

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 22-60779-CIV-SMITH

UNITED STATES OF AMERICA,

Plaintiff,

v.

FUNERAL & CREMATION GROUP
OF NORTH AMERICA, LLC, a Delaware
limited liability company, *et al.*,

Defendants.

/

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND MONETARY JUDGMENTS**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction, Civil Penalties, Monetary Relief, and Other Relief (“Complaint”) in this matter, pursuant to Sections 5(m)(1)(A), 13(b), 16(a)(1), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a)(1), 57b, and the Commission’s Trade Regulation Rule Concerning Funeral Industry Practices (“Funeral Rule”), 16 C.F.R. Part 453. Defendants have waived service of the summons and the Complaint. Plaintiff and Defendants stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary and Civil Penalty Judgment (“Order”) to resolve all matters in dispute in this action between them.

Therefore, it is **ORDERED** as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45 and the Funeral Rule in connection with the advertising, marketing, distribution, offering for sale, or sale of Funeral Goods and Services.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction. However, the facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission to enforce its rights under this Order, including its rights to any payment or monetary judgment pursuant to this Order.
4. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
5. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.
6. Defendants and Plaintiff waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

A. **“Alternative Container”** is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

B. **“Cash Advance Item(s)”** means any item of service or merchandise described to a purchaser as a “cash advance,” “accommodation,” “cash disbursement,” or similar term. A Cash Advance Item is also any item obtained from a third party and paid for by the Funeral Provider on the purchaser’s behalf. Cash Advance Items may include but are not limited to: fees charged by a cemetery or crematory for services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities; and death certificates.

C. **“Clear(ly) and conspicuous(ly)”** means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.

2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

D. “**Defendants**” means the individual defendant Anthony Joseph Damiano, also known as AJ Damiano, AJ Styles, or AJ Mahoney, and the Corporate Defendants, individually, collectively, or in any combination.

E. “**Corporate Defendants**” means Legacy Funeral Services, LLC also doing business as Heritage Cremation Provider, Evergreen Funeral Home and Crematory, and Carolina Central Crematory, and its successors and assigns; and Funeral & Cremation Group of North America, LLC, and their successors and assigns.

F. “**Funeral Goods**” means the goods which are sold or offered for sale directly to the public for use in connection with Funeral Services.

G. **“Funeral Provider”** means any person, partnership or corporation that sells or offers to sell Funeral Goods and Funeral Services to the public.

H. **“Funeral Rule”** means the Trade Regulation Rule Concerning Funeral Industry Practices issued by the FTC, 16 C.F.R. Part 453. A copy of the Funeral Rule is attached to this Order as Attachment A.

I. **“Funeral Services”** means any services that may be used to care for and prepare deceased human bodies for burial, cremation or other final disposition, and arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

J. **“General Price List”** means a written price list for funeral goods and services, which is in accordance with the Funeral Rule, including 16 C.F.R. 453.2(b)(4) and the required price and other disclosures for such a list.

K. **“Landing Page”** means the first webpage a consumer sees upon reaching any of Defendants’ Websites.

L. **“Statement of Funeral Goods and Services”** means an itemized written statement given for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements, which must contain the Funeral Goods and Services selected and the prices for each, itemized Cash Advance Items, and total cost of the Funeral Goods and Services selected.

M. **“Websites”** means legacycremationservices.com and heritagecremationprovider.com, and any other website owned, operated, or controlled partially or wholly by any of the Defendants that is involved in the sale of goods or services.

ORDER

I. PROHIBITION AGAINST MISREPRESENTATIONS

It is **ORDERED** that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service, or in connection with arranging or contracting with a Funeral Provider for goods or services, are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

A. The identity, nature, location or scope of Defendants' business operations, goods or services, or business premises, including whether Defendants provide goods or services directly or arrange or contract with others for the goods or services they offer;

B. The location or identity of the company or individual providing each good or service sold or offered for sale by Defendants;

C. The nature of Defendants' affiliation with the company or person involved in providing or assisting with the provision of each good or service;

D. The cost of each good or service requested by the consumer or required to be purchased by the consumer;

E. The total cost to purchase, receive, or use goods or services, and the goods and services included in the total cost; or

