

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.

**PLAINTIFFS' UNOPPOSED¹ MOTION TO APPROVE CLASS SETTLEMENT
AND FOR CLASS REPRESENTATIVES' FEES, CLASS MEMBER'S FEES, AND
ATTORNEY'S FEES AND COSTS, AND MEMORANDUM OF LAW**

Plaintiffs, James Richardson, individually, and, Michael Howard and Nancy Howard, his wife, individually, and as Representatives of a Class of all similarly situated others (collectively "Plaintiffs") by and through the undersigned counsel, pursuant to Florida Rule of Civil Procedure 1.220(e), file this Unopposed Motion to Approve Class Settlement and for Class Representatives' Fees, Class Member's Fees, and Attorneys' Fees and Costs. In support of this Motion, Plaintiffs state as follows:

I. Terms of Class Settlement

Subject to approval by this honorable Court, the parties have agreed to settle this class action under the following general terms:²

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.

¹ Defendant agrees not to "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." Settlement Agreement attached hereto as Exhibit "A."

² *Id.*

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:

A. All refunds to Class members, less each Class member's pro rata share, in relation to the total common fund, of items B through G, below,

B. \$255,000, less costs, to Class counsel,

C. \$12,000 to Class Representative Michael Howard,

D. \$12,000 to Class Representative Nancy Howard,

E. \$10,000 to Named Plaintiff James Richardson,

F. Recoverable costs to Class counsel, and

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

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

II. Standard of Review

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."³ At such a hearing, however, a trial court "enjoys a limited but important role in the review of the [class action] settlement"⁴ because, "[p]articularly in class action suits, there is an overriding public interest in favor of settlement."⁵ 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."⁶ 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."⁷

³ Florida Rule of Civil Procedure 1.220(e).

⁴ *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 305 (N.D. Ga. 1993).

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

⁶ *Id.* at 1330 (internal quotations omitted).

⁷ *Id.*

Although the court may “conduct whatever inquiry it feels appropriate regarding the fairness of a proposed class action settlement[.]”⁸ 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.”⁹ The court may take practical considerations into account, but “the inquiry should focus upon the terms of the settlement.”¹⁰ 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.”¹¹

1. The Proposed Class Settlement Should be Approved Because it 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.”¹² The court should examine the negotiating process to determine “whether the compromise was the result of arms-length bargaining between the parties.”¹³ There is no evidence of collusion when the “case has been adversarial, featuring a high level of contention between the parties.”¹⁴

Although negotiated by Defendant’s counsel, the proposed Class settlement was not accepted by Defendant until submitted to and approved by a public vote of Defendant’s City Commission. From the outset of this class action, the parties contentiously argued. Mr. Richardson’s resolve to hold Defendant accountable to its citizens resulted in public interest lawsuits and oversight and investigations by the Florida Department of Law Enforcement. The discord between the parties is further highlighted by the numerous media reports concerning the class action and the parties involved. In addition, Defendant’s police chief and former acting City Manager, Terry Isaacs, threatened Mr. Richardson with arrest while Mr. Richardson was attending Mr. Isaac’s deposition.¹⁵ Accordingly, this Court should approve the proposed Class settlement.

2. The Proposed Class Settlement Should be Approved Because it Eliminates the Need for Expensive and Protracted Litigation.

⁸ *Hameroff v. Public Med. Assistance Trust Fund*, 911 So.2d 827, 830 (Fla. 1st DCA 2005).

⁹ *In re Checking Account Overdraft Litig.*, 830 F.Supp.2d 1330, 1345 (S.D. Fla. 2011).

¹⁰ *Cotton*, 559 F.2d at 1330.

¹¹ *Hameroff*, 911 So.2d at 830.

¹² *In re Domestic*, 148 F.R.D. at 313.

¹³ *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001).

¹⁴ *In re Checking*, 830 F.Supp.2d at 1345.

¹⁵ Isaacs Dep., June 21, 2013, attached hereto as Exhibit “B” at 82:1-25 – 83:1-13.

“[T]he demand for time on the existing judicial system must be evaluated” in deciding whether to approve or reject a class action settlement.¹⁶ “A settlement is fair, reasonable and adequate when the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued.”¹⁷

The proposed Class settlement was reached relatively early in this case and represents a near complete victory 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 a near complete victory 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. Accordingly, this Court should approve the proposed Class settlement.

3. The Proposed Class Settlement Should be Approved Because 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.”¹⁸ “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.”¹⁹ 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.”²⁰

In order to establish the facts, each party has served formal discovery demands on the other, and Plaintiffs have also obtained and reviewed numerous documents through the use of public records requests. In addition, Plaintiffs deposed numerous public officials, including Defendant’s City Treasurer,²¹ to help establish the range of possible recovery. Likewise, Class counsel has performed extensive legal research on the merits of this case, as evidenced by Plaintiff’s pending Motion for Partial Summary Judgment. Moreover, although Defendant’s counsel negotiated the proposed Class settlement, the settlement was not accepted until after Defendant’s City Commission held a public hearing and after numerous media reports. Because both parties had

¹⁶ *In re Checking*, 830 F.Supp.2d at 1346.

¹⁷ *Id.* at 1344.

¹⁸ *Id.* at 1348 (internal quotations omitted).

¹⁹ *Id.* at 1349.

²⁰ *Francisco v. Numismatic Guar. Corp. of Am.*, No. 06-61677-CIV, 2008 WL 649124, at *11 (S.D. Fla. 2008).

²¹ Michaud Dep., April 23, 2013, attached hereto as Exhibit “C.”

sufficient information upon which to evaluate the merits prior to settlement, this honorable Court should approve the proposed Class settlement.

