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Superior Court of California
County of Los Angeles

FEB 27 2014

Sherri R. Carter, Executive Officer/Clerk
By Armando Garcia, Deputy

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

RECEIVED
FEB 27 2014
ROOM 102

ROBERT SCOTT, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

SERVICE CORPORATION
INTERNATIONAL, a Texas corporation,
SCI CALIFORNIA FUNERAL SERVICES,
INC., a California corporation, EDEN
MEMORIAL PARK MANAGEMENT CO.,
a California corporation, EDEN
MEMORIAL PARK ASSOCIATION, a
California business entity, EDEN
MEMORIAL PARK, a California business
entity, JAMES R. BIBY, an individual and
DOES 1 through 100.

Defendants.

Case No. BC421528

ASSIGNED FOR APPROVAL OF CLASS
ACTION SETTLEMENT TO:
Hon. Daniel Buckley, Dept. 1

ASSIGNED FOR TRIAL TO:
Hon. Marc Marmaro, Dept. 37

~~PROPOSED~~ PRELIMINARY APPROVAL
ORDER

1 WHEREAS, by orders dated May 4, 2012 and August 30, 2012, the Court certified the
2 above entitled action to proceed as a class action (the "Class Action");

3 WHEREAS, the Class certified by the Court included:

4 A. All persons who purchased interment rights (plots), goods or services at
5 Eden for use in an in-ground burial from February 7, 1985 through
6 September 10, 2009; and/or

7 B. All persons who entered into agreements authorizing their family members
8 to be interred at Eden for use in an in-ground burial from February 7, 1985
9 through September 10, 2009; and/or

10 C. The authorized representative(s) of deceased persons who would have
11 otherwise qualified under the definitions in Category (A) or Category (B)
12 above pursuant to CCP § 377.30 *et seq.*

13 (the "Class");

14 WHEREAS, the Court approved plaintiffs Robert Scott, Sean Frank, Rabbi Howard
15 Laibson, Barry Chapman, Warren Binder, Ivy Greenstein, Linda Pore, Miriam Sue Roth and
16 Habib Naiem to serve as the Class Representatives (the "Class Representatives");

17 WHEREAS, the Court further appointed the law firm of Eagan Avenatti, LLP to serve as
18 class counsel ("Class Counsel");

19 WHEREAS, Notice of the Pendency of this Class Action was directly mailed to Class
20 members in 2012;

21 WHEREAS, only 54 individuals "opted-out" of the Class in response to the Notice of the
22 Pendency of this Class Action;

23 WHEREAS, the trial in this Class Action commenced on January 27, 2014 before the
24 Honorable Marc Marmaro;

25 WHEREAS, the Class Representatives on behalf of themselves and the Class
26 ("Plaintiffs"), on the one hand, and Defendants Service Corporation International and SCI
27 California Funeral Services, Inc. ("Defendants"), on the other hand, have reached a proposed
28 settlement and compromise of the disputes between them in the Class Action;

1 WHEREAS, the Parties have applied to the Court for preliminary approval of the
2 proposed Settlement, the terms and conditions of which are set forth in the Settlement Agreement
3 filed with the Court (the "Settlement" or "Settlement Agreement"), which is attached as Exhibit A
4 to the Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement
5 ("Motion for Preliminary Approval");

6 WHEREAS, the Court has preliminarily considered the Settlement to determine, among
7 other things, whether the Settlement is sufficient for preliminary approval and to warrant the
8 issuance of notice to members of the Class;

9 AND NOW, the Court, having read and considered the Settlement Agreement and
10 accompanying documents and the Motion for Preliminary Approval and supporting papers, and
11 the Parties to the Settlement Agreement having consented to the entry of this order,
12 *for the reasons set forth in the attached ~~order~~ verbatim*
IT IS HEREBY ORDERED AS FOLLOWS:

13 1. The Court has jurisdiction over the subject matter of the Class Action, the
14 Settling Parties, and all Class members.

15 2. The Court grants preliminary approval of the terms and conditions
16 contained in the Settlement Agreement.

