

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.

2014 APR 14 AM 11:06  
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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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."<sup>1</sup> At such a hearing, a trial court "enjoys a limited but important role in the review of the [class action] settlement"<sup>2</sup> because, "[p]articularly in class action suits, there is an overriding public interest in favor of settlement."<sup>3</sup> 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."<sup>4</sup> 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."<sup>5</sup>

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<sup>1</sup> Florida Rule of Civil Procedure 1.220(e).

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

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

<sup>4</sup> *Id.* at 1330 (internal quotations omitted).

<sup>5</sup> *Id.*

Although the court may “conduct whatever inquiry it feels appropriate regarding the fairness of a proposed class action settlement[.]”<sup>6</sup> 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.”<sup>7</sup> The court may take practical considerations into account, but “the inquiry should focus upon the terms of the settlement.”<sup>8</sup> 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.”<sup>9</sup>

**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.”<sup>10</sup> , the court should examine the negotiating process to determine “whether the compromise was the result of arms-length bargaining between the parties.”<sup>11</sup> There is no evidence of collusion when the “case has been adversarial, featuring a high level of contention between the parties.”<sup>12</sup> 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.<sup>13</sup> “A settlement is fair, reasonable and adequate

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

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

<sup>8</sup> *Cotton*, 559 F.2d at 1330.

<sup>9</sup> *Hameroff*, 911 So.2d at 830.

<sup>10</sup> *In re Domestic*, 148 F.R.D. at 313.

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

<sup>12</sup> *In re Checking*, 830 F.Supp.2d at 1345.

<sup>13</sup> *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.”<sup>14</sup>

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.”<sup>15</sup> “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.”<sup>16</sup> 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.”<sup>17</sup> 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.”<sup>18</sup>

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

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<sup>14</sup> *Id.* at 1344.

<sup>15</sup> *Id.* at 1348 (internal quotations omitted).

<sup>16</sup> *Id.* at 1349.

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

<sup>18</sup> *Cotton*, 559 F.2d at 1330.

defenses raised by Defendant.<sup>19</sup> In addition, Defendant's ordinance "[c]omes to [the] court clothed with a presumption of constitutionality."<sup>20</sup> 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."<sup>21</sup> Rather, "a settlement must be evaluated in light of the attendant risks with litigation."<sup>22</sup> 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."<sup>23</sup>

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."<sup>24</sup> Indeed, "[c]ounsel's conclusions that the Settlement is fair, adequate and reasonable provides strong evidence that the settlement merits the Court's approval."<sup>25</sup> Thus, "the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel."<sup>26</sup>

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

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<sup>19</sup> Def.'s Answer & Affirmative Defenses.

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

<sup>21</sup> *In re Checking*, 830 F.Supp.2d at 1345.

<sup>22</sup> *Id.* at 1350.

<sup>23</sup> *Id.* at 1346.

<sup>24</sup> *Cotton*, 559 F.2d at 1330.

<sup>25</sup> *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").

<sup>26</sup> *Cotton*, 559 F.2d at 1330.

granted an opportunity to opt out.”<sup>27</sup> 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 . . . .”<sup>28</sup> While the number of objectors “is a factor to be considered[,] . . . [it] is not controlling.”<sup>29</sup> In fact, a significant number of objectors is not a valid reason, without more, to reject a proposed class action settlement.<sup>30</sup> Likewise, a small number of objectors can indicate class-wide support of the proposed settlement.<sup>31</sup> 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.”<sup>32</sup>

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.<sup>33</sup>

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

<sup>28</sup> *Id.* at 573.

<sup>29</sup> *Cotton*, 559 F.2d at 1331.

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

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

<sup>32</sup> *Cotton*, 559 F.2d at 1331.

<sup>33</sup> 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."<sup>34</sup> Indeed, "[c]lass representatives [take] risks, [bear] hardships, and [make] sacrifices that absent class members [do] not."<sup>35</sup> 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."<sup>36</sup>

Incentive awards are used to reward class representatives who "diligently and completely fulfil[ ] [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."<sup>37</sup> 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."<sup>38</sup> "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."<sup>39</sup>

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,<sup>40</sup> read depositions,<sup>41</sup> attended depositions,<sup>42</sup> attended

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

<sup>35</sup> *Ingram*, 200 F.R.D. at 694.

<sup>36</sup> *Altamonte Springs*, 12 So.3d at 857.

<sup>37</sup> *Francisco*, 2008 WL 649124 at \*16.

<sup>38</sup> *Pinto*, 513 F.Supp.2d at 1344.

<sup>39</sup> *In re Checking*, 830 F.Supp.2d at 1357.

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

<sup>41</sup> *Id.* at 36:8-10.

<sup>42</sup> *Id.* at 36:11-12.

mediation,<sup>43</sup> conferenced with the other named plaintiffs and class counsel,<sup>44</sup> read pleadings,<sup>45</sup> attended hearings,<sup>46</sup> and testified in support of the Class.<sup>47</sup> 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 (11<sup>th</sup> Cir.

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<sup>43</sup> *Id.* at 36:13-14.

<sup>44</sup> *Id.* at 36:15-19.

<sup>45</sup> *Id.* at 36:20-22.

<sup>46</sup> *Id.* at 36:23-25.

<sup>47</sup> Am. Hr'g Tr., September 10, 2013.



2012). Cook v. Niedert, 142 F.3d 1004 (7<sup>th</sup> 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.”<sup>48</sup> This applies to both class representatives and Class Members who make a “unique and extraordinary . . . contribution to the litigation that entails risk or effort.”<sup>49</sup> 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.<sup>50</sup>

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.<sup>51</sup> 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.**

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

<sup>49</sup> 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).

<sup>50</sup> Ingram, 200 F.R.D. at 694.

<sup>51</sup> 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."<sup>52</sup> "[L]awyers who recover a common fund for the benefit of others are entitled to reasonable attorney's fees from the fund."<sup>53</sup> 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."<sup>54</sup> 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."<sup>55</sup>

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.

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<sup>52</sup> *Nelson*, 985 So.2d at 573.

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

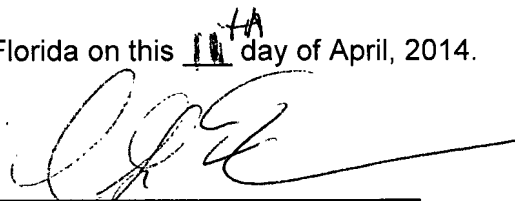
<sup>54</sup> *Fidelity & Cas. Co. of New York v. O'Shea*, 397 So.2d 1196, 1198 (Fla. 2d DCA 1981).

<sup>55</sup> *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 11<sup>th</sup> day of April, 2014.



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MICHAEL G. TAKAC  
Circuit Court Judge

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