F. Any other fact material to consumers concerning goods or services.

**II. MANDATORY DISCLOSURE OF MATERIAL INFORMATION RELATING TO
THE MARKETING AND SALE OF GOODS OR SERVICES**

It is further **ORDERED** that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any Funeral Goods or Services, are permanently restrained and enjoined from:

A. Failing to disclose, Clearly and Conspicuously, on the Landing Page of any of the Websites:

1. The actual physical location of Defendants' business premises, including but not limited to the geographic location of Defendants' funeral homes, crematories, or cemeteries;

2. That Defendants arrange for all or part of the goods and services requested by the consumer to be provided by a Funeral Provider that is not directly or indirectly owned or controlled by Defendants, when such is true; and

3. A link to a General Price List.

B. Failing to disclose, Clearly and Conspicuously, during Defendants' first communication by telephone or electronic means with a consumer the information required to be disclosed under Section II.A.1-2 (directly above), and such disclosure must be made prior to any discussion about the cost of any Funeral Good or Service.

C. Failing to give a General Price List to any consumer communicating with Defendants by telephone or electronic means about any Funeral Good or Service that Defendants offer to sell or arrange, during or immediately after the first such communication, and such General Price List must be given prior to any discussion about the cost of any Funeral Good or Service.

Provided, however, that Defendants may provide the information by Clearly and Conspicuously directing the consumer to the General Price List on the Websites or sending an electronic copy of the General Price List to the consumer via email, text, or other electronic means available to that consumer.

D. Failing to disclose, Clearly and Conspicuously, by telephone or electronic means, upon request by the consumer for pricing information for Funeral Goods or Services, the total cost of such Funeral Goods or Services, provided that until selection by Defendant of a Funeral Provider to provide Funeral Goods or Services to a consumer, the Defendant may give an estimated price of Cash Advance Items if the exact price is not known, as long as the Defendant specifically identifies any additional Cash Advance Item that may be added to the total cost, provides a good faith estimate for any such Cash Advance Item, and states that the amount is an estimate. The total cost must include, to the extent applicable:

1. Additional fees, including crematory fees or state or county permit fees; and
2. Required purchases, including Alternative Containers.

E. Failing to disclose, Clearly and Conspicuously, by telephone and electronic means, the name, geographic location, and contact information for any Funeral Provider selected by a Defendant to provide Funeral Goods or Services to a consumer, immediately upon selection of such Funeral Provider.

F. For any sale, before obtaining payment information from the consumer, failing to provide the consumer with a Statement of Funeral Goods and Services that includes the Funeral Goods and Services selected by the consumer, the prices to be paid for each of them, and the total cost of the Funeral Goods and Services selected by the consumer.

III. PROHIBITION AGAINST UNFAIR PRACTICES RELATED TO THE PROVISION OF GOODS AND SERVICES

It is further **ORDERED** that Defendants are permanently restrained and enjoined from engaging in the following practices, whether acting directly or indirectly:

A. Failing to return or threatening not to return to consumers, or withholding information about the location of, the cremated remains or the body of a deceased human being; or

B. Assisting or instructing any company or person to delay returning to, or withhold from, consumers the cremated remains or the body of a deceased human being.

IV. INJUNCTION CONCERNING FUNERAL GOODS AND SERVICES

It is further **ORDERED** that Defendants and Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the sale of any Funeral Good or Service are hereby permanently restrained and enjoined from:

A. Failing to provide any consumer who inquires by telephone or electronic means about offerings or prices, with accurate information from Defendants' price lists and any other readily available information that reasonably answers the consumer's question;

B. Failing to disclose on a Statement of Funeral Goods and Services that the price charged for Cash Advance Items may not be the same as the cost to Defendants, if true; and

C. Violating the Funeral Rule.

V. MONETARY JUDGMENTS

It is further **ORDERED** that:

A. Judgment in the amount of Two Hundred Seventy-Five Thousand Dollars

(\$275,000) is entered in favor of Plaintiff against Defendant Damiano and Corporate Defendants, jointly and severally, as a civil penalty.

B. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

C. Defendants shall pay to Plaintiff, the total amount of Two Hundred Seventy-Five Thousand Dollars (\$275,000) (“Civil Penalty”), by making payment to the Treasurer of the United States, according to the following schedule:

1. Defendants shall pay such Civil Penalty in equal monthly payment installments not to exceed twenty-four (24) months.

2. Defendants shall pay the first payment installment of Eleven Thousand Four Hundred Fifty-Eight Dollars and Thirty-Three cents (\$11,458.33) to Plaintiff on or before January 15, 2023.