4. The Proposed Class Settlement Should be Approved Because Plaintiffs Likelihood of Success on the Merits is Unknown.

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 of the duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute.”²²

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 far from guaranteed. While Plaintiffs strongly believe in their case, if this class action were litigated through trial, Plaintiffs would have to defeat fifteen affirmative defenses raised by Defendant.²³ In addition, Defendant’s ordinance “[c]omes to [the] court clothed with a presumption of constitutionality.”²⁴ The likelihood that Plaintiffs would succeed on the merits at trial is unknown. Further, as outlined below, Plaintiffs risk not recovering anything if unsuccessful at trial. Accordingly, the proposed Class settlement represents an excellent result for the Class and warrants approval by this honorable Court.

5. The Proposed Class Settlement Should be Approved Because it is an Excellent Result Based on the Range of Possible Recovery.

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.”²⁵ Rather, “a settlement must be evaluated in light of the attendant risks with litigation.”²⁶ 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.”²⁷

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. Accordingly, this Court should approve the proposed Class settlement.

²² *Cotton*, 559 F.2d at 1330.

²³ Def.’s Answer & Affirmative Defenses attached hereto as Exhibit “D.”

²⁴ *Blue Cross Blue Shield of Fla., Inc. v. Outpatient Surgery Ctr. Of St. Augustine*, 66 So.3d 952, 953 (Fla. 1st DCA 2011).

²⁵ *In re Checking*, 830 F.Supp.2d at 1345.

²⁶ *Id.* at 1350.

²⁷ *Id.* at 1346.

6. The Proposed Class Settlement Should be Approved Because it is Fair, Reasonable, and Adequate According to Class Counsel, the Class Representatives, and the Class.

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.”²⁸ Indeed, “[c]ounsel’s conclusions that the Settlement is fair, adequate and reasonable provides strong evidence that the settlement merits the Court’s approval.”²⁹ Thus, “the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.”³⁰

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 granted an opportunity to opt out.”³¹ 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”³² While the number of objectors “is a factor to be considered[,] . . . [it] is not controlling.”³³ In fact, a significant number of objectors is not a valid reason, without more, to reject a proposed class action settlement.³⁴ Likewise, a small number of objectors can indicate class-wide support of the proposed settlement.³⁵ 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.”³⁶

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.³⁷ Further, media coverage and public reaction regarding the possible amount of each Class member’s recovery has been favorable. Thus, this Court should approve the proposed Class settlement.

²⁸ *Cotton*, 559 F.2d at 1330.

²⁹ *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”).

³⁰ *Cotton*, 559 F.2d at 1330.

³¹ *Nelson v. Wakulla Cnty.*, 985 So.2d 564, 576 (Fla. 1st DCA 2008).

³² *Id.* at 573.

³³ *Cotton*, 559 F.2d at 1331.

³⁴ See *Id.* (approving a proposed settlement over the objections of 50% of all class members).

³⁵ *Pinto v. Princess Cruise Lines, Ltd.*, 513 F.Supp.2d 1334, 1343 (S.D. Fla. 2007); *Francisco*, 2008 WL 649124 at *12.

³⁶ *Cotton*, 559 F.2d at 1331.

³⁷ Settlement Agreement attached hereto as Exhibit “A.”

III. Class Representatives' Fees of \$12,000.00 for Michael Howard and \$12,000.00 for Nancy Howard Should be Approved Because the Class Representatives Fulfilled Their Obligations to the Class.

"The position of fiduciary for the class is less an honor than a headache."³⁸ Indeed, "[c]lass representatives [take] risks, [bear] hardships, and [make] sacrifices that absent class members [do] not."³⁹ 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."⁴⁰

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."⁴¹ 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."⁴² "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."⁴³

The proposed settlement provides Michael and Nancy Howard with individual incentive awards of \$12,000.00 each. Mr. and Mrs. Howard protected the interest of the Class by bringing this class action lawsuit to right a public wrong, and, under the proposed settlement terms, successfully forcing Defendant to stop charging the illegal taxes and obtaining a refund for the Class. In fulfilling his obligations as Class Representative, Mr. Howard helped uncover Defendant's illegal tax scheme,⁴⁴ read depositions,⁴⁵ attended depositions,⁴⁶ attended mediation,⁴⁷ conferenced with the other named plaintiffs and class counsel,⁴⁸ read pleadings,⁴⁹ attended hearings,⁵⁰ withstood personal threats,⁵¹ and testified in support of the Class.⁵² Likewise, Mrs. Howard

³⁸ *Altamonte Springs Imaging, L.C. v. State Farm Mut. Auto. Ins. Co.*, 12 So.3d 850, 857 (Fla. 3d DCA 2008).

³⁹ *Ingram*, 200 F.R.D. at 694.

⁴⁰ *Altamonte Springs*, 12 So.3d at 857.

⁴¹ *Francisco*, 2008 WL 649124 at *16.

⁴² *Pinto*, 513 F.Supp.2d at 1344.

⁴³ *In re Checking*, 830 F.Supp.2d at 1357.

⁴⁴ Am. Hr'g Tr., September 10, 2013 attached hereto as Exhibit "E" at 35:1-25 – 36:1-7.

⁴⁵ *Id.* at 36:8-10.

⁴⁶ *Id.* at 36:11-12.

⁴⁷ *Id.* at 36:13-14.

⁴⁸ *Id.* at 36:15-19.

⁴⁹ *Id.* at 36:20-22.

⁵⁰ *Id.* at 36:23-25.

