

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION**

LINDA S. KAGAN, on behalf of)
 plaintiff and a class,)

Plaintiff,)

v.)

Case No. 11 CH 22722

WALDHEIM CEMETERY CO.; ZION)
 GARDENS, INC.; ROSEMONT PARK,)
 INC.; BANK OF AMERICA NATIONAL)
 ASSOCIATION, successor to LASALLE)
 BANK N.A.; and DAVID B. GAIL,)

Judge Demacopoulos

Defendants,)

ELLIOT SAMUELS, acting as the trustee)
 for the Abe Samuels Trust, as the executor)
 of the Estate of Diane Samuels, and on)
 behalf of all others similarly situated,)

Plaintiff,)

v.)

Case No. 11 CH 23177

ROSEMONT PARK, INC., DAVID GAIL,)
 WALDHEIM CEMETERY COMPANY,)
 BANK OF AMERICA N.A.,)
 (successor in interest to LaSalle Bank N.A.,)
 and ZION GARDENS INC.)

Judge Demacopoulos

Consolidated with:

11 CH 22722

Defendants.)

FINAL APPROVAL ORDER AND INJUNCTION

This matter coming before the Court for final approval of the proposed settlement, a hearing being held after notice;

IT IS HEREBY ORDERED:

1. The Court finds that it has jurisdiction over the Class Members;
2. The Court finds that it has subject matter jurisdiction to approve the Settlement Agreement and all Exhibits hereto;
3. The Court finds that the above-captioned action involves a controversy with respect to Illinois real estate, namely cemetery lots, graves and appurtenances thereto and is governed by the law of the State of Illinois;
4. The Court confirms the definition of the Class in the Preliminary Approval Order for purposes of the Settlement Agreement and the Final Order;
5. The Court finds that the Class Notice, Long-Form Notice and the notice methodology implemented pursuant to the Settlement Agreement
 - a. constitute the best practicable notice;
 - b. constitute notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the *Kagan/Samuels* Action, their right to object to or to exclude themselves from the Settlement and to appear at the Final Approval Hearing, and their right to seek monetary and other relief;
 - c. are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and
 - d. meet all applicable requirements of Due Process;
6. The Court finds that full opportunity has been afforded to all Class Members to request exclusion from the Settlement, to file objections to the Settlement, and to participate in the

Final Approval Hearing, and that all Class Members and other persons validly requesting to be heard have been heard;

7. The Court approves the Opt Out List provided by the Co-Lead Class Counsel and determines that the Opt Out List is a complete list of all Class Members who have properly and timely requested exclusion from the Settlement and, therefore, are not members of the Class; and further provides that those persons shall neither share in the Settlement benefits nor be bound by the Final Order;

8. The Court grants final approval to the Settlement Agreement, including the terms defined therein and the exhibits thereto, as being fair, reasonable, and adequate as to, and in the best interests of, each of the Plaintiffs and Class Members, and is consistent and in compliance with all requirements of Due Process;

9. The Court directs the Parties and their counsel to implement and consummate this Agreement in accordance with its terms and provisions;

10. The Court directs that Bank of America shall pay (with the exception of the notice funds addressed pursuant to Section 7 of the Settlement Agreement) the Settlement Consideration in accordance with Section 14(a) of the Settlement Agreement within 5 days of the Effective Date;

11. The Court adjudges that Plaintiffs and the Settlement Class Members have conclusively compromised, settled, discharged, dismissed, and released any and all Released Claims against Defendants, as well as the Parties' respective Releases against each other and incorporates the Releases into the Final Approval Order;

12. The Court enters final judgment in accordance with the terms of the Settlement Agreement, and further orders that the pending Third Amended Consolidated Class Action Complaint

is dismissed with prejudice as to the Defendants, and the Bank's pending counterclaim is dismissed with prejudice, without fees or costs to any Party except as provided herein;

13. The Court declares the Settlement Agreement and this Order to be binding on and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the Releases maintained by or on behalf of Plaintiffs and all other Class Members, as well as their heirs, executors and administrators, successors, and assigns, as well as the Parties' respective Releases of each other;

14. The Court determines that upon the Effective Date, Plaintiffs and all Class Members who have not been excluded from the Class, shall be barred from asserting any Released Claims against Defendants, and any such Class Members shall have released any and all Released Claims as against Defendants and further that the respective Parties shall be barred from asserting any Released Claims against each other and any and all Parties shall have released any and all Released Claims against each other;

15. The Court bars and permanently enjoins all Class Members who have not properly and timely excluded themselves from the Settlement from filing, commencing, prosecuting, intervening in, continuing or participating as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances alleged in the above-captioned actions and/or relating to the Released Claims;

16. The Court declares that Defendants and their counsel shall have no liability whatsoever for the use of the Cash Settlement Fund once it has been paid;

17. The Court awards \$ ^{397,231.93} attorney's fees and expenses to Co-Lead Class

Counsel. Payment shall be made after the Effective Date.

18. The Court awards \$ 100 as a Service Award to each Named Plaintiff in accordance with Section 17 of the Settlement Agreement. Payment for such awards shall be paid from and not in addition to the Cash Settlement Fund as provided in Section 17 of the Settlement Agreement.

Payment shall be made after the Effective Date.

19. The settlement is not, and should not in any event be offered or received as evidence of, a presumption, a concession, or an admission of liability or of any allegation made against the Defendants, provided, however, that reference may be made to this Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate the provisions of this Agreement;

20. Without affecting the finality of the Final Order for purposes of appeal, the Court reserves jurisdiction over Defendants, the Plaintiffs, and the Class as to all matters relating to the administration, consummation, enforcement, and interpretation of the terms of the Settlement, this Agreement, and the Final Order, and for any other necessary purposes.

21. The Court authorizes the Parties, without further approval from the Court, to agree to and to adopt such amendments, modifications, and expansions of this Agreement and all Exhibits hereto as long as they do not reduce the rights of Class Members under this Agreement or in the Final Order.

Judge Anna Helen Demacopoulos

DEC 14 2017

Judge Anna Demacopoulos

Circuit Court - 2002

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