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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JAN 22 2020

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LOS ANGELES SUPERIOR COURT

JAN 09 2020

S. DREW

15 Attorneys for Plaintiffs

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 FOR THE COUNTY OF LOS ANGELES

18 WILLIAM HOWARD AND JODI HOWARD) **CASE NO BC655179**
19 individually, and on behalf of all persons)
similarly situated,) Assigned for All Purposes to the
20) Honorable Elihu M. Berle
Plaintiff,) Department 6 Spring Street Courthouse
21)
22 vs.) **CLASS ACTION**
THE ROMAN CATHOLIC ARCHDIOCESE) **[proposed] ORDER GRANTING**
23 OF LOS ANGELES, and DOES 1 THROUGH) **MOTION FOR CLASS**
24 100 INCLUSIVE,) **CERTIFICATION**
25 Defendants.) Date: December 10, 2019
26) Time: 11:00 a.m.
27) Dept.: 6
28)

1 Now before the Court for consideration is the motion for class certification filed by Plaintiff,
2 William Howard (“Howard” or “Plaintiff”). The Court has considered the parties’ papers, relevant
3 legal authority, the record in this case, and it GRANTS the motion for class certification.

4 BACKGROUND

5 Plaintiffs William Howard and Jodi Howard (“Plaintiffs”) jointly filed a lawsuit on behalf
6 of themselves and others similarly situated against the Defendant, The Roman Catholic
7 Archbishop of Los Angeles, (“Defendant”) for, among other things, contractual claims of
8 negligence, declaratory relief and the imposition of a constructive trust, as well as a claim for
9 violation of the unfair competition law.

10 The Plaintiffs allege that they either entered into or are third-party beneficiaries of the
11 burial contract, which provided that certain sums paid for burials were to be kept in a fund used
12 for future cemetery maintenance.

13 According to the allegations of the Complaint, Defendant failed to use the funds pursuant
14 to their legal duty for the maintenance of the cemetery and, subsequently, the Defendant’s
15 cemeteries have fallen into a state of disrepair and neglect.

16 Plaintiffs have filed a motion for class certification, in which Plaintiff William Howard
17 seeks to be appointed a representative of the following class:

18 All persons and their successors in interest who paid money for
19 interment services pursuant to the SUBJECT CONTRACTS, which
20 is a defined term. [The term “SUBJECT CONTRACTS” is defined as
21 any agreement for interment services at Roman Catholic Archdiocese
of Los Angeles cemeteries that includes a discrete charge for “care
and maintenance.”]

22 The motion is filed only on behalf of Plaintiff William Howard (“Plaintiff”) and the
23 certification of the class is based only on a cause of action for unfair competition.

24 ANALYSIS

25 A. Plaintiff has Standing and the UCL claims are not Moot

26 Defendant argues in opposition that certification should not be granted because Plaintiff
27 lacks standing to pursue the UCL claims and because the UCL claim is otherwise moot.

28 Defendant first argues that Plaintiff lacks standing to bring a UCL claim and, accordingly,

1 the claim has failed as a result. A litigant's standing is of course a threshold issue. Before 2004, the
2 UCL allowed any person acting for the interest of itself, its members, or the general public to seek
3 restitution or injunctive relief against unfair acts or practices. (Amalgamated Transit Union v.
4 Superior Court (2009) 46 Cal. App. 4th 983.) Under the pre-2004 version of the UCL, a plaintiff did
5 not have to show any actual injury and a representative action brought under the unfair competition
6 law did not have to be brought as a class action. That changed in 2004, when the voters enacted
7 proposition 64, which declared that the broad standing permitted by the UCL had been abused.
8 Proposition 64 was amended to the effect that the UCL allowed private representative claims for
9 relief to be brought only by those persons who satisfied the law's new standing requirements and
10 complied with Code of Civil Procedure §382. And, that is, a claim seeking injunctive relief on behalf
11 of others under the UCL must be brought by a person who has suffered injury and, in fact, lost
12 money or property as a result of the unfair competition.

13 Plaintiffs seek only to have Plaintiff William Howard as the proposed class representative,
14 so Plaintiffs do not address the issue of Plaintiff Jodi Howard.

15 The Court finds that the Defendant's argument with respect to the standing of William
16 Howard is not persuasive and the Court finds that there is standing as to William Howard to be a
17 proposed class representative and that the Action may be maintained under the unfair competition
18 law, as the Plaintiff does claim injury.