⁵¹ Following certification of the Class, Defendant's former police chief, Mark Isom, threatened to interfere with Mr. Howard's employment as a Leesburg Police Officer. A copy of Mr. Isom's Request for Exclusion From Class form is attached hereto as Exhibit "F."

fulfilled her obligations as Class Representative by reading depositions,⁵³ reading court filings,⁵⁴ conferencing with class counsel,⁵⁵ attending mediation, attending hearings, testifying in support of the Class, and reviewing thousands of public records produced by Defendant. Mr. and Mrs. Howard 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 illegal taxes paid to Defendant. In addition, Class members who are still current water customers of Defendant benefit by no longer being subject to Defendant's illegal taxes. Further, courts have provided similar incentive awards in numerous successful class actions.⁵⁶ Class Counsel is also willing, as outlined below, to voluntarily lower its fees to accommodate the proposed incentive awards for Mr. and Mrs. Howard. Accordingly, this Court should approve the proposed individual incentive awards of \$12,000.00 each to Mr. and Mrs. Howard.

IV. Class Member Fees of \$10,000.00 for James Richardson Should be Approved Because of His Extraordinary Service to the Class.

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."⁵⁷ This applies to both class representatives and Class Members who make a "unique and extraordinary . . . contribution to the litigation that entails risk or effort."⁵⁸ 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.⁵⁹ The proposed settlement provides named plaintiff, James Richardson, with a \$10,000.00 incentive award. This award is

⁵² Am. Hr'g Tr., September 10, 2013 attached hereto as Exhibit "E."

⁵³ *Id.* at 37:7-21, 51:23-25 – 52:1-3.

⁵⁴ *Id.* at 37:7-21, 51:23-25 – 52:1-3.

⁵⁵ *Id.* at 51:23-25 – 52:1-3.

⁵⁶ See e.g. *Cook v. Niedert*, 142 F.3d 1004 (7th Cir. 1998) (approving \$25,000 incentive award); *Nelson v. Mead Johnson & Johnson Co.*, 484 Fed.Appx. 429 (11th Cir. 2012) (approving incentive awards from \$1,000 to \$10,000); *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving \$50,000 incentive award); *Spicer v. Chicago Bd. Options Exchange, Inc.*, 844 F.Supp. 1226 (N.D. Ill. 1993) (approving \$10,000 incentive award); *Atkinson v. Wal-mart Stores, Inc.*, No. 8:08-CV-691-T-30TBM, 2011 WL 6846747 (M.D. Fla. 2011) (approving \$10,000 incentive award); *In re Terazosin Hydrochloride Antitrust Litig.*, No. 99-MDL-1317-SEITZKLEIN, 2005 WL 2451958 (S.D. Fla. 2005) (approving incentive awards from \$2,500 to \$40,000); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F.Supp.2d 1334 (S.D. Fla. 2007) (approving \$7,500 incentive award); *In re Dun & Bradstreet Credit Svcs. Customer Litig.*, 130 F.R.D. 366 (S.D. Ohio 1990) (approving incentive awards from \$35,000 to \$55,000); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240 (S.D. Ohio 1991) (approving \$50,000 incentive award); *Bogosian v. Gulf Oil Corp.*, 621 F.Supp. 27 (E.D. Pa. 1985) (approving \$20,000 incentive award); *Godshall v. Franklin Mint Co.*, No. 01-CV-6539, 2004 WL 2745890 (E.D. Pa. 2004) (approving \$20,000 incentive award); *Yap v. Sumitomo Corp. of America*, No. 88-Civ.700(LBS), 1991 WL 29112 (S.D. N.Y. 1991) (approving \$30,000 incentive award); *Pelletz v. Weyerhaeuser Co.*, 592 F.Supp.2d 1322 (W.D. Wash. 2009) (approving \$7,500 incentive award); *Altamonte Springs Imaging, L.C. v. State Farm Mut. Auto. Ins. Co.*, 12 So.3d 850 (Fla. 3d DCA 2009) (approving \$10,000 incentive award).

⁵⁷ *Allapattah Svcs., Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185, 1218 (S.D. Fla. 2006).

⁵⁸ *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).

⁵⁹ *Ingram*, 200 F.R.D. at 694.

reasonable based on the high risk of retaliation and tremendous effort Mr. Richardson expended in contributing to the investigation and prosecution of this class action lawsuit, as well as a review of incentive awards in similar cases.

Mr. Richardson deserves a \$10,000.00 incentive award because he made unique and extraordinary contributions to the investigation and prosecution of this class action. Mr. Richardson uncovered Defendant's illegal tax scheme,⁶⁰ brought the issue to the attention of class counsel,⁶¹ reviewed all pleadings,⁶² reviewed all motions,⁶³ reviewed all filed responses,⁶⁴ reviewed hundreds of emails,⁶⁵ aided Class counsel in discovery,⁶⁶ researched public records,⁶⁷ was deposed,⁶⁸ attended nine depositions,⁶⁹ attended mediation, attended multiple hearings, and communicated extensively with Class counsel.⁷⁰ In total, Mr. Richardson dedicated over 300 hours of his time to the investigation and prosecution of this class action litigation.⁷¹ Thus, Mr. Richardson has expended considerable time and effort while contributing to this class action.

In addition, Mr. Richardson deserves a \$10,000.00 incentive award because Defendant retaliated against Mr. Richardson for raising the issue and actively participating in the class action litigation. Mr. Richardson questioned Defendant's utility billing practices on August 6, 2012. Thereafter, Defendant attempted to obtain arrest warrants against Mr. Richardson, a City Commissioner at the time, based on false statements that Mr. Richardson inappropriately tampered with city-owned computer.⁷² Defendant then published these false statements to media outlets, who in turn broadcasted the false statements throughout Central Florida.⁷³ Mr. Richardson again raised the illegal tax scheme to Defendant's attention on December 11, 2012.⁷⁴ Defendant retaliated by accusing Mr. Richardson of illegally disclosing information and directing Defendant's attorney to draft a resolution finding Mr. Richardson violated ethical rules.⁷⁵ The retaliation continued when Mr. Richardson attended the deposition of Defendant's former acting city manager and current police chief, Terry Isaacs, on June 21, 2013, during which Mr. Isaacs threatened to arrest Mr. Richardson.⁷⁶ In addition, Defendant's former police chief, Mark Isom, expressed his personal animosity toward Mr. Richardson by noting on his request to opt-out of the Class that "Fruitland

⁶⁰ Richardson Dep., September 5, 2013, attached hereto as Exhibit "G" at 37:15-21.

