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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES- CENTRAL DISTRICT

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

PLAINTIFFS' APPLICATION FOR ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS AND RESPONSE TO THE OBJECTION OF SUSAN FRYDRYCH

[*Plaintiffs' Motion for Final Approval of Class Action Settlement; Declarations of Michael J. Avenatti, Jason M. Frank Kenneth Jue; Dr. David Stewart; Professor Brian Fitzpatrick; Robert Scott, Sean Frank, Rabbi Howard Laibson, Barry Chapman, Warren Binder, Ivy Greenstein, Linda Pore, Miriam Sue Roth and Habib Naeim; [Proposed] Final Approval Order and [Proposed] Judgment filed concurrently herewith*]

Date: May 15, 2014
Time: 9:00 a.m.
Dept.: 1

TO THE COURT, TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 15, 2014, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 1 of the California Superior Court for the County of Los Angeles, located at the Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles California 90012-3014, Plaintiffs and Class Representatives Robert Scott, Sean Frank, Rabbi Howard Laibson, Barry Chapman, Warren Binder, Ivy Greenstein, Linda Pore, Miriam Sue Roth and Habib Naeim (the "Class Representatives") and the law firm of Eagan Avenatti, LLP ("Class Counsel") will, and hereby do, apply to this Court, pursuant to Rule 3.769 of the California Rules of Court, for an order:

1. Granting the application for attorneys' fees and costs in the amount of $23,500,000; and
2. Granting the application for incentive awards to each Class Representative in the amount of $20,000 each.

This application is based on this Notice as well as the attached Memorandum of Points and Authorities, Plaintiffs' Motion for Final Approval of Class Action Settlement, the Declaration of Michael J. Avenatti, the Declaration of Jason M. Frank, the Declaration of the Kenneth Jue on behalf of the Claims Administrator, Gilardi & Co., LLC ("Gilardi"), the Declarations of the Class Representatives; the Declaration of Dr. David Stewart; the Declaration of Professor Brian Fitzpatrick, and the exhibits attached thereto; the Class Action Settlement Agreement the Preliminary Approval Order, the [Proposed] Final Approval and the [Proposed] Judgment filled concurrently herewith, the documents filed with this Court, and upon such further oral and/or documentary evidence and argument as may properly be presented to the Court at the time of the hearing on this matter.

Dated: May 9, 2014

EAGAN AVENATTI, LLP

By: 

MICHAEL J. AVENATTI
JASON M. FRANK
SCOTT SIMS
Attorneys for Plaintiffs, on behalf of themselves and all others similarly situated

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This certified class action lawsuit concerned allegations of improper burial practices at Eden Memorial Park Cemetery ("Eden"), a Jewish cemetery in Mission Hills, California. According to the lawsuit, Defendants have been intentionally and negligently breaking outer burial containers in neighboring graves in order to make new graves fit, which, at times, has caused human remains to be disturbed and discarded in the cemetery's dumping grounds. Defendants have vehemently denied these allegations. On behalf of the Class, Plaintiffs were seeking: (1) injunctive relief to prevent the alleged improper burial practices from occurring in the future, (2) the right for Class Members to rescind their purchases at the cemetery and obtain a full refund of their money back (including having disinterments performed by the cemetery free of charge if necessary); and (3) out of pocket loss damages for those Class Members who elect to keep their graves at the cemetery. By order of the Court, the Class's monetary remedies were limited to *economic damages* in the class action, and the Class was not permitted to pursue claims for emotional distress damages on a class-wide basis.

After four and half years of incredibly hard fought litigation, and after the fourth week of a class action jury trial, Plaintiffs and Class Counsel were able to reach a settlement with Defendants that has been valued at over $80.5 million. [Declaration of Michael Avenatti ("Avenatti Decl.") Ex. 1.] The details of the Settlement and the valuation of its benefits are discussed in detail in Plaintiffs' Motion for Final Approval of Class Action Settlement filed concurrently herewith and incorporated by reference herein.

In this Application, Plaintiffs are requesting the Court grant final approval of an award of attorneys' fees and costs to Class Counsel in the amount of $23.5 million, as well as incentive awards to the nine Class Representatives in the amount of $20,000 each. To date, Class Counsel has paid out $4,587,719 in unreimbursed expenses on behalf of the Class, and has incurred approximately $18,785,150 in legal fees under regular market rates. [Avenatti Decl., ¶ 4; Ex. 3.] This requested compensation is for the 27,798 hours of attorney time spent by Class Counsel during the last four and half years of litigation to secure a just result for the Class and an end to Defendants' improper burial practices. Based on the enormous risks incurred by Class Counsel, the complexity of the legal and

factual issues, the quality of the representation, the outstanding results achieved and the formidable opposition Class Counsel was required to overcome, Class Counsel would easily be entitled to a 2 or more multiplier of their attorneys' fees under California law. Instead, Class Counsel is only seeking its fees and costs with *no multiplier*. In addition, Plaintiffs are seeking incentive awards for the nine Class Representatives of $20,000 each based on the substantial amount of time, dedication and risks each Class Representative incurred to obtain the benefits for the Class.

On February 27, 2014, this Court granted preliminary approval of the attorneys' fees, costs and incentive awards and found that the amounts were fair, reasonable and appropriate under the circumstances of this case. [Avenatti Decl., Ex 2 (Prelim. Approv. Order) at ¶ 5, Tentative Opinion adopted by Court at 3.] Defendants do not oppose this Application for final approval of the fees, costs and incentive awards, nor do they oppose the amounts requested.