19 As a second threshold matter, Defendant argues Plaintiff's class certification must fail
20 because the UCL claims are moot. Defendant contends that even assuming Defendant improperly
21 used the Care Fund, there is no evidence showing Defendant will do so again. And, furthermore,
22 Defendant asserts it has replenished the funds it withdrew in 2007.

23 Raising the substantive issue of mootness in opposition to a procedural motion for class
24 certification where there has been no intervening change of circumstances is not appropriate.
25 Nevertheless, even if there were a substantive factual dispute resolvable in this procedural motion
26 for class certification, Defendant's argument is unavailing. The evidence, as set forth by Plaintiff
27 establishes that Defendant continues to use burial contracts containing the same language which is
28 at the heart of this dispute. Plaintiff has set forth evidence that the same allegedly improper conduct

1 is capable of repetition at any time. Accordingly, the Court cannot find that the controversy is moot.

2 **B. The Requirements for Class Certification have been Met.**

3 Code of Civil Procedure §382 authorizes class actions when the question is one of a common
4 general interest of many persons, or when the parties are numerous and it is impracticable to bring
5 them all before the Court. As the California Supreme Court set forth in the seminal case on class
6 actions, Sav-On Drug v. Superior Court (2004) 34 Cal. 4th 319 as follows, “the party seeking
7 certification has the burden of establishing the existence of both an ascertainable class and a well-
8 defined community of interest among class members.”

9 The community of interest requirement embodies three factors: 1) predominant common
10 questions of law or fact; 2) class representatives with claims or defenses typical of the class; and 3),
11 class representatives who can adequately represent the class. The Supreme Court continued, the
12 certification question is essentially a procedural one, that does not ask whether an action is legally
13 or factually meritorious.

14 A trial court ruling on a certification motion determines whether the issues which may be
15 jointly tried or compared with those requiring separate adjudication are so numerous or substantial
16 that the maintenance of a class action would be advantageous to the judicial process and to the
17 litigants. As the focus in the certification dispute is on what type of questions, common or individual,
18 are likely to arise in the action, rather than on the merits of the case, in determining whether there
19 was substantial evidence to support a trial court’s certification order, we consider whether the theory
20 of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove
21 amenable to class treatment.

22 Reviewing courts consistently look at the allegations of the complaint and the declarations
23 of the attorneys representing the plaintiff class to resolve this question.

24 The first two factors that must be considered by the Court in connection with a ruling on a
25 motion for class certification are ascertainability and numerosity.

26 **1. Ascertainability**

27 When determining whether a class is ascertainable, the Court looks at the class definition,
28 the size of the class and the means available for identifying the class members. (Reyes v. San Diego

1 County Board of Supervisors (1987) 196 Cal. App. 3d 1263.) An ascertainable class is characterized
2 by a clear and objective definition. Sufficient records must be available to identify class members
3 at the remedial stage.

4 In this case, the class is limited to persons and their successors in interest who paid money
5 for interment services pursuant to contracts that included a discrete charge for care and maintenance.
6 This consists of common transactional facts based on objective characteristics. The consumers
7 either contractually enlisted the services of the Defendant or they did not. The charges are either
8 contained in the consumer contracts or the charges are not.

9 Accordingly, the definition is neither vague nor subjective.

10 Furthermore, Defendant's business records including the subject contracts should state the
11 names and addresses of all the original contracting parties. All this is evidence that the class is
12 ascertainable.

13 Defendant argues that the proposed class is not temporally limited. However, the class period
14 can be modified in the future, if necessary, should the parties seek to limit the claims based upon
15 the statute of limitations or other matters affecting the temporal scope. This does not create an
16 impediment to ascertainability.

17 Defendant also argues that successors in interest is amorphous and is jurisprudentially
18 unascertainable. However, that argument is untenable as these adjectives seem to imply that
19 successors in interest can essentially never comprise a class, which is a proposition that is
20 unsupported by legal authority. Simply put, beneficiaries of these decedents' estates would be able
21 to identify themselves based on whether the decedent was provided interment services from the
22 Defendant.

23 Defendant argues that deriving a class member from Defendant's business records is not
24 readily achievable as individual contracts have been archived and then later the contracting parties
25 have died or moved. However, simply because the contracts have been archived does not foreclose
26 ascertainability of the class members. The parties' counsel can review the documents and records
27 and the names and addresses of the contracting or paying parties can be reviewed so that notice can
28 be sent to those individuals. Although Defendant has set forth some evidence to reasonably establish

1 that there may be practical questions that could arise, should it ultimately prove impracticable,
2 publication is another alternative for notice. So, there is no detriment to ascertainability.