⁶¹ *Id.* at 37:22-25 – 38:1-4.

⁶² Am. Hr'g Tr., September 10, 2013 attached hereto as Exhibit "E" at 63:1-12.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Richardson Dep., September 5, 2013, attached hereto as Exhibit "G."

⁶⁹ Am. Hr'g Tr., September 10, 2013 attached hereto as Exhibit "E" at 63:1-12.

⁷⁰ Richardson Dep., September 5, 2013, attached hereto as Exhibit "G" at 15:25 – 16:11.

⁷¹ Am. Hr'g Tr., September 10, 2013 attached hereto as Exhibit "E" at 63:13-19.

⁷² Compl. attached hereto as Exhibit "H" at ¶ 14.

⁷³ *Id.*

⁷⁴ *Id.* at ¶ 21.

⁷⁵ *Id.*

⁷⁶ Isaacs Dep., June 21, 2013, attached hereto as Exhibit "B" at 82:1-25 – 83:1-13.

Park would be a better place to live” if Mr. Richardson moved elsewhere.⁷⁷ Thus, Mr. Richardson has endured multiple instances of retaliation by Defendant, and must worry whether Defendant’s current police chief will continue the pattern of harassment. Accordingly, Mr. Richardson should receive an incentive award for his unique and extraordinary contribution to the Class and for proceeding undeterred by Defendant’s retaliation.

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 illegal taxes they paid to Defendant and Class members who are still current water customers of Defendant benefit by no longer being subject to Defendant’s illegal taxes. In addition, Mr. Richardson’s level of effort and risk far surpasses the basis in other cases where non-representative Class members were provided incentive awards.⁷⁸ Further, Class counsel recognizes the extraordinary service Mr. Richardson provided to the Class and is willing to voluntarily lower its fees, as outlined below, to accommodate the proposed incentive award for Mr. Richardson. Accordingly, this Court should approve the proposed \$10,000.00 incentive award for Mr. Richardson in recognition of his extraordinary service to the Class.

V. Attorneys’ Fees

“[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.”⁷⁹ “[L]awyers who recover a common fund for the benefit of others are entitled to reasonable attorney’s fees from the fund.”⁸⁰ 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.”⁸¹ 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.”⁸²

⁷⁷ A copy of Mr. Isom’s Request for Exclusion From Class form is attached hereto as Exhibit “F.”

⁷⁸ 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).

⁷⁹ *Nelson*, 985 So.2d at 573.

⁸⁰ *Kuhnlein v. Dept. of Revenue*, 662 So.2d 309, 314 (Fla. 1995).

⁸¹ *Fidelity & Cas. Co. of New York v. O’Shea*, 397 So.2d 1196, 1198 (Fla. 2d DCA 1981).

⁸² *Nelson*, 985 So.2d at 570.

1. Class Counsel is Entitled to \$255,000.00, Less Costs, in Attorney's Fees From the Common Fund.

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" ⁸³ The lodestar figure is calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. ⁸⁴ In determining whether the hours and rate are reasonable, the court should consider: "(1) the time and labor required, (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases." ⁸⁵

Class counsel's base lodestar amount is \$150,560.00. ⁸⁶ This amount is a reasonable starting point because this class action is a case of first impression and Defendant mounted a vigorous defense. Class counsel is also entitled to a lodestar multiplier of 3, as outlined below, but voluntarily reduces its request for attorney's fees to \$255,000.00, less costs.

A. Time and Labor Required

"The trial judge should weigh the hours claimed against his own knowledge, experience, and expertise of the time required to complete similar activities." ⁸⁷ Yet, the court should acknowledge that "[c]ases of first impression generally require more time and effort on the attorney's part." ⁸⁸ Indeed, although the greater expenditure of time in research and preparation in a case of first impression "is an investment by counsel in obtaining knowledge which can be used in similar later cases, he should not be penalized for undertaking a case which may make new law." ⁸⁹

The law firm of Bowen Radson Schroth, P.A., in accordance with its duties as Class counsel, spent 642.25 hours in professional services in this matter beginning on December 4, 2012. ⁹⁰ Class counsel expects to expend an additional 50 hours to

⁸³ *Kuhnlein*, 662 So.2d at 311-12.

⁸⁴ *Fla. Patient's Compensation Fund v. Rowe*, 472 So.2d 1145, 1151 (Fla. 1985).

⁸⁵ *Standard Guar. Ins. Co. v. Quanstrom*, 555 So.2d 828, 834 (Fla. 1990).

⁸⁶ This figure is current through February 12, 2014.

⁸⁷ *Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 717 (5th Cir. 1974), abrogated on other grounds by *Blanchard v. Bergeron*, 489 U.S. 87 (1989).

⁸⁸ *Id.* at 718.

⁸⁹ *Id.*

⁹⁰ This figure is current through February 12, 2014. A copy of Class counsel's Time Listing is attached hereto as Exhibit "I."

conclude this matter, for a total of 692.25 hours.⁹¹ These hours are broken down and summarized in Table 1, below.⁹²

Table 1.

