

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT GRAYSON, SON AND SOLE)
SURVIVING HEIR OF DINAH)
WASHINGTON a/k/a RUTH JONES,)
GRANDSON OF ALICE JONES, NEPHEW)
OF LEDDIE WARE AND VIRGINIA WARE,)
AND DEBORAH CHARLES, DAUGHTER)
OF EZZARD CHARLES, FORMER)
HEAVYWEIGHT BOXING CHAMPION OF)
THE WORLD, ON BEHALF OF)
THEMSELVES AND ALL OTHERS)
SIMILARLY SITUATED,)

Plaintiffs,)

v.)

Case No. 09-cv-4464_____

PACESETTER CAPITAL GROUP a/k/a)
PACESETTER/MVHC, INC., PERPETUA,)
INC., PERPETUA-BURR OAK HOLDINGS,)
LLC, PERPETUA HOLDINGS OF)
ILLINOIS, INC., MELVIN Z. BRYANT,)
FELIX VILLALBA, AND VILLAGE OF)
ALSIP, ILLINOIS,)

JURY DEMAND

Defendants.)

CLASS ACTION COMPLAINT

NOW COME Plaintiffs ROBERT GRAYSON, son and sole surviving heir of Dinah Washington a/k/a Ruth Jones, grandson of Alice Jones, nephew of Leddie Ware and Virginia Ware, and Deborah Charles, daughter of Ezzard Charles, former heavyweight boxing champion of the world, on behalf of themselves and all others similarly situated, by and through Arthur S. Gold of the law firm of Gold & Coulson, a partnership of professional and limited liability corporations, and Shelby Kanarish of the law firm of Harvey L. Walner & Associates, Ltd. and complaining against Defendants PACESETTER CAPITAL GROUP a/k/a

PACESETTER/MVHC, INC. (“Pacesetter”), PERPETUA, INC., PERPETUA-BURR OAK HOLDINGS, LLC, PERPETUA HOLDINGS OF ILLINOIS, INC. (“Pacesetter Defendants”), MELVIN BRYANT (“Bryant”), FELIX VILLALBA (“Villalba”), and the VILLAGE OF ALSIP, ILLINOIS (“Village”), allege as follows:

NATURE OF THE CASE

1. The Pacesetter Defendants own, operate, and manage the Burr Oak Cemetery in Alsip, Illinois. On July 9, 2009 it was revealed that cemetery workers at Burr Oak Cemetery dug up at least 300 graves and moved the bodies to different locations. Cemetery workers dug up and moved these graves in order to re-sell the plots for a profit. This reprehensible activity was part of a pattern of conduct that went on for several years.
2. Plaintiffs, and those they seek to represent, have family members buried in the Burr Oak Cemetery. They seek redress for Defendants’ (and their agents’) shocking conduct, which caused them extensive grief, anguish, and other damages.

FACTUAL BACKGROUND

3. Beginning at least several years ago, Burr Oak Cemetery employees Carolyn Towns, Keith Nicks, Terrence Nicks, and Maurice Dailey (“BOC Employees”) began an enterprise whereby they dug up the graves of persons buried at Burr Oak Cemetery and moved them to other locations, in order to re-sell their plots for a profit.
4. At all relevant times, the BOC Employees were agents of the Pacesetter Defendants, and under their control.
5. Pacesetter Defendants were the sole managers and operators of the Burr Oak Cemetery.
6. On information and belief, all Perpetua entities are owned by Defendant Pacesetter, which is the umbrella company for Perpetua.

7. Defendant Bryant is an Operation Partner of Defendant Pacesetter, and Defendant Villalba is Defendant Pacesetter's Vice President and Chief Financial Officer.

8. On information and belief, Defendant Village of Alsip, Illinois had knowledge of the BOC Employees' unlawful conduct, yet declined to take action.

PARTIES

9. Plaintiff Robert Grayson is a resident of Cook County, Illinois. He has several family members buried in Burr Oak Cemetery: his mother, world-famous musical artist Dinah Washington; his grandmother, Alice Jones; his aunt, Virginia Ware; and his uncle, Leddie Ware, and the graves of those individuals, on information and belief, have been disturbed.