3 **2. Numerosity**

4 As to numerosity, no set number is required as a matter of law for the maintenance of a class
5 action. To be certified, a class must be numerous in size, such that it is impracticable to bring all of
6 them before the Court. Impracticability does not mean impossibility. It only refers to a difficulty or
7 inconvenience of joining all members of a class. California case law would indicate that as few as
8 10 or 28 members can satisfy the numerosity requirement. In this case, Defendant does not
9 reasonably dispute the numerosity requirement. Plaintiff represents that there are well over 1,000
10 potential members of the class.

11 The Court finds the ascertainability and numerosity requirements are met.

12 **3. Community of Interest**

13 As previously noted, there are three factors that embody the community of interest
14 requirement: 1) predominate, common questions of law or fact; 2) class representatives with claims
15 or defenses typical of the class; and 3) class representatives who can adequately represent the class.
16 The California Supreme Court held in the Sav-On case that the central issue in a class certification
17 motion is whether the questions that will arise in the action are common or individual, not plaintiffs'
18 likelihood of success on the merits of their claims. The United States Supreme Court has made clear
19 that any competently drafted class complaint can raise common questions, but the common question
20 must be of such a nature that it is capable of class-wide resolution, which means that determination
21 of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in
22 one stroke.

23 A court is not to focus on the potential conflicting issues of fact or law on an individual basis.
24 Rather, a court must evaluate whether the theory of recovery advanced by plaintiff is likely to prove
25 amenable to class treatment. (Jaimez v. Daihatsu USA (2010) 181 Cal. App. 4th 1286.)

26 A class action would not be permitted if each class member is required to litigate substantial
27 and numerous factually unique questions before recovery may be allowed. If the class action was
28 splintered into individual trials, common questions do not predominate, and litigation of the action

1 in a class format is inappropriate.

2 **a. Predominant Common Questions of Law and Fact**

3 The issue then is whether the common questions of fact and law predominate as to a class
4 pursuing UCL claims based on deceptive practices in charging care and maintenance fees for the
5 interment. Under the Business and Professions Code, the UCL prohibits and provides similar
6 remedies for unfair competition, which it defines as any unlawful, unfair or fraudulent business act
7 or practice. An act can be alleged to violate any or all three of the prongs of the UCL – unfair,
8 unlawful or fraudulent.

9 False advertising claims under the UCL are governed by the reasonable consumer test. (Bank
10 of the West v. Superior Court (1992) 2 Cal. 4th 1254.) Under the reasonable consumer standard, a
11 plaintiff must show that members of the public are likely to be deceived.

12 The California Supreme Court has recognized that these laws prohibit not only advertising
13 which is false, but also advertising which, although true, is either actually misleading or which has
14 a capacity, likelihood or tendency to deceive or confuse the public. (Kasky v. Nike (2002) 27 Cal.
15 4th 983.)

16 The UCL's purpose is to protect both consumers and competitors by promoting fair
17 competition in commercial markets for goods and services. (Kwikset v. Superior Court (2011) 51
18 Cal. 4th 310.)

19 In this case, Plaintiff has set forth argument and evidence that common questions of law and
20 fact will predominate over individualized ones.

21 First, the predominating legal question that will resolve liability is whether Defendant's
22 uniform contract language containing a line item charge for care and maintenance was deceptive
23 within the meaning of the UCL if the extra amounts being charged for said care and maintenance
24 could be used instead for purposes unrelated to care and maintenance.

25 Second, the discrete line item charged at issue, that is care and maintenance appears in all
26 contracts at issue. The typical fee equated to 15 percent of the interment cost and Defendant's
27 computerized records show the charge since December 1986. To the extent written representations
28 are at issue, the representations were the same as to each consumer. Thus, the objective standard as

1 to whether a reasonable consumer would likely be deceived by representations would be a
2 determination that would apply on a class-wide basis.

3 Third, whether the funds were unlawfully misused would be determined at one time and that
4 finding would be applied to all of the class members' claims. Similarly, the amount of any misused
5 funds, which is alleged to be \$80,000,000 would be subject to a single determination, also applicable
6 to all class members' claims.

7 Finally, whether the alleged \$80,000,000 failed to be repaid would be amenable to proof
8 common to all the class.

9 Defendant argues that Plaintiffs have not shown that Defendant made misrepresentations or
10 that anyone relied to their detriment on any misrepresentations. This argument fails for a number
11 of reasons.