Name	Title	Hours Expended	Hours Expected
Derek A. Schroth	Partner	304.10	25.00
Jason M. Radson	Partner	6.10	0.00
Katrina H. Dempsey	Partner	2.00	0.00
James A. Myers	Associate	240.45	15.00
Laura L. Lightsey	Associate	2.80	0.00
Zachary T. Broome	Associate	1.70	0.00
Amy Hasselbring	Paralegal	75.10	10.00
Teresa Anderson	File Clerk	10.00	0.00
	TOTAL	642.25	50.00

Because this class action presented a case of first impression, a significant amount of research was involved. In addition, this case was originally filed as a two-count complaint. Defendant removed both counts, including this class action, to federal court, thus unnecessarily increasing costs. The federal court granted Plaintiff's motion to remand the class action back to state court. Defendant also mounted a vigorous defense by raising fifteen affirmative defenses and contesting many of Plaintiffs' motions. There are 133 docket entries in this case in less than twelve months and Class counsel took numerous depositions. Thus, the number of hours expended by Class counsel are reasonable and should be approved by this honorable Court.

B. Novelty and Difficulty of the Questions

"It is common knowledge that class action suits have a well-deserved reputation as being most complex."⁹³ A class action that presents a case of first impression, however, is particularly so.⁹⁴ "Cases of first impression generally require more time and effort on the attorney's part."⁹⁵ Although the greater expenditure of time in research and preparation in a case of first impression "is an investment by counsel in obtaining knowledge which can be used in similar later cases, he should not be penalized for undertaking a case which may make new law. Instead, he should be appropriately compensated for accepting the challenge."⁹⁶

⁹¹ This figure includes, but is not limited to, hours required for such activities as preparing for and attending the hearing on this Motion, handling telephone inquiries from Class members, tracking responses to Class notifications, communicating with Class Representatives, and monitoring Defendant's refund administration.

⁹² A copy of Class counsel's Time Listing is attached hereto as Exhibit "I." Mr. Schroth's affidavit of time is attached hereto as Exhibit "J." Mr. Myers' affidavit of time is attached hereto as Exhibit "K."

⁹³ *Cotton*, 559 F.2d at 1331.

⁹⁴ *Pinto*, 513 F.Supp.2d at 1342.

⁹⁵ *Johnson*, 488 F.2d at 718.

⁹⁶ *Id.*

There is no case law directly on point regarding the legality of charging “voluntary” police and fire fees. Due to this lack of precedent, this area of law is unsettled and Plaintiffs’ likelihood of success is far from guaranteed. If this class action was litigated through trial, Plaintiffs would have to defeat fifteen affirmative defenses raised by Defendant⁹⁷ and overcome the presumption that Defendant’s disputed police and fire fees are constitutional.⁹⁸ Despite these difficulties, Class counsel conferred a substantial benefit on the Class, by obtaining an early settlement at or near the highest point of possible recovery, and this Court should approve Class counsel’s request for attorney’s fees.

C. Skill Requisite to Perform Legal Service Properly

In order to determine the quality of representation by Class counsel, “[t]he trial judge should closely observe the attorney’s work product, his preparation, and general ability before the court.”⁹⁹ The court should also consider the quality of the opposition.¹⁰⁰ In evaluating this factor, the court may draw on past experience and also observations from the bench to determine the quality of the representation.¹⁰¹ Yet the best measurement of the quality of Class counsel’s representation may be the benefit conferred on the class.¹⁰²

This honorable Court is familiar with Class counsel’s quality of representation. Class counsel has had many cases before this Court and tried a seven day jury trial before this Court.¹⁰³ Class counsel is Board Certified and an expert in local government. In addition, Defendant employed three separate law firms to mount their defense, including Tallahassee-based Nabors Giblin & Nickerson, P.A. (“Nabors”). Nabors specializes in representing local governments and is considered a leading authority on local taxation matters by the Florida Legislature.¹⁰⁴ Despite the quality of opposing counsel, Class counsel obtained a near complete victory for the Class in the form of the proposed Class settlement. Accordingly, this honorable Court should approve the requested enhanced attorney’s fees, requested by Class counsel, in recognition of the quality of representation provided to the Class.

D. Preclusion of Other Employment

“This guideline involves the dual consideration of otherwise available business which is foreclosed because of conflicts of interest which occur from the representation,

⁹⁷ Def.’s Answer & Affirmative Defenses attached hereto as Exhibit “D.”

⁹⁸ *Blue Cross*, 66 So.3d at 953.

⁹⁹ *Johnson*, 488 F.2d at 718.

¹⁰⁰ *Francisco*, 2008 WL 649124 at *15.

¹⁰¹ *Johnson*, 488 F.2d at 718.

¹⁰² *Behrens v. Wometco Enterp, Inc.*, 118 F.R.D. 534, 547-48 (S.D. Fla. 1988).

¹⁰³ *Nasr v. Eldifrawi*, No. 2010-CA-000821, 2012 WL 8133517 (Fla. 5th Cir. Ct. 2012).

¹⁰⁴ For example, Nabors’ annual publication, *Primer on Home Rule & Local Government Revenue Sources*, was cited by the Florida Senate’s Committee on Community Affairs in 2011 as part of its review of a proposed bill that would have specifically authorized municipalities to levy a special assessment for police services. Fla. S. Comm. on Cmty. Affairs, SB 1234 (2011) Staff Analysis (March 14, 2011) attached hereto as Exhibit “L.”

and the fact that once the employment is undertaken the attorney is not free to use the time spent on the client's behalf for other purposes."¹⁰⁵ This factor does not apply to this case and should not impact the Court's award of attorney's fees.

E. Customary Fee

The party seeking attorney's fees has "the burden of establishing the prevailing market rate, i.e., the rate charged in that community by lawyers of reasonably comparable skill, experience and reputation, for similar services." Class counsel is entitled to the following base rates (with a multiplier of 3, as outlined below): \$300-\$400 per hour for partners, \$200-\$300 per hour for associates, \$100-200 per hour for paralegals, and \$50-\$100 per hour for file clerks. These hourly rates are representative of the customary rates in Florida's Fifth Judicial Circuit as evidenced by the Affidavits of Class counsel,¹⁰⁶ Expert Michelle Lieberman,¹⁰⁷ and Expert Phillip S. Smith.¹⁰⁸ Thus, this honorable Court should approve the hourly rates submitted by Class counsel.