10. Plaintiff, Deborah Charles, is a resident of Cook County, Illinois and her father, Ezzard Charles, was the former heavyweight boxing champion of the world and the grave of Ezzard Charles, on information and belief, has been disturbed.

11. Defendant Pacesetter Capital Group, a/k/a Pacesetter/MVHC, Inc. is a Texas corporation, specializing in investment in small businesses, with its principal place of business at 2435 North Central Expressway, Suite 200, Richardson, Texas 75080.

12. Defendant Perpetua, Inc. is an Arizona corporation, with its principal place of business at 3510 East Hampton Avenue, Villa 100, Mesa, Arizona, 85204.

13. Defendant Perpetua, Inc. wholly owns Defendant Perpetua Holdings of Illinois, Inc., which is a corporation, organized under the laws of the State of Illinois, with its principal place of business at 2435 North Central Expressway, Richardson, Texas 75080.

14. Defendant Perpetua Holdings of Illinois, Inc. manages Defendant Perpetua-Burr Oak Holdings, LLC, which is a limited liability company organized under the laws of the State of Illinois, with its principal place of business at 4400 West 127th Street, Alsip, Illinois, 60803.

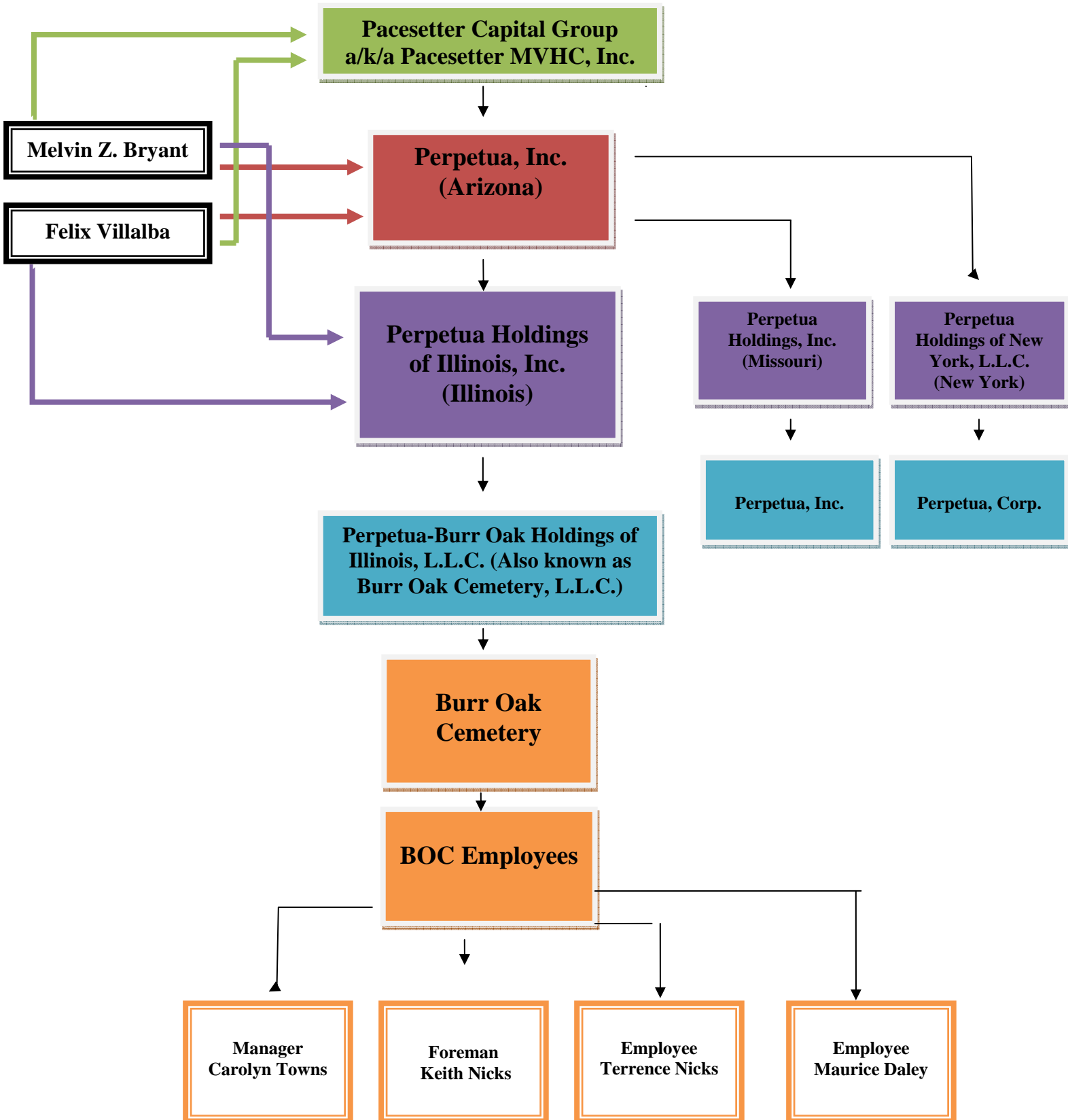
15. Defendant Perpetua-Burr Oak Holdings, LLC ran the Burr Oak Cemetery at all relevant times.

