade or Commerce" as:

[T]he advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. "Trade or Commerce" shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity.

The advertising, soliciting, offering, selling and furnishing of burial plots, burial vaults, cemetery services, and pre-need contracts by Defendants to Plaintiffs and the Class is "Trade or Commerce" within the meaning of section 501.203(8), Florida Statutes.

79. Section 501.204(1) provides that: "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful " The Defendants acts and omissions as well as their failure to use reasonable care in this matter as alleged in this complaint equals unconscionable acts or practices, as well as deceptive and unfair acts or practices in the conduct of Defendants' trade or commerce pursuant to section 501.204, Florida Statutes.

80. The unconscionable, illegal, unfair and deceptive acts and practices of Defendants are violative of the provisions of Florida's Deceptive and Unfair Trade Practices Act. Plaintiffs and the Class have suffered actual damage for which they are entitled to relief pursuant to section 501.211(2), Florida Statutes.

81. Plaintiffs, individually and in their representative capacity, are entitled to recover their reasonable attorneys fees pursuant to section 501.2105, Florida Statutes upon prevailing in this matter.

82. As a direct and proximate result of the aforementioned statutory violations, Plaintiffs and class members have suffered and will suffer extreme mental anguish, emotional distress and suffering, expense necessary to properly find, identify and handle the subject remains, attorneys' fees and costs.

WHEREFORE, Plaintiffs JOAN LIGHT, SHIRLEY EISENBERG, CAROL PRISCO and GLORIA ZIMMER, on behalf of themselves and all others similarly situated and the Class, demand:

- a. An order awarding Plaintiffs and each Class member compensatory damages;
- b. An order certifying the class and appointing undersigned counsel as counsel for the Class;
- c. Damages in accordance with Fla.Stat. § 497.527;
- d. Equitable relief in accordance with Fla.Stat. § 497.527 and as set forth in Count III;
- e. An award of costs, interest and attorneys' fees pursuant to Florida law and Fla.Stat. §§ 497.517 and 501.211(2); and
- f. Any and all such further relief as this Court deems just and proper.

**COUNT VII**  
**NEGLIGENCE CLAIM AGAINST DEFENDANTS**

83. Plaintiffs readopt and reallege paragraphs 1 through 45 as though fully set forth herein

84. Defendants had a duty to use reasonable care in all aspects of their cemetery business. Defendants' duty to Plaintiffs and the Class included but was not limited to the following.

- a. Not to bury remains in locations other than the location purchased;
- b. Not to break and open burial vaults when burying others;
- c. Not to crush down burial vaults in order to make room for other vaults;
- d. Not to bury decedents on top of each other rather than side-by-side;
- e. Not to dig up and move remains;
- f. Not to bury remains head-to-foot rather than side-by-side;
- g. Not to mix body parts and remains from different individuals;
- h. To hire and retain persons qualified and capable of providing proper cemetery related services;
- i. To properly supervise their employees and make sure they were using reasonable care in providing the Plaintiffs and Class with appropriate burial services;
- j. To inspect, audit and correct the cemetery spacing problems and related problems at the cemetery;
- k. To correct the numerous problems identified in this complaint after Defendants knew or should have known of the problem;
- l. To warn and inform the Plaintiffs and the class members of the problems with the cemetery discussed in this complaint before Plaintiffs and the class members purchased cemetery plots and after Defendants discovered or should have discovered the problem; and
- m. To exercise reasonable care in handling the subject remains.

85. Defendants breached their duty to the Plaintiffs and the Class and were negligent by failing to use reasonable care in all aspects of their cemetery business. The specific breaches include but are not limited to those set forth below:

- n. by negligently and carelessly burying remains in locations other than the location purchased;

- o. by negligently and carelessly breaking and opening burial vaults while burying others.
- p. by negligently and carelessly crushing down burial vaults in order to make room for other vaults;
- q. by negligently and carelessly burying decedents on top of each other rather than side-by-side;
- r. by negligently and carelessly plotting or failing to re-plot the cemetery after Defendants knew or should have known of the serious spacing problems in the cemeteries.
- s. by negligently and carelessly burying remains head-to-foot rather than side-by-side;
- t. by negligently and carelessly hiring and retaining persons not qualified or capable of providing proper cemetery related services;
- u. by negligently and carelessly failing to properly supervise their employees and make sure they were using reasonable care in providing the Plaintiffs and Class with appropriate burial services;
- v. by negligently and carelessly failing to inspect, audit and correct the cemeteries spacing problems and related problems at the cemeteries;
- w. by negligently and carelessly failing to correct the numerous problems identified in this complaint after Defendants knew or should have known of the problems;
- x. by negligently and carelessly failing to warn and inform the Plaintiffs and the class members of the problems with the cemetery discussed in this complaint before Plaintiffs and the Class purchased cemetery plots and after when Defendants discovered or should have discovered the problems;
- y. by negligently and carelessly mixing body parts and remains from different individuals; and
- z. by failing to exercise reasonable care in handling the subject remains.