Accompanying this Application is the Declaration of Professor Brian Fitzpatrick (the "Fitzpatrick Decl."). Mr. Fitzpatrick is a Professor of Law at Vanderbilt University, who served as a law clerk to The Honorable Diarmuid O'Scannlain on the United States Court of Appeals for the Ninth Circuit and to The Honorable Antonin Scalia on the United States Supreme Court. [Fitzpatrick Decl., ¶ 2.] Mr. Fitzpatrick is the author of the leading study on class action settlements and fee awards in the United States. [Id. at ¶ 3.] His work is relied upon by numerous courts, scholars, and testifying experts.[1] [Id.] Mr. Fitzpatrick has reviewed Class Counsel's current fee request and found that it is "more than reasonable." [Id. at ¶¶ 4, 10.] He particularly notes that Class Counsel has litigated this case without compensation for nearly five years, which is two years longer than the average class action, and that *there were only 8 cases (out of 688) in his empirical study where class counsel had spent as much in expenses as Class Counsel did here*. [Id. at ¶ 13.] Based on the risks

[1] See, e.g., Silverman v. Motorola Solutions, Inc., 739 F.3d 956, 958 (7th Cir. 2013) (relying on article to assess fees); In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, 2014 WL 92465, at *5-*6 & n.8 (E.D.N.Y., Jan. 10, 2014) (same); In re Federal National Mortgage Association Securities, Derivative, and "ERISA" Litigation, 2013 WL 6383000, *11-*12 (D.D.C., Dec. 6, 2013) (same); In re Vioxx Products Liability Litigation, 2013 WL 5295707, at *3-4 (E.D. La., Sep. 18, 2013) (same); In re Black Farmers Discrimination Litigation, 953 F.Supp.2d 82, 98-99 (D.D.C. 2013) (same); In re Southeastern Milk Antitrust Litigation, 2013 WL 2155387, at *2 (E.D. Tenn., May 17, 2013) (same); In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig., 851 F. Supp. 2d 1040, 1081 (S.D. Tex. 2012) (same); Pavlik v. FDIC, 2011 WL 5184445, at *4 (N.D. Ill. Nov. 1, 2011) (same); In re Black Farmers Discrimination Litig., 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); In re AT & T Mobility Wireless Data Servs. Sales Tax Litig., 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); In re MetLife Demutualization Litig., 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

incurred, the results achieved and the fee awards in other California cases, Mr. Fitzpatrick opines that Class Counsel would be justified in requesting a positive multiplier on its fees under California's lodestar method -- even though no multiplier is being requested here -- in order to compensate counsel for the tremendous risks it took in pursuing this matter and taking this class action to trial, which rarely occurs in class actions. [Id. at ¶¶ 4, 10.]

Accordingly, for the reasons stated herein, Plaintiffs respectfully request the Court grant this Application.

II. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE AND APPROPRIATE

Pursuant to the Settlement Agreement, Defendants have agreed to pay Class Counsel's attorneys' fees and costs up to $23,500,000. [Avenatti Decl., Ex. 1 at § 7.11.] Like every other aspect of a proposed class action settlement, the Court is required to assess whether the fee request is fair and reasonable. Cal. Rule of Court 3.769; Serrano v. Priest (1977) 20 Cal.3d 25, 48-49. The Court has "wide latitude in assessing the value of the attorney's services, and its decision [is] not to be disturbed on appeal absent a manifest abuse of discretion." Lealao v. Beneficial California, Inc. (2000) 82 Cal.App.4th 19, 41 (citing Flannery v. California Highway Patrol (1991) 61 Cal.App.4th. 629, 634.)

A. Class Counsel's Fee Request is Reasonable and Appropriate Under California's Lodestar Method.

There are essentially two methods for calculating attorney fees in civil class actions: (1) the lodestar/multiplier method; and (2) the percentage of recovery method. Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254. The preferred method in California, and the starting point for any fee assessment, is the lodestar method. Serrano 20 Cal.3d at 48-49; Lealao 82 Cal.App.4th at 26. The lodestar method multiplies the number of hours reasonably expended by the class attorneys by a reasonable hourly rate. Id. Once the court has determined the "lodestar," it may increase or decrease that amount by applying a positive or negative "multiplier" to take into account a variety of other factors, including: (1) the quality of the representation; (2) "the novelty and difficulty of the questions involved, and the skill displayed in presenting them"; (3) the results obtained; (4) "the contingent nature

of the fee award, both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award;" and (5) "the extent to which the nature of the litigation precluded other employment by the attorneys." Id.; Thayer v. Wells Fargo Bank, N.A. (2001) 92 Cal.App.4th 819, 833. Sometimes the lodestar calculation may be enhanced on the basis of a "percentage of the benefit" analysis. Lealao 82 Cal.App.4th at 39-40. The percentage method calculates attorney fees as a reasonable percentage of the common fund. However, this method should be used only where the amount of the settlement is a certain or easily calculable sum of money. Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1808.

For wholly-contingent consumer cases such as this one, California courts have approved fee awards with multipliers of 2 to 4 or even higher on the lodestar amount. See, e.g. Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher"); see also Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (approving 2.5 multiplier in settlement in coupon settlement with no monetary amounts paid to class); City of Oakland v. Oakland Raiders (1988) 203 Cal.App.3d 78 (affirming a multiplier of 2.34).

Finally, under California law, detailed time sheets are not required of class counsel to support fee awards in class action cases; instead, "declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case" are sufficient. Wershba 91 Cal.App.4th at 254–255; Dunk 48 Cal.App.4th at 1810; Sommers v. Erb (1992) 2 Cal. App. 4th 1644, 1651. In fact, the court may award fees based on time estimates for attorneys who do not even keep time records. Chavez, 162 Cal.App.4th at 64 (citing Margolin v. Regional Planning Com. (1982) 134 Cal.App.3d 999, 1006–1007). Here, Class Counsel can provide detailed time records if requested by the Court, but would be required to heavily redact said records due to other ongoing litigation against Defendants.

1. The Quality and Amount of Work Performed By Class Counsel Supports The Fee Request.

During the last four and half years of litigation, Class Counsel has incurred approximately $18,785,150 in legal fees based on approximately 27,798 hours of legal work by the firm's attorneys and paralegals. [Avenatti Decl., ¶4; Ex. 3.] In addition, Class Counsel has incurred $4,587,719 in

out-of-pocket expenses on behalf of the Class, including money spent to obtain a $500,000 bond in order to secure the Preliminary Injunction Order in this matter for the benefit of the Class.[2] [Id., ¶ 6; Ex. 4] Class Counsel estimates that it will incur at least an additional $150,000 in legal fees going forward as it oversees the performance of the Settlement Agreement and fields inquiries from Class Members. [Id., ¶ 4.]

