

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

**DISCOUNT SLEEP OF OCALA, LLC d/b/a
MATTRESS WAREHOUSE, individually,
and as a Representative of a Class of all
similarly situated others, and DALE W.
BIRCH, individually, and as a
Representative of a Class of all similarly
situated others,**

Case No.: 2014 CA 000426

Plaintiffs,

v.

**CITY OF OCALA, FLORIDA, a political
subdivision of the State of Florida,**

Defendant.

**PLAINTIFFS' SECOND AMENDED
MOTION FOR CLASS CERTIFICATION
AND MEMORANDUM OF LAW
AND REQUEST FOR HEARING**

Plaintiffs, Discount Sleep of Ocala, LLC, individually, and as a Representative of a Class of all similarly situated others, and Dale W. Birch, individually, and as a Representative of a Class of all similarly situated others (collectively "Plaintiffs"), by and through their undersigned attorneys, file this Motion for Class Certification, pursuant to Florida Rule of Civil Procedure 1.220, and as grounds state as follows:

1. On January 1, 2007, Defendant, City of Ocala (the "City" or "Defendant"), began charging its utility customers a monthly fire service fee (the "Disputed Fee" or "Fire Fee").
2. On October 8, 2009, the City repealed the Disputed Fee in its entirety.
3. On May 4, 2010, the City voted to again impose the Disputed Fee, thereby re-enacting the Disputed Fee effective October 1, 2010.
4. On October 14, 2011, the City filed a lawsuit against the Marion County School Board asking the Court, in Count I, to determine whether the Disputed Fee is valid and enforceable against the school board.

5. On December 3, 2013, Plaintiff, Discount Sleep of Ocala, LLC, individually, and as a Representative of a Class of all similarly situated others, requested that the City stop charging the Disputed Fee and refund all fees paid by the putative class. The City refused to stop charging the Disputed Fee.

6. On February 20, 2014, Plaintiffs filed this class action against the City asking the Court to determine whether the Disputed Fee is invalid.

7. On March 31, 2014, the City filed a Motion to Dismiss this lawsuit.

8. On April 10, 2014, Plaintiffs filed an Amended Complaint, pursuant to Florida Rule of Civil Procedure 1.190(a), which cured all alleged deficiencies identified in Defendant's Motion to Dismiss.

9. On February 13, 2015, the Court dismissed this case with prejudice.

10. On June 17, 2016, the Fifth District Court of Appeal reversed the Court's dismissal with prejudice.

MEMORANDUM OF LAW

The purpose of the class action mechanism "is to save a multiplicity of suits, to reduce the expense of litigation, to make legal processes more effective and expeditious, and to make available a remedy that would otherwise not exist."¹ Florida Rule of Civil Procedure 1.220 directs the trial court to enter an order, at the request of any party, as to whether a claim can be maintained as a class action "[a]s soon as practicable after service of any pleading alleging the existence of a class"² The party seeking class certification has the burden of pleading and proving the elements required by Florida Rule of Civil Procedure 1.220.³

In making such a determination, trial courts are required to conduct a "rigorous analysis" as to whether the case satisfies the criteria set by Florida Rule of Civil Procedure 1.220.⁴ Yet, because an

¹ *Broin v. Philip Morris Companies, Inc.*, 641 So.2d 888 (Fla. 3d DCA 2010).

² Fla. R. Civ. P. 1.220(d)(1) (2014).

³ *Terry L. Braun, P.A. v. Campbell*, 827 So.2d 261, 265 (Fla. 5th DCA 2002).

⁴ *Miami Auto. Retail, Inc. v. Baldwin*, 97 So.3d 846, 851 (Fla. 3d DCA 2012).

order certifying a class “may be altered or amended at any time before the entry of a judgment on the merits,”⁵ any doubts as to class certification should be resolved “in favor of certification, especially in the early stages of litigation.”⁶ Furthermore, as part of its initial determination, “a trial court may look beyond the pleadings and, without resolving disputed issues, determine how disputed issues might be addressed on a classwide basis.”⁷

I. THE COURT SHOULD GRANT CLASS CERTIFICATION BECAUSE PLAINTIFFS HAVE STANDING TO REPRESENT THE PUTATIVE CLASS.

“A threshold inquiry in a motion for class certification is whether the class representative has standing to represent the putative class members.”⁸ “Florida recognizes a general standing requirement in the sense that every case must involve a real controversy as to the issue or issues presented.”⁹ In the class action context, “the class representative must illustrate that a case or controversy exists between him or her and the defendant, and that this case or controversy will continue throughout the existence of the litigation.”¹⁰ The Florida Supreme Court has held that a real controversy exists between a class representative and the defendant when “the law in question . . . requires certain residents either to pay an allegedly illegal tax or risk being penalized”¹¹

From October 9, 2009 through September 30, 2010 Defendant illegally charged Fire Fees without an ordinance in place. From October 1, 2010, Defendant has charged, and continues to charge pursuant to Ordinance 2010-43, the Disputed Fee to its utility customers, which includes Plaintiffs and every member of the putative class, as part of each customer’s monthly utility bill.¹² Because Defendant collects the Disputed Fee in the same manner as it collects utility services,¹³ Defendant imposes severe penalties for delinquent payment or nonpayment of the full amount of the utility bill,

⁵ *Canal Ins. Co. v. Gibraltar Budget Plan, Inc.*, 41 So.3d 375, 377 (Fla. 4th DCA 2010). Likewise, “trial courts are permitted to redefine a proposed class in a manner which will allow utilization of the class action.” *Id.*

⁶ *Sosa v. Safeway Premium Finance Co.*, 73 So.3d 91, 105 (Fla. 2011).

⁷ *Id.* at 117.

⁸ *Id.* at 116.

⁹ *Dept. of Revenue v. Kuhnlein*, 646 So.2d 717, 720 (Fla. 1994).

¹⁰ *Sosa*, 73 So.3d at 116.

¹¹ *Kuhnlein*, 646 So.2d at 721.

¹² City of Ocala Ordinances 5554 and 2010-43, attached hereto as Composite Exhibit “A.”

¹³ *Id.*

including the Disputed Fee.¹⁴ These penalties include late fees,¹⁵ terminating utility service,¹⁶ severance fees,¹⁷ liens,¹⁸ attorney's fees,¹⁹ reconnection charges,²⁰ and litigation.²¹ Thus, Defendant requires Plaintiffs and all putative class members to either pay the Disputed Fee or risk being severely penalized. Plaintiffs and all putative class members have paid the Disputed Fee. Accordingly, this Court should find that Plaintiffs have standing to bring this class action lawsuit because a real and continuing controversy exists between Plaintiffs and Defendant and this Court should grant class certification.

In addition, Plaintiffs seek a declaratory judgment declaring the Disputed Fee invalid. Defendant has vigorously litigated against the Marion County School Board for nearly five years to have the Disputed Fee declared valid and enforceable.²² The parties' contradictory positions further illustrate that a real and continuing controversy exists between Plaintiffs and Defendant. Accordingly, because Plaintiffs have standing to bring this class action lawsuit, the Court should grant class certification.

II. THE COURT SHOULD GRANT CLASS CERTIFICATION BECAUSE PLAINTIFFS SATISFY ALL PREREQUISITES TO CLASS REPRESENTATION.

Whether a class action meets the requirements of Florida Rule of Civil Procedure 1.220(a) "is a factual finding, which falls within a trial court's discretion."²³ Florida Rule of Civil Procedure 1.220(a) is satisfied only where "(1) the members of the class are so numerous that separate joinder of each member is impracticable, (2) the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class, (3) the claim or defense of the representative party is typical of the claim or defense of each member of

¹⁴ City of Ocala, CODE OF ORDINANCES, §§ 70-686, 70-687, 70-691, and 70-693.

¹⁵ City of Ocala, CODE OF ORDINANCES, § 70-687(a).

¹⁶ City of Ocala, CODE OF ORDINANCES, §§ 70-686(c) and 70-691.

¹⁷ City of Ocala, CODE OF ORDINANCES, § 70-693(c).

¹⁸ City of Ocala, CODE OF ORDINANCES, § 70-686(e).

¹⁹ City of Ocala, CODE OF ORDINANCES, § 70-687(b).

²⁰ City of Ocala, CODE OF ORDINANCES, § 70-693(a)-(b).

²¹ See e.g. *City of Ocala v. The School Board of Marion County, Florida* (Marion County Circuit Court case number 2011-CA-003112).

²² Marion County Circuit Court case number 2011-CA-003112.

²³ *Sosa*, 73 So.3d at 103. Although the trial court has broad discretion whether to certify a class, such discretion "is to be applied within the structure of [R]ule 1.220." *Baldwin*, 97 So.3d at 851.

the class, and (4) the representative party can fairly and adequately protect and represent the interests of each member of the class.”²⁴ These requirements are commonly referred to as numerosity, commonality, typicality, and adequacy.²⁵

A. Class Size Makes Separate Joinder of Each Member Impracticable.

“Parties seeking class certification must demonstrate that the members of the class are so numerous that separate joinder of each member is impracticable.”²⁶ Yet, “[n]o specific number and no precise count are needed to sustain the numerosity requirement.”²⁷ Indeed, “members of the plaintiff class may be ascertained through discovery.”²⁸ Still, while there is no magic number of class members that will support certification, classes of more than forty members are generally deemed to satisfy the numerosity requirement.²⁹

“[C]lass certification is proper if the class representative does not base the projected class size on mere speculation.”³⁰ In determining whether the numerosity requirement is met, “the Court should consider the geographical dispersion of the class members, judicial economy, and the ease of identifying the members of the class and their addresses.”³¹ Further, the projected class size is not speculative when it can be determined by geographical and chronological boundaries.³²

Plaintiffs seek to represent two (2) classes of persons defined as: (1) all persons who paid the City a Fire Fee from February 10, 2010 through October 1, 2010 and (2) all persons who paid the City a Fire Fee from October 2, 2010 through the present. The actual size of the putative class, and the identity of each class member, should be easily ascertainable from Defendant’s utility billing records. Plaintiffs estimate that the putative class contains at least 22,000 members and may contain as many

²⁴ Fla. R. Civ. P. 1.220(a) (2014).

²⁵ *City of Tampa v. Addison*, 979 So.2d 246, 251 (Fla. 2d DCA 2007).

²⁶ *Campbell*, 827 So.2d at 266.

²⁷ *Sosa*, 73 So.3d at 114.

²⁸ *Frankel v. City of Miami Beach*, 340 So.2d 463, 470 (Fla. 1976).

²⁹ *Kuehn v. Cadle Co., Inc.*, 245 F.R.D. 545, 548 (M.D. Fla. 2007). Note that, because Florida Rule of Civil Procedure 1.220 was modeled after Federal Rule of Civil Procedure 23, “Florida courts often look to federal cases for guidance as persuasive authority on issues regarding class actions.” *Barnhill v. Fla. Microsoft Anti-Trust Litigation*, 905 So.2d 195, 198 (Fla. 3d DCA 2005).

³⁰ *Sosa*, 73 So.3d at 114.

³¹ *Kuehn*, 245 F.R.D. at 548.

³² *Sosa*, 73 So.3d at 114.

as 50,000 members.³³ Joinder of thousands of individual claims would be impracticable and would defeat the purpose of Florida Rule of Civil Procedure 1.220, which is to promote judicial economy.³⁴ In addition, Plaintiffs chronologically confine the putative class to only those persons from whom Defendant collected the Disputed Fee during the applicable statute of limitations period. Thus, Plaintiffs' estimated class size is not speculative. Accordingly, this Court should find that Plaintiffs have satisfied the numerosity requirement and grant class certification.

B. The Questions of Law or Fact Raised by Plaintiffs are Common to All Class Members.

The commonality requirement presents a low hurdle and "only requires that resolution of a class action affect all or a substantial number of the class members, and that the subject matter of the class action presents a question of common or general interest."³⁵ A plaintiff satisfies the commonality requirement "if the common or general interest of the class members is in the object of the action, the result sought, or the general question implicated in the action."³⁶ Furthermore, commonality "is satisfied if the questions linking the class members are substantially related to the resolution of the litigation, even if the individuals are not identically situated."³⁷ Indeed, "[a] mere factual difference between class members does not necessarily preclude satisfaction of the commonality requirement."³⁸ Likewise, "nuanced factual differences [as] to each individual damage determination . . . [does] not preclude a finding of commonality."³⁹ In addition, factual differences as to the applicable statutes of limitations

³³ See United States Census Bureau, 2010 Demographic Profile Data (showing Defendant as having 23,103 occupied households within its municipal boundaries) attached hereto as Exhibit "B;" Florida Municipal Power Agency Statistics (showing Defendant's utility service as having 50,489 customers in 2014) attached hereto as Exhibit "C." Note that neither of these sources accurately capture or account for any fluctuations in the number of utility customers caused by population growth or transiency over time. Thus, the true putative class size may exceed 50,000 members.

³⁴ *Broin*, 641 So.2d at 891.

³⁵ *Sosa*, 73 So.3d at 107.

³⁶ *Id.*

³⁷ *Id.* at 108.

³⁸ *Id.* at 107.

³⁹ *Id.* at 108.

among class members will not defeat a finding of commonality.⁴⁰ Rather, “[t]here must be a common right of recovery based on the same essential facts.”⁴¹

The object of this class action is the validity of Defendant’s Disputed Fee, which Defendant has imposed, or continues to impose, on all class members. In bringing this class action, Plaintiffs pose a question of common interest, as to whether Defendant’s Disputed Fee is valid and enforceable as to all class members, and seek supplemental relief, common to all class members, in the form of a refund of all unlawfully collected fees. Class members will benefit by a declaration that Defendant’s fee is invalid by no longer having to pay the Disputed Fee. Class members will also benefit if Defendant is ordered to refund all unlawfully collected fees. Accordingly, this Court should find that Plaintiffs have satisfied the commonality requirement and grant class certification.

C. Plaintiffs’ Claims Against Defendant are Typical of the Claims Each Class Member has Against Defendant.

“The test for typicality is not demanding and focuses generally on the similarities between the class representative and the putative class members.”⁴² The key inquiry when analyzing typicality is “whether the class representative possesses the same legal interest and has endured the same legal injury as the class members.”⁴³ A plaintiff satisfies the typicality requirement when there is a strong similarity in the legal theories between the class representatives’ claims and the claims of putative class members and “when the claims of the class representative[s] and class members are not antagonistic to one another.”⁴⁴ Furthermore, “[m]ere factual differences between the class representatives’ claims and the claims of class members will not defeat typicality.”⁴⁵

Because Defendant has imposed, or continues to impose, its Disputed Fee on Plaintiffs, as well as every member of the putative class, Plaintiffs and each member of the putative class have the same legal interest, theory and claim as to whether Defendant’s Disputed Fee is valid and enforceable. For

⁴⁰ *Broin*, 641 So.2d at 891.

⁴¹ *Id.* at 890.

⁴² *Sosa*, 73 So.3d at 114.

⁴³ *Id.*

⁴⁴ *Id.* at 114-15.

⁴⁵ *Id.* at 114.

similar reasons, Plaintiffs and each member of the putative class have endured the same legal injury, i.e. mandatory payment of Defendant's Disputed Fee. Accordingly, this Court should find that Plaintiffs satisfy the typicality requirement and grant class certification.

D. Plaintiffs and Class Counsel Will Fairly and Adequately Protect and Represent the Class.

A determination as to whether the adequacy requirement is met involves a two-part inquiry: (1) whether class counsel has the ability to advocate effectively on behalf of the class, and (2) whether the class representatives' interests are antagonistic to the interests of the class.⁴⁶

1. Class Counsel Has the Qualifications, Experience and Ability to Advocate Effectively on Behalf of the Class.

"The first prong [of the adequacy requirement] concerns the qualifications, experience, and ability of class counsel to conduct the litigation."⁴⁷ In other words, the trial court must determine whether class counsel is "competent and experienced, [thus] giving them the ability to advocate effectively on behalf of [the named plaintiffs] and the putative class members."⁴⁸ In addition, the ability of class counsel to conduct the litigation includes class counsel's "willingness to absorb the costs in prosecuting th[e] case as a class action."⁴⁹

Derek A. Schroth, is a Board Certified City, County and Local Government Lawyer with experience prosecuting and defending class actions and complex business litigation in Florida and Federal courts. Mr. Schroth is an expert in local government matters, serves as city attorney for two municipalities located in Lake County, Florida, and serves as a quasi-judicial hearing officer for the City of Orlando. Mr. Schroth is also an expert in business litigation and is the only lawyer in private practice recognized by the Florida Bar as an expert in business litigation and local government law. James A. Myers was admitted to The Florida Bar in 2013 after a successful career handling complex property and casualty claims for a national insurance carrier. Since joining Bowen & Schroth, P.A., Mr. Myers

⁴⁶ *Id.* at 115.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Baldwin*, 97 So.3d at 854.

has focused primarily on class action litigation under the direct supervision and tutelage of Mr. Schroth. Moreover, Mr. Schroth and Mr. Myers have successfully settled two similar class action lawsuits against municipalities in Lake and Sumter Counties involving similar issues as are involved in this lawsuit.⁵⁰ In addition, Bowen & Schroth, P.A. have agreed to absorb all litigation costs on behalf of the Plaintiffs and the class, regardless of the outcome of this lawsuit. Accordingly, this Court should find that Derek A. Schroth and James A. Myers have the qualifications, experience and ability to advocate effectively on behalf of the class, grant class certification, and appoint Derek A. Schroth, as class counsel, with Mr. Myers as co-counsel, for each member of the certified class.