12 First, Defendant seems to be making a merits argument, which is not appropriate at a
13 procedural stage for certification. Plaintiff does not need to establish the elements of the claim in a
14 motion for class certification.

15 Second, and perhaps more importantly, Defendant misconstrues Plaintiff's theory of the case
16 when Defendant states that individual inquiries are required to determine whether Defendant made
17 a material misrepresentation to each class member, and, if so, whether that class member relied on
18 the misrepresentation.

19 In this case, Plaintiff is relying on the same alleged written misrepresentation in the burial
20 contracts and has not asserted that there were any individual, unique or oral misrepresentations.

21 Third, relief under the UCL requires proof of reliance from the class representatives, but not
22 absent class members. (Sevidal v. Target (2010) 189 Cal. App. 4th 905.)

23 Accordingly, Defendant's argument regarding the misrepresentations or reliances is
24 unpersuasive.

25 At this stage of the proceedings, based on the submissions of counsel, there appear to be few
26 demonstrable individual questions of either fact or law, given that the claims among the class
27 members are based upon material facts involving the same type of transactions, the same alleged
28 misrepresentations, and the same alleged improper conduct by Defendant.

1 Accordingly, in light of the greater number of common questions of fact and law, Plaintiffs
2 have established that common questions will predominate over individualized.

3 **b. Typicality**

4 With regard to the next factor to be considered, typicality, Plaintiffs contend that Plaintiff
5 William Howard's claims are typical of the class claims.

6 Typicality refers to the nature of the class representative's claim or defense and not the
7 specific facts in which it arose or the relief sought. (Seastrom v. Neways (2007) 149 Cal. App. 4th
8 1496.)

9 The typicality test is whether other members have the same or similar injury, whether the
10 action is based on conduct which is not unique to the named plaintiffs, and whether other class
11 members have been injured by the same course and conduct.

12 In this case, Plaintiff contracted for burial service for his mother at Defendant's San
13 Fernando Mission Cemetery. The burial contract had a line item for money charged for care and
14 maintenance and Plaintiff understood a portion of the purchase price would be dedicated for the
15 perpetual care and maintenance of his mother's gravesite and cemetery.

16 This similarly situates Plaintiff with the rest of the class members. Accordingly, for
17 Defendant to have unlawful use of the funds, Plaintiff and the class would all suffer the same type
18 of injury.

19 Defendant seems to argue that Plaintiff is not typical of the class because he failed to produce
20 evidence that his contract was the same as the other class members' contracts. However, the
21 McMahon declaration submitted by Defendant expressly states that on or about 1992, Defendant
22 began using a new burial contract template that contained a column entitled "Fees, Care and
23 Maintenance," similar to contracts being used by private cemeteries. This declaration further states
24 that the column has been used over the years and again stating that it appears in the new version of
25 the contract since around 1992. In other words, Defendant's own evidence strongly suggests that
26 Plaintiff William Howard's contract is the same as other consumers, or at least contains the same
27 language being challenged on a class-wide basis.

28 Accordingly, the Court finds that Plaintiff has established typicality and Defendant's

1 argument to the contrary is unpersuasive.

2 **c. Adequacy of Representation**

3 The next factor to be considered by the Court is adequacy. A named Plaintiff must also
4 adequately represent the class.

5 Adequacy of representation depends on whether a plaintiff's attorney is qualified to conduct
6 the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class.
7 (McGhee v. Bank of America (1976) 60 Cal. App. 3d 442.)

8 The primary criteria for determining whether a class representative will adequately represent
9 the class is whether the representative, though qualified counsel, will vigorously and tenaciously
10 protect the interest of the class.

11 In the present case, counsel has submitted evidence establishing experience with relevant
12 litigation and qualifications to lead this proposed class action proceeding.

13 Plaintiff seems to have a clear understanding of the facts of the case and has been
14 continuously willing to participate in it.

15 Defendant, however, claims that Plaintiff has credibility issues and calls into question
16 Plaintiff's knowledge or his involvement in this action, contending that Plaintiff is simply lending
17 his name to a suit controlled by the class attorney. Defendant's primary evidentiary support consists
18 of alleged conflicts between Plaintiff's deposition statements and declaration statements.

19 Defendant points to Plaintiff's deposition testimony, which indicates he had no recollection
20 of discussing the price of the burial contract. Defendant then points to Plaintiff's declaration which
21 indicates that he would not have agreed to the transaction or paid money had he been informed that
22 the money charged for care and maintenance was not required to be used exclusively for that
23 purpose. However, these statements are not irreconcilable statements.