17 3. The Court preliminarily finds that the Settlement Agreement was the
18 product of serious, informed, non-collusive negotiations conducted at arms' length by the Parties.
19 In making this preliminary finding, the Court considered the nature of the claims, the amounts
20 and kinds of benefits paid in Settlement, the allocation of Settlement proceeds among the Class
21 members, and the fact that a settlement represents a compromise of the Parties' respective
22 positions rather than the result of a finding of liability at trial. The Court further preliminarily
23 finds that the terms of the Settlement Agreement have no obvious deficiencies and do not
24 improperly grant preferential treatment to any individual Class member.

25 4. Subject to further consideration by the Court at the time of the Final
26 Approval Hearing, the Court preliminarily approves the Settlement as fair, reasonable and
27 adequate to the Class, as falling within the range of possible final approval, as meriting
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1 submission to the Class for its consideration and directs the Settling Parties to proceed to provide
2 Notice of the Settlement to all members of the Class who did not previously "opt-out."

3 5. Subject to further consideration by the Court at the time of the Final
4 Approval Hearing, the Court preliminary finds that the incentive awards sought for the Class
5 Representatives and the attorneys' fees and costs as provided for in the Settlement Agreement are
6 fair and reasonable.

7 6. The Class Representatives and Class Counsel are authorized to enter into
8 the Settlement Agreement on behalf of the Class, subject to final approval by this Court of the
9 Settlement. The Class Representatives and Class Counsel are authorized to act on behalf of the
10 Class with respect to all acts required by the Settlement Agreement or such other acts which are
11 reasonably necessary to consummate the proposed Settlement set forth in the Settlement
12 Agreement.

13 7. The Court approves Gilardi & Co. LLC to continue to serve as the Claims
14 Administrator and to administer the notice and claims procedures of the Settlement.

15 8. The Court approves, as to form and content, the Notice to be mailed to the
16 Class (the "Notice"), the Summary Notice to be published in the Jewish Journal in Los Angeles
17 (the "Summary Notice") and the Claim Form, which are attached to the Motion for Preliminary
18 Approval as Exhibits B, C and D respectively. The Court hereby instructs the Claims
19 Administrator to directly mail the Notice to all Class members (who did not previously "opt-out")
20 based on the mailing list created by the Claims Administrator from the review of Defendants'
21 cemetery records. The Court further directs the Claims Administrator to cause the Summary
22 Notice to be published in the Jewish Journal in Los Angeles on four consecutive weeks during the
23 Claims Period. By agreement, the Claims Administrator and the Parties may make non-material
24 changes to the Notice and/or the Claim Form if necessary for formatting purposes or to reflect
25 any changes directed by the Court or this Order.

26 9. The Notice also will be published on the Internet at the settlement website
27 operated by the Claims Administrator at www.edenclassaction.com.

28 10. The Court orders notice to the Class as follows:

- 1 A. By March 7, 2014, the Claims Administrator will directly mail the
2 Notice and the Claim Form to all Class members who did not
3 previously opt-out of the Class Action.
- 4 B. By the week of March 10, 2014, or soon thereafter as is practical,
5 the Claims Administrator will ensure the Summary Notice is
6 published in the Jewish Journal in Los Angeles on four consecutive
7 weeks during the Claims Period.
- 8 C. By March 7, 2014, the Claims Administrator will also include the
9 Notice and Claim Form on its settlement website
10 (www.edenclassaction.com), along with the fully executed
11 Settlement Agreement, the operative Second Amended Complaint
12 in this Class Action, the Motion for Preliminary Approval and this
13 Order.