Given the serious and emotionally sensitive nature of a case involving claims of grave desecration at a Jewish cemetery spanning over at least a 24-year period, Class Counsel felt an obligation to devote all of its skills and resources to this class action regardless of the risks. [Avenatti Decl., ¶ 7.] For this reason, virtually every attorney at the Eagan Avenatti, LLP law firm dedicated a significant amount of time to this case over the last four and half years. [Id.] Moreover, the firm's two principle business generators, Michael Avenatti and Jason Frank, spent roughly 2/3rds of their time working exclusively on this matter. [Id.] To put it simply, the firm and its lawyers went "all in" on their representation of the Class.

It is impossible to truly capture the enormous amount of work performed in this case in order to obtain the substantially favorable results provided by the Settlement. Since the beginning of this litigation on September 10, 2009, there has not been any period of time when this case has been dormant. The work performed by Class Counsel during this period included:

(a) Taking and defending over 130 depositions spanning over 151 days, including nineteen expert depositions, encompassing over 24,625 pages of deposition transcripts;

(b) Reviewing over 424,853 pages of documents and hundreds of thousands of native electronic files produced by Defendants, compromising more than two million pages;

(c) Preparing and responding to voluminous rounds of written discovery;

(d) Traveling around the country to interview witnesses and uncover evidence supporting Plaintiffs' claims;

[2] The preliminary injunction order, among other things, left in place a stipulated temporary restraining order requiring Defendants to notify Plaintiffs' counsel any time evidence of possible damage to an outer burial container was discovered during an excavation at Eden and allow for inspection of same. Pursuant to this order, Plaintiffs and their experts were called to inspect the cemetery on over 180 occasions.

(e) Conducting a four-day hearing with live witnesses in connection with Plaintiffs' motion for a preliminary injunction;

(f) Defeating Defendants' demurrer to the operative complaint in this action;

(g) Defeating *seven* separate motions for summary adjudication;

(h) Prevailing on Plaintiffs' motion for class certification and motion to amend the class definition to include a claim under the UCL;

(i) Defeating *several* writ petitions and petitions for review filed by Defendants;

(j) Litigating numerous discovery motions, including extensive briefing on privilege issues;

(k) Incurring the cost of having three separate discovery referees preside over depositions and various discovery disputes. The Discovery Referees in this matter were: the Honorable Gabriel Gutierrez (Ret.); the Honorable Joe Hilberman (Ret.) and the Honorable Jacqueline Connor (Ret.). Collectively, they billed hundreds of hours to this matter, which Class Counsel advanced for the benefit of the Class;

(l) Consulting and retaining the services of numerous experts in the fields of cemetery operations, cemetery remediation, land surveying, ground penetrating radar, cement failure analysis, anthropology, market valuation, Jewish customs and law, corporate investigations, and damage calculations;

(m) Conducting over *180* inspections of Eden, including a full three-day evaluation (across three weekends) of the cemetery with ground penetrating radar and land surveyors analyzing the lot pin locations in numerous cemetery gardens;

(n) Incurring the cost of multiple public opinion surveys to measure the materiality of the alleged problems at Eden, and the negative effect on market price if the problems were disclosed;

(o) Briefing over 50 motions *in limine* and numerous motions for bifurcation;

(p) Preparing for and commencing the first month of an estimated four-month class action jury trial, with over 1,710 trial exhibits listed on the parties' joint exhibit list and over 204 witnesses listed on the parties' joint witness list;

(q) Retaining jury consultants and conducting mock trials; and

(r) Responding to substantial media coverage of this lawsuit.

Suffice it to say that this has been nothing short of four and half years of extremely active, hard fought and difficult litigation. [Avenatti Decl., ¶ 8.] Attached to the Avenatti Decl. as Exhibit 5 is the Court docket in this matter further demonstrating the high level of activity in this lawsuit. The trial judges previously assigned to this matter – the Honorable John Shepard Wiley, the Honorable Anthony Mohr, the Honorable Lee Smalley Edmon and the Honorable Marc Marmaro – have each commented on the record on a number of occasions as to the effort and quality of lawyering that has been put forth in this litigation. [Avenatti Decl., ¶ 9.]

2. The Amount of Work Performed By Class Counsel Was Reasonable and Necessary In Light of the Formidable Obstacles Faced in this Lawsuit.

Defendants vigorously disputed the allegations in this lawsuit, and retained four separate law firms to defend them in this case -- Yoka & Smith LLP, Gurnee & Daniels LLP (currently known as Gurnee, Mason Forestiere LLP), Gilbert, Kelly, Crowley and Jennett LLP and Greines, Martin, Stein & Richland LLP (Defendants' appellate counsel). Defendants attempted to make it as difficult as possible for Plaintiffs to successfully pursue their claims. Judge Mohr, who was the presiding judge during most of this lawsuit, described Defendants' litigation strategy as follows:

> THE COURT: YEAH. LOOK, THIS IS -- IT'S A HARD-FOUGHT CASE, WHICH IS FINE. BUT, YOU KNOW, WE'RE GETTING TO THE POINT WHERE -- YOU KNOW, ESPECIALLY FROM THE DEFENSE. YOU'RE EMPLOYING -- THIS IS AKIN TO THE NATO DEFENSE DOCTRINE FOR SOVIET AGGRESSION ACROSS THE VOLGA PLAIN IN EASTERN EUROPE, **WHICH IS DEFEND EVERY FIELD AND DON'T GIVE AN INCH.**

[Avenatti Decl., Ex. 6 (December 15, 2010) at 27:25 – 28:3 (emphasis added).] Judge Mohr later described in a Court order that "the defense has determined to pursue a strategy to object to everything, even when the law is clear that their objections are not well taken." [Avenatti Decl., ¶ 10.]

In order to overcome this "don't give an inch" defense, Class Counsel fought forward with all of their resources, so that the Class' claims would be decided upon the merits, rather than being decided upon which side was able to spend more money. Undoubtedly, the favorable results obtained in this Settlement could not have been achieved without Class Counsel's willingness to invest and risk their time and expenses, as evidenced by the fact that it took four and half years of litigation and the beginning of a class action jury trial before Defendants finally agreed to settle this lawsuit.

3. Class Counsel's Willingness to Invest the Amount of Time and Money Expended in this Class Action Yielded Substantial Benefits to the Class.