24 Defendant relies on the case of Howard Gunty v. Superior Court (2001) 88 Cal. App. 4th
25 572. However, in that case the plaintiff involved was a "professional plaintiff" who had filed
26 approximately 20 lawsuits alleging fraud and mismanagement in securities derivative actions and
27 represented in substantially all of them by the same attorneys. There's no evidence of that type of
28 situation existing here and the facts are not analogous.

1 The Court does not find that the ostensible equivocal testimony between the deposition
2 testimony and the declarations filed in support of the motion establish that Plaintiff has credibility
3 issues so as to be rendered inadequate to represent the class.

4 The Court finds that Plaintiff William Howard and his counsel Jeffrey Spencer of the
5 Spencer Law Firm, Jeffrey Wilens of the Lakeshore Law Center and Scott Schutzman of the Law
6 Offices of Scott E. Schutzman would adequately and fairly represent the class members.

7 **4. Superiority**

8 Finally, trial courts are required to carefully weigh their respective benefits and burdens and
9 to allow maintenance of the class action only where substantial benefits accrue, both to litigants and
10 the courts. Courts must pay careful attention to manageability concerns when deciding whether to
11 certify a class action. In a court's consideration of whether a class action is superior for resolving a
12 controversy, the manageability of individual issues is just as important as the existence of common
13 questions uniting the proposed class.

14 Trial courts evaluate whether a class action is the superior means for resolving the litigation
15 by considering many factors, including, but not limited to: whether the alleged claims, being small
16 would not be pursued except by way of a class action; whether multiple lawsuits are likely if a class
17 action is not certified; whether individual rights can be adequately protected if the action proceeds
18 as a class action; and whether class treatment is more efficient and economical than adjudicating a
19 potential number of individual cases.

20 In the present case, Plaintiffs have set forth evidence which establishes that Defendant's
21 alleged conduct was uniformly applicable to the class members and subject to common questions
22 of law and fact.

23 Litigating whether Defendant's statements or conduct was misleading or unlawful one single
24 time on behalf of 1,000 plaintiffs is particularly preferable, given the relatively minor amount of
25 individual issues that may arise.

26 Unmanageability does not present itself as a challenge or a problem, and the Court finds that
27 class treatment is the preferable method for Plaintiff to try the claims.

28 Defendant does not directly address many, if any, of the superiority factors. However,

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Defendant argues that Plaintiff has not presented a suitable trial plan. We have not gotten to that stage yet. However, should a trial plan prove unworkable as discovery continues or as the case develops, the parties can address their concerns to the Court as part of a discovery presentation or with regard to preparation for trial when we get to setting conferences for trial.

As it stands now, however, the inquiry into judicial economy weighs in favor of the case being brought as a class action.

Therefore, in conclusion, the Court grants the motion for class certification.

Plaintiff William Howard is approved as class representative and Plaintiff's Counsel Jeffrey Spencer of the Spencer Law Firm, Jeffrey Wilens of the Lakeshore Law Center and Scott Schutzman of the Law Offices of Scott E. Schutzman are appointed class counsel.

IT IS SO ORDERED.

Dated: 1/22/20

ELIHU M. BERLE

The Honorable Elihu M. Berle
Judge of the Superior Court

PROOF OF SERVICE

1 State of California)
2 County of Orange)

3 I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a
4 party to the within action. My business address is 2 Venture, Suite 220, Irvine, CA 92618.


5 On January 29, 2020, I served the Order Granting Motion for Class Certification on the interested parties
6 in this action electronically via File & Sever Express to the email addresses listed below:

<p>6 <u>Co-Counsel for Plaintiffs</u> LAKESHORE LAW CENTER Jeffrey Wilens, Esq. (State Bar No. 120371) 18340 Yorba Linda Blvd., Suite 107-610 Yorba Linda, CA 92886 Telephone No: (714) 854-7205 Facsimile No: (714) 854-7206 Email: jeff@lakeshorelaw.org</p>	<p><u>Attorneys for Defendants</u> CLYDE & Co. US LLP Alison K. Beanum 355 S. Grand Ave., Suite 1400 Los Angeles, CA 90071 Tel. (213) 358-7600 Fax: (213) 358-7650 Alison.beanum@clydeco.us</p>
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17
18 BY File & Serve Express: To the email addresses listed above

19 BY U.S. MAIL:

20 Executed on January 29, 2020 at Irvine, California. I declare under penalty of perjury under the laws of
21 the State of California that the foregoing is true and correct.

22 
23
24 By: _____
Jeffrey Spencer