14 11. The Court finds the notice to the class ordered herein and the Claim Form
15 complies fully with the requirements of the California Rules of Court, the California Code of
16 Civil Procedure, the California Civil Code, the Constitution of the State of California, the United
17 States Constitution, and any other applicable law and constitutes the best notice practicable under
18 the circumstances and shall constitute due and sufficient notice to the Class, and will adequately
19 inform members of the Class of their right to exclude themselves from the Class so as not to be
20 bound by the terms of the Settlement Agreement:

21 12. Members of the Class shall have no more than thirty (30) days after Notice
22 of the Settlement Agreement is first mailed within which to file with the Court any objections to
23 the Settlement Agreement (the "Objection Deadline"). It is contemplated by this Order that the
24 **Objection Deadline will be April 7, 2014.** The objection must be filed with the Court and
25 served on Class Counsel and counsel for the Defendants. The objection must also be mailed to
26 the Claims Administrator. In order for an objection to be valid, the objection must be in writing
27 and include: (a) the objector's name, address, telephone number and signature; (b) documents
28 sufficient to allow the Parties to confirm they are a member of the Class; (c) a detailed statement

1 of their specific objection; and (d) the grounds for each such objection, as well as any authority or
2 documents they wish the Court to consider. The Claims Administrator shall promptly forward
3 copies of all objections to Class Counsel and counsel for Defendants.

4 13. Members of the Class shall have no more than sixty (60) days after Notice
5 of the Settlement Agreement is first mailed within which to request exclusion or "opt out" of the
6 Class (the "Request for Exclusion Deadline"). It is contemplated by this Order that the **Request**
7 **for Exclusion Deadline will be May 6, 2014.** The request for exclusion must be mailed to the
8 Claims Administrator at the address provided in the Class Notice. The Claims Administrator
9 shall promptly forward copies of all requests for exclusion to Class Counsel and counsel for
10 Defendants, and not later than three days following the conclusion of this period, the Claims
11 Administrator shall prepare and deliver to Class Counsel, who shall file it with the Court, a report
12 stating the total number of Class members who have submitted timely and valid requests for
13 exclusion from the Class, and the names of such individuals. Should more than 500 Class
14 members or should Defendants demonstrate to the Court that 100 or more of the individual clients
15 of Class Counsel have requested exclusion from the Settlement, then Defendants shall have the
16 right to rescind and cancel the Settlement Agreement.

17 14. Any member of the Class who elects to be excluded shall not be entitled to
18 receive any of the benefits of the Settlement, shall not be bound by the release of any claims
19 pursuant to the Settlement Agreement, and shall not be entitled to object to the Settlement
20 Agreement or appear at the Final Approval Hearing.

21 15. On or before **May 9, 2014**, Plaintiffs shall file their Motion for Final
22 Approval, an Application for Attorneys' Fees and Costs, and their responses to any objections if
23 applicable.

24 16. A Final Approval Hearing shall be held before this Court at 9:00 a.m. on
25 **May 15, 2014** in Dept. 1 of the Los Angeles Superior Court, to address: (a) whether the proposed
26 Settlement should be finally approved as fair, reasonable and adequate, and whether the Final
27 Approval Order and Judgment should be entered; and (b) whether Class Counsel's application for
28 attorneys' fees, costs, expenses and incentive awards should be approved. The date and time of

1 the Fairness Hearing shall be set forth in the Class Notice. The Court retains jurisdiction to
2 consider all further applications arising out of or in connection with the Settlement Agreement.

3 17. Any member of the Class that does not request exclusion may appear at the
4 Final Approval Hearing, in person or by counsel (if an appearance is filed and served), and may
5 be heard, to the extent allowed by the Court, in support of or in opposition to, the fairness,
6 reasonableness, and adequacy of the Settlement, the application for an award of attorneys' fees,
7 cost, and expenses to Class Counsel, and any incentive awards to be provided to the Class
8 Representatives. Unless such requirement is excused by the Court, no person shall be heard in
9 opposition to the Settlement, the application for an award of attorneys' fees, costs, and expenses
10 to Class Counsel, or to any incentive awards to be provided to the Class Representatives unless,
11 no later than the Objection Deadline, such member of the Class files with the Clerk of the Court
12 and with the Claims Administrator a notice of an intention to appear together with a statement
13 that indicates a basis for such opposition along with any supporting documentation, including
14 proof of membership in the Class, and legal authority, if any, supporting the objection. Copies of
15 such notice, statement, and documentation, together with copies of other papers or briefs filed
16 with the Court, must be simultaneously delivered to Class Counsel and counsel for Defendants.
17 Any Class member who does not object in the foregoing manner shall be deemed to have waived
18 all objections and shall be foreclosed from making any objection to the Agreement. Only Class
19 members who have filed with the Court and/or submitted to the Claims Administrator valid and
20 timely notices of intention to appear, together with supporting papers, shall be entitled to be heard
21 at the Final Approval Hearing.