Class Counsel's willingness to spare no expense on behalf of the Class yielded substantial benefits to the litigation and the Class. Perhaps no better example of this occurred at the very beginning of the lawsuit. Within a few weeks after filing the complaint, Class Counsel received a tip that Eden's employees were removing evidence of broken outer burial containers from the cemetery's dumping grounds. [Avenatti Decl., ¶ 20.] Two partners at Class Counsel's firm -- Michael Avenatti and Jason Frank – immediately drove out to the cemetery to investigate. [Id.] Unfortunately, Eden is bracketed by two major freeways (Interstate 405 and Interstate 5) on its west and northern borders, and private property on its eastern border. [Id.] As a result, Class Counsel could not view the cemetery's dumping grounds from street level. [Id.] So, counsel pulled over to side of the freeway and climbed up a steep embankment (dressed in their suits from an earlier court appearance) in order to get a view of the dump. Sure enough, counsel was able to see activity in the dumping grounds. [Id.] Within one hour, counsel chartered a helicopter out of the Van Nuys airport, flew over the cemetery and captured Eden's employees on video removing evidence from the dumping grounds. [Id.] This video evidence later resulted in severe evidentiary sanctions against Defendants and was used during Plaintiffs' opening statement at trial.[3] [Id., Ex. 9.] Moreover, this was the impetus for a Temporary Restraining Order (stipulated to by Defendants) as well as a Court order for emergency discovery that ultimately resulted in a successful Motion for Preliminary Injunction. [Id.] This emergency discovery order (entered by Judge Wiley) allowed Plaintiffs to take early depositions of

[3] On the eve of the Class Action trial, Judge Mohr rescinded parts of his sanction order finding that the evidentiary sanctions may have been too harsh, but kept intact other sanctions.

several key witnesses and obtain numerous admissions about the alleged improper burial practices at Eden; admissions that the Court later described as "spectacularly damning" in its Preliminary Injunction Order. [Avenatti Decl., ¶ 21; Ex. 10 (Prelim. Inj. Order) at 3:13-14; 4:1-3.]

Another example of Class Counsel going above and beyond for the Class was its decision to create a back-up plan in the event class certification was denied, in order to ensure that Eden could not avoid scrutiny of their alleged improper burial practices simply by defeating a class certification motion. Prior to the filing of this lawsuit, efforts to certify class actions based on similar allegations of wrongful burial practices had been largely unsuccessful. See, e.g. Bennett v. Regents of the University of California (2005) 133 Cal.App.4th 347, 359 (affirming denial of class certification where plaintiff alleged that the defendant had mishandled remains and secretly discarded remains in a landfill); see also Conroy v. Regents of the University of California (2009) 45 Cal.4th 1244, 1251-52 (reports of a general pattern of misconduct in the handling of dead bodies are not sufficient to establish negligence liability for an individual plaintiff). In a typical class action, there are generally one or two class representatives and if class certification is denied that is typically the "death knell of the litigation." See, e.g., In re Baycol Cases I and II (2011) 51 Cal.4th 751, 757-58 (explaining why California's "death knell" doctrine treats an order denying class certification as akin to a final judgment against the plaintiff, and therefore immediately appealable.) Class Counsel was aware of these risks, and did not want Eden to be able to escape scrutiny simply by defeating class certification. [Avenatti Decl., ¶ 22.]

Accordingly, Class Counsel made the strategic decision to allow families with loved ones buried at Eden to retain the firm on an individual basis in the event class certification was denied. This resulted in Class Counsel being retained by over 1,200 families. [Avenatti Decl., ¶ 22.] This allowed Class Counsel to argue to the Court that class certification would be the most efficient means to litigate these disputes because, otherwise, the Court would be faced with the inefficient prospect of presiding over 1200 individual lawsuits. [Id.] However, this strategy also tremendously increased Class Counsel's workload in this case. [Id.] For example, this strategy allowed Defendants to engage is substantial offensive discovery, as Defendants were permitted to depose and serve written discovery on numerous Class Members beyond the nine Class Representatives. [Id.]

It has been an enormous honor for Class Counsel to represent the families in this Class, and counsel is humbled by the faith these families have placed in the firm. [Avenatti Decl., ¶ 24.] Throughout the litigation, Class Counsel fielded thousands of calls from concerned family members, often on a weekly basis, and provided regular updates on the status of the litigation. [Id.] Given the emotional nature of the subject matter of this lawsuit, the attorneys and staff at Class Counsel's firm placed a high priority on promptly returning calls and taking as much time as necessary to sensitively address their concerns.[4] [Id.] Indeed, the Claims Administrator recently experienced the same high level of concern generated by this litigation. As noted in the Claims Administrator's declaration, *since just February 26, 2014*, the Claims Administrator's telephone support center has received approximately 7,051 calls totaling more than 1,100 hours of call time. [Declaration of Kenneth Jue ("Jue Decl."), ¶ 7.] Class Counsel has been fielding this level of calls since the filing of this lawsuit more than four and a half years ago.

These are just a few examples of the types of extraordinary measures Class Counsel undertook in order to serve the best interests of the Class. Put simply, the nature of this case required Class Counsel to take on far greater responsibilities than would typically occur in a class action. At each step, Class Counsel more than met this challenge.

4. Class Counsel's Hourly Rates Are Reasonable Based Upon The Prevailing Market Rates In Los Angeles for Complex Class Action Litigation.

As noted above, under the lodestar method, the Court is required to multiply the number of hours worked by a reasonable hourly rate. Ketchum v. Moses 24 Cal. 4th 1122, 1133; Lealao, 82 Cal.App.4th at 49-50. The "reasonable hourly rate" is the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience and reputation. Id. Ordinarily, reasonable hourly rates are based on each attorney's current hourly rates in order to compensate them for the delay in receipt of payment. See, e.g. Vizcaino v. Microsoft Corp. (9th Cir. 2002) 290 F. 3d

[4] Several Class Representatives noted this point in their declarations when commenting on the performance of Class Counsel. See Declarations of Robert Scott, Sean Frank, Rabbi Howard Laibson, Barry Chapman, Warren Binder, Linda Pore, and Miriam Sue Roth, each at ¶11.