86. Defendants knew or could reasonably foresee that their wrongful acts and omissions would injure the Plaintiffs and the Class.

87. As a direct and proximate result of the negligence of Defendants, Plaintiffs and the class suffered the damages described fully in paragraph 42 of this complaint.

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

89. Defendants' acts and omissions amount to gross negligence tantamount to willful, wanton, reckless conduct against the interests of the Plaintiffs and the class members.

90. Defendants knew or should have known that their serious failure to use reasonable care herein would result in damage to Plaintiffs and the class members.

WHEREFORE, Plaintiffs JOAN LIGHT, SHIRLEY EISENBERG, CAROL PRISCO and GLORIA ZIMMER, on behalf of themselves and all others similarly situated and the Class, demand:

- a. Judgment awarding Plaintiffs and each Class member compensatory damages;
- b. An order certifying the class and appointing undersigned counsel as counsel for the Class;
- c. Damages in accordance with Fla.Stat. § 497.527;
- d. Equitable relief in accordance with Fla.Stat. § 497.527 and as set forth in Count III;
- e. An award of costs and interest and attorneys' fees pursuant to Florida law and Fla.Stat. § 497.517; and
- f. Any and all such further relief as this Court deems just and proper.

**COUNT VIII**  
**PUNITIVE DAMAGES CLAIM AGAINST DEFENDANTS**

91. Plaintiffs readopt and reallege all prior paragraphs as though fully set forth herein

92. Defendants' conduct was willful, wanton, reckless, or so grossly negligent as to amount to an intentional tort tantamount to at least a third degree misdemeanor

93. Defendants' acts and omissions are so outrageous that they are not tolerable in a civilized society or community.

94. Defendants' wrongful conduct subjects Defendants to an assessment against them of substantial punitive damages, to punish them for their bad acts, and to deter others from acting in a similar way in the future.

95. Moreover, the negligence of the Defendants as defined in this complaint in connection with the intentional acts of certain of their employees serves as a further basis for the imposition of punitive damages against Defendants.

96. The evidence in this case establishes that Defendants engaged in conduct which showed such an entire lack of care that the Defendants must have been consciously indifferent to the consequences; that Defendants engaged in conduct that showed wanton or reckless disregard for the welfare of the public, and that they engaged in conduct which showed a reckless indifference to the rights of others. As a result, Plaintiffs are entitled to punitive damages against Defendants.

WHEREFORE, Plaintiffs, JOAN LIGHT, SHIRLEY EISENBERG, CAROL PRISCO and GLORIA ZIMMER, on behalf of themselves and all others similarly situated and the Class, demand:

- a. Judgment awarding Plaintiffs and each Class member compensatory damages;
- b. An order certifying the class and appointing undersigned counsel as counsel for the Class;
- c. Damages in accordance with Fla.Stat. § 497.527;
- d. Equitable relief in accordance with Fla.Stat. § 497.527 and as set forth in Count III;
- e. An award of costs and interest and attorneys' fees pursuant to Florida law and Fla.Stat. § 497.517;
- f. Judgment awarding Plaintiffs and each Class member punitive damages in an amount sufficient to punish and deter the Defendants and others from future similar conduct; and
- g. Any and all such further relief as this Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiffs JOAN LIGHT, SHIRLEY EISENBERG, CAROL PRISCO and GLORIA ZIMMER, hereby demand a trial by jury of all issues so triable as a matter of right.

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of the forgoing was mailed this 26<sup>th</sup> day of August, 2002 to: *Barry Davidson, Esquire*, Hunton and Williams, Counsel for Defendants, 1111 Brickell Avenue, Suite 2500, Miami, Florida 33131 and *Dennis O'Hara, Esquire*, Wicker, Smith, O'Hara, McCoy, Graham & Ford, P.A., Co-Counsel for Defendant, SCI Funeral Services of Florida, SouthTrust Tower, Suite 500, One East Broward Boulevard, Ft. Lauderdale, Florida 33302.

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By: 

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