2. Plaintiffs' Interests are Aligned With the Interests of the Class.

To meet the adequacy requirement, “[a] class representative must be part of the class and possess the same interest and suffer the same injury as the class members.”⁵¹ “[I]nherent in this rule is an expectation of a minimal level of interest in the action.”⁵² Yet, a class representative does not need a sophisticated understanding of the legal system or underlying legal theories.⁵³ Rather, a class representative can provide adequate representation for the class with only a basic understanding of the facts that form the basis of the class action lawsuit.⁵⁴

“The relevant inquiry is whether the plaintiffs maintain a sufficient interest in, and nexus with, the class so as to ensure vigorous representation.”⁵⁵ Thus, the adequacy inquiry “serves to uncover conflicts of interest between the presumptive class representative and the class he or she seeks to represent.”⁵⁶ A substantial conflict of interest, one that is fundamental and which “go[es] to the specific issues in controversy, will defeat class certification.”⁵⁷ In contrast, a conflict of interest that is “merely

⁵⁰ Fruitland Park Settlement Agreement and Order Approving Settlement are attached hereto as Composite Exhibit “D;” Wildwood Settlement Agreement attached hereto as Exhibit “E.” Please note that the fairness hearing as to the Wildwood class action is scheduled to occur on November 13, 2014.

⁵¹ *Addison*, 979 So.2d at 253.

⁵² *Leibell v. Miami-Dade Cnty.*, 84 So.3d 1078, 1085 (Fla. 3d DCA 2012).

⁵³ *Surowitz v. Hilton Hotels Corp.*, 383 U.S. 363, 370 (1966).

⁵⁴ *Alfred v. Okeelanta Corp.*, No. 89-8285-CIV-RYSKAMP, 1991 WL 177658, *14 (S.D. Fla. 1991).

⁵⁵ *Roper v. Conserve, Inc.*, 578 F.2d 1106, 1112 (5th Cir. 1978).

⁵⁶ *Sosa*, 73 So.3d at 115.

⁵⁷ *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003).

speculative or hypothetical” is neither substantial nor a barrier to class certification.⁵⁸ A fundamental conflict exists where class members “have opposing interests or when [the class] consists of members who benefit from the same acts alleged to be harmful to other members of the class.”⁵⁹

Satisfaction of the commonality and typicality requirements provides “strong evidence that [the named plaintiffs] adequately represent the class.”⁶⁰ Additional proof that the named plaintiffs adequately represent the class exists where the same relief is sought for Plaintiffs and all class members.⁶¹ Likewise, when named plaintiff is “willing and able to take an active role as class representative and advocate on behalf of all class members[, his] interests [are] not antagonistic to those of the rest of the class.”⁶²

Because each Plaintiff is a utility customer of Defendant, and therefore subject to Defendant’s Disputed Fee, each Plaintiff is clearly a member of the putative class and has suffered the same injury as the putative class, i.e. mandatory payment of the Disputed Fee. Likewise, each Plaintiff shares the same interest as all members of the putative class in having Defendant’s Disputed Fee declared invalid and unenforceable. In addition, each Plaintiff seeks the same relief for themselves and all class members, as the result of having Defendant’s Disputed Fee declared invalid and unenforceable will allow the putative class to avoid further payment of the Disputed Fee and will entitle all members of the putative class to a refund of all unlawfully collected fees. Accordingly, this Court should find that each Plaintiff’s interests are aligned with those of the putative class, grant class certification, and appoint both Plaintiffs as Class Representatives for the certified class.

III. THE COURT SHOULD GRANT CLASS CERTIFICATION BECAUSE PLAINTIFFS’ CLAIMS AGAINST DEFENDANT ARE MAINTAINABLE ON BEHALF OF A CLASS.

⁵⁸ *Henderson v. Thomas*, 289 F.R.D. at 512.

⁵⁹ *Pickett v. Iowa Beef Processors*, 209 F.3d 1276, 1280 (11th Cir. 2000).

⁶⁰ *Henderson*, 289 F.R.D. at 511.

⁶¹ *Broin*, 641 So.2d at 892.

⁶² *Sosa*, 73 So.3d at 115.

In addition to satisfying “numerosity, commonality, typicality, and adequacy, a class must meet one of the three categories listed in subsection (b) of rule 1.220.”⁶³

A. Plaintiffs’ Claims are Maintainable on Behalf of a Class Because Defendant’s Conduct is Applicable to All Class Members.

Class certification is appropriate under Florida Rule of Civil Procedure 1.220(b)(2) when the “party opposing the class has acted or refused to act on grounds generally applicable to all the members of the class, thereby making . . . declaratory relief concerning the class as a whole appropriate.”⁶⁴ Defendant either imposed or continues to impose the Disputed Fee on all class members. If this Court declares Defendant’s Disputed Fee to be an illegal tax, it would be unlawful as to all class members. Accordingly, this Court should find that Defendant’s conduct is applicable to all putative class members and grant class certification under Florida Rule of Civil Procedure 1.220(b)(2).

B. Plaintiffs’ Claims are Also Maintainable on Behalf of a Class Because Common Questions of Law or Fact Predominate Over Individual Questions of Law or Fact and Class Representation is the Superior Method for Adjudicating This Dispute.

Class certification is also appropriate under Florida Rule of Civil Procedure 1.220(b)(3) when “the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy.”⁶⁵ In determining whether to certify a class under Florida Rule of Civil Procedure 1.220(b)(3), the court must consider “all relevant facts and circumstances, including (A) the respective interests of each member of the class in individually controlling the prosecution of separate claims or defenses, (B) the nature and extent of any pending litigation to which any member of the class is a party and in which any question of law or fact controverted in the subject action is to be adjudicated, (C) the desirability or undesirability of

⁶³ *Baldwin*, 97 So.3d at 852.

⁶⁴ Fla. R. Civ. P. 1.220(b)(2) (2014).

⁶⁵ Fla. R. Civ. P. 1.220(b)(3) (2014).

concentrating the litigation in the forum where the subject action is instituted, and (D) the difficulties likely to be encountered in the management of the claim or defense on behalf of a class.”⁶⁶

1. Common Questions of Law or Fact Predominate Over Individual Questions of Law or Fact.

The “predominance inquiry tests whether the proposed class is sufficiently cohesive to warrant adjudication by representation.”⁶⁷ The predominance requirement is satisfied when a named plaintiff demonstrates that “if he or she, by proving his or her own individual case, necessarily proves the cases of the other class members.”⁶⁸ Indeed, “Florida courts have held that common questions of fact predominate when the defendant acts toward the class members in a similar or common way.” A finding of predominance is further bolstered where “any minor variance in factual circumstances would be with regard to the issue of damages and not liability . . . [and where] any variance in damage recovery between the class members is calculable by using a systematic formula”⁶⁹

Defendant has charged and collected, and continues to charge and collect, the Disputed Fee from its utility customers, which includes Plaintiffs and every member of the putative class.⁷⁰ Thus, Plaintiffs and each member of the putative class share the same interests as to whether Defendant’s Disputed Fee is actually an illegal tax. If Plaintiffs successfully prove that Defendant’s Disputed Fee is an illegal tax, Defendant’s Disputed Fee will be invalid as to all class members and all class members will be entitled to a refund of all unlawfully collected fees. Accordingly, this Court should find that Plaintiffs have satisfied the predominance requirement and grant class certification under Florida Rule of Civil Procedure 1.220(b)(3).

2. Class Representation is the Superior Method for Adjudicating This Dispute.

The purpose of the superiority requirement is to ensure that the “class action would achieve economies of time, effort, and expense, and promote uniformity of decisions as to persons similarly

⁶⁶ *Id.*

⁶⁷ *Chase Manhattan Mortg. Corp. v. Porcher*, 898 So.2d 153, 157 (Fla. 4th DCA 2005).

⁶⁸ *Sosa*, 73 So.3d at 112.

⁶⁹ *Id.* at 113.

⁷⁰ City of Ocala Ordinances 5554 and 2010-43, attached hereto as Composite Exhibit “A.”

situated, without sacrificing procedural fairness.”⁷¹ In determining whether a class action is the superior method of adjudicating a controversy, the trial court should consider “(1) whether a class action would provide the class members with the only economically viable remedy; (2) whether there is a likelihood that the individual claims are large enough to justify the expense of separate litigation; and (3) whether a class action cause of action is manageable.”⁷² In addition, “the predominance analysis has a tremendous impact on the superiority analysis for the simple reason that, the more common issues predominate over individual issues, the more desirable a class action lawsuit will be as a vehicle for adjudicating the plaintiffs’ claims, both relative to other forms of litigation such as joinder or consolidation, and in absolute terms of manageability.”⁷³

Individual claims of class members can range from under \$20.00 to several thousand dollars, depending on how long each class member has been Defendant’s utility customer and whether the class member is a residential or commercial utility customer.⁷⁴ Thus, few, if any, individual claims would justify the legal expense of seeking to invalidate Defendant’s Disputed Fee, especially in light of Defendant’s zealous defense to this lawsuit and prolonged prosecution of Defendant’s lawsuit attempting to enforce the Disputed Fee against the Marion County School Board.⁷⁵ Yet, class representation would provide each class member with an economically viable means of protecting their interests. In addition, and as previously discussed, Plaintiffs project a class size well over 22,000 members and joinder of such a large number of individual claims would be impracticable. Thus, class representation of this lawsuit would also promote judicial economy. Furthermore, there are no

⁷¹ *Braxton v. Farmer’s Ins. Group*, 209 F.R.D. 654, 662 (N.D. Ala. 2002).

⁷² *Sosa*, 73 So.3d at 116. Yet, the final factor – manageability – is rarely a concern as “[e]ven potentially severe management issues have been held insufficient to defeat class certification.” *Klay v. Humana, Inc.*, 382 F.3d 1241, 1273 (11th Cir. 2004).

⁷³ *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Svcs., Inc.*, 601 F.3d 1159, 1184 (11th Cir. 2010).

⁷⁴ See City of Ocala Ordinances 5554 and 2010-43, attached hereto as Composite Exhibit “A.” Residential utility customers are charged \$14.30 per month and commercial utility customers are charged anywhere from \$15.20 to \$2,082.92 per month, depending on their total building square footage.

⁷⁵ Indeed, superiority is clear when the defendant has “demonstrated willingness and proclivity for drawing out legal proceedings for as long as humanly possible and burying their opponents in paperwork and filings.” *Klay*, 382 F.3d at 1271.

“insurmountable difficulties”⁷⁶ involved with this lawsuit that would prevent the Court from utilizing the class notification procedures contained in Florida Rule of Civil Procedure 1.220(d)(2), or any other class management tool, to adequately manage the class. Accordingly, this Court should find that Plaintiffs have satisfied the superiority requirement and grant certification under Florida Rule of Civil Procedure 1.220(b)(3).

V. CONCLUSION

For the reasons set forth above, this Honorable Court should find that Plaintiffs have standing to bring this action, Plaintiffs have satisfied all prerequisites to class certification, and Plaintiffs’ claims are maintainable as a class action. Accordingly, this Honorable Court should grant Plaintiffs’ Motion for Class Certification, certify the class described herein, appoint both Plaintiffs as Class Representatives, and appoint Derek A. Schroth as class counsel and James A. Myers as co-class counsel.

REQUEST FOR EVIDENTIARY HEARING

Although the facts and law support granting Plaintiffs’ Motion for Class Certification, Plaintiffs anticipate a lengthy opposition from Defendant and believe that oral argument may assist the Court.⁷⁷ Accordingly, Plaintiffs respectfully request an evidentiary hearing before the Court on their Motion for Class Certification. Plaintiffs estimate three (3) hours will be required for argument.

WHEREFORE, Plaintiffs, Discount Sleep of Ocala, LLC, individually, and as a Representative of a Class of all similarly situated others, and Dale W. Birch, individually, and as a Representative of a Class of all similarly situated others, respectfully request this Court enter an order:

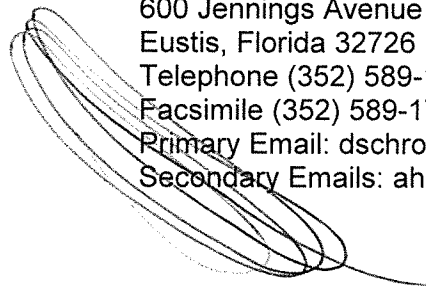
1. Certifying two (2) classes, pursuant to Florida Rule of Civil Procedure 1.220(b)(2), consisting of (1) all persons who paid the City a Fire Fee from February 10, 2010 through October 1, 2010 and (2) all persons who paid the City a Fire Fee from October 2, 2010 through the present.

⁷⁶ *Klay*, 382 F.3d at 1273.

⁷⁷ *Sosa*, 73 So.3d at 105 (stating that “[a]lthough [R]ule 1.220 does not demand it, and certainly not all situations require it, a trial court may conduct an evidentiary hearing to evaluate the basis for class certification”). In doing so, and “if consequential to its consideration of whether to certify a class, a trial court may consider evidence on the merits of the case as it applies to the class certification requirements.” *Id.*

2. Appointing Discount Sleep of Ocala, LLC d/b/a Mattress Warehouse and Dale W. Birch as Class Representatives for the certified class;
3. Appointing Derek A. Schroth as Class Counsel and James A. Myers as Co-Class counsel;
4. Approving, pursuant to Florida Rule of Civil Procedure 1.220(d), the class action notices attached hereto as Composite Exhibit "F;"
5. Granting such other and further relief as may be just and proper.

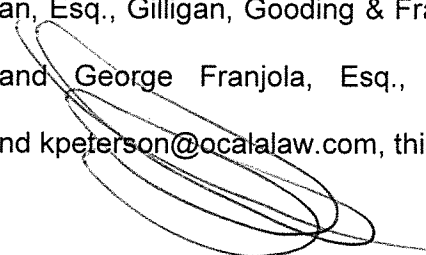
BOWEN & SCHROTH, P.A.
600 Jennings Avenue
Eustis, Florida 32726
Telephone (352) 589-1414
Facsimile (352) 589-1726
Primary Email: dschroth@bowenschroth.com
Secondary Emails: ahasselbring@bowenschroth.com



DEREK A. SCHROTH
Florida Bar No. 0352070
Board Certified in City, County and Local Government Law
JAMES A. MYERS
Florida Bar No. 0106125

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by email service to Patrick G. Gilligan, Esq., Gilligan, Gooding & Franjola, P.A., at pgilligan@ocalalaw.com and llanders@ocalalaw.com, and George Franjola, Esq., Gilligan, Gooding & Franjola, P.A., at gfranjola@ocalalaw.com and kpeterson@ocalalaw.com, this 21st day of June, 2015.



DEREK A. SCHROTH

Ordinance

5554

AN ORDINANCE OF THE CITY OF OCALA, FLORIDA, CONCERNING CHAPTER 30, EMERGENCY SERVICES, ADDING AN ARTICLE III, TO BE ENTITLED "EMERGENCY FIRE SERVICE AVAILABILITY FEE"; ADDING SECTIONS TO BE NUMBERED 30-50 THROUGH 30-54; PROVIDING FOR DEFINITIONS; PROVIDING FINDINGS AND BACKGROUND; PROVIDING FOR THE IMPOSITION OF AN EMERGENCY FIRE SERVICE AVAILABILITY FEE; PROVIDING FOR APPLICABLE IMPOSITION DATE, COLLECTION AND BILLING OF FEES, AND FOR FUTURE CITY COUNCIL REVIEW; PROVIDING FOR USE OF REVENUE AND INTERNAL ACCOUNTING; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Ocala, Florida as follows:

Section 1. That the Code of Ordinances, City of Ocala, Florida, is hereby amended by adding Article III, sections to be numbered 30-50 through 30-54, which sections read as follows:

ARTICLE III. EMERGENCY FIRE SERVICE AVAILABILITY FEE.