16. Defendant Melvin Z. Bryant is an Operating Partner in Perpetua umbrella company Defendant Pacesetter. Defendant Bryant is also President and CEO of Defendant Perpetua, Inc. (of Arizona). Additionally, Defendant Bryant is President of Defendant Perpetua Holdings of Illinois, Inc. Defendant Bryant is a resident of Dallas County, Texas.

17. Defendant Felix Villalba is the Vice President and CFO of Perpetua umbrella company Defendant Pacesetter. Defendant Villalba is also a Director of Defendant Perpetua, Inc. (of Arizona). Additionally, Defendant Villalba is Secretary of Defendant Perpetua Holdings of Illinois, Inc. Defendant Villalba is a resident of Dallas County, Texas.

18. As demonstrated by the chart on the following page (titled “Pacesetter Corporate Structure”), all Pacesetter Defendant entities are intimately intertwined. The entities share officers and directors: Defendant Perpetua Holdings of Illinois, Inc. lists Defendant Melvin Z. Bryant as President and Defendant Felix Villalba as Secretary. Bryant is the President/CEO, and Villalba is a Director, of Perpetua, Inc.—incorporated in Arizona—(See Exhibit 1 attached, incorporation documents from Arizona and Illinois). Both Bryant and Villalba are also executives at Perpetua umbrella company, Defendant Pacesetter—Villalba as Vice President/CFO, and Bryant as Operating Partner.

PACESETTER CORPORATE STRUCTURE



19. Furthermore, Perpetua-Burr Oak Holdings of Illinois, LLC is managed by Perpetua Holdings of Illinois, Inc. (See Exhibit 2 attached, Illinois LLC File Detail Report for Perpetua-Burr Oak Holdings, LLC). Its assumed name is Burr Oak Cemetery, LLC. (*Id.*)
20. Defendant Perpetua, Inc. and Defendant Bryant also operate Perpetua Holdings, Inc. of Missouri (See Exhibit 3 attached, Missouri Annual Registration Report). Perpetua also controls Perpetua Holdings of New York, LLC and Perpetua Corp. (See Exhibit 4 attached, New York State corporation information).
21. This unity of interest between all Perpetua entities essentially means that there is one Defendant for jurisdictional and practical purposes—Pacesetter—which owns and operates all Perpetua entities.
22. Defendant Village of Alsip, is located in the southern part of Cook County, Illinois approximately 19 miles away from downtown Chicago. Alsip is an incorporated village, and home to the Burr Oak Cemetery.