F. Nature of Fee

Whether the Class counsel was retained on a contingency basis is important because the contingency arrangement "must be promoted to assure representation when a person could not otherwise afford the services of a lawyer."¹⁰⁹ In addition, the court should consider "the fact that the risks of failure and nonpayment in a class action are extremely high."¹¹⁰ Thus, if a "bonus methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing."¹¹¹

Because the individual claims of Class members are relatively small, challenging Defendant's disputed police and fire fees was not economically viable for Class members as anything other than a class action. In light of that fact, Class counsel agreed to take this case on a contingency basis, and therefore assumed the risk of recovering nothing if the class action was ultimately unsuccessful. Moreover, because this class action presents a case of first impression, Class counsel should be rewarded, rather than penalized, "for accepting the challenge."¹¹² Accordingly, this Court should approve Class counsel's request for attorney's fees.

¹⁰⁵ *Johnson*, 488 F.2d at 718.

¹⁰⁶ Mr. Schroth's affidavit of time is attached hereto as Exhibit "J." Mr. Myers' affidavit of time is attached hereto as Exhibit "K."

¹⁰⁷ Ms. Lieberman's affidavit of time attached hereto as Exhibit "M."

¹⁰⁸ Mr. Smith's affidavit of time attached hereto as Exhibit "N."

¹⁰⁹ *Behrens*, 118 F.R.D. at 548.

¹¹⁰ *Pinto*, 513 F.Supp.2d at 1339.

¹¹¹ *Behrens*, 118 F.R.D. at 548.

¹¹² *Johnson*, 488 F.2d at 718.

G. Time Limitations Imposed by Client or Circumstances

“Priority work that delays the lawyer’s other legal work is entitled to some premium.”¹¹³ Further, “[i]n considering this factor, many courts have found that time pressures warrant an increased fee award.”¹¹⁴

Because a class action requires heightened judicial oversight, Class counsel had to prioritize this case ahead of other active cases in order to satisfy the needs of the Class and requirements imposed by the Court. For example, Class counsel was required to notify the approximately 3,500 Class members of Class certification “[a]s soon as practicable” after the certification hearing.¹¹⁵ In addition, Class counsel had to develop a process to collect, verify, and track responses to two separate Class notification mass mailings. Moreover, the named plaintiffs were more demanding than Class counsel’s typical clients and frequently communicated with Class counsel on nights and weekends. Accordingly, this Court should approve the enhanced attorney’s fees, requested by Class counsel, for prioritizing this class action for the benefit of the Class.

H. Amount Involved and Results Obtained

In the class action context, “[t]he result achieved is a major factor to consider in making a fee award.”¹¹⁶ Further, “when determining the total value of a class action settlement for purposes of calculating the attorneys’ fee award, courts usually consider not only the compensatory relief, but also the economic value of any prospective injunctive relief obtained for the class.”¹¹⁷

Defendant has collected approximately \$550,000 in revenue from its disputed police and fire fees.¹¹⁸ If Plaintiffs were ultimately successful at trial, the remedy for charging illegal taxes would have forced Defendant to refund all monies it had collected in illegal taxes. Because the proposed Class settlement requires Defendant to disgorge itself of nearly all the revenue it collected from the disputed fees before Plaintiffs incur the significant expense of a trial, the results obtained by Class counsel on behalf of the Class are excellent. In addition, Class counsel obtained valuable prospective relief for the Class because Defendant will repeal the disputed ordinances and stop charging Class members the disputed fees. Because Class counsel obtained an excellent result on behalf of the Class, this honorable Court should approve Class counsel’s request for attorney’s fees.

¹¹³ *Id.*

¹¹⁴ *Allapattah*, 454 F.Supp.2d at 1215.

¹¹⁵ Fla. R. Civ. P. 1.220(d)(2) (2013).

¹¹⁶ *Francisco*, 2008 WL 649124 at *15.

¹¹⁷ *Pinto*, 513 F.Supp.2d at 1342.

¹¹⁸ Defendant’s Finance Clerk, Amanda Perez, supplied an affidavit indicating that Defendant had collected \$513,579.64 from the disputed fees as of August 19, 2013. Perez Aff. attached hereto as Exhibit “O,” at 4.

I. Experience, Reputation and Ability of Attorneys

More experienced attorneys will generally command a higher hourly rate.¹¹⁹ Yet longevity alone should not dictate a higher fee award.¹²⁰ Indeed, a relatively short period of time spent on settling a case of first impression is evidence that Class counsel “is very experienced and able.”¹²¹

Lead counsel, Derek A. Schroth, is experienced with class actions,¹²² complex litigation¹²³ and the subject matter of this litigation. Mr. Schroth is a partner in Bowen Radson Schroth, P.A. and is Board Certified in City, County, and Local Government by the Florida Bar. Mr. Schroth is also well respected by his peers. Mr. Schroth is a past-president of the Lake County Bar Association, currently serves on the Judicial Nominating Committee for Florida’s Fifth Judicial Circuit, and is the City Attorney for the City of Eustis and the Town of Lady Lake. Further, Class counsel has obtained an efficient early settlement on a case of first impression. Accordingly, this Court should approve Class counsel’s request for attorney’s fees.