Sec. 30-50. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Property means a parcel of real property within the city limits which is assigned a unique Parcel identification number by the Marion County Property Appraiser.

Premise means a physical location where the city provides one or more utility services.

Sec. 30-51. Findings and background.

Findings and background. The city council finds and declares as follows:

- (a) The city is committed to providing adequate emergency fire services for its citizens and to the businesses and property located in the city.
- (b) The city council has considered adequate information, including the study developed by the city's fire service fee consultant.
- (c) The benefits of emergency fire service availability received from properties in the service area are many. First, there is a watch standing, or availability benefit that comes from the availability of fire service. Second, there is a

COMPOSITE
EXHIBIT
A

service benefit that comes from actual calls for service to the property classes within the service area. Third, a benefit of the availability of fire service in the city is the availability of, and potentially reduced cost of fire insurance. The level of fire service provided can have an effect upon fire insurance rates with higher levels of service generally resulting in lower insurance rates. Finally, the ability of the city's fire service personnel to intervene in a fire event can potentially save structures or reduce damage to structures.

- (d) Insufficient funding is available from other General Fund revenue sources to continue providing the level of emergency fire services that the city desires to provide to the citizens and properties located in the city.
- (c) Imposing an emergency fire service availability fee is the most equitable manner of providing the additional funding needed to pay for these services.
- (f) It is the city's plan that the fire service fee will generate a portion of the budgeted operational costs of providing emergency fire services to the city's citizens and properties.
- (g) The fire service fee will be billed to all city properties as a part of the monthly utility bill.

Sec. 30-52. Emergency fire service availability fee imposed.

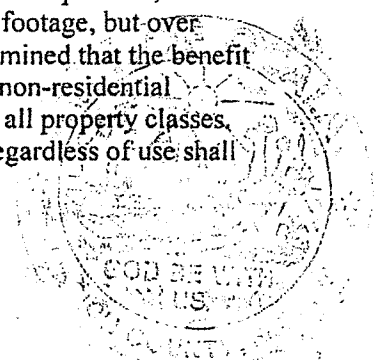
To each residential or non-residential premise located within the city limits there is hereby imposed a monthly fee for emergency fire service availability based on the equitable portion of the cost of providing such services.

Budgeted fire service costs have been projected for the five year period beginning with fiscal year 2007 and the following fee schedule has been developed to recover a portion of the costs for each year in the period FY 2007 through FY 2011.

- (a) Residential fee. All residential properties will pay the same fee per residential unit. This is true whether the property is classified as a single family residence, mobile home, condominium, or a unit of a duplex, apartment complex, etc. The monthly fee for each residential dwelling unit for the residential class is as follows:

<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY2010</u>	<u>FY2011</u>
\$12.00	\$14.30	\$14.30	\$15.20	\$15.20

- (b) Non-residential. Non-residential properties are classified as either Institutional, Governmental, or Commercial/Industrial (C/I). It has been determined that the benefit received from emergency fire services for non-residential property is related to the developed space of each premise, but that the benefit increases not directly proportional to square footage, but over broad ranges of developed space. It has also been determined that the benefit received is not materially different among the different non-residential property classes, consequently the fees are the same for all property classes. The schedule of fees for each non-residential premise regardless of use shall be based upon the following schedule:

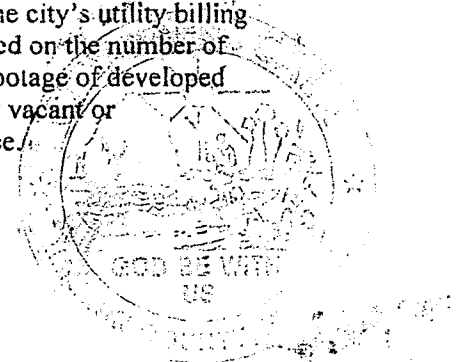


**Fire Services Fee Schedule for Institutional, Governmental and
Commercial/Industrial (C/I) Property**

Sq. Ft. Range	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
1 - 2,000	\$ 12.00	\$ 14.30	\$ 14.30	\$ 15.20	\$ 15.20
2,001 - 3,000	\$ 13.70	\$ 16.33	\$ 16.33	\$ 17.36	\$ 17.36
3,001 - 4,000	\$ 19.17	\$ 22.86	\$ 22.86	\$ 24.30	\$ 24.30
4,001 - 5,000	\$ 24.65	\$ 29.39	\$ 29.39	\$ 31.24	\$ 31.24
5,001 - 6,000	\$ 30.13	\$ 35.93	\$ 35.93	\$ 38.19	\$ 38.19
6,001 - 7,000	\$ 35.61	\$ 42.46	\$ 42.46	\$ 45.13	\$ 45.13
7,001 - 8,000	\$ 41.09	\$ 48.99	\$ 48.99	\$ 52.07	\$ 52.07
8,001 - 10,000	\$ 49.33	\$ 58.79	\$ 58.79	\$ 62.49	\$ 62.49
10,001 - 12,000	\$ 60.27	\$ 71.85	\$ 71.85	\$ 76.37	\$ 76.37
12,001 - 14,000	\$ 71.23	\$ 84.92	\$ 84.92	\$ 90.26	\$ 90.26
14,001 - 16,000	\$ 82.18	\$ 97.98	\$ 97.98	\$ 104.15	\$ 104.15
16,001 - 18,000	\$ 93.14	\$ 111.04	\$ 111.04	\$ 118.03	\$ 118.03
18,001 - 20,000	\$ 104.10	\$ 124.11	\$ 124.11	\$ 131.92	\$ 131.92
20,001 - 25,000	\$ 123.28	\$ 146.97	\$ 146.97	\$ 156.22	\$ 156.22
25,001 - 30,000	\$ 150.67	\$ 179.63	\$ 179.63	\$ 190.93	\$ 190.93
30,001 - 35,000	\$ 178.07	\$ 212.29	\$ 212.29	\$ 225.65	\$ 225.65
35,001 - 40,000	\$ 205.46	\$ 244.95	\$ 244.95	\$ 260.37	\$ 260.37
40,001 - 45,000	\$ 232.86	\$ 277.61	\$ 277.61	\$ 295.08	\$ 295.08
45,001 - 50,000	\$ 260.25	\$ 310.27	\$ 310.27	\$ 329.80	\$ 329.80
50,001 - 60,000	\$ 301.35	\$ 359.26	\$ 359.26	\$ 381.87	\$ 381.87
60,001 - 70,000	\$ 356.14	\$ 424.58	\$ 424.58	\$ 451.30	\$ 451.30
70,001 - 80,000	\$ 410.93	\$ 489.90	\$ 489.90	\$ 520.73	\$ 520.73
80,001 - 90,000	\$ 465.72	\$ 555.22	\$ 555.22	\$ 590.16	\$ 590.16
90,001 - 100,000	\$ 520.51	\$ 620.54	\$ 620.54	\$ 659.59	\$ 659.59
100,001 - 120,000	\$ 602.70	\$ 718.52	\$ 718.52	\$ 763.74	\$ 763.74
120,001 - 140,000	\$ 712.28	\$ 849.16	\$ 849.16	\$ 902.60	\$ 902.60
140,001 - 160,000	\$ 821.86	\$ 979.80	\$ 979.80	\$1,041.46	\$1,041.46
160,001 - 180,000	\$ 931.44	\$1,110.44	\$1,110.44	\$1,180.32	\$1,180.32
180,001 - 200,000	\$1,041.03	\$1,241.08	\$1,241.08	\$1,319.19	\$1,319.19
200,001 - 250,000	\$1,232.79	\$1,469.69	\$1,469.69	\$1,562.19	\$1,562.19
250,001 - 300,000	\$1,506.75	\$1,796.29	\$1,796.29	\$1,909.35	\$1,909.35
300,001 <	\$1,643.74	\$1,959.59	\$1,959.59	\$2,082.92	\$2,082.92

Sec. 30-53. Applicability; collection; review.

- (a) The emergency fire services fee imposed by this Article shall be imposed on each developed property within the city limits beginning January 1, 2007. Where a property has multiple premises, as defined by the city's utility billing system, each premise will be assessed a separate fee based on the number of residential units, for residential property, or the square footage of developed space, for non-residential property, as appropriate. Only vacant or undeveloped land will be exempt from the fire service fee.



- (b) The city will include the fire service fee on the utility bills for all developed properties in the city. Collection enforcement will be in the same manor as that used with all other portions of the bill for utility services.
- (c) The emergency fire service fee shall be reviewed by the city council in July of 2011 and, thereafter, at five year intervals, for the purpose of determining the appropriate fee for the following five fiscal years required to recover a portion of the projected cost of providing emergency fire services as determined by the city council. This review will be based on the most current data available.

Sec. 30-54 Use of revenue

The proceeds received by reason of the establishment of this emergency fire service fee shall be used as a portion of the revenues budgeted by the city for providing fire services.

Section 2. Severability Clause: Should any provision or section of this ordinance be held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall take effect upon approval by the mayor, or upon becoming law without such approval.

ATTEST:

Valerie J. Forster
Valerie J. Forster
City Clerk

CITY OF OCALA

By: Daniel Owen
Daniel Owen
President, Ocala City Council

Approved/ Denied by me as Mayor of the City of Ocala, Florida, on August 9th, 2006.

By: Randall Ewers
Randall Ewers
Mayor

~~Approved as to form and legality:~~

Patrick G. Gilligan
Patrick G. Gilligan
City Attorney

Ordinance No. 5554
Introduced: July 25, 2006
Adopted as amended: August 8, 2006
Legal Ad No: 0774074

THIS IS TO CERTIFY THE FOREGOING TO
BE A TRUE AND ACCURATE COPY

Valerie J. Forster
CITY CLERK

ORDINANCE 2010-43

AN ORDINANCE OF THE CITY OF OCALA, FLORIDA, CONCERNING CHAPTER 30, EMERGENCY SERVICES, REPEALING ORDINANCE NUMBER 6015, ENACTED ON OCTOBER 6, 2009, THAT INTENDED TO REPEAL CHAPTER 30, ARTICLE III, SECTIONS 30-50 THROUGH 30-54 OF THE CODE OF ORDINANCES, ON THE EFFECTIVE DATE OF OCTOBER 1, 2010; THEN AMENDING SECTION 30-50, "DEFINITIONS" BY ADDING A DEFINITION OF FISCAL YEAR; AMENDING SECTION 30-52, "EMERGENCY FIRE SERVICE USER FEE IMPOSED" PROVIDING FOR ANNUAL REVIEW, DETERMINATION AND IMPOSITION BY CITY COUNCIL OF THE UPCOMING FISCAL YEAR RESIDENTIAL FIRE USER FEE RATE AND NON-RESIDENTIAL FIRE USER FEE SCHEDULE BY RESOLUTION; AMENDING SECTION 30-53, "APPLICABILITY; COLLECTION; REVIEW"; PROVIDING FOR A NEW SECTION TITLE OF "APPLICABILITY; REVIEW"; PROVIDING FOR DELETION OF REQUIREMENT OF COUNCIL REVIEW OF USER FEE RATES ON FIVE (5) YEAR INTERVAL BASIS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Ocala, Florida as follows:

Section 1. That Ordinance 6015, enacted on October 6, 2009, that intended to repeal Chapter 30, Article III, Sections 30-50 through 30-54, on the effective date of October 1, 2010, is hereby repealed.

Section 2. That Chapter 30, Article III, Sections 30-50 through 30-59, of the Code of Ordinances, City of Ocala, Florida, is hereby amended to read as follows:

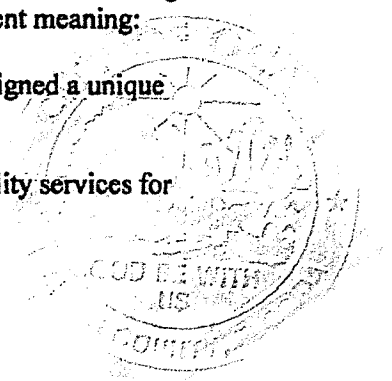
ARTICLE III. EMERGENCY FIRE SERVICE USER FEE

Sec. 30-50. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Property means a parcel of real property within the city limits which is assigned a unique Parcel identification number by the Marion County Property Appraiser.

Premise means a physical location where the city provides one or more utility services for which a customer is billed in accordance with the city's utility billing system.



Fiscal Year means the fiscal year from October 1 of each year to September 30 of the following year.

Sec. 30-51. Findings and background.

The city council finds and declares as follows:

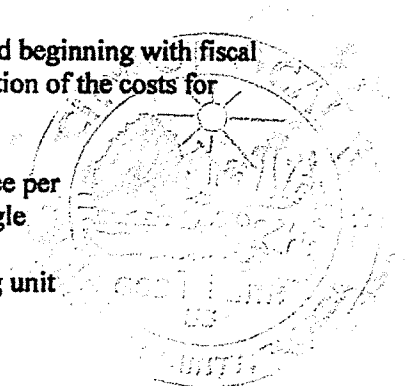
- (a) The city is committed to providing adequate emergency fire services for its citizens and to the businesses and property located in the city.
- (b) The city council has considered adequate information, including the study developed by the city's fire service fee consultant.
- (c) Florida Statute, §166.201 authorizes a municipality to raise funds by the imposition of user fees or charges authorized by ordinance, which are necessary for the conduct of municipal government and may enforce their receipt and collection in the manner prescribed by ordinance not inconsistent with law.
- (d) The benefits of emergency fire service received from properties in the service area are many. First, there is a watch standing, or availability benefit that comes from the availability of fire service. Second, there is a service benefit that comes from actual calls for service to the property classes within the service area. Third, a benefit of the availability of fire service in the city is the availability of, and potentially reduced cost of fire insurance. The level of fire service provided can have an effect upon fire insurance rates with higher levels of service generally resulting in lower insurance rates. Finally, the ability of the city's fire service personnel to intervene in a fire event can potentially save structures or reduce damage to structures.
- (e) Insufficient funding is available from other general fund revenue sources to continue providing the level of emergency fire services that the city desires to provide to the citizens and properties located in the city.
- (f) Imposing an emergency fire service user fee is the most equitable manner of providing the additional funding needed to pay for these services.
- (g) It is the city's plan that the fire service fee will generate a portion of the budgeted operational costs of providing emergency fire services to the city's citizens and properties.
- (h) The fire service fee will be billed to all city properties as a part of the monthly utility bill.

Sec. 30-52. Emergency fire service user fee imposed.

To each residential or non-residential premise located within the city limits there is hereby imposed a monthly fee for emergency fire service based on the equitable portion of the cost of providing such services.

Budgeted fire service costs have been projected for the five-year period beginning with fiscal year 2007 and the following fee schedule has been developed to recover a portion of the costs for each year in the period FY 2007 through FY 2011.

- (a) **Residential fee.** All residential properties will pay the same fee per residential unit. This is true whether the property is classified as a single family residence, mobile home, condominium, or a unit of a duplex, apartment complex, etc. The monthly fee for each residential dwelling unit



for the residential class is as follows:

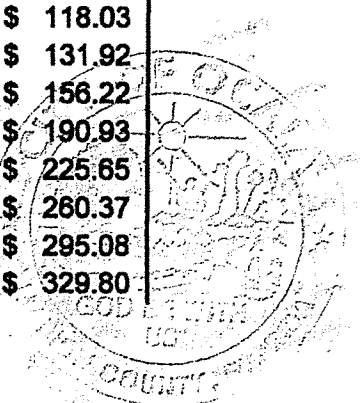
<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY2010</u>
\$12.00	\$14.30	\$14.30	\$14.30

(b) The residential user fee for Fiscal Year 2011 shall be set by city council prior to the beginning of that Fiscal Year (October 1, 2010) by an adopted user fee resolution. Annually thereafter prior to the beginning of the next Fiscal Year city council shall adopt the user fee rate by resolution for the next Fiscal Year. Should city council not adopt a new residential user fee rate for any given Fiscal Year, it shall remain the same rate as that imposed for the previous Fiscal Year.