JURISDICTION AND VENUE

23. This Court has personal jurisdiction over all Defendants based on their systematic and continuous contact with Illinois. Plaintiffs' claims arise directly from all Defendants' conduct within the State of Illinois.
24. Jurisdiction is appropriate in this Court under 28 U.S.C. § 1332 (as amended), the Class Action Fairness Act, and Rule 23 of the Federal Rules of Civil Procedure.
25. Jurisdiction is proper under the Class Action Fairness Act because Plaintiffs are residents of Illinois, Defendant Pacesetter is a Texas corporation, citizen of Texas, Perpetua Inc. is a citizen of Arizona, and the amount in controversy in this case exceeds \$5,000,000.

26. Venue is proper in this District as the conduct of Defendants about which this complaint is based occurred in this District as to the named Plaintiffs.

CLASS ALLEGATIONS

27. Pursuant to 28 U.S.C. § 1332 and Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this action on behalf of a class of similarly situated persons injured by Defendants' unlawful and reprehensible conduct. The class is defined as follows:

“All individuals whose family members and/or relatives and/or descendants' graves were disturbed at Burr Oak Cemetery by Burr Oak Cemetery employees and/or who owned burial plots and were buried in sections of Burr Oak Cemetery where bodies have been disturbed.”

28. The Class members are so numerous that joinder of all members is impracticable. While the exact number of class members is unknown to Plaintiffs at this time, it is ascertainable through appropriate discovery. Plaintiff believes that hundreds if not thousands have been victimized by Defendants' reprehensible conduct during the relevant period.

29. Questions of law and fact are common to the Class and these common questions predominate over any questions affecting individual members.

30. Plaintiffs will fairly and adequately protect the interest of the Class.

31. Plaintiffs' counsel are experienced class action attorneys.

32. A class action is the superior method for the fair and efficient adjudication of the dispute.

COUNT I – NEGLIGENCE AS TO PACESETTER DEFENDANTS, DEFENDANT BRYANT, AND DEFENDANT VILLALBA

33. For paragraph 33 of Count I, Plaintiffs adopt and incorporate paragraphs 1 through 32 by reference, as if same were fully set forth herein.

34. The Pacesetter Defendants owned the Burr Oak Cemetery.

35. The Pacesetter Defendants, as well as Defendant Bryant and Defendant Villalba, had full and sole control over the operations of Burr Oak Cemetery, including the management of affairs, and supervision of employees.

36. The Pacesetter Defendants, as well as Defendant Bryant and Defendant Villalba, owed a duty to Plaintiffs and those they seek to represent to care for the graves of the family members of Plaintiffs and those they seek to represent, as well as to care for the surrounding cemetery.

37. The Pacesetter Defendants, as well as Defendant Bryant and Defendant Villalba, breached this duty through their agents, the BOC Employees. Specifically, the BOC Employees violated the duty owed to Plaintiffs and those they seek to represent, when they dug up the burial plots of family members in order to re-sell them for a profit.

38. Additionally, the Pacesetter Defendants, as well as Defendant Bryant and Defendant Villalba, owed Plaintiffs, and those they seek to represent, a duty to supervise all employees and manage the Burr Oak Cemetery in a way that would protect the burial plots of Plaintiffs' families members, and the plots of the family members of those they seek to represent.

39. The Pacesetter Defendants, as well as Defendant Bryant and Defendant Villalba, breached this duty when they allowed the BOC Employees to engage in an enterprise to dig up bodies and re-sell plots, for several years running, without repercussion. The BOC Employees would not have been able to sustain such a nefarious enterprise but for the gross mismanagement of Burr Oak Cemetery by the Pacesetter Defendants, as well as Defendant Bryant and Defendant Villalba.

40. Defendant Bryant and Defendant Villalba personally participated in this gross mismanagement by allowing the BOC Employees to dig up bodies and desecrate grave sites on their managerial watch.

41. The Pacesetter Defendants, as well as Defendant Bryant and Defendant Villalba's negligent conduct proximately caused damages to Plaintiffs and those they seek to represent.

WHEREFORE, Plaintiffs and those they seek to represent respectfully pray that this Court: (1) certify this case as a class action; (2) award Plaintiffs and those they seek to represent damages in an appropriate amount to be determined at trial against and enter judgment against the Pacesetter Defendants, Defendant Bryant, and Defendant Villalba; (3) grant Plaintiffs and those they seek to represent such other and further relief as the Court deems necessary and appropriate.