3. Defendants shall pay remaining the monthly installments each of Eleven Thousand Four Hundred Fifty-Eight Dollars and Thirty-Three cents (\$11,458.33), on or before each of the following dates:

- a. February 15, 2023;
- b. March 15, 2023;
- c. April 15, 2023;
- d. May 15, 2023;
- e. June 15, 2023;
- f. July 15, 2023;
- g. August 15, 2023;

- h. September 15, 2023;
- i. October 15, 2023;
- j. November 15, 2023;
- k. December 15, 2023;
- l. January 15, 2024;
- m. February 15, 2024;
- n. March 15, 2024;
- o. April 15, 2024;
- p. May 15, 2024;
- q. June 15, 2024;
- r. July 15, 2024;
- s. August 15, 2024;
- t. September 15, 2024;
- u. October 15, 2024;
- v. November 15, 2024; and
- w. December 15, 2024.

4. Defendants shall place the first payment installment of the Civil Penalty in escrow as of the date this Stipulated Order For Permanent Injunction And Monetary Judgments is signed by Defendants, and on that date shall provide to Plaintiff a certification by Defendants' counsel that funds have been placed in escrow.

5. Each installment payment of the Civil Penalty must be made by electronic fund transfer in accordance with instructions previously provided by a representative of Plaintiff.

6. Written confirmation of the transfer shall be delivered via email to Wandaly Fernandez Garcia, Trial Attorney, Consumer Protection Branch, U.S. Department of Justice at wandaly.e.fernandez.garcia@usdoj.gov.

D. Defendants may prepay at any time, and without penalty, the remaining balance, or any part thereof, of the Two Hundred Seventy-Five Thousand Dollars (\$275,000.00) owed under this Order. Any such prepayment made prior to an installment due date shall be credited as if made on the next installment due date, and Defendants shall be relieved of making any further payments on the installment due date for any prepayments to the extent of such prepayment. Nothing herein shall be construed to relieve Defendants of their obligation to make timely payment for any installments as they become due, which have not otherwise fully been paid in advance.

E. Defendants agree that their payment of the Civil Penalty to the United States is not compensation for actual pecuniary loss and is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

F. If the Defendants default on their installment payments of the Civil Penalty, the entire remaining amount of the Civil Penalty shall immediately become due.

G. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants must submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

VIII. ORDER ACKNOWLEDGMENTS

It is further **ORDERED** that Defendants obtain the following acknowledgments of receipt of this Order:

A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, the Defendant Damiano for any business that he, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IX. COMPLIANCE REPORTING

It is further **ORDERED** that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission and Plaintiff may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet

addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Defendant Damiano must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, Defendant Damiano must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including those for all residences; (b) identify all business activities, including any business for which Defendant Damiano performs services whether as an employee or otherwise and any entity in which Defendant Damiano has any ownership interest; and (c) describe in detail Defendant Damiano's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 20 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, Defendant Damiano must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which Defendant Damiano performs services whether as an employee or

otherwise and any entity in which Defendant Damiano has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Legacy Funeral Services.

X. RECORD KEEPING

It is further **ORDERED** that Defendants must create the records outlined below for 20 years after entry of the Order and retain each such record for 5 years. Specifically, Corporate Defendants and Defendant Damiano for any business that Defendant Damiano, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

A. Accounting records showing the revenues from all goods or services sold;

B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response thereto;

D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

E. A copy of each unique advertisement or other marketing material.

XI. COMPLIANCE MONITORING

It is further **ORDERED** that, for the purpose of monitoring Defendants' compliance with this Order including any failure to transfer any assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission or Plaintiff, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission and Plaintiff are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission and Plaintiff are authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission and Plaintiff to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.


C. The Commission and Plaintiff may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of the Commission or Plaintiff, any consumer reporting agency must furnish consumer reports concerning Defendant Damiano, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

XII. RETENTION OF JURISDICTION

It is further **ORDERED** that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order until December 31, 2024.

DONE AND ORDERED in Fort Lauderdale, Florida, this 6th day of April 2023.



RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc Counsel of Record