22 18. Any Class member who does not make an objection in the time and manner
23 provided shall be deemed to have waived such objection and forever shall be foreclosed from
24 making any objection to the fairness or adequacy of the proposed settlement as incorporated in
25 the Settlement Agreement, the payment of attorneys' fees and costs, or the Final Approval Order
26 and Judgment.

27 19. Class members who wish to receive distributions from the Settlement Fund
28 must submit a timely and valid Claim Form to the Claims Administrator no later than ninety (90)

1 days after notice of the Settlement Agreement is first mailed. It is contemplated by this Order
2 that the Claim Deadline will be **June 5, 2014**. The Claim Form must be submitted to the Claims
3 Administrator by U.S. Mail or electronically online at www.edenclassaction.com. The Claims
4 Administrator will be the final arbiter as to whether a Claim Form is valid, unless the Parties seek
5 further review by the Court.

6 20. Pending the final determination of whether the Settlement should be
7 approved, all trial proceedings in the instant case are stayed. If the Settlement is terminated or
8 final approval does not for any reason occur, the stay shall be immediately terminated and the
9 parties should report to the Honorable Marc Marmaro.

10 21. With the exception of such proceedings as are necessary to implement,
11 effectuate and grant final approval to the terms of the Settlement Agreement, all proceedings are
12 stayed in this Class Action and all Class members are enjoined from commencing or continuing
13 any action or proceeding in any court or tribunal asserting any claims encompassed by the
14 Settlement Agreement, unless the Class member "opts out" by filing a timely and valid Request
15 for Exclusion.

16 22. If the Settlement is finally approved by the Court, the Court shall retain
17 jurisdiction over the Settling Parties, the Class members, and this Class Action, only with respect
18 to matters arising out of, or in connection with, the Settlement, and may issue such orders as
19 necessary to implement the terms of the Settlement. The Court may approve the Settlement, with
20 such modifications as may be agreed to by the Settling Parties, without further notice to the Class.

21 23. The Settlement Agreement and any and all negotiations, documents and
22 discussions associated with it, shall not be deemed or construed to be an admission or evidence of
23 any violation of any statute, law, rule, regulation or principle of common law or equity, of any
24 liability or wrongdoing by Defendants or the truth of any of the claims, and evidence relating to
25 the Settlement Agreement shall not be discoverable or used, directly or indirectly, in any way,
26 whether in the Class Action or in any other action or proceeding, except for purposes of
27 demonstrating, describing, implementing or enforcing the terms and conditions of the Settlement
28 Agreement, this Order and/or the Final Judgment and the Order of Dismissal.

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24. In the event that the proposed Settlement is not approved by the Court, or in the event that the Settlement Agreement becomes null and void pursuant to its terms, this Order and all orders entered in connection therewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purpose whatsoever in this civil action or in any other case or controversy; in such event the Settlement Agreement and all negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement Agreement.

25. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Class members. The Court reserves the right to adjourn and/or reschedule the Final Approval Hearing without further notice of any kind; therefore, any Class member intending to attend the Final Approval Hearing should (in addition to complying with all instructions and requirements above) confirm the date, time, and location of the Final Approval Hearing with Class Counsel. The Final Approval Hearing may from time to time be continued by order of the Court and without further notice to the Class.

IT IS SO ORDERED.

Dated: Feb 27, 2014


Honorable Daniel Buckley

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| CASE | <i>Scott v. Service Corporation International</i> |
| Case No. | BC 421 528 |

Tentative Ruling

The unopposed Motion for Preliminary Approval is granted.