COUNT II – BREACH OF CONTRACT AS TO PACESETTER DEFENDANTS

42. For paragraph 42 of Count II, Plaintiffs adopt and incorporate paragraphs 1 through 41 by reference, as if same were fully set forth herein.

43. Plaintiffs and those they seek to represent, and/or their family members, entered into contracts with the Pacesetter Defendants, or their predecessors-in-interest. These contracts imposed a duty on Pacesetter to maintain the graves of the family members of Plaintiffs and those they seek to represent. Plaintiffs do not at present possess a copy of this contract.

44. Pacesetter breached these contracts when the BOC Employees disturbed and desecrated the graves described above, in order to re-sell the plots for a profit.

45. This desecration of graves of family members was shocking and outrageous, and caused severe anguish, mental pain, and damages to Plaintiffs and those they seek to represent.

46. Plaintiffs and those they seek to represent performed all of their obligations under these contracts.

47. Even if Plaintiffs and those they seek to represent are not the named parties to the contracts, they are the intended third-party beneficiaries.

48. Plaintiffs and those they seek to represent were damaged by the Pacesetter Defendants' breach of contract.

WHEREFORE, Plaintiffs and those they seek to represent respectfully pray that this Court: (1) certify this case as a class action; (2) award Plaintiffs and those they seek to represent damages in an appropriate amount to be determined at trial and enter judgment against the Pacesetter Defendants; (3) grant Plaintiffs and those they seek to represent such other and further relief as the Court deems necessary and appropriate.

**COUNT III – INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS AS TO
PACESSETTER DEFENDANTS**

49. For paragraph 49 of Count III, Plaintiffs adopt and incorporate paragraphs 1 through 48 by reference, as if same were fully set forth herein.

50. Pacesetter's agents, the BOC Employees, engaged in extreme and outrageous conduct when they dug up over 300 graves, moved the bodies, and left them exposed to the elements.

51. The BOC Employees must have known that there was at least a high probability that this extreme and outrageous conduct would cause severe emotional distress to the families of those buried in the graves that they disturbed and desecrated.

52. This conduct in fact caused severe emotional distress to Plaintiffs and those they seek to represent.

53. Plaintiffs and those they seek to represent suffered severe damage as a result of this conduct.

WHEREFORE, Plaintiffs and those they seek to represent respectfully pray that this Court: (1) certify this case as a class action; (2) award Plaintiffs and those they seek to represent damages in an appropriate amount to be determined at trial and enter judgment against the

Pacesetter Defendants; (3) grant Plaintiffs and those they seek to represent such other and further relief as the Court deems necessary and appropriate.

COUNT IV – VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS 505, et seq., BY PACESETTER DEFENDANTS

54. For paragraph 54 of Count IV, Plaintiffs adopt and incorporate paragraphs 1 through 53 by reference, as if same were fully set forth herein.

55. In purchasing grave sites at Burr Oak Cemetery, Plaintiffs and those they seek to represent, and/or their family members, purchased grave sites based on the representation and reasonable expectation that the grave sites would not be disturbed, dug up, and/or re-sold.

56. When the BOC Employees re-sold the grave sites, they subsequently promised new purchasers that the grave sites were empty and would also not be disturbed. This misrepresentation was the sole motivation for these subsequent purchasers to buy the grave sites of the family members of Plaintiffs and those they seek to represent.

57. Plaintiffs suffered damages as a result of this conduct.

58. Pacesetter Defendants' conduct violated the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505, *et seq.*

WHEREFORE, Plaintiffs and those they seek to represent respectfully pray that this Court: (1) certify this case as a class action; (2) award Plaintiffs and those they seek to represent damages in an appropriate amount to be determined at trial and enter judgment against the Pacesetter Defendants; (3) grant Plaintiffs and those they seek to represent such other and further relief as the Court deems necessary and appropriate.