J. Undesirability of the Case

“This factor acknowledges that attorneys should be rewarded for taking on cases that other firms have rejected due to thorny factual circumstances, the possible outcome of the case, or any other number of reasons.”¹²⁴ Relevant considerations include the risk that Class counsel’s willingness to accept the case “is not pleasantly received by the community[,]” and the potential economic impact to Class counsel’s law practice that may result.¹²⁵ Further, the undesirability of a case and the risks assumed by Class counsel “must be evaluated from the standpoint of plaintiffs’ counsel as of the time they commenced the suit, not retroactively, with the benefit of hindsight.”¹²⁶

Prior to accepting this case, Class counsel knew Defendant accused named plaintiff, James Richardson, of witness tampering, harassing a rape victim, and taking advantage of a cancer victim, each of which was reported by local media outlets. Class counsel accepted this case despite the risk that Defendant’s accusations might create negative publicity and have a negative effect on Class counsel’s reputation as City Attorney of a neighboring city.¹²⁷ Even though Defendant’s accusations were false, the media, at the time, was not reporting the accusations were false. In addition, Class

¹¹⁹ *Johnson*, 488 F.2d at 718-19.

¹²⁰ *Id.* at 719.

¹²¹ *Behrens*, 118 F.R.D. at 547.

¹²² *E.g. Owner-Operator Ind. Drivers Ass’n, Inc. v. 4 Points Logistics, LLC*, No. 5:05-cv-440-Oc-10GRJ, 2007 WL 2071389 (M.D. Fla. 2007); *Gagnon v. Service Trucking, Inc.*, 266 F.Supp.2d 1361 (M.D. Fla. 2003), vacated by agreement of the parties in *Gagnon v. Service Trucking, Inc.*, No. 5:02-CV-342-OC-10GRJ, 2004 WL 290743 (M.D. Fla. 2004).

¹²³ *E.g. Hennis v. MONY Life Ins. Co. of America*, No. 5:11-cv-55-J-37TBS, 2011 WL 6010416 (M.D. Fla. 2011).

¹²⁴ *Allapattah*, 454 F.Supp.2d at 1216.

¹²⁵ *Johnson*, 488 F.2d at 719.

¹²⁶ *In re Checking*, 830 F.Supp.2d at 1364.

¹²⁷ Mr. Schroth is the City Attorney for the Town of Lady Lake, a neighboring city, while also serving as lead counsel in this class action.

counsel accepted this case aware of the general public's opinion that class actions are a tool to enrich plaintiff attorneys at the expense of class members.¹²⁸ Accordingly, this Court should approve Class counsel's request for attorney's fees.

K. Nature and Length of Client Relationship

Under this factor, "a higher fee may be warranted in class actions where class counsel had no prior relationship with the named plaintiffs."¹²⁹ The court may also consider whether a similar lawyer in private practice would have "var[ie]d his fee for similar work" in light of an existing client relationship.¹³⁰

This case represents the first professional encounter between Class counsel and all three named plaintiffs. As with any new client, Class counsel accepted this class action with no indication that the named plaintiffs would fulfill their respective obligations or remain committed to prosecuting the case. Regardless, upon filing the class action complaint, Class counsel became obligated to protect the interests of the putative Class. Thus, Class counsel assumed the risk that no named plaintiff would adequately represent the Class. Accordingly, a higher fee is warranted and this Court should approve Class counsel's request for attorney's fees.

L. Awards in Similar Cases

To evaluate this factor, the court "should focus on both the applicable lodestar multiple used by other courts as well as the amount of attorneys' fees awarded as a percentage of total class recovery."¹³¹ "The range of lodestar multiples in large and complicated class actions runs from a low of 2.26 to a high of 4.5."¹³² In addition, courts "have traditionally awarded fees in the 20%-50% range in class actions."¹³³

Class counsel is entitled to a lodestar of \$150,560.00¹³⁴ and a multiplier of 3, as outlined below, for a total of \$451,680.00. Yet, because this calculation represents over 85% of the common fund, Class counsel will voluntarily reduce its multiplier to ensure total attorney's fees and costs do not exceed \$255,000.00. By voluntarily reducing its multiplier, Class counsel significantly lessens the impact attorney's fees will have on the common fund, thereby ensuring that more of the common fund will be available for Class refunds and the Class Representatives' and Class Member fees outlined above.

¹²⁸ Indeed, a primary reason for heightened judicial oversight of class actions is to "guar[d] against the public perception that attorneys exploit the class action device to obtain large fees at the expense of the class." *Nelson*, 985 So.2d at 573.

¹²⁹ *Allapattah*, 454 F.Supp.2d at 1216.

¹³⁰ *Johnson*, 488 F.2d at 719.

¹³¹ *Behrens*, 118 F.R.D. at 548.

¹³² *Id.* at 549 (accumulating 9 cases from jurisdictions across the country).

¹³³ *In re Warner Comm. Securities Litig.*, 618 F.Supp. 735, 749 (S.D. N.Y. 1985) (accumulating 18 cases from jurisdictions across the country). Notably, the case in which a 50% attorney's fee award was approved involved a total class recovery of \$260,000. *Id.*

¹³⁴ This calculation is based on figures current through February 12, 2014.

Accordingly, this honorable Court should approve Class counsel's request for attorney's fees.

2. Class Counsel is Entitled to a Multiplier Because of the Contingent Nature of the Litigation and the Results Obtained.

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.¹³⁵ Factors to consider in awarding a multiplier include: (1) whether the market requires a multiplier to obtain competent counsel, (2) whether the risk of nonpayment was mitigated by the lawyer, and (3) the amount involved in the subject matter of the litigation and results obtained.¹³⁶ If a multiplier is appropriate, the court must establish which multiplier to apply.¹³⁷

In *Quanstrom*, the Florida Supreme Court has adopted a sliding scale, based on the likelihood of success at the outset of the case, to determine the appropriate multiplier to apply, with a maximum multiplier of 2.5, in tort and contract cases.¹³⁸ This sliding scale is depicted in Table 2, below.