This certified class action is the result of the alleged malfeasance of Defendant Service Corporation International (SCI) and its California affiliate, SCI California Funeral Services, Inc. (SCI California), in disturbing graves at the Eden Jewish cemetery in Mission Hills, California, without disclosure of such to the Defendants' customers, who are represented by the Plaintiffs in this case. The Plaintiffs sought (1) injunctive relief, (2) rescission of interment transactions, and (3) out-of-pocket losses of Eden customers. The Plaintiffs undisputedly established that Eden sold approximately \$99.6 million in plots and were prepared to establish that Eden would have lost 95% of its business if the supposed problems had been disclosed. The Plaintiffs accepted \$45 million in restored value and have thus filed an unopposed motion for preliminary approval of their class action settlement.

To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval. CRC 3.769(a); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800 – 1801. The court must determine whether the settlement is fair, adequate, and reasonable in order to protect those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties. *Id.* Any party to such a settlement agreement may serve and file with the court a written notice of motion for preliminary approval of the settlement; the motion must be accompanied by the settlement agreement, the proposed notice to class members, and the proposed order. CRC 3.769(c). *The present motion satisfies these formal requirements.*

With respect to this and any such motion, the court has broad discretion to determine whether the settlement is fair. *Dunk*, supra, 48 Cal.App.4th at 1801. It should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, and the reaction of the class members to the proposed settlement. *Id.* The list of factors is not exhaustive and should be tailored to each case. *Id.* Due regard should be given to what is otherwise a private consensual agreement between the parties. *Id.* The inquiry must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned. *Id.* Ultimately, the court's determination is nothing more than an amalgam of delicate balancing, gross approximations and rough justice. *Id.*

The court cannot, however, accept a settlement that the proponents have not shown to be fair, reasonable and adequate. *Id.*, at 1801 – 1802. Assuming the burden is on the proponents, a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Id.*, at 1802.

The settlement was reached after trial began on January 27, 2014, before Judge Marc Marmaro. With substantial assistance from retired Judge Louis Meisinger, the parties arrived at the following settlement terms through “arm’s-length” bargaining on February 21, 2014:

- A global settlement fund of \$35,250,000.00 to be distributed pursuant to the settlement agreement, including one or more of the following;
- A full refund for those class members who wish to disinter their loved ones from Eden;
- A full refund available for those interested class members who have pre-purchased unused graves;
- Settlement proceeds distributed on a per-grave basis among the class members that submit claims during the claims period;
- Administration costs of \$250,000.00 will be paid by Defendants;
- Defendants are to implement a series of measures that will prevent future wrongful conduct;
- Defendants and Plaintiffs have agreed to a mutual release of liability;
- An incentive award of \$20,000.00 for each of the nine class representatives;
- Out-of-pocket costs of \$4.2 million for class counsel, who conducted 151 days of depositions, reviewed 424,853 pages of paper and electronic files, prepared voluminous responses to discovery, conducted over 180 inspections of Eden cemetery, etc.
- A notice plan executed by the reputedly largest, full-service class action notice and claims administration company in the country, Gilardi & Co., LLC;
 - [Gilardi & Co., LLC will conduct direct mailing notice and publication notice in the Los Angeles Jewish Journal for four consecutive weeks.]
 - The direct mailing Notice [Exhibit B of the Motion] satisfies the legal requirements for such notice: (1) A brief explanation of the case, including the basic contentions or denials of the parties; (2) A statement that the court will exclude the member from the class if the member so requests by a specified date; (3) A procedure for the member to follow in requesting exclusion from the class;

(4) A statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1390.

- A three-month claims period;
- A thirty-day objection period;
- A sixty-day “opt-out” period;
- Attorney fees of \$23.5 million (in comparison to \$99.6 million in plots sold by Eden); etc.

To the extent a conflict exists between this tentative ruling and the Order, the Order will take precedence. This Court approves the language of the Order.

Among the parties, the percentage of objectors in this instance is nil. This Court has also considered that the trial court’s broad discretion to determine whether a settlement was fair and reasonable, the notice to the class was adequate, and the certification of the class was proper. The Court finds the present settlement is fair, adequate, and reasonable.