(c) Non-residential. Non-residential properties are classified as Institutional, Governmental, or Commercial/Industrial (C/I). It has been determined that the benefit received from emergency fire services for non-residential property is related to the developed space of each premise, but that the benefit increases not directly proportional to square footage, but over broad ranges of developed space. It has also been determined that the benefit received is not materially different among the different non-residential property classes, consequently the fees are the same for all property classes. The schedule of fees for each non-residential premise regardless of use shall be based upon the following schedule:

Fire Services Fee Schedule for Institutional, Governmental and Commercial/Industrial (C/I) Property

<u>Sq. Ft. Range</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
1 - 2,000	\$ 12.00	\$ 14.30	\$ 14.30	\$ 15.20	\$ 15.20
2,001 - 3,000	\$ 13.70	\$ 16.33	\$ 16.33	\$ 17.36	\$ 17.36
3,001 - 4,000	\$ 19.17	\$ 22.86	\$ 22.86	\$ 24.30	\$ 24.30
4,001 - 5,000	\$ 24.65	\$ 29.39	\$ 29.39	\$ 31.24	\$ 31.24
5,001 - 6,000	\$ 30.13	\$ 35.93	\$ 35.93	\$ 38.19	\$ 38.19
6,001 - 7,000	\$ 35.61	\$ 42.46	\$ 42.46	\$ 45.13	\$ 45.13
7,001 - 8,000	\$ 41.09	\$ 48.99	\$ 48.99	\$ 52.07	\$ 52.07
8,001 - 10,000	\$ 49.33	\$ 58.79	\$ 58.79	\$ 62.49	\$ 62.49
10,001 - 12,000	\$ 60.27	\$ 71.85	\$ 71.85	\$ 76.37	\$ 76.37
12,001 - 14,000	\$ 71.23	\$ 84.92	\$ 84.92	\$ 90.26	\$ 90.26
14,001 - 16,000	\$ 82.18	\$ 97.98	\$ 97.98	\$ 104.15	\$ 104.15
16,001 - 18,000	\$ 93.14	\$ 111.04	\$ 111.04	\$ 118.03	\$ 118.03
18,001 - 20,000	\$ 104.10	\$ 124.11	\$ 124.11	\$ 131.92	\$ 131.92
20,001 - 25,000	\$ 123.28	\$ 146.97	\$ 146.97	\$ 156.22	\$ 156.22
25,001 - 30,000	\$ 150.67	\$ 179.63	\$ 179.63	\$ 190.93	\$ 190.93
30,001 - 35,000	\$ 178.07	\$ 212.29	\$ 212.29	\$ 225.65	\$ 225.65
35,001 - 40,000	\$ 205.46	\$ 244.95	\$ 244.95	\$ 260.37	\$ 260.37
40,001 - 45,000	\$ 232.86	\$ 277.61	\$ 277.61	\$ 295.08	\$ 295.08
45,001 - 50,000	\$ 260.25	\$ 310.27	\$ 310.27	\$ 329.80	\$ 329.80



50,001	-	60,000	\$ 301.35	\$ 359.26	\$ 359.26	\$ 381.87	\$ 381.87
60,001	-	70,000	\$ 356.14	\$ 424.58	\$ 424.58	\$ 451.30	\$ 451.30
70,001	-	80,000	\$ 410.93	\$ 489.90	\$ 489.90	\$ 520.73	\$ 520.73
80,001	-	90,000	\$ 465.72	\$ 555.22	\$ 555.22	\$ 590.16	\$ 590.16
90,001	-	100,000	\$ 520.51	\$ 620.54	\$ 620.54	\$ 659.59	\$ 659.59
100,001	-	120,000	\$ 602.70	\$ 718.52	\$ 718.52	\$ 763.74	\$ 763.74
120,001	-	140,000	\$ 712.28	\$ 849.16	\$ 849.16	\$ 902.60	\$ 902.60
140,001	-	160,000	\$ 821.86	\$ 979.80	\$ 979.80	\$1,041.46	\$1,041.46
160,001	-	180,000	\$ 931.44	\$1,110.44	\$1,110.44	\$1,180.32	\$1,180.32
180,001	-	200,000	\$1,041.03	\$1,241.08	\$1,241.08	\$1,319.19	\$1,319.19
200,001	-	250,000	\$1,232.79	\$1,469.69	\$1,469.69	\$1,562.19	\$1,562.19
250,001	-	300,000	\$1,506.75	\$1,796.29	\$1,796.29	\$1,909.35	\$1,909.35
300,001	>		\$1,643.74	\$1,959.59	\$1,959.59	\$2,082.92	\$2,082.92

(d) The non-residential user fee schedule for Fiscal Year 2012 shall be set by city council prior to the beginning of that Fiscal Year (October 1, 2011) by an adopted user fee resolution. Annually thereafter prior to the beginning of the next Fiscal Year city council shall adopt the non-residential user fee rate schedule by resolution for the next Fiscal Year. Should city council not adopt a new non-residential user fee rate schedule for any given Fiscal Year, the schedule shall remain the same as that imposed for the previous Fiscal Year.

Sec. 30-53. Applicability; collection.

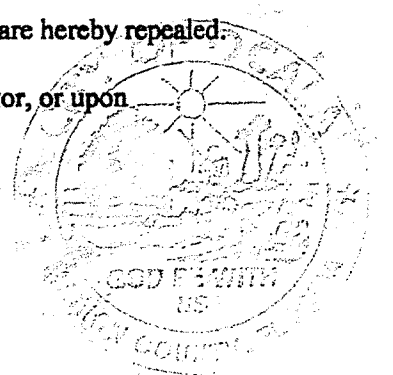
- (a) The emergency fire services fee imposed by this Article shall be imposed on each developed property within the city limits beginning January 1, 2007. Where a property has multiple premises, each premise will be assessed a separate fee based on the number of residential units, for residential property, or the square footage of developed space, for non-residential property, as appropriate. Only vacant or undeveloped land will be exempt from the fire service fee.
- (b) The city will include the fire service fee on the utility bills for all developed properties in the city. Collection enforcement will be in the same manor as that used with all other portions of the bill for utility services.

Sec. 30-54 - 30-59. Reserved.

Section 3. Severability Clause: Should any provision or section of this ordinance be held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. This ordinance shall take effect upon approval by the mayor, or upon becoming law without such approval.



CITY OF OCALA

By: *Reuben Kent Guinn*
Reuben Kent Guinn
President, Ocala City Council

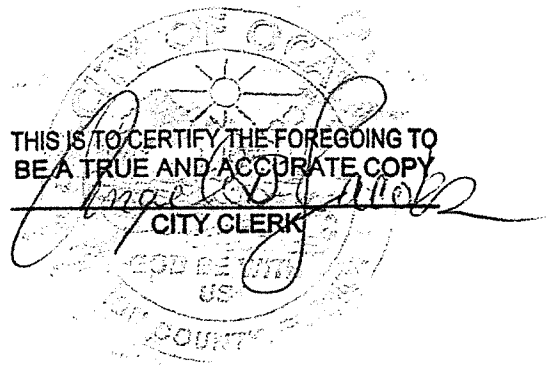
ATTEST:
By: *Angel B. Jacobs*
Angel B. Jacobs
City Clerk

Approved/Denied by me as Mayor of the City of Ocala, Florida, on May 4th, ~~2009~~ ²⁰¹⁰

By: *Randall Ewers*
Randall Ewers
Mayor

Approved as to form and legality:
By: *W. James Gooding III*
~~Patrick G. Gillingan~~ **W. James Gooding III**
~~City Attorney~~ **Assistant City Attorney**

Ordinance No. 2010-43
Introduced: March 30, 2010
Adopted: May 4, 2010
Legal Ad No: SF05151801 - April 2, 2010
Tabled: April 20, 2010





DP-1

Profile of General Population and Housing Characteristics: 2010

2010 Demographic Profile Data

NOTE: For more information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/dpsf.pdf>.

Geography: Ocala city, Florida

Subject	Number	Percent
SEX AND AGE		
Total population	56,315	100.0
Under 5 years	3,937	7.0
5 to 9 years	3,300	5.9
10 to 14 years	3,274	5.8
15 to 19 years	3,810	6.8
20 to 24 years	4,241	7.5
25 to 29 years	4,125	7.3
30 to 34 years	3,361	6.0
35 to 39 years	3,394	6.0
40 to 44 years	3,544	6.3
45 to 49 years	3,819	6.8
50 to 54 years	3,791	6.7
55 to 59 years	3,110	5.5
60 to 64 years	2,902	5.2
65 to 69 years	2,422	4.3
70 to 74 years	1,977	3.5
75 to 79 years	1,700	3.0
80 to 84 years	1,622	2.9
85 years and over	1,986	3.5
Median age (years)	38.2	(X)
16 years and over	45,142	80.2
18 years and over	43,685	77.6
21 years and over	41,162	73.1
62 years and over	11,417	20.3
65 years and over	9,707	17.2
Male population		
Under 5 years	1,962	3.5
5 to 9 years	1,652	2.9
10 to 14 years	1,658	2.9
15 to 19 years	1,942	3.4
20 to 24 years	2,083	3.7
25 to 29 years	2,078	3.7
30 to 34 years	1,711	3.0
35 to 39 years	1,728	3.1
40 to 44 years	1,747	3.1
45 to 49 years	1,887	3.4
50 to 54 years	1,782	3.2
55 to 59 years	1,452	2.6
60 to 64 years	1,332	2.4
65 to 69 years	1,067	1.9
70 to 74 years	836	1.5



Subject	Number	Percent
75 to 79 years	670	1.2
80 to 84 years	607	1.1
85 years and over	606	1.1
Median age (years)	35.8	(X)
16 years and over	21,187	37.6
18 years and over	20,450	36.3
21 years and over	19,166	34.0
62 years and over	4,564	8.1
65 years and over	3,786	6.7
Female population	29,515	52.4
Under 5 years	1,975	3.5
5 to 9 years	1,648	2.9
10 to 14 years	1,616	2.9
15 to 19 years	1,868	3.3
20 to 24 years	2,158	3.8
25 to 29 years	2,047	3.6
30 to 34 years	1,650	2.9
35 to 39 years	1,666	3.0
40 to 44 years	1,797	3.2
45 to 49 years	1,932	3.4
50 to 54 years	2,009	3.6
55 to 59 years	1,658	2.9
60 to 64 years	1,570	2.8
65 to 69 years	1,355	2.4
70 to 74 years	1,141	2.0
75 to 79 years	1,030	1.8
80 to 84 years	1,015	1.8
85 years and over	1,380	2.5
Median age (years)	40.4	(X)
16 years and over	23,955	42.5
18 years and over	23,235	41.3
21 years and over	21,996	39.1
62 years and over	6,853	12.2
65 years and over	5,921	10.5
RACE		
Total population	56,315	100.0
One Race	54,941	97.6
White	39,822	70.7
Black or African American	11,795	20.9
American Indian and Alaska Native	188	0.3
Asian	1,464	2.6
Asian Indian	593	1.1
Chinese	220	0.4
Filipino	300	0.5
Japanese	21	0.0
Korean	69	0.1
Vietnamese	111	0.2
Other Asian [1]	150	0.3
Native Hawaiian and Other Pacific Islander	17	0.0
Native Hawaiian	11	0.0
Guamanian or Chamorro	4	0.0
Samoan	0	0.0
Other Pacific Islander [2]	2	0.0
Some Other Race	1,655	2.9

Subject	Number	Percent
Two or More Races	1,374	2.4
White; American Indian and Alaska Native [3]	221	0.4
White; Asian [3]	154	0.3
White; Black or African American [3]	420	0.7
White; Some Other Race [3]	260	0.5
Race alone or in combination with one or more other races: [4]		
White	40,987	72.8
Black or African American	12,427	22.1
American Indian and Alaska Native	529	0.9
Asian	1,707	3.0
Native Hawaiian and Other Pacific Islander	89	0.2
Some Other Race	2,065	3.7
HISPANIC OR LATINO		
Total population	56,315	100.0
Hispanic or Latino (of any race)	6,586	11.7
Mexican	1,294	2.3
Puerto Rican	2,740	4.9
Cuban	578	1.0
Other Hispanic or Latino [5]	1,974	3.5
Not Hispanic or Latino	49,729	88.3
HISPANIC OR LATINO AND RACE		
Total population	56,315	100.0
Hispanic or Latino	6,586	11.7
White alone	4,199	7.5
Black or African American alone	298	0.5
American Indian and Alaska Native alone	71	0.1
Asian alone	9	0.0
Native Hawaiian and Other Pacific Islander alone	8	0.0
Some Other Race alone	1,537	2.7
Two or More Races	464	0.8
Not Hispanic or Latino	49,729	88.3
White alone	35,623	63.3
Black or African American alone	11,497	20.4
American Indian and Alaska Native alone	117	0.2
Asian alone	1,455	2.6
Native Hawaiian and Other Pacific Islander alone	9	0.0
Some Other Race alone	118	0.2
Two or More Races	910	1.6
RELATIONSHIP		
Total population	56,315	100.0
In households	53,034	94.2
Householder	23,103	41.0
Spouse [6]	8,413	14.9
Child	14,509	25.8
Own child under 18 years	10,960	19.5
Other relatives	3,348	5.9
Under 18 years	1,295	2.3
65 years and over	511	0.9
Nonrelatives	3,661	6.5
Under 18 years	241	0.4
65 years and over	188	0.3
Unmarried partner	1,844	3.3
In group quarters	3,281	5.8
Institutionalized population	2,856	5.1
Male	1,895	3.4

Subject	Number	Percent
Female	961	1.7
Noninstitutionalized population	425	0.8
Male	257	0.5
Female	168	0.3
HOUSEHOLDS BY TYPE		
Total households	23,103	100.0
Family households (families) [7]	13,456	58.2
With own children under 18 years	6,083	26.3
Husband-wife family	8,413	36.4
With own children under 18 years	3,159	13.7
Male householder, no wife present	1,114	4.8
With own children under 18 years	572	2.5
Female householder, no husband present	3,929	17.0
With own children under 18 years	2,352	10.2
Nonfamily households [7]	9,647	41.8
Householder living alone	7,909	34.2
Male	3,080	13.3
65 years and over	868	3.8
Female	4,829	20.9
65 years and over	2,429	10.5
Households with individuals under 18 years	6,854	29.7
Households with individuals 65 years and over	6,872	29.7
Average household size	2.30	(X)
Average family size [7]	2.95	(X)
HOUSING OCCUPANCY		
Total housing units	26,764	100.0
Occupied housing units	23,103	86.3
Vacant housing units	3,661	13.7
For rent	1,693	6.3
Rented, not occupied	60	0.2
For sale only	617	2.3
Sold, not occupied	48	0.2
For seasonal, recreational, or occasional use	237	0.9
All other vacants	1,006	3.8
Homeowner vacancy rate (percent) [8]	5.0	(X)
Rental vacancy rate (percent) [9]	12.8	(X)
HOUSING TENURE		
Occupied housing units	23,103	100.0
Owner-occupied housing units	11,662	50.5
Population in owner-occupied housing units	27,581	(X)
Average household size of owner-occupied units	2.37	(X)
Renter-occupied housing units	11,441	49.5
Population in renter-occupied housing units	25,453	(X)
Average household size of renter-occupied units	2.22	(X)

X Not applicable.

[1] Other Asian alone, or two or more Asian categories.

[2] Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.

[3] One of the four most commonly reported multiple-race combinations nationwide in Census 2000.

[4] In combination with one or more of the other races listed. The six numbers may add to more than the total population, and the six percentages may add to more than 100 percent because individuals may report more than one race.

[5] This category is composed of people whose origins are from the Dominican Republic, Spain, and Spanish-speaking Central or South

American countries. It also includes general origin responses such as "Latino" or "Hispanic."

[6] "Spouse" represents spouse of the householder. It does not reflect all spouses in a household. Responses of "same-sex spouse" were edited during processing to "unmarried partner."

[7] "Family households" consist of a householder and one or more other people related to the householder by birth, marriage, or adoption. They do not include same-sex married couples even if the marriage was performed in a state issuing marriage certificates for same-sex couples. Same-sex couple households are included in the family households category if there is at least one additional person related to the householder by birth or adoption. Same-sex couple households with no relatives of the householder present are tabulated in nonfamily households. "Nonfamily households" consist of people living alone and households which do not have any members related to the householder.