COUNT V – TRESPASS AS TO PACESETTER DEFENDANTS

59. For paragraph 59 of Count V, Plaintiffs adopt and incorporate paragraphs 1 through 58 by reference, as if same were fully set forth herein.

60. Plaintiffs and those they seek to represent possessed exclusive rights to the land containing the graves of their relatives.

61. The Pacesetter Defendants, specifically their agents the BOC Employees, did not have a right to enter onto that land, except to care for the grave sites as provided for in the parties' contracts.

62. The BOC Employees' conduct in disturbing and digging up the graves, and removing the bodies was an unlawful trespass upon the land and property of Plaintiffs and those they seek to represent.

63. Further, the BOC Employees had no right to possess or disturb the bodies of the family members of Plaintiffs and those they seek to represent.

64. Pacesetter Defendants further committed a trespass by disturbing the graves of said family members and removing their bodies from same.

WHEREFORE, Plaintiffs and those they seek to represent respectfully pray that this Court: (1) certify this case as a class action; (2) award Plaintiffs and those he seeks to represent damages in an appropriate amount to be determined at trial and enter judgment against the Pacesetter Defendants; (3) grant Plaintiffs and those they seek to represent such other and further relief as the Court deems necessary and appropriate.

COUNT VI – REPLEVIN AS TO PACESETTER DEFENDANTS

65. For paragraph 65 of Count VI, Plaintiffs adopt and incorporate paragraphs 1 through 64 by reference, as if same were fully set forth herein.

66. Plaintiffs and those they seek to represent are the proper and true owners of the remains of their family members.

67. As the proper owners, Plaintiffs and those they seek to represent are entitled to possession of their family members' remains.

68. The Pacesetter Defendants, specifically the BOC Employees, had no authority to disturb or remove the remains of the family members of Plaintiffs and those they seek to represent.

69. The wrongful taking of said remains was not for purposes of any tax, assessment, or fine levied by any law of the State of Illinois. These seizures were not under any lawful process against the property of Plaintiffs and those they seek to represent, nor were they done by virtue of any order for replevin against Plaintiffs or any of those they seek to represent.

WHEREFORE, Plaintiffs and those they seek to represent demand that the Pacesetter Defendants return the remains of their family members to Plaintiffs.

COUNT VII – RECKLESS DISREGARD OF PERSONAL PROPERTY RIGHTS OF OTHERS BY DEFENDANT VILLAGE OF ALSIP, ILLINOIS

70. For paragraph 70 of Count VII, Plaintiffs adopt and incorporate paragraphs 1 through 69 by reference, as if same were fully set forth herein.

71. As described above, the Burr Oak Cemetery is located in the Village of Alsip, Illinois.

72. On information and belief, Defendant Village had knowledge of the BOC Employees unlawful scheme, yet declined to take action.

73. Defendant Village's conscious disregard for the law, within its own borders, constituted willful and wanton conduct, which caused harm to Plaintiffs and those they seek to represent. But for Defendant Village's conscious and reckless disregard for the BOC Employees' scheme, the graves of the family members of Plaintiffs and those they seek to represent would not have been disturbed and desecrated.

Wherefore, Plaintiffs and those they seek to represent respectfully pray that this Court: (1) certify this case as a class action; (2) award Plaintiffs and those they seek to represent

damages in an appropriate amount to be determined at trial and enter judgment against Defendant Village of Alsip, Illinois; (3) grant Plaintiffs and those they seek to represent such other and further relief as the Court deems necessary and appropriate.

RELIEF REQUESTED AS TO ALL COUNTS

Plaintiffs and those they seek to represent pray that the Court:

- a. certify this case as a class action;
- b. name Plaintiffs as class representatives;
- c. enter judgment against Defendants and for Plaintiffs and those they seek to represent in an amount equal to the total losses of Plaintiffs and those they seek to represent;
- d. award Plaintiffs and those they seek to represent reasonable attorneys' fees;
- e. grant such additional relief as the Court finds appropriate and just;
- f. trial by jury.

Respectfully submitted,

By: /s/ Arthur S. Gold
one of their counsel

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