1043, 1051.[5] The relevant community is the location where the Court sits, which in this case is Los Angeles. Ketchum 24 Cal.4th 1133; Lealao, 82 Cal.App.4th at 49-50.

The four attorneys who spent the most time working on this case were: (a) Michael Avenatti (formerly of Greene Broillet & Wheeler, LLP) at $885 per hour; (b) Jason Frank (a former litigation partner at Paul Hastings Janofsky & Walker, LLP) at $875 per hour; (c) Scott Sims (formerly of Paul Hastings Janofsky & Walker) at $675 per hour; and (d) John Arden (formerly of Latham & Watkins, LLP New York City Office) at $600 per hour. The credentials and past successes of these attorneys are detailed in the Avenatti declaration. Class Counsel's rates are similar to the rates of attorneys that practice complex class action litigation in the Los Angeles market, such as Paul Kiesel (formerly of Kiesel Boucher Larson LLP) at $890 per hour, Mark Geragos and Shelley Kaufman[6] (Geragos & Geragos, LLP) at $1000 and $750 respectively, and Patrick McNicholas and Mathew McNicholas (McNicholas & McNicholas, LLP) at $850 per hour. [Declaration of Jason M. Frank ("Frank Decl."), ¶8.] The rates for Scott Sims and John Arden are actually lower than the rates of attorneys with similar experience at the Los Angeles firms where they previously worked. [Id., ¶¶ 4-5.] In sum, Class Counsel's hourly rates are well within the range of those found permissible for attorneys practicing class action litigation in the Los Angeles market. See Housing Rights Ctr. v. Sterling (C.D. Cal. 2005) 2005 WL 3320738 at *2 (noting hourly rates may run up to $1000 per hour in Los Angeles, with rates ranging from $125 to $650 being routine in California nearly a decade ago in 2005)

B. The Novel and Difficult Issues Involved in this Litigation and Class Counsel's Skill in Litigating These Issues Supports the Fee Request.

In assessing the reasonableness of fee requests, California courts also consider "the novelty and difficulty of the questions involved, and the skill displayed in presenting them." Thayer 92 Cal.App.4th at 833. This factor likewise supports the current fee request.

[5] California courts may follow the lead of federal courts when they believe such federal court has "analogous precedential value." Lealao, 82 Cal.App.4th at 37-38.

[6] Now, the Honorable Shelley Kaufman.

As noted above, prior to the filing of this lawsuit, efforts to certify class actions based on similar allegations of wrongful burial practices had been largely unsuccessful. See, e.g. Bennett 133 Cal.App.4th at 359 (affirming denial of class certification where plaintiff alleged that the defendant had mishandled remains and secretly discarded remains in a landfill); Conroy 45 Cal.4th at 1251-52 (reports of a general pattern of misconduct in the handling of dead bodies are not sufficient to establish negligence liability for an individual plaintiff). This was due, in part, to the California Supreme Court's decision in Christensen v. Sup. Ct. (1991) 54 Cal.3d 868. In Christensen, the Supreme Court ruled that in the context of claims alleging a general pattern of misconduct in the handling of dead bodies – such as the case here – a party cannot obtain emotional distress damages unless the party can establish a "well-founded substantial certainty" that their *own* loved-one's grave was disturbed. Id. at 902. This precedent caused subsequent courts to rule that these individual issues of emotional distress would preclude class treatment. See, e.g. Bennett 133 Cal.App.4th at 359. In the context of the current case, it would also have the perverse result of rewarding Defendants for burying evidence of the damaged graves underground (as alleged), because determining which specific graves were damaged would require the disinterment of every grave at the cemetery -- obviously, an untenable option. In other words, assuming the allegations in this lawsuit were true, Defendants' reliance on Christensen would in essence allow Defendants to get away with their alleged misconduct, because they literally buried the evidence of the damage graves and discarded remains underground.

Class Counsel was determined not to let this perverse result come to fruition. Consequently, Class Counsel did not limit Plaintiffs' claims to emotional distress damages. Instead, on behalf of the Class, Class Counsel pursued fraud theories against Defendants for *economic* damages, based on the theory that Defendants had a duty to disclose the alleged improper burial practices to families prior to purchase and interment, and Defendants' failure to do so caused economic harm to the Class Members. Class Counsel analogized this to the situation of a buyer being fraudulently induced to purchase a home as result of a seller's failure to disclose problems that would impact the sales price of the home --- except in this case, the transaction involved the ultimate home; i.e. a person's final

resting place. This theory raised numerous legal issues that had not been previously addressed in the context of a cemetery case. These issues included, among other things:

- Does a cemetery owe fiduciary duties to its customers?
- Does a cemetery have a duty to disclose burial problems at a cemetery to prospective customers, and, if so, under what circumstances?
- Does a cemetery customer have standing to assert a claim for fraud absent a showing that the party's own grave was physically harmed?
- Can a deceased party's successor in interest pursue a claim for fraud on behalf of the decedent, and, if so, how does the successor in interest prove reliance?
- Can a party obtain monetary damages against a cemetery for fraud, absent a showing of physical harm to the grave, if they decide to keep their grave at the cemetery?
- Would the disclosure of the alleged problems at Eden cause a decrease in the market value of Eden's plots, goods and services?
- Are cemetery purchases covered by the Consumer Legal Remedies Act (the "CLRA") and, if so, what remedies are available?
- Do Plaintiffs' fraud theories present common issues subject to class treatment?
- Can Plaintiffs obtain injunctive relief on behalf of the Class absent a showing that their own graves were physically harmed, or at risk of physical harm?
- Can Eden be held liable for fraud if a Class Member purchased a grave through a third party and, if so, under what circumstances?

The list goes on and on. On behalf of the Class, Class Counsel prevailed on almost every issue. Using their skill and legal expertise in presenting these difficult questions of law and fact, Class Counsel successfully obtained class certification, obtained a preliminary injunction for the benefit of the Class, defeated *seven* motions for summary adjudication and *several* appellate writ petitions and brought this case to trial before a jury. In sum, "the novelty and difficulty of the questions involved" and "the skill [Class Counsel] displayed in presenting them" strongly supports this application for legal fees and costs.