[8] The homeowner vacancy rate is the proportion of the homeowner inventory that is vacant "for sale." It is computed by dividing the total number of vacant units "for sale only" by the sum of owner-occupied units, vacant units that are "for sale only," and vacant units that have been sold but not yet occupied; and then multiplying by 100.

[9] The rental vacancy rate is the proportion of the rental inventory that is vacant "for rent." It is computed by dividing the total number of vacant units "for rent" by the sum of the renter-occupied units, vacant units that are "for rent," and vacant units that have been rented but not yet occupied; and then multiplying by 100.

Source: U.S. Census Bureau, 2010 Census.

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Pairing the personal service of a community-owned utility with the resources of a statewide organization produces the best of community power and statewide strength.



MEMBERS

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 bartow
 blountstown
 bushnell
 chattahoochee
 clewiston
 fort meade
 fort pierce
 gainesville
 green cove springs
 havana
 homestead
 jacksonville beach
 key west
 kissimmee
 lake worth
 lakeland
 leesburg
 moore haven
 mount dora
 new smyrna beach
 newberry
 ocala
 orlando
 quincy
 st. cloud
 starke
 vero beach
 wauchula
 williston
 winter park

Ocala

Ocala Electric Utility
 1805 N.E. 30th Avenue
 Ocala, FL 34470-4875

City Phone: (352) 629-2489
 Utility Phone: (352) 351-6600
 Fax: (352) 351-8263

www.ocalaelectric.com

City Services Provided: electricity, water, sewer, wastewater, broadband, transport, fiber leasing, municipal data network, SCADA, voice

Total Number Electric Customers	50,489
Gross Receipts	\$131,872,732
Peak Demand	264 MW
kWh Sales (retail)	1,185,155,561 kWh
Net generating capacity (MW)	10MW
Service Area, in Square Miles	171
Municipal Population	57,041
Total Megawatts supplied by FMPA in fiscal 2013	275.8 ¹

¹ Participants' noncoincident peak demand in fiscal 2013. Includes demand served by: 1) Entitlement shares of St. Lucie, Stanton, Tri-City and Stanton II projects for All-Requirements members that are also in these projects, and 2) Portions of Crystal River Unit 3 or its replacement power, individually owned by some members.



IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

JAMES RICHARDSON, individually,
MICHAEL HOWARD and NANCY HOWARD
his wife, both individually, and as Representatives
of a Class of all similarly situated others,

CASE NO. 2013 CA 400

Plaintiffs,

v.

CITY OF FRUITLAND PARK, FLORIDA,
a municipal corporation,

Defendant.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered between MICHAEL HOWARD and NANCY HOWARD, his wife, both individually, and as Representatives of a Class duly approved by the Court (the "Class Representatives") and JAMES RICHARDSON ("Jim Richardson"), and the CITY OF FRUITLAND PARK, FLORIDA, a municipal corporation (the "City"), this 21st day of January, 2014.

WHEREAS, the Class Representatives and James Richardson filed the above styled action in the Circuit Court of the Fifth Judicial Circuit, in and for Lake County, Florida, consisting of two counts. Count One, stated a claim for the violation of Title 42 U.S.C. § 1983, alleging a claim for first amendment retaliation and Count Two sought a declaratory judgment to declare police service fees and fire service fees ("Police and Fire Fees") imposed by the City invalid and establish a common fund; and



WHEREAS, the City removed the entire case to the United States District Court, Middle District of Florida, where, after Plaintiff filed its Motion to Remand, the City stipulated to Plaintiff's requested relief and the Court entered an order severing Count Two and remanding that matter back to the Circuit Court for the Fifth Judicial Circuit; and

WHEREAS, James Richardson and the City eventually settled Count One and all issues related to that matter have been resolved; and

WHEREAS, as to Count Two, on September 12, 2013, the Court entered an Order on Plaintiffs' Motion for Class Certification appointing the Howards as Class Representatives for a class defined as "all those City of Fruitland Park Utility Customers that have paid to the City police, fire or both, since the enactment of Ordinance 2009-014" ("the Class"); and

WHEREAS, the parties have arrived at a settlement agreement on behalf of the individuals and members of the Class to resolve all remaining issues as to Count Two.

NOW, THEREFORE, in consideration of the mutual covenants to be performed herein and for good and lawful consideration, the sufficiency of which is acknowledged by all parties, the Class Representatives and the City agree, covenant and stipulate as follows:

1. Common Fund. The City will establish a common fund in the amount of \$530,000.00 (the "Common Fund"), which will be held by the City and separately accounted for from other funds. The Common Fund shall be administered as follows:

A. All refunds paid to members of the Class, attorney fees, Class Representatives' fees, approved costs, other fees that may be sought by the Class Representatives or James Richardson, and the City's costs of postage and advertising as set forth in Section 3 below shall be paid from the Common Fund.

B. The City agrees to administer the Common Fund and bear the administrative cost of establishing the Fund, providing applications and the processing of refunds to members of the Class and other Court approved payments.

C. The creation, funding and administration of the Common Fund as set forth in this Agreement shall be the full extent of the City's responsibility, obligation and liability in this matter to members of the Class as the result of the issues asserted in the above styled cause.

2. Approval of Settlement Agreement and Award of Fees and Costs. Following the execution of this Agreement, the parties shall jointly file with the Court, a motion for approval of the Agreement. The Class Representatives and their counsel shall also submit an application with the Court for an award of attorney's fees, recoverable costs, Class Representatives' fees and such other fees sought to be paid from the Common Fund. The City and its Commissioners agree it will not take a position either in support or in opposition of the amount or reasonableness of attorney's fees, Class Representatives' fees or such other fees sought to be paid from the Common Fund. The City agrees that in the consideration of the award of attorney's fees from the Common Fund, affidavits are admissible for the purpose of establishing the amount of attorney's fees and their reasonableness and further agrees that the benefit the litigation bestowed upon the Class includes the avoidance of future fees. Upon approval of the Settlement Agreement and the entry of an Order by the Court awarding attorney's fees, recoverable costs, Class Representatives' fees or such other fees to be paid from the Common Fund, the City shall pay these amounts from the Common Fund, within fifteen (15) days of the entry of the Order by the Court and notification by the Class Representatives that they will not appeal those determinations by the Court. The Plaintiffs do not waive or relinquish and the City does waive and relinquish any right to appeal the determination of the Court as to the award of

attorney's fees, recoverable costs, Class Representatives' fees or such other fees to be paid from the Common Fund that are ultimately awarded by the Court.

3. Application for Refund. Upon the Court's approval of this Agreement and the attorney's fees, recoverable costs, Class Representatives' fees and such other fees sought to be paid from the Common Fund, the City shall mail to its utility customers shown on Exhibit "A" less those who have opted out of the class as shown on Exhibit "B", either within the customer's utility bill or by separate mailing, an application for the refund of paid Police and Fire Fees. The form of the application to be mailed or otherwise provided to the members of the Class is attached to this Agreement as Exhibit "C". Additionally, the City shall publish, in a newspaper of general circulation within the City, a notice of the availability of refunds for the paid Police and Fire Fees and instructions as to how an application can be obtained. A copy of the form of the notice is attached to this Agreement as Exhibit "D". The members of the Class shall have thirty (30) days from the mailing of the application and from the publication of the notice to return their completed application to the City on behalf of the Class member that paid the Police and Fire Fees (the "Application Period"). Failure of a Class member to return a completed application to the City within the thirty (30) day Application Period shall be deemed as a waiver of a right to any refund for the payment of Police and Fire Fees. The application shall be returned to the City, who shall then verify that the applicant was a utility customer of the City during the period that the Police and Fire Fees were collected and actually paid the Police and Fire Fees. Upon verification that the member of the Class was a utility customer during the relevant time period and paid the Police and Fire Fees, the City shall refund the paid Police and Fire Fees to the Class member that filed the application, less that Class members' pro rata share of the Court awarded attorney's fees, recoverable costs, Class Representatives' fees and such

other fees sought to be paid from the Common Fund. The City shall provide a listing to the counsel for the Class Representative for all individuals that submitted an application who it was determined were not customers during the relevant time period or did not pay the Police and Fire Fees.

4. Payment of Refund. Upon verification that the applicant actually paid the Police and Fire Fees and following the final determination by the Court as to all attorney's fees, recoverable costs, Class Representatives' fees and such other fees sought to be paid from the Common Fund the City shall pay the refund to the Class member. The refunds shall be paid within sixty (60) days of verification by the City and final determination of the Court as to all attorney's fees, recoverable costs, Class Representatives' fees and such other fees sought to be paid from the Common Fund. Each member of the Class will be paid the actual amount of Police and Fire Fees paid less the Class Member's pro rata share of the attorney's fees, recoverable costs, Class Representatives' fees and such other fees sought to be paid from the Common Fund. Under this approach, each Class member who files a completed application within the Application Period will receive a refund of the amount of Police and Fire Fees paid less the Class member's share of the Court approved attorney's fees, recoverable costs, Class Representatives' fees and such other fees as related to the entire Common Fund Amount. By way of example, if the total of all amount of attorney's fees, recoverable costs, Class Representatives' fees and such other fees awarded by the Court equals \$286,200, then that amount represents fifty four (54%) percent of the Common Fund of \$530,000. Therefore, every Class member will be refunded the actual amount of Police and Fire Fees that they paid, reduced by fifty-four percent (54%) for their pro rata share of the attorney's fees, recoverable costs, Class Representatives' fees and such other fees sought to be paid from the Common Fund. For

purposes of this section, any utility account consisting of more than one person or entity (e.g. joint or husband and wife accounts) shall be considered a single Class member or utility customer.

5. Surplus of Common Fund. Any surplus of the Common Fund remaining after payment of refunds, approved attorney's fees, recoverable costs, Class Representatives' fees and such other fees as awarded by the Court, shall be returned to the City and utilized for the provision of fire services.

6. Repeal of Ordinance. The City agrees that within thirty (30) days of the approval of this Agreement by the Court that it will repeal Ordinance 2009-014, as amended by Ordinances 2010-005 and 2011-010.

7. In consideration of the matters referenced in this Agreement, James Richardson and the Class Representatives, individually and on behalf of the Class, mutually agree that this Agreement, and the fulfillment of the conditions contained therein by the City, shall represent the full and complete satisfaction of any responsibility, obligation or requirement of the City relating to the Police and Fire Fees charged by the City as to the Class pursuant to Ordinance 2009-014, as amended by Ordinances 2010-005 and 2011-010, and shall satisfy and discharge the City, including, but not limited to, its commissioners; officials; officers; directors; employees and agents, whether in their official or individual capacities; from all claims, causes of action, rights, demands, charges, complaints, grievances, or other suits whatsoever, whether in law or equity, as a result of any loss, known or unknown at this time, or which hereafter may become known, by the Class Representatives and the members of the Class, arising out of or related to, directly or indirectly, the fire and police fees charged by the City pursuant to Ordinance 2009-014, as amended by Ordinances 2010-005 and 2011-010.

8. The Court shall retain jurisdiction for the enforcement of this Agreement and the administration of the Common Fund. Upon disbursement of the refunds to members of the Class, payment of attorney's fees, recoverable costs, Class Representatives' fees and such other fees approved by the Court, the City shall file a report with the Court setting forth the payments that have been made from the Common Fund and also setting forth those applications which were received but which it was determined that they did not pay the fire and police fees or which filed applications were received outside of the Application Period. The City will then file a Motion with the Court to obtain approval for the closing of the Common Fund. Upon the filing of the report and entry of an Order by the Court closing the Common Fund, the Class Representatives agree to file a Notice of Voluntary Dismissal with Prejudice of the above styled action.

9. The City acknowledges the benefit the litigation bestowed upon the Class.

10. This Agreement shall be construed and governed in accordance with the laws of the State of Florida and of the United States of America.

11. The waiver by any party of a breach of any provision of this Agreement by another party shall not operate or be construed as a waiver of any subsequent breach of that or any other provision by said party.

12. This Agreement is intended to be the final and full expression of the settlement between the Class Representatives, both individually and on behalf of the Class, and the City, and all prior or collateral agreements are merged within. This Agreement may not be modified, amended, or superseded except by express written agreement of the parties, their heirs, successors in title or assigns to this Agreement and approved by the Court. If any portion of this Agreement is held to be without force and effect, the remainder of the Agreement shall be

effective unless there is a substantial failure of consideration due to the ineffectiveness of that portion of the Agreement.

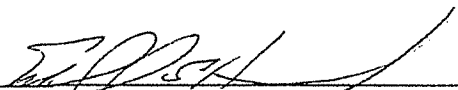
13. The Class Representatives and the City acknowledge that each has read this Agreement, has sought and received the advice of counsel, and understands the meaning of this Agreement. Further, the Class Representatives and the City each acknowledge that they and their counsel have suggested, or had the opportunity to suggest changes to the language of this Agreement, and therefore, any rule of interpretation that any ambiguity shall be construed against the drafter shall not apply in interpreting the provisions of this Agreement.

14. The Class Representatives and the City each represent that it is fully authorized to enter into this Agreement, that it has taken all necessary governmental, corporate and/or internal legal actions to duly approve the making and performance of the matters set forth in this Agreement, and that, except as set forth in this Agreement, no further governmental, corporate and/or other internal approval is necessary.

15. This Agreement shall become binding upon its execution, in two (2) counterpart originals, by all parties, with one fully executed original to be retained by each.

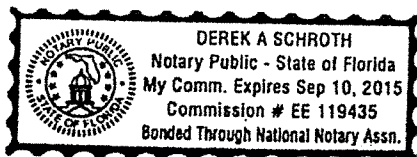
16. The parties acknowledge that this Agreement is a public record of the State of Florida.

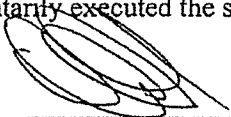
IN WITNESS WHEREOF, JAMES RICHARDSON, an individual, and MICHAEL HOWARD and NANCY HOWARD, his wife, both individually, and as Representatives of a Class duly approved by the Court of all similarly situated others, and the CITY OF FRUITLAND PARK, FLORIDA, a municipal corporation, have in duplicate original, signed this Agreement.


MICHAEL HOWARD, individually, and
as Representatives of a Class duly approved
by the Court of all similarly situated others

STATE OF FLORIDA
COUNTY OF LANE

BEFORE me, this 16th day of JANUARY, 2014, personally appeared MICHAEL HOWARD, who is personally known to me or who has produced _____ as identification, and who executed the foregoing Settlement Agreement and acknowledged to me that he voluntarily executed the same.



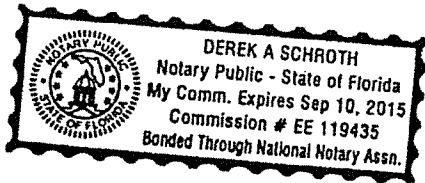

Printed Name Derek A. Schroth
Notary Public, State of Florida at Large
My Commission expires: 9/10/2015
Commission No. 119435

Nancy E. Howard

NANCY HOWARD, his wife, individually, and
as Representatives of a Class duly approved
by the Court of all similarly situated others

STATE OF FLORIDA
COUNTY OF LAke

BEFORE me, this 16th day of January, 2014, personally appeared
NANCY HOWARD, who is personally known to me or who has produced
as identification, and who executed the foregoing Settlement
Agreement and acknowledged to me that she voluntarily executed the same.

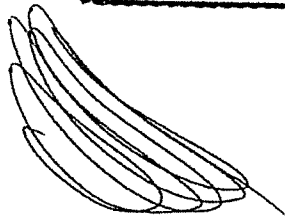


Printed Name _____
Derek A. Schroth
Notary Public, State of Florida at Large
My Commission expires: _____
Commission No. _____


JAMES RICHARDSON

STATE OF FLORIDA
COUNTY OF

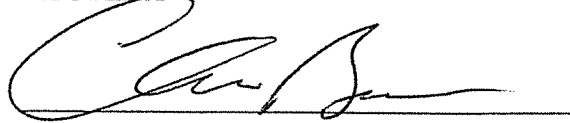
BEFORE me, this 14th day of January, 2014, personally appeared JAMES RICHARDSON, who is personally known to me or who has produced _____ as identification, and who executed the foregoing Settlement Agreement and acknowledged to me that he voluntarily executed the same.