Table 2. Multiplier for tort and contract cases (not common fund cases).

Likelihood of Success at Outset	Multiplier Range
More likely than not	1 to 1.5
Approximately even	1.5 to 2
Unlikely	2 to 2.5

In *Kuhnlein*, common fund cases were recognized as a special type of attorney-fee case, for which the Florida Supreme Court increased the maximum multiplier to 5.¹³⁹ The purpose of this increase was "to alleviate the contingency risk factor involved and attract high level counsel to common fund cases while producing a fee which remains within the bounds of reasonableness."¹⁴⁰

While increasing the maximum multiplier in common fund cases to 5, the Court also stated that "the criteria set forth in *Quanstrom* [was] to be used to . . . set the amount of the multiplier."¹⁴¹ As such, a sliding scale which uses, like *Quanstrom*, the likelihood of success at the outset of the case as the distinguishing criteria, should also be used in common fund cases. The associated multiplier ranges, however, will require adjustment, in light of the increased maximum multiplier of 5, in order to preserve the correlation between the likelihood of success at the outset of the case and the multiplier

¹³⁵ *Rowe*, 472 So.2d at 1151.

¹³⁶ *Quanstrom*, 555 So.2d at 834.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Kuhnlein*, 662 So.2d at 315.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 315 n.9.

range, as established in *Quanstrom*. The adjusted sliding scale for common fund multipliers is depicted in Table 3, below.

Table 3. Multipliers for common fund cases.

Likelihood of Success at Outset	Multiplier Range
More likely than not	2 to 3
Approximately even	3 to 4
Unlikely	4 to 5

Due to the relatively small nature of Class members' individual claims, it was not economically feasible for Class members to obtain relief from Defendant's disputed police and fire fees in any manner other than this class action. Likewise, many Class members may not have had the financial means to litigate this issue. Class counsel agreed to take this case on a contingency basis, and therefore assumed the risk of recovering nothing if the class action was ultimately unsuccessful. In addition, the results obtained on behalf of the Class are excellent due to Class counsel's efforts to reach an early settlement at or near the highest point of possible recovery. This result maximizes Class members' individual refunds by limiting the amount of attorney's fees ultimately payable from the common fund. Based on these factors, Class counsel is entitled to enhanced attorney's fees.

Further, because this class action involves a case of first impression and Plaintiffs would have to overcome fifteen affirmative defenses and a presumption that Defendant's disputed police and fire fees are valid, the likelihood of success at the outset of this case was 50/50. Thus, Class counsel is entitled to a lodestar multiplier of at least 3, for enhanced attorney's fees of \$451,680.00. However, in light of the substantial reduction such an award will cause to the common fund, Class counsel will voluntarily accept reduced attorney's fees of \$255,000.00, less costs, to help maximize Class members' individual refunds and enable the Court to award incentive awards to the Class Representatives and Mr. Richardson. Accordingly, Class counsel respectfully requests that this honorable Court find that a lodestar multiplier of 3 is appropriate in this case and approve Class Counsel's reduced attorney's fees, as requested.

VI. Plaintiffs are Entitled to Costs

Under Florida law, "[t]he party recovering judgment shall recover all his or her legal costs and charges" ¹⁴² Florida's Fifth Judicial Circuit has stated that "the party recovering judgment under section 57.041, and the prevailing party under section 57.105 are governed under the same principles." ¹⁴³ For purposes of awarding costs, in determining which party prevailed, "[t]he focus . . . should be on the result obtained." ¹⁴⁴ Once the prevailing party is identified, the trial court has no discretion to deny costs. ¹⁴⁵

¹⁴² FLA. STAT. § 57.041(1) (2013).

¹⁴³ *Granoff v. Seidle*, 915 So.2d 674, 677 (Fla. 5th DCA 2005).

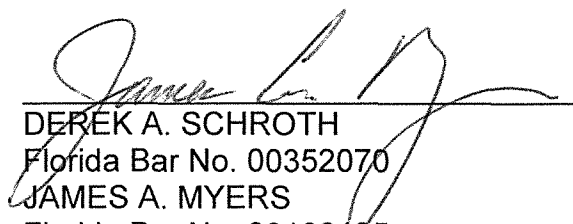
¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

Because the proposed Class settlement represents a near complete victory for Plaintiffs, Plaintiffs are the prevailing party in this action and are entitled to recover their costs. Plaintiffs are also entitled to costs pursuant to the parties' settlement agreement. Plaintiffs' costs are \$16,031.30.¹⁴⁶ Accordingly, this Court should award \$16,031.30 in costs to Plaintiffs.

WHEREFORE, Plaintiffs respectfully requests this Court enter a Judgment: (1) approving the proposed Class Settlement and ordering the parties to comply with it, (2) awarding an incentive award of \$12,000.00 to Michael Howard, (3) awarding an incentive award of \$12,000.00 to Nancy Howard, (4) awarding an incentive award of \$10,000.00 to James Richardson, (5) determining Plaintiffs are entitled to a 3 multiplier for attorney fees and reducing and awarding attorney's fees and costs of \$255,000.00 to Class counsel, and (6) ordering any other such relief as this Court deems just and appropriate.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via email service to Gregory T. Stewart, Esq., and Carly J. Schrader, Esq., Nabors, Giblin & Nickerson, P.A., at gstewart@ngnlaw.com, cschrader@ngnlaw.com, and legal-admin@ngnlaw.com, and Scott A. Gerken, Esq., Stone & Gerken, P.A., at scott@stonegerken.com and cindi@stonegerken.com, this 19th day of February, 2014.



JAMES A. MYERS

¹⁴⁶ A copy of the Client Costs Journal is attached hereto as Exhibit "P."