C. The Excellent Results Obtained On Behalf of the Class Support the Fee Request.

As established at length in the concurrently filed Motion for Final Approval of Class Action Settlement, Class Counsel was able to obtain spectacular results on behalf of the Class, achieving a Settlement that has been valued at over $80.5 million. *In fact, the Settlement largely accomplished all of the goals of this litigation.*

First, the Settlement provides significant and *permanent* measures to prevent the alleged problems from occurring in the future and protect the graves of those Class Members who elect to keep their loved ones at Eden. Plaintiffs achieved virtually every objective of their claims for injunctive relief, short of having the cemetery taken over by a receiver (an outcome that Class Counsel acknowledged would be difficult to obtain under California law and which Plaintiffs were unable to obtain during the preliminary injunction trial). As discussed in the Declaration of Plaintiffs' Market Valuation Expert (Dr. David Stewart), these permanent measures will help restore at least $45 million in economic value to those Class Members who elect to keep their graves at Eden. [Declaration of Dr. David Stewart ("Stewart Decl."), ¶¶ 2, 13-26.] In addition, these permanent measures will benefit non-Class Members, including individuals who purchased graves outside of the Class Period, and future purchasers who will now be apprised of the risks of purchasing graves at Eden.

Second, all of the claims in this class action were based on the theory that the Class was fraudulently induced to make purchases at Eden as result of Defendants' failure to disclose the problems at the cemetery. Under California law, when a party is fraudulently induced to enter into a transaction, the defrauded party has the option of rescinding the transaction (i.e. getting their money back and returning what they purchased). Alliance Mortgage Co. v. Rothwell (1995) 10 Cal.4th 1226, 1240. Here, under this Settlement, Class Members have the option of rescinding their transactions with Eden and ***receiving 100% of their money back.*** If this requires a disinterment, Eden is further required to conduct the disinterment free of charge (the cemetery normally charges $1,900). Accordingly, this Settlement provides nearly *full relief* for Class Members who want to rescind their transactions based on Defendants' alleged fraudulent non-disclosures. It is obviously rare for parties to obtain everything they are requesting in a Settlement; and, yet, in this Settlement,

Class Members electing the rescission are obtaining essentially full relief and full refunds. Approximately 1,600 Class Members have elected this option to date. [Jue Decl., ¶ 8.]

Third, for those Class Members who have elected to keep their graves at Eden, the Settlement provides that they will receive their pro-rata share of the net settlement fund, even though there was a serious legal question as to whether they could receive any monetary damages absent proof that their own grave was harmed. In total, this Settlement requires Defendants to pay out a minimum of $35.5 million, not including the cost of performing the permanent measures and disinterments required under the Settlement. This is, of course, on top of the millions and millions of dollars of defense costs incurred by Defendants. As a result, the amount of money Defendants have been forced to pay as a result of their wrongful conduct, and the efforts of Class Counsel to obtain retribution on behalf of the Class, will not only wipe out any profits the cemetery made during the 24-year Class Period, but will erase most if not all of the $52,720,791 in revenue Defendants collected for the sale of graves during the Class Period.[7] [See Stewart Decl., Ex. C.] On behalf of the Class, Class Counsel ensured that Defendants paid a hefty price for their alleged wrongful conduct, which will hopefully serve as a strong deterrent against similar conduct in the future.

D. The Extraordinary Risks Incurred By Class Counsel Support the Fee Request.

California courts also consider the risks incurred by counsel when assessing a fee request. Lealao, 82 Cal.App.4th at 26. This factor strongly supports the fee request in this case, and in fact, supports a multiplier (even though no multiplier is being requested). [Fitzpatrick Decl., ¶ 13.]

For the last four and half years, Class Counsel has spent approximately 27,798 hours actively litigating this case and incurring $4,587,719 in expenses without any reimbursement. [Avenatti Decl., ¶¶ 4, 6; Exs. 3, 4.] The outcome in this case was far from certain; in fact, the odds were that the case would not be certified as a class action based on prior case precedent. See, e.g. Bennett 133 Cal.App.4th at 359. And yet, Class Counsel continued undaunted, investing and risking extraordinary amounts of time and money to overcome Defendants "don't give an inch" strategy and obtain the

[7] In total, Defendants collected approximately $99.6 million for the sale of graves, goods and services during the Class Period. [Stewart Decl., Ex. C.] However, the total amount of revenue collected for just the sale of graves (as opposed to the revenue collected for goods like markers) is $52,720,791.

substantial permanent measures and monetary benefits provided in the Settlement. This required additional sacrifices by Class Counsel as the two largest business generators in the firm devoted 2/3rds of their time to this case at the expense of other opportunities. [Avenatti Decl., ¶ 7.]; see also Thayer 92 Cal.App.4th at 833 (noting that one of factors to consider when assessing a fee award is "the extent to which the nature of the litigation precluded other employment by the attorneys.")

Moreover, unlike virtually every other class action in the United States, this case went to trial. [Fitzpatrick Decl., ¶ 13.] If Plaintiffs lost, Class Counsel would have received nothing for the tens of thousands of hour worked during this case, and they would have lost all of their unreimbursed expenses. In sum, the tremendous risks taken by Class Counsel for the benefit of the Class strongly support the fee request.

E. The Expert Evaluation of Professor Brian Fitzpatrick.

Finally, as discussed in the introduction, one of the nation's leading experts on class action settlements and fee awards (Professor Brian Fitzpatrick) has reviewed Plaintiffs' Application for Attorneys' Fees and Costs and concluded that they are "more than reasonable." [Fitzpatrick Decl., ¶¶ 4, 10.] Evaluating the fees based on California's lodestar method, and comparing the current request to fee awards in other California cases, Mr. Fitzpatrick concluded that Class Counsel would be justified in requesting a multiplier on its lodestar of approximately $18.8 million based on the outstanding results achieved and the incredible risks incurred. [Id. at ¶¶ 4, 10.] As Mr. Fitzpatrick notes, this case, unlike almost every other class action in the country, *actually went to trial.* [Id.] For this reason, it is not surprising that there were *only 8 cases out of 688* in his empirical study where class counsel had spent as much in out-of-pocket expenses as Class Counsel did here. [Id. at ¶ 13.] In sum, based on all of the relevant factors for assessing fee awards in California, Class Counsel should be awarded $23.5 million in fees and costs as provided for in the Settlement.