Ann R Blair
Printed Name
Ann R Blair
Notary Public, State of Florida at Large
My Commission expires: Apr. 9, 2017
Commission No. FF 006301

DEREK A. SCHROTH, ESQUIRE
Florida Bar No. 00352070
Bowen Radson Schroth, P.A.
600 Jennings Avenue
Eustis, Florida 32726
(352) 589-1414
(352) 589-1726 (Facsimile)
Email: dschroth@brslegal.com
Secondary Email: ahasselbring@brslegal.com
ATTORNEY FOR PLAINTIFFS

CITY OF FRUITLAND PARK,
FLORIDA



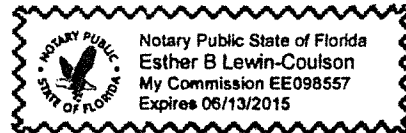
By: MAYOR CHRIS BELL

STATE OF FLORIDA
COUNTY OF LARSA

BEFORE me, this 21st day of January, 2014, personally appeared _____, as representative of the CITY OF FRUITLAND PARK, FLORIDA, who is personally known to me or who has produced _____ as identification, and who executed the foregoing Settlement Agreement and acknowledged to me that she/he voluntarily executed the same.

ESTHER B. LEWIN-COULSON
Printed Name

Notary Public, State of Florida at Large
My Commission expires: June 13, 2015
Commission No. EE 098 557



GREGORY T. STEWART
Florida Bar No. 203718
CARLY J. SCHRADER
Florida Bar No. 14675
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Post Office Box 11008
Tallahassee, Florida 32302
(850) 224-4070
(850) 224-4073 (Facsimile)
Email: gstewart@ngnlaw.com
cschrader@ngnlaw.com
legal-admin@ngnlaw.com
ATTORNEYS FOR DEFENDANT,
CITY OF FRUITLAND PARK, FLORIDA

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA

JAMES RICHARDSON, individually, and
MICHAEL HOWARD and NANCY
HOWARD his wife, individually and as
Representatives of a Class of all similarly
situated others,

Case No.: 2013 CA 400

Plaintiffs,

v.

CITY OF FRUITLAND PARK, FLORIDA,
a political subdivision of the State of
Florida,

Defendant.

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CLERK OF CIRCUIT
AND COUNTY COURT
LAKE COUNTY
TALLAHASSEE, FLORIDA

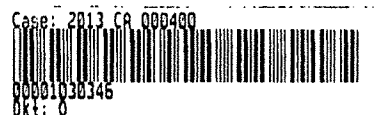
**ORDER GRANTING UNOPPOSED MOTION TO APPROVE CLASS SETTLEMENT
AND FOR CLASS REPRESENTATIVES' FEES, CLASS MEMBER'S FEES, AND
ATTORNEY'S FEES AND COSTS**

THIS MATTER came before the Court on Plaintiffs' Unopposed Motion to Approve Class Settlement and for Class Representatives' Fees, Class Member's Fees, and Attorney's Fees and Costs ("Plaintiffs' Motion") pursuant to Florida Rule of Civil Procedure 1.220. Having considered the evidence and arguments presented, reviewed the affidavits and the file and being otherwise duly advised in the premises, the Court finds as follows:

I. Terms of Class Settlement

The parties have settled the case with the following proposed terms:

1. Defendant will stop charging Class Members the disputed police and fire fees and repeal Ordinance 2009-014, as amended by Ordinances 2010-005 and 2011-010.
2. Defendant will create and administer a common fund in the amount of \$530,000.00.
3. Defendant will bear the administrative costs of (1) establishing the common fund, (2) providing refund applications to the Class, (3) processing all refunds to Class members, and (4) processing other payments approved by this Court.
4. Defendant will pay from the common fund:



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TR

A. refunds to Class members, less each class member's pro rata share of expenses pursuant to the Settlement Agreement.

B. all amounts awarded by the Court for attorney's fees and costs to Class counsel, Class Representative Fees, Fees for Extraordinary Service and costs in the amount of \$1,000 toward postage and advertising costs to Defendant associated with distributing the refund applications.

5. Plaintiff seeks the following fees and costs from the common fund, as to which the Defendant, as part of the settlement, has agreed to neither oppose nor support these requests. However, both parties have agreed that the Court, in its discretion based upon the evidence and arguments presented, shall set the fees and costs to be ultimately paid to each entity from the common fund.

- i. \$255,000 in attorney's and costs to Class counsel,
- ii. \$12,000 to Class Representative Michael Howard,
- iii. \$12,000 to Class Representative Nancy Howard,
- iv. \$10,000 to Named Plaintiff James Richardson,

6. Any surplus remaining after payment of items A through B above, will revert to Defendant for the provision of fire services.

II. Standard for Approval of Class Action Settlement.

Florida Rule of Civil Procedure 1.220(e) provides that once a Class is certified, the class action cannot be settled "without approval of the court after notice and hearing."¹ At such a hearing, a trial court "enjoys a limited but important role in the review of the [class action] settlement"² because, "[p]articularly in class action suits, there is an overriding public interest in favor of settlement."³ In evaluating the proposed class action settlement, the court should not require justification of "each term of settlement against a hypothetical or speculative measure of what concessions might have been gained {as} inherent in compromise is a yielding of absolutes and an abandoning of highest hopes."⁴ Rather, the court's role in scrutinizing a proposed class action settlement is to determine whether "the settlement is fair, adequate and reasonable and is not the product of collusion between the parties."⁵

¹ Florida Rule of Civil Procedure 1.220(e).

² *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 305 (N.D. Ga. 1993).

³ *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977).

⁴ *Id.* at 1330 (internal quotations omitted).

⁵ *Id.*

Although the court may “conduct whatever inquiry it feels appropriate regarding the fairness of a proposed class action settlement[,]”⁶ six factors the court should consider “in analyzing the fairness, reasonableness, and adequacy of a class action settlement [include:] . . . (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiffs’ success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives, and the substance and amount of opposition to the settlement.”⁷ The court may take practical considerations into account, but “the inquiry should focus upon the terms of the settlement.”⁸ Further, “[w]hile a trial court may make suggestions for modification or a proposed settlement, . . . [i]f the parties disagree as to the suggested modifications, the court must either approve or reject the settlement as presented.”⁹

III. Plaintiff’s Motion to Approve Settlement should be GRANTED pursuant to the following terms and awards.

For all the reasons set forth herein, Plaintiffs Unopposed Motion to Approve Class Settlement and for Class Representatives’ Fees, Class Member’s Fees, and Attorney’s Fees and Costs should be **GRANTED**.

A. The Proposed Class Settlement is not the Product of Fraud or Collusion.

Determining whether the proposed settlement is the product of fraud or collusion “involves a negative analysis: whether there is any reason to believe otherwise.”¹⁰ , the court should examine the negotiating process to determine “whether the compromise was the result of arms-length bargaining between the parties.”¹¹ There is no evidence of collusion when the “case has been adversarial, featuring a high level of contention between the parties.”¹² In this case, there is no evidence of collusion.

B. The Proposed Class Settlement Eliminates Expensive and Protracted Litigation.

“[T]he demand for time on the existing judicial system must be evaluated” in deciding whether to approve or reject a class action settlement.¹³ “A settlement is fair, reasonable and adequate

⁶ *Hameroff v. Public Med. Assistance Trust Fund*, 911 So.2d 827, 830 (Fla. 1st DCA 2005).

⁷ *In re Checking Account Overdraft Litig.*, 830 F.Supp.2d 1330, 1345 (S.D. Fla. 2011).

⁸ *Cotton*, 559 F.2d at 1330.

⁹ *Hameroff*, 911 So.2d at 830.

¹⁰ *In re Domestic*, 148 F.R.D. at 313.

¹¹ *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001).

¹² *In re Checking*, 830 F.Supp.2d at 1345.

¹³ *In re Checking*, 830 F.Supp.2d at 1346.

when the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued.”¹⁴

The proposed Class settlement was reached relatively early in this case and represents an excellent result for the Class. If instead of settling, Plaintiffs choose to continue litigating this class action and are ultimately unsuccessful on their pending Motion for Partial Summary Judgment, Plaintiffs would still have a trial on damages. The cost of the remaining litigation would likely consume any additional benefit that may result from litigating this class action through trial. As such, even if Plaintiffs are successful at trial, Class members would likely receive a smaller percentage of the common fund than what is offered through the proposed Class settlement. Further, if Plaintiffs are unsuccessful at trial, Class members would receive nothing. Because the Class settlement represents an excellent result for the Class and prevents the Class from absorbing the additional costs of continuing to pursue this class action, the proposed Class settlement serves the best interests of the Class.

C. The Parties Have Sufficient Information Upon Which to Evaluate the Merits.

Courts “consider the degree of case development that class counsel have accomplished prior to settlement to ensure that counsel had an adequate appreciation of the merits of the case before settlement.”¹⁵ “The law is clear that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery should be required to make those determinations.”¹⁶ Thus, “in the context of class action settlements, formal discovery is not a necessary ticket to the bargaining table where the parties have sufficient information to make an informed decision about the settlement.”¹⁷ As evidenced by the Court’s docket, the parties conducted significant discovery and have sufficient information upon which to evaluate the merits.

D. Plaintiffs’ Likelihood of Success on the Merits is Undetermined.

The likelihood of success on the merits should be weighed “against the amount and form of relief offered in the settlement.” The court does not, however, “have the right or the duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute.”¹⁸

Due to a lack of precedent directly on point, the issue of charging police and fire fees on water bills is unsettled and Plaintiffs’ likelihood of success on the merits is not guaranteed. If this class action were litigated through trial, Plaintiffs would have to defeat fifteen affirmative

¹⁴ *Id.* at 1344.

¹⁵ *Id.* at 1348 (internal quotations omitted).

¹⁶ *Id.* at 1349.

¹⁷ *Francisco v. Numismatic Guar. Corp. of Am.*, No. 06-61677-CIV, 2008 WL 649124, at *11 (S.D. Fla. 2008).

¹⁸ *Cotton*, 559 F.2d at 1330.

defenses raised by Defendant.¹⁹ In addition, Defendant's ordinance "[c]omes to [the] court clothed with a presumption of constitutionality."²⁰ The likelihood that Plaintiffs would succeed on the merits at trial is unknown. Plaintiffs risk not recovering anything if unsuccessful at trial.

E. The Settlement it is an Excellent Result for the Class.

Further, "the Court is not called upon to determine whether the settlement reached by the parties is the best possible deal, nor whether class members will receive as much from a settlement as they might have recovered from victory at trial."²¹ Rather, "a settlement must be evaluated in light of the attendant risks with litigation."²² Further, "[a] settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery."²³

This class action lawsuit represents an "all or nothing" undertaking for Plaintiffs. If Plaintiffs are correct on the merits and were to prevail on each of Defendant's fifteen affirmative defenses, Defendant would have to refund all revenue it generated as a result of the disputed police and fire fees. Yet if Defendant is correct, then Plaintiffs are owed nothing. The proposed Class settlement requires Defendant to disgorge itself of nearly all the money it collected from the disputed police and fire fees and stop charging the disputed fees going forward. Thus, the proposed Class settlement represents an excellent result based on the range of possible recovery.

F. The Proposed Class Settlement is Fair, Reasonable, and Adequate.

In deciding whether to approve a proposed class action settlement, "the trial court is entitled to rely upon the judgment of experienced counsel for the parties."²⁴ Indeed, "[c]ounsel's conclusions that the Settlement is fair, adequate and reasonable provides strong evidence that the settlement merits the Court's approval."²⁵ Thus, "the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel."²⁶

Despite the opinions of Class counsel and the Class Representatives, "[o]bjectors must be provided with an opportunity to object to any settlement, and may, in the court's discretion, be

¹⁹ Def.'s Answer & Affirmative Defenses.

²⁰ *Blue Cross Blue Shield of Fla., Inc. v. Outpatient Surgery Ctr. Of St. Augustine*, 66 So.3d 952, 953 (Fla. 1st DCA 2011).

²¹ *In re Checking*, 830 F.Supp.2d at 1345.

²² *Id.* at 1350.

²³ *Id.* at 1346.

²⁴ *Cotton*, 559 F.2d at 1330.

²⁵ *Francisco*, 2008 WL 649124 at *12 (S.D. Fla. 2008); accord *In re Checking*, 830 F.Supp.2d at 1351 (giving "great weight to the recommendations of counsel for the parties").

²⁶ *Cotton*, 559 F.2d at 1330.

granted an opportunity to opt out.”²⁷ Indeed, a primary purpose of requiring judicial approval of class action settlements “is to protect the nonparty members of the class from unjust or unfair settlements affecting their rights”²⁸ While the number of objectors “is a factor to be considered[,] . . . [it] is not controlling.”²⁹ In fact, a significant number of objectors is not a valid reason, without more, to reject a proposed class action settlement.³⁰ Likewise, a small number of objectors can indicate class-wide support of the proposed settlement.³¹ As such, the court “should examine the settlement in light of the objections raised and set forth on the record a reasoned response to the objections including findings of fact and conclusions of law necessary to support the response.”³²

In this case, two objections were filed, three objectors appeared. The substance of the objections were identical. Although one of the objectors is not a class member, the Court will address both objections. The objectors contend the attorney’s fees and costs are excessive because they are beyond the “industry standard of 25% - 40%.” Under Florida law, attorney’s fee awards paid from a common fund are to follow the lodestar method as an initial basis for determining reasonable attorney’s fees. The lodestar figure is calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. Once the reasonableness of the hours and base rate are established, the court must determine whether a multiplier should be applied in light of the contingent nature of the litigation and the results obtained. For the reasons set forth in Plaintiff’s Motion and the uncontested affidavits, the fees and costs requested are reasonable.

The objectors question what “extraordinary services” Plaintiff, Jim Richardson and class representatives, Howard provided. For the reasons set forth in Section IV below, the class representatives and Mr. Richardson are found to have provided services and, moreover, are entitled to incentive pay as compensation for their services. The Objectors’ objections are overruled to the extent of the awards made herein below, in section IV.

The settlement is fair, reasonable and adequate. The excellent result obtained on behalf of the Class is evidence that the parties negotiated at arms-length. Defendant must disgorge itself of nearly all the money it collected from the disputed police and fire fees and has agreed to stop charging the fees in the future. In addition, the proposed Class settlement allows unclaimed refunds to revert back to Defendant for the provision of fire services. Class counsel and the Class Representatives confirm the proposed Class settlement is fair, reasonable, and adequate.³³

²⁷ *Nelson v. Wakulla Cnty.*, 985 So.2d 564, 576 (Fla. 1st DCA 2008).

²⁸ *Id.* at 573.

²⁹ *Cotton*, 559 F.2d at 1331.

³⁰ *See Id.* (approving a proposed settlement over the objections of 50% of all class members).

³¹ *Pinto v. Princess Cruise Lines, Ltd.*, 513 F.Supp.2d 1334, 1343 (S.D. Fla. 2007); *Francisco*, 2008 WL 649124 at *12.

³² *Cotton*, 559 F.2d at 1331.

³³ Settlement Agreement.

IV. Court awards to Class Representatives', Howard, and Plaintiff Richardson.

"The position of fiduciary for the class is less an honor than a headache."³⁴ Indeed, "[c]lass representatives [take] risks, [bear] hardships, and [make] sacrifices that absent class members [do] not."³⁵ Class representatives "[are] identified as a class litigant in public records (potentially affecting credit reports and disclosures for financing), [are] subject to fiduciary duties to the class, may be deposed and required to produce records, and must meet with counsel and appear in court, for example."³⁶

Incentive awards are used to reward class representatives who "diligently and completely fulfill[] [their] obligations as representative[s] for the class . . . [by] filing suit on behalf of Class Members[,] . . . [being] involved in the negotiations and decision making[,] and participat[ing] in discovery, including sitting for deposition."³⁷ In addition, when class representatives are "act[ing] as private attorneys general seeking a remedy for what appear[s] to be a public wrong[,]" approval of incentive awards "is warranted as a matter of policy and is appropriate under applicable precedents."³⁸ "The factors for determining [an incentive] award include: (1) the actions the class representative took to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the class representatives expended in pursuing the litigation."³⁹

The proposed settlement request payment of \$12,000.00, each to class representatives Michael and Nancy Howard as individual incentive awards. In addition, \$10,000.00, is requested for Plaintiff, Richardson, who is denied class representative status by, and for the reasons stated in, this Court's separate Order previously entered. The parties are each addressed separately below.