III. THE PROPOSED INCENTIVE AWARDS ARE REASONABLE AND APPROPRIATE

Under California law, it is proper to award incentive payments to Class Representatives in order to compensate them for the time and risks incurred in conferring benefits on other class members. Munoz v. BCI Coca–Cola Bottling Co. of Los Angeles (2010) 186 Cal.App.4th 399, 412. Here, an award of $20,000 to each of the Class Representatives is fair, reasonable and appropriate

under the circumstances of this case. These nine Class Representatives were required to invest a substantial amount of time, dedication and effort in pursuing this case on behalf of the Class, far more than the typical class action. [Frank Decl., ¶ 9.] These tasks included, but were not limited to:

(1) Substantial time meeting and conferring with Class Counsel by telephone, email and in person regarding status, developments and strategy;

(2) Substantial time reviewing pleadings;

(3) Substantial time reviewing voluminous transcripts of the deposition testimony of Eden's employees and managers, as well as the deposition transcripts of employees at the California Cemetery & Funeral Bureau;

(4) Responding to detailed "Fact Sheets" regarding their claims with over 40 questions, including subparts, for each deceased relative;

(5) Participating in and responding to voluminous rounds of extensive written discovery requests, including hundreds of interrogatories and requests for admissions;

(6) Preparing for and sitting for their depositions;

(7) Attending court hearings in person, including the preliminary injunction trial and hearings regarding Defendants' motion to compel the excavation of their loved ones' graves;

(8) Having their family members subjected to depositions;

(9) Attending the class action trial and preparing to testify; and

(10) Consulting with Class Counsel regarding settlement negotiations until the Settlement Agreement reached its final form.

[See Declarations of Robert Scott, Sean Frank, Rabbi Howard Laibson, Barry Chapman, Warren Binder, Ivy Greenstein, Linda Pore, Miriam Sue Roth and Habib Naeim ("Class Rep. Decls."). at ¶ 2.]

These Class Representative also faced significant burdens and risks that the Class did not incur. For example, Defendants filed several motions to compel the Court to order the excavation of their family members' graves, which, if Defendants prevailed on their motions would have occurred against their families' wishes. [Class Rep. Decls. at ¶ 8.] The Class Representatives also faced the

significant risk that Defendants would seek costs against them if Defendants prevailed in this action, which could have easily been hundreds of thousands of dollars against each Class Representative. See Van de Kamp v. Bank of America (1988) 204 Cal.App.3d 819, 867 (Defendants who prevail in a plaintiff class action may recover their costs from the named representative of the class, but not from the entire class.). They also each performed unique services and made personal sacrifices for the benefit of the Class. [Class Rep. Decls. at ¶ 2.] For example, Rabbi Howard Laibson spent significant time researching issues of Jewish law and providing expert declarations to the Court. [Laibson Decl. at ¶ 2.] Robert Scott served as the spokesperson for the Class, sitting for media interviews, and sharing his parents' horrible experiences during the Holocaust to explain the emotional anguish caused by Defendants' improper burial practices. [Scott Decl. at ¶ 2.] Barry Chapman was forced to re-live the death of his seven-year old son during deposition questioning by Defendants' counsel -- re-opening emotional wounds that he had spent years in therapy trying to overcome. [Chapman Decl. at ¶¶ 2, 11.] Harry Naeim – whose sister was in one of the few graves that Defendants admitted they damaged – abandoned potentially more valuable individual emotional distress claims in order to serve as a Class Representative and assist the Class obtain justice. [Naeim Decl. at ¶ 2.] The Class Representatives' contribution to this case cannot be overstated. [Frank Decl., ¶ 9.]

Accordingly, the Court should grant final approval of the requested incentive awards.

IV. THE COURT SHOULD OVERRULE THE OBJECTION OF SUSAN FRYDRYCH

Out of the 25,000 families covered by this Settlement, there is only a single Class Member (Susan Frydrych) currently objecting to the Settlement (the "Frydrych Objection").[8] [Jue Decl., ¶ 10.] Mrs. Frydrych "does not object to the Settlement as a whole" but does object to the request for attorney fees. [Jue Decl., Ex. E.] She argues that the value of the Settlement is "only" worth $35.25 million, and ignores the $45 million value of the Settlement's permanent measures even though she is choosing

[8] There were a few additional objectors who subsequently withdrew their objections after receiving further information about the Settlement. In addition, there is another Class Member, Joseph Naiman, who has indicated he would like to speak at the Final Approval Hearing because he does not "agree with the structure of the settlement." [Jue Decl., Ex. E.] However, he does not state the grounds for his objection as required by this Court's Preliminary Approval Order and, thus, any objection is deemed waived. [Avenatti Decl., Ex. 2 (Prelim. Approv. Order) at ¶¶ 17-18.]

to keep her graves at the cemetery. Based on her decision to ignore the $45 million value of the permanent measures, Mrs. Frydrych argues that the requested attorneys' fees are approximately 2/3 of the Settlement. [Id., Ex. E.] Mrs. Frydrych further suggests that Class Counsel should, instead, only get $10 million total for both its fees and costs, meaning less than $6 million in legal fees after reimbursement of its costs. [Id.] Mrs. Frydrych's objection should be overruled for the following reasons.

First, this Court cannot simply ignore the substantial value of the permanent measures required by the Settlement. As explained by Dr. Stewart, the restored value of the Settlement's permanent measures is well over $45 million based on the *same* analysis, methodology and evidence Dr. Stewart used to support Plaintiffs' damage claims. [Stewart Decl., ¶ 25.] This, of course, does not include the "peace of mind" value for those Class Members electing to keep their graves at this cemetery. [Id., ¶ 26.] The economic valuation of the permanent measures is discussed in greater detail in Plaintiffs' Motion for Final Approval of Class Action Settlement at pages 8 through 12.

Second, Mrs. Frydrych cannot, on the one hand, claim she is entitled to greater damages than those provided in the Settlement, while simultaneously discounting the restored economic value provided by the Settlement's permanent measures. As discussed above, Plaintiffs' class claims were limited to claims for *economic* damages; Class Members could not seek emotional distress damages in this class action. [Avenatti Decl., Ex 7 (May 4, 2014 Class Cert. Order) at 19-21.] If Mrs. Frydrych wanted to obtain emotional distress damages, she would need to "opt out" and file a separate individual lawsuit, as well as provide proof of a "well-found substantial certainty" that her own family member's grave was disturbed. Christensen 54 Cal.3d at 902. Mrs. Frydrych does not indicate that she has any such evidence, nor has she "opted out" to pursue such claims. [Jue Decl., Ex. C.] Accordingly, Mrs. Frydrych's economic remedies in this class action were limited to either the rescission/refund/disinterment remedy or the out-of-pocket loss remedy. Alliance Mortgage 10 Cal.4th at 1240 (stating two alternative remedies for fraudulent non-disclosure). Under the Settlement, Mrs. Frydrych could have selected the rescission option and obtained essentially 100% relief – an option selected by approximately 1,600 Class Members. [Jue Decl., ¶ 8.] Instead, Mrs. Frydrych elected to keep her family member's grave at the cemetery – a completely understandable

decision. However, this means that Mrs. Frydrych's claims would be limited to "out-of-pocket" loss damages, and even on that point, Defendants vociferously argued that she could not obtain any such damages absent a showing of physical harm to her *own* family member's grave.

In other words, under Defendants' view, any money awarded to Mrs. Frydrych under this Settlement would be considered a windfall, because she is electing to keep her grave at the cemetery. Under Plaintiffs' view, Mrs. Frydrych would be entitled to the decrease in the market value price that would have occurred if the problems at Eden had been disclosed at the time of sale and were continuing after sale. However, now that the Settlement's permanent measures are stopping the alleged improper burial practices, this lost economic value has been restored by at least 50% based on the post-Settlement sales on the secondary market reviewed by Dr. Stewart, for an aggregate total of at least $45 million in restored value. [Stewart Decl., ¶¶ 23-24.] As Dr. Stewart notes, "[i]f a Class Member were to argue that the restored value is less than $45 million, or not quantifiable, then that Class Member would not only be wrong, he/she would be essentially arguing that he/she did not suffer economic damages in the manner or amount alleged in this lawsuit. This is because [his] valuation of the Permanent Corrective Measures is based on the same evidence and methodology used to establish [Mrs. Frydrych's] damage claim." [Id.] Put another way, Mrs. Frydrych wants to keep her grave at the cemetery and claim she suffered a loss in economic value in an amount apparently greater than the amount available under the Settlement. But then she wants to ignore the restored economic value achieved by the Settlement's permanent measures, which is based on the *same* evidence and methodology used to establish her damage claim. Mrs. Frydrych cannot have it both ways.

Third, Mrs. Frydrych's contention that Class Counsel should only get a percentage of the Settlement's monetary amounts is not appropriate under California law. California has rejected awarding fees based on a percentage of the benefit method in favor of the lodestar method. Serrano 20 Cal.3d at 48-49; Lealao 82 Cal.App.4th at 26. California courts are allowed to use the "percentage of the benefit" as a factor in determining whether to adjust the lodestar amount, but only when "the value of the class recovery can be monetized with a reasonable degree of certainty." Lealao 82 Cal.App.4th at 49-50; Dunk 48 Cal.App.4th at 1808. If Mrs. Frydrych is claiming that the permanent measures

cannot be monetized, then she cannot argue for a "percentage of the benefit" cross check. Id. If she is claiming it can be monetized, then she has to compare counsel's requested fees ($18,785,150) to the full value of the Settlement ($80.5 million), which means that Class Counsel's requested fees are approximately 23% of the total value – a percentage that is lower than what is typically obtained in a contingency case. [Fitzpatrick Decl. at ¶ 15.] If this Court were to accept Mrs. Frydrych's argument that Class Counsel should only get $10 million -- meaning less than $6 million in legal fees after reimbursement of costs -- then this Court would be finding that Class Counsel should get *two-thirds less* than its lodestar (i.e. a negative 66% multiplier rather than a positive multiplier). There is simply no way under the factors used to determine whether to adjust a lodestar up or down that Class Counsel could be awarded less than what it incurred as established in Section II above.

Fourth, as explained in the expert declaration of Brian Fitzpatrick, "[i]t is often difficult to value nonmonetary relief in class action settlements, but that is not reason to forgo compensating class counsel when they win important nonmonetary relief for the class." [Fitzpatrick Decl. at ¶ 16 (citations omitted).] He further explains why it is not unusual for fees to consume a majority of the monetary amount of a Settlement, especially when the Settlement achieves important non-monetary relief. Specifically, he explains as follows:

> [C]lass counsel cannot be paid in nonmonetary relief; they can only be paid in cash. This means that, in order to properly compensate class counsel for obtaining the nonmonetary relief, class counsel will often be awarded extra cash. Indeed, in many settlements involving nonmonetary relief, attorneys' fees consume all of the cash in the settlement—the settlements comprise only injunctive relief and attorneys' fees. There is nothing inherently wrong with such settlements: sometimes injunctive relief can be more valuable to the class than cash relief; the important question is whether the settlement is a good result for the class in light of the risks the class faced. If it is, then class counsel should be compensated appropriately—that is, class counsel should not be punished for obtaining nonmonetary relief. If courts capped class counsel's compensation at 25% (or some similar percentage) of the cash portion of a settlement regardless of whether class counsel also obtained injunctive relief for the class, class

counsel would not have any incentive to fight for injunctive relief even when it would be important to the class. It is easy to see why this approach would ultimately disserve class members, and it is for this reason that many courts and I oppose it.

[Fitzpatrick Decl., ¶ 17.] For this reason, Courts considering this issue have rejected the notion that class action fee awards should be capped at any percentage of the cash portion of the settlements that include injunctive relief. See, e.g., Faught v. American Home Shield Corp., 668 F.3d 1233, 1238-44 (11th Cir. 2012).

Accordingly, Mrs. Frydrych's objection to the fee request should be overruled.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant this Application for fees and costs to Class Counsel in the amount of $23.5 million and incentive awards in the amount of $20,000 to each Class Representative.

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