Mr. and Mrs. Howard protected the interest of the Class by bringing this class action lawsuit to address the issue as to the propriety of the fees, and, under the proposed settlement terms, successfully forcing Defendant to stop charging the disputed fees and obtaining a refund for the Class. In fulfilling their obligations as Class Representatives, the Howards engaged counsel to contest Defendant's disputed fees,⁴⁰ read depositions,⁴¹ attended depositions,⁴² attended

³⁴ *Altamonte Springs Imaging, L.C. v. State Farm Mut. Auto. Ins. Co.*, 12 So.3d 850, 857 (Fla. 3d DCA 2008).

³⁵ *Ingram*, 200 F.R.D. at 694.

³⁶ *Altamonte Springs*, 12 So.3d at 857.

³⁷ *Francisco*, 2008 WL 649124 at *16.

³⁸ *Pinto*, 513 F.Supp.2d at 1344.

³⁹ *In re Checking*, 830 F.Supp.2d at 1357.

⁴⁰ Am. Hr'g Tr., September 10, 2013 at 35:1-25 – 36:1-7.

⁴¹ *Id.* at 36:8-10.

⁴² *Id.* at 36:11-12.

mediation,⁴³ conferenced with the other named plaintiffs and class counsel,⁴⁴ read pleadings,⁴⁵ attended hearings,⁴⁶ and testified in support of the Class.⁴⁷ The Howards were also the final decision-makers in negotiating, reviewing, and approving the proposed Class settlement.

Each Class member benefits from Mr. and Mrs. Howard's actions by obtaining a partial refund of disputed fees paid to Defendant. In addition, Class members who are still current water customers of Defendant benefit by no longer being subject to the disputed fees.

The difficulty for the Court is to quantify the incentive. In terms of work needed to bring forth the claim the action appears rather straight forward. An ordinance was enacted; its plain language and operation are contested under Florida's constitution. Intensive fact finding is unnecessary as reflected by Plaintiff's motion for summary judgment.

No time records have been submitted for any party Plaintiff. In an effort to extrapolate the "efforts" of the Plaintiffs, the Court has looked to the time sheets submitted by the attorneys from which it might glean the work effort contributed to their counsel. Howard's efforts are specifically referenced approximately nine (9) times for a total of 1.85 hours, with most of those entries appearing to be incrementally billed at the rate of ".2 hours" for nothing more than "discussion; correspondence; or conference" with someone from the law firm. Specific references to "clients," generally, are similarly limited and yields slightly less than a total of 19 hours of time. Furthermore, there are multiple entries for essentially the same task, e.g., "discussion" and subsequently "conference," on the same days for a minimal increment of time (such as .2) from which the Court cannot surmise any "extraordinary" contribution in terms of effort or disclosure. Beyond specific entries addressing "clients," there are approximately a total of 73 hours of time where the work identified simply cannot be attributed to any party. For instance, December 11, 2012, mixes "multiple correspondence with client" and "continued research" tasks together. In addition, June 14, 2013, mixes "attorney preparation" with "subsequent conference with client," without separating the time spent for each. In any event, the total time is approximately 100 hours, much of which is spent in perfunctory correspondence, discussion, or conference of approximately .2 an hour.

The same analysis applies in trying to determined extraordinary effort contributed by Richardson. The Court can only glean three (3) specific references attributed to Mr. Richardson's efforts, 3 telephone conferences totaling .6 of an hour (i.e., .2 each) and the substantial time of 7 hours for being deposed.

For guidance, the Court has looked at the incentive awards provided in cases sighted by Plaintiff, and such as: Nelson v. Mead Johnson and Johnson, Co., 484 F. App'x 429 (11th Cir.

⁴³ *Id.* at 36:13-14.

⁴⁴ *Id.* at 36:15-19.

⁴⁵ *Id.* at 36:20-22.

⁴⁶ *Id.* at 36:23-25.

⁴⁷ Am. Hr'g Tr., September 10, 2013.

2012). Cook v. Niedert, 142 F.3d 1004 (7th Cir. 1998). Van Vranken v. Atl. Richfield Co., 901 F.Supp. 294, 300 (N.D. Cal. 1995). Altamonte Springs Imaging, L.C. v. State Farm Mut. Auto. Ins. Co., 12 So. 3d 850, 857 (Fla. 3d DCA 2009). Spicer v. Chicago Bd. Options Exch., Inc., 844 F.Supp. 1226, 1233 (N.D. Ill. 1993). Pinto v. Princess Cruise Lines, Ltd., 513 F.Supp 2d 1334, 1337 (S.D. Fla. 2007).

The Court finds these awards instructive in terms of yielding an incentive as a percentage of the recovery. In this case, the monetary recovery is fixed at \$530,000.00. The incentive awards sought by Plaintiffs here far exceed the percentages paid to any other class representatives or parties in the cases examined by the Court. Therefore, the Court in its discretion and in light of the evidence presented to it, has had to reduce the incentive awards to the class representatives as follows:

\$1,200.00 to each of the Howards;
\$1,000.00 to Richardson.

Named plaintiffs can be compensated "for the services they provid[e] and the risks they incu[r] during the course of the class action litigation."⁴⁸ This applies to both class representatives and Class Members who make a "unique and extraordinary . . . contribution to the litigation that entails risk or effort."⁴⁹ Incentive awards of this type are justified when considerable time and effort is expended or there is a risk of retaliation from participating in the class action litigation.⁵⁰

Each Class member benefits from Mr. Richardson's efforts. Because of Mr. Richardson's extensive involvement in the investigation and prosecution of this class action, each Class member obtains a partial refund of disputed fees they paid to Defendant and Class members who are still current water customers of Defendant benefit by no longer being subject to Defendant's disputed fees. In addition, Mr. Richardson's level of effort and risk surpasses the basis in other cases where non-representative Class members were provided incentive awards.⁵¹ Mr. Richardson's efforts to assist this case have been, equal to the participation of class representatives Howard.

V. The Court Awards \$255,000 in Attorney's Fees and Costs.

⁴⁸ Allapattah Svcs., Inc. v. Exxon Corp., 454 F.Supp.2d 1185, 1218 (S.D. Fla. 2006).

⁴⁹ Ingram, 200 F.R.D. at 694 (approving separate incentive awards for class representatives and affiants); see also Abdallah v. Coca-Cola Co., 133 F.Supp.2d 1364 (N.D. Ga. 2001) (notifying all class members that each person who executes an affidavit in support of the class settlement is entitled to a \$3,000 incentive award).

⁵⁰ Ingram, 200 F.R.D. at 694.

⁵¹ See e.g. Hosier v. Mattress Firm, Inc., No. 3:10-CV-294-J-32JRK, 2012 WL 2813960 (M.D. Fla. 2012) (providing incentive awards from \$500 to \$2,000 to class members who "opt[ed] in prior to settlement and assisted in the discovery process"); Ingram v. The Coca-Cola Co., 200 F.R.D. 685 (N.D. Ga. 2001) (providing a \$3,000 incentive award for class members who merely executed an affidavit in support of class settlement).

"[T]o fully discharge its duty to review and approve class action settlement agreements, a court must assess the reasonableness of the attorney's fees."⁵² "[L]awyers who recover a common fund for the benefit of others are entitled to reasonable attorney's fees from the fund."⁵³ This "common fund rule is based on the theory that plaintiff's successful litigation confers on members of a class a substantial benefit in a fund."⁵⁴ Thus, "when litigation contributes substantial benefits to persons not party to the litigation and a fund is established from which the benefits will be paid, the persons responsible for gaining the benefit should be entitled to costs and attorney's fees paid from the fund."⁵⁵

The Court reviewed the file, Class Counsel's time sheets, and the uncontested affidavits. Plaintiffs' \$255,000 fees and costs request is reasonable. For the reasons set forth in Plaintiffs' Motion, and as supported by the Affidavits, the Court approves and awards \$255,000 in attorney's fees and costs to be paid from the common fund.

The Court **ORDERS** and **ADJUDGES**:

1. Plaintiffs' Unopposed Motion to Approve Class Settlement and for Class Representatives' Fees, Class Member's Fees, and Attorney's Fees and Costs is **GRANTED**.

2. The Court approves the Settlement Agreement with the exception that members of the Class shall have until July 31, 2014 to return the completed application for refund to the City. The Court determines that this modification grants additional time for the filing of the application for refund and is beneficial to the Class members. Therefore, an additional hearing for the consideration of this modification is not required. The Court orders the parties to comply with the Settlement Agreement as modified. Pursuant to the Settlement Agreement, Defendant will pay from the \$530,000 common fund:

A. refunds to Class members, less each class member's pro rata share of expenses pursuant to the Settlement Agreement,

B. \$255,000 in attorney's fees and costs to Class counsel,

C. \$1,200.00 to Class Representative Michael Howard,

D. \$1,200.00 to Class Representative Nancy Howard,

E. \$1,000.00 to Named Plaintiff James Richardson,

F. \$1,000 toward postage and advertising costs to Defendant associated with distributing the refund applications.

⁵² *Nelson*, 985 So.2d at 573.

⁵³ *Kuhnlein v. Dept. of Revenue*, 662 So.2d 309, 314 (Fla. 1995).

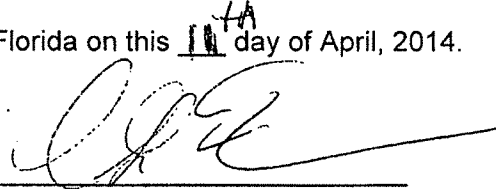
⁵⁴ *Fidelity & Cas. Co. of New York v. O'Shea*, 397 So.2d 1196, 1198 (Fla. 2d DCA 1981).

⁵⁵ *Nelson*, 985 So.2d at 570.

3. Defendant shall notify all members of the class, who have not opted out, in the same manner contemplated in, and as required by, Florida Rule of Civil Procedure 1.220(d)(2) of the refund procedure set forth in the Settlement Agreement.

4. The Court retains jurisdiction to enter further orders that are proper.

DONE AND ORDERED in Tavares, Lake County, Florida on this 11th day of April, 2014.



MICHAEL G. TAKAC
Circuit Court Judge

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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR SUMTER COUNTY, FLORIDA

ROSALIND WEAVER,
individually, and as Class Representative
of a Class of all similarly situated others,

CASE NO. 2013 CA 000268

Plaintiffs,

v.

CITY OF WILDWOOD, FLORIDA,
a political subdivision of the state of Florida,

Defendant.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered between ROSALIND WEAVER, both individually, and as Representatives of a Class duly approved by the Court (the "Class Representative"), and the CITY OF WILDWOOD, FLORIDA, a political subdivision of the state of Florida (the "City"), this ____ day of _____, 2014.

WHEREAS, the Class Representative filed the above styled action in the Circuit Court of the Fifth Judicial Circuit, in and for Sumter County, Florida, consisting of one count. The Class Representative sought a declaratory judgment to declare police service fees ("Police Fees") imposed by the City invalid and establish a common fund; and

WHEREAS, on June 25, 2014, the Court entered an Order on Plaintiffs' Motion for Class Certification appointing Rosalind Weaver as Class Representative for a class defined as "those who paid to the City Police Fees from February 12, 2009" ("the Class"); and



WHEREAS, the parties have arrived at a settlement agreement on behalf of Ms. Weaver and members of the Class to resolve all remaining issues as to the complaint.

NOW, THEREFORE, in consideration of the mutual covenants to be performed herein and for good and lawful consideration, the sufficiency of which is acknowledged by all parties, the Class Representative, individually and on behalf of the class, and the City agree, covenant and stipulate as follows:

1. Common Fund. The City will establish a common fund in the amount of \$471,682.00 (the "Common Fund"), which will be held by the City and separately accounted for from other funds. The Common Fund shall be administered as follows:

A. From such fund, and upon court approval of this agreement, the City will pay refunds to each class member as set forth below in paragraph 3. From such fund, and upon court approval of this agreement, the City will also pay \$241,650.00 in attorney's fees. \$15,425.00 towards costs, and the Court approved amount to class representative Rosalind Weaver.

B. The City agrees to administer the Common Fund and bear all administrative costs of establishing the Fund and processing refunds to members of the Class and other Court approved payments.

C. The creation, funding and administration of the Common Fund as set forth in this Agreement shall be the full extent of the City's responsibility, obligation and liability in this matter to members of the Class as the result of the issues asserted in the above styled cause.

2. Approval of Settlement Agreement and Award of Fees and Costs. Following the execution of this Agreement, the parties shall jointly file with the Court, a motion for approval of the Agreement. The Class Representatives and their counsel shall also submit an application

with the Court for an award of attorney's fees, recoverable costs, Class Representative's fees and such other fees sought to be paid from the Common Fund. The City agrees it will not oppose the amount or reasonableness of attorney's fees or such other fees sought to be paid from the Common Fund. The City reserves the right to object to any Class Representative fees exceeding \$5,000.00. The City agrees that in the consideration of the award of attorney's fees from the Common Fund, affidavits are admissible for the purpose of establishing Class Representative costs and reasonable attorney's fees. Upon approval of the Settlement Agreement and the entry of an Order by the Court awarding attorney's fees, recoverable costs, Class Representative's fees or such other fees to be paid from the Common Fund, the City shall pay the court awarded attorney's fees to class counsel and the court awarded Class Representative's fees to the Class Representative from the Common Fund within fifteen (15) days of the entry of the Order by the Court and notification by the Class Representatives that they will not appeal those determinations by the Court. The Plaintiffs do not waive or relinquish and the City does waive and relinquish any right to appeal the determination of the Court as to the award of attorney's fees, recoverable costs, or such other fees to be paid from the Common Fund that are ultimately awarded by the Court.

3. Payment of Refund. The City shall pay a refund to each class member who did not opt-out and filed a claim form as set forth in Paragraph 4. The City shall pay the refunds within ninety (90) days of its receipt of each validated class member's claim form as set forth in Paragraph 4. Each Class member who files a completed claim form that is validated within the ninety (90) day Claim Period will receive a refund of the amount of Police Fees paid between February 12, 2009 to January 1, 2012 less the Class member's share the Deduction Percentage and Arrearage Percentage, if any, as defined below. By way of example, if the total amount of

attorney's fees, recoverable costs, Class Representative's fees and such other fees awarded by the Court equals \$262,075.01, then that amount represents 55.6% of the Common Fund of \$471,682.00. Therefore, every Class member will be refunded the actual amount of Police Fees that they paid between February 12, 2009 and January 1, 2012, reduced by 55.6% for their pro rata share of the attorney's fees, recoverable costs, Class Representative's fees and such other fees sought to be paid from the Common Fund ("Deduction Percentage"). For purposes of this section, any utility account consisting of more than one person or entity (e.g. joint or husband and wife accounts) shall be considered a single Class member or utility customer.

In the event the claimant has unpaid utility arrearages as of January 1, 2012 the total refund due will be reduced by a sum equal to the total arrearage multiplied by that percentage which the police fee revenue bears to the total utility revenue for the 33 month period during which the police fee was charged ("Arrearage Percentage").

4. Refund Claim Form. The amount of the Common Fund remaining after payment of refunds, approved attorney's fees, recoverable costs, Class Representative's fees and such other fees as awarded by the Court, shall be held by the City to allow class members to file a claim. The form of the application to be mailed or otherwise provided to the members of the Class once drafted will be attached to this Agreement as Exhibit "C". Additionally, the City shall publish, in a newspaper of general circulation within the City and on its Website, a notice of the availability of refunds to those who paid Police Fees after February 12, 2009 and instructions as to how a refund application can be obtained. A copy of the form of the notice, once drafted, will be attached to this Agreement as Exhibit "D". Failure of any Class member to return a completed application to the City within the ninety (90) day Claim Period shall be deemed as a waiver of a right to any refund for the payment of Police Fees. Upon receipt of a

claim form the City shall then verify that the Claimant paid Police Fees to the City between February 12, 2009 and January 1, 2012. Upon verification that the Claimant paid the Police Fees, the City shall refund the paid Police Fees to the Class member, less the Deduction Percentage and Arrearage Percentage, if any. The City shall provide a listing to the counsel for the Class Representative for all individuals who submitted an application who it was determined were not customers during the relevant time period or did not pay the Police Fees. Any disagreement as to the forms noted herein can be submitted to the court for resolution if necessary.

5. In consideration of the matters referenced in this Agreement, Rosalind Weaver as the Class Representative, individually and on behalf of the Class, agrees that this Agreement, and the fulfillment of the conditions contained therein by the City, shall represent the full and complete satisfaction of any responsibility, obligation or requirement of the City relating to the Police Fees charged by the City as to the Class pursuant to Ordinance 426, and shall satisfy and discharge the City, including, but not limited to, its commissioners; officials; officers; directors; employees and agents, whether in their official or individual capacities; from all claims, causes of action, rights, demands, charges, complaints, grievances, or other suits whatsoever, whether in law or equity, as a result of any loss, known or unknown at this time, or which hereafter may become known, by the Class Representatives and the members of the Class, arising out of or related to, directly or indirectly, the police fees charged by the City pursuant to Ordinance 426.

6. Any surplus of the Common Fund remaining after payment of refunds, approved attorney's fees, recoverable costs, Class Representative's fees and such other fees as awarded by the Court, shall be paid to the City's General Fund.

7. The Court shall retain jurisdiction for the enforcement of this Agreement and the administration of the Common Fund. Upon disbursement of the refunds to members of the Class, payment of attorney's fees, recoverable costs, Class Representative's fees and such other fees approved by the Court, the City shall file a report with the Court setting forth the payments that have been made from the Common Fund and also setting forth those Claim Forms which were received, but for which no payment was received and the reasons therefore. The City will then file a Motion with the Court to obtain approval for the closing of the Common Fund. Upon the filing of the report and entry of an Order by the Court closing the Common Fund, the Class Representative agrees to file a Notice of Voluntary Dismissal with Prejudice of the above styled action.

8. The City acknowledges the benefit the litigation bestowed upon the Class.

9. This Agreement shall be construed and governed in accordance with the laws of the State of Florida and of the United States of America.

10. The waiver by any party of a breach of any provision of this Agreement by another party shall not operate or be construed as a waiver of any subsequent breach of that or any other provision by said party.

11. This Agreement is intended to be the final and full expression of the settlement between the Class Representative, both individually and on behalf of the Class, and the City, and all prior or collateral agreements are merged within. This Agreement may not be modified, amended, or superseded except by express written agreement of the parties, their heirs, successors in title or assigns to this Agreement and approved by the Court. If any portion of this Agreement is held to be without force and effect, the remainder of the Agreement shall be

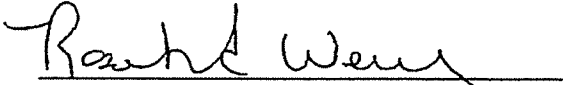
effective unless there is a substantial failure of consideration due to the ineffectiveness of that portion of the Agreement.

12. The Class Representative and the City acknowledge that each has read this Agreement, has sought and received the advice of counsel, and understands the meaning of this Agreement. Further, the Class Representative and the City each acknowledge that they and their counsel have suggested, or had the opportunity to suggest changes to the language of this Agreement, and therefore, any rule of interpretation that any ambiguity shall be construed against the drafter shall not apply in interpreting the provisions of this Agreement.

13. The Class Representative and the City each represent that it is fully authorized to enter into this Agreement, that it has taken all necessary governmental, corporate and/or internal legal actions to duly approve the making and performance of the matters set forth in this Agreement, and that, except as set forth in this Agreement, no further governmental, corporate and/or other internal approval is necessary.

14. This Agreement shall become binding upon its execution, in two (2) counterpart originals, by all parties, with one fully executed original to be retained by each.

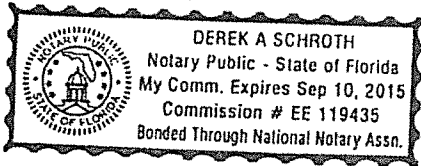
15. The parties acknowledge that this Agreement is a public record of the State of Florida IN WITNESS WHEREOF, ROSALIND WEAVER, both individually, and as a Representative of a Class duly approved by the Court of all similarly situated others, and the CITY OF WILDWOOD, FLORIDA, a political subdivision of the state of Florida, have in duplicate original, signed this Agreement.



ROSALIND WEAVER, individually, and
As a Representative of a Class duly approved
by the Court of all similarly situated others

STATE OF FLORIDA
COUNTY OF Lake

BEFORE me, this 30th day of August, 2014, personally appeared ROSALIND WEAVER, who is personally known to me or who has produced _____ as identification, and who executed the foregoing Settlement Agreement and acknowledged to me that he voluntarily executed the same.



Printed Name - Derek A. Schroth

Notary Public, State of Florida at Large
My Commission expires: _____
Commission No. _____

DEREK A. SCHROTH, CLASS COUNSEL
Board Certified in City, County and Local Government Law
Florida Bar No. 00352070
Bowen & Schroth, P.A.
600 Jennings Avenue
Eustis, Florida 32726
(352) 589-1414
(352) 589-1726 (Facsimile)
Email: dschroth@bowenschroth.com
Secondary Email: ahasselbring@bowenschroth.com

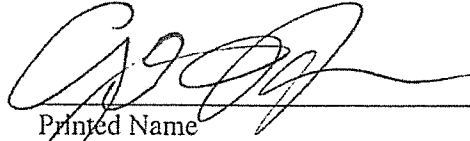
CITY OF WILDWOOD, FLORIDA

By: Mayor

STATE OF FLORIDA
COUNTY OF SUMTER


BEFORE me, this 25th day of AUGUST, 2014, personally appeared ED WOLF, as representative of the CITY OF WILDWOOD, FLORIDA, who is personally known to me or who has produced _____ as identification, and who executed the foregoing Settlement Agreement and acknowledged to me that she/he voluntarily executed the same.





Printed Name _____

Notary Public, State of Florida at Large
My Commission expires: _____
Commission No. _____



ASHLEY S. HUNT, Esq.
Florida Bar No. 0845361
Hunt Law Firm, P.A.
601 S. 9th Street
Post Office Box 11008
Leesburg, Florida 34748
(352) 365-2111
Email: Ashley@huntlawpa.com
crystal@huntlawpa.com
GEORGE E. CARR, Esq.
Florida Bar No. 205443
Law Offices of George E. Carr, P.A.
301 East. Pine Street, Suite 790
Orlando, Florida 32801
407-380-9312
E-Mail: gcarr6052@gmail.com
ATTORNEYS FOR DEFENDANT,
CITY OF WILDWOOD, FLORIDA

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

DISCOUNT SLEEP OF OCALA, LLC d/b/a
MATTRESS WAREHOUSE, individually,
and as a Representative of a Class of all
similarly situated others, and DALE W.
BIRCH, individually and as a
Representative of a Class of all similarly
situated others,

Case No.: 2014 CA 000426

Plaintiffs,

Class Representation

v.

CITY OF OCALA, FLORIDA, a political
subdivision of the State of Florida,

Defendant.

NOTICE OF PENDENCY OF CLASS ACTION

To All Potential Members of the Following Classes: (1) all persons who paid the City a Fire Fee from February 10, 2010 through October 1, 2010 and (2) all persons who paid the City a Fire Fee from October 2, 2010 through the present (the "Class").

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

YOU HAVE NOT BEEN SUED.

Utility customers of the City of Ocala have sued alleging that the City of Ocala levied illegal taxes in the form of an Emergency Fire Service Availability Fee and Emergency Fire Service User Fee (the "Fire Fee"), which were charged as part of each utility customer's monthly utility bill (the "Lawsuit").

The Circuit Court of Marion County (the "Court") has allowed the lawsuit to be a class action on behalf of all City of Ocala water utility customers that have paid a Fire Fee.

The Court has not decided whether the City of Ocala did anything wrong. There is no money available now, and no guarantee there will be. However, your legal rights are affected, and you must decide now whether to remain a member of the Class or opt out of the Class.

Your options are explained in this notice. To opt out, you must act before _____, ____, 2016.

Unless this case is resolved by settlement or otherwise dismissed, Class Counsel must prove the claims against the City of Ocala at a trial. If money or benefits are obtained from the City of Ocala, you will be notified about how to ask for a share of the recovery.

COMPOSITE
EXHIBIT
F

Any questions not answered by this Notice of Pendency of Class Action (the "Notice") should be directed to Class Counsel and not the Court.

WHY THIS NOTICE WAS SENT TO YOU

The City of Ocala has indicated that you were or are a current in-city utility customer of the City of Ocala and are, therefore, a member of the Class. This notice is being sent to you pursuant to Florida Rule of Civil Procedure 1.220(d)(2), which requires that, upon the certification of a Class, all members of the Class who can be identified and located be provided with certain information regarding the Lawsuit and their rights.

BACKGROUND OF THE LAWSUIT

Plaintiffs, Discount Sleep of Ocala, LLC d/b/a Mattress Warehouse and Dale W. Birch, sued the City of Ocala on February 20, 2014. The Plaintiffs allege the City still charged Fire Fees after it repealed the Fire Fees and that the City of Ocala's enactment of Ordinances 5554 and 2010-043 (the "Ordinances"), which imposed Fire Fees, is an attempt to levy non-ad valorem taxes in violation of the Florida Constitution. The Plaintiffs are asking the Court to declare certain Ordinances unconstitutional and order the City of Ocala to refund all of the Fire Fees it has unlawfully collected.

The City of Ocala denies the allegations, believes that the Ordinances were properly enacted in accordance with the Florida Constitution and Florida Statutes and that it properly collected all fire fees.

No money or benefits are available now because the Court has not decided whether the City of Ocala did anything wrong, and the two sides have not settled the Lawsuit. There is no guarantee that money or benefits will ever be obtained. If they are, you will be notified about how to ask for a share of the recovery.

CLASS CERTIFICATION

On _____, the Court ruled that this Lawsuit may be maintained as a class action on behalf of the following Classes:

(1) all persons who paid the City Fire Fee from February 10, 2010 through October 1, 2010 and (2) all persons who paid the City a Fire Fee from October 2, 2010 through the present (the "Class").

The estimated number of Class Members exceeds 50,000. The Court has certified as Class Representatives Discount Sleep of Ocala, LLC d/b/a Mattress Warehouse and Dale W. Birch (the "Class Representatives"). The Class Representatives will be seeking relief on behalf of themselves and all Class Members. Derek A. Schroth, Lead Class Counsel and James Myers as Co-Class Counsel have been hired by the Class Representatives and appointed by the Court as Class Counsel.

RIGHT TO SEPARATE COUNSEL

You have the right to hire your own attorney and unless you retain your own counsel to enter an appearance on your behalf, you will be represented by Class Counsel. If you choose to hire your own attorney, you will have to pay that attorney.

ATTORNEY FEES

As a Class Member, you will not be directly charged by Class Counsel to represent you in this Lawsuit. In the event of a judgment in favor of the Class in this Lawsuit, Class Counsel will apply to the Court for payment of reasonable attorneys' fees and costs which will either be deducted from the funds recovered before net proceeds are distributed to the Class Members or paid directly by the City of Ocala.

YOUR OPTIONS

The Court has not decided the merits of the Lawsuit. The purpose of this Notice is to advise you of the existence of this Lawsuit and how it may affect your rights. You have to decide whether to stay in the Class or ask to be excluded before the trial, and you have to decide this now. Your options regarding this lawsuit are as follows:

Do Nothing	By doing nothing, you will remain a member of the Class. Your interests will be represented by Class Counsel and you will be bound by the outcome of this Lawsuit. In the event of a favorable judgment, you will share in the recovery. In the event of an unfavorable judgment, you will be precluded from bringing the same or similar claims against the City of Ocala on your own behalf. You will be entitled to notice of and an opportunity to be heard regarding any proposed settlement or dismissal of this Lawsuit. You will be entitled to share in settlement proceeds obtained on behalf of the Class. If you want to remain a member of the Class, you should NOT sign the "Request for Exclusion From Class" form.
Opt Out	By opting out of the Class, your interests will not be represented by Class Counsel and you will not be bound by the outcome of this Lawsuit unless you seek to intervene in this Lawsuit. In the event of a favorable judgment, you will not share in the recovery. In the event of an unfavorable judgment, you may still assert the same or similar claims you have against the City of Ocala. You will not be entitled to notice of or an opportunity to be heard regarding any proposed settlement or dismissal of the Lawsuit. You will not be entitled to share in any settlement proceeds obtained on behalf of the Class. If you want to be excluded from the Class, you must complete the enclosed form ("Request for Exclusion From Class") and return it by mail, postmarked no later than _____, ____, 2016 , to: Bowen & Schroth, P.A. 600 Jennings Avenue Eustis, Florida 32726

	If you request exclusion on behalf of any person or entity other than yourself, you must state your legal authority to execute the request on behalf of that other person or entity.
--	--

FURTHER COURT PROCEEDINGS

This Lawsuit is not presently set for trial. You may communicate with Class Counsel if you have any evidence you believe would be helpful to establish the Class claims, and you may be asked by the parties to provide information relevant to the case.

If it becomes necessary to hold a trial in order to resolve this class action, there is no guarantee that the Plaintiffs will win, or that they will get any money for the Class. You do not need to attend the trial. Class Counsel will present the case for the Plaintiffs, and the City of Ocala will present its defenses. You or your own attorney are welcome to attend at your own expense.

ADDITIONAL INFORMATION

If the Plaintiffs obtain any money or benefits as a result of this class action, you will be notified about how to participate in the recovery. We do not know how long this will take.

Any questions you have concerning the matters contained in this Notice should NOT be made to the Court, but should be directed in writing to:

Bowen & Schroth, P.A.
600 Jennings Avenue
Eustis, Florida 32726

REMINDER AS TO TIME LIMIT

If you wish to be excluded from the Class, you must return a completed "Request for Exclusion From Class" form to Class Counsel by mail **postmarked no later than _____, __, 2016.**

Dated: _____

BY ORDER OF THE COURT
FIFTH JUDICIAL CIRCUIT IN AND FOR
MARION COUNTY, FLORIDA

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

DISCOUNT SLEEP OF OCALA, LLC d/b/a
MATTRESS WAREHOUSE, individually,
and as a Representative of a Class of all
similarly situated others, and DALE W.
BIRCH, individually and as a
Representative of a Class of all similarly
situated others,

Case No.: 2014 CA 000426

Plaintiffs,

Class Representation

v.

CITY OF OCALA, FLORIDA, a political
subdivision of the State of Florida,

Defendant.

_____ /

REQUEST FOR EXCLUSION FROM CLASS

(ONLY FILL OUT IF YOU WISH TO BE EXCLUDED FROM THE CLASS)

THIS DOCUMENT MUST BE POSTMARKED BY NO LATER THAN _____, ____, 2016.
IT MUST BE SENT BY U.S. REGULAR MAIL.

PLEASE MAIL TO:

Bowen & Schroth, P.A.
600 Jennings Avenue
Eustis, Florida 32726

IT IS MY DECISION TO EXCLUDE MYSELF FROM THE CLASS IN THIS CLASS ACTION
CASE. I confirm that I paid the City of Ocala, Florida an Emergency Fire Service Availability
Fee or Emergency Fire Service User Fee on or after February 10, 2010. I confirm that I have
received notice of this class action, I have decided to be excluded from the class, and I have
decided not to participate in this class action.

(signature)

(date)

(address)

(print name)

(social security #)

(city, state, zip)

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

DISCOUNT SLEEP OF OCALA, LLC d/b/a
MATTRESS WAREHOUSE, individually,
and as a Representative of a Class of all
similarly situated others, and DALE W.
BIRCH, individually and as a
Representative of a Class of all similarly
situated others,

Case No.: 2014 CA 000426

Plaintiffs,

Class Representation

v.

CITY OF OCALA, FLORIDA, a political
subdivision of the State of Florida,

Defendant.

_____ /

SUMMARY NOTICE OF PENDENCY OF CLASS ACTION

To All Potential Members of the Following Classes: (1) all persons who paid the City a Fire Fee from February 10, 2010 through October 1, 2010 and (2) all persons who paid the City a Fire Fee from October 2, 2010 through the present (the "Class").

This Notice is to advise you that the Circuit Court of Marion County, Florida (the "Court") has certified this action as a class action. Class Counsel is:

Derek A. Schroth, Esq.
Bowen & Schroth, P.A.
600 Jennings Avenue
Eustis, Florida 32726

If you are a member of the above-described Class and have not received a "Notice of Pendency of Class Action," you may obtain a copy by visiting www.bowenschroth.com or by contacting Class Counsel in writing. The "Notice of Pendency of Class Action" provides further detail regarding your rights and options concerning this class action.

You do not need to do anything to remain a member of the above-described Class. As a member of the Class, your interests will be represented by Class Counsel.

All inquiries regarding this case should be addressed to Class Counsel and not the Court.

Dated: _____, 2016

BY ORDER OF THE COURT
FIFTH JUDICIAL CIRCUIT IN AND FOR
MARION COUNTY, FLORIDA