UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-80456-CIV-MARRA/MATTHEWMAN

NORMAN HIRSCH, MATTHEW DWYER, and RALPH WILLARD, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

JUPITER GOLF CLUB LLC, a Delaware LLC d/b/a TRUMP NATIONAL GOLF CLUB JUPITER and RBF, LLC d/b/a THE RITZ-CARLTON GOLF CLUB & SPA JUPITER,

Defendants.
_____/

PLAINTIFFS' AND CLASS COUNSEL'S *UNOPPOSED* MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND APPLICATION FOR SERVICE AWARD, ATTORNEYS' FEES AND EXPENSES, AND INCORPORATED MEMORANDUM OF LAW

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I. INTRODUCTION

After more than four years of aggressive litigation, Plaintiffs won a substantial monetary judgment for themselves and the class following a bench trial. The principal sum of the judgment, $4,849,000, represented 100% of the damages sought by Plaintiffs at trial. In addition, the judgment included $925,010 of prejudgment interest, totaling $5,774,010. Defendant appealed the judgment. In addition to the judgment, Plaintiffs were awarded taxable costs, attorney fees, non-taxable costs and incentive awards. Oral argument before the U.S. Court of Appeals in the Eleventh Circuit is presently set in May. Plaintiffs-Appellees have a filed an unopposed motion for remand or stay of appellate proceedings in light of Class Settlement on March 9, 2018. The parties have entered into a proposed class Settlement Agreement ("Settlement Agreement"). The terms of the Settlement Agreement require Defendant Jupiter Golf Club LLC dba Trump National Golf Club Jupiter ("Trump National") to pay $5,446,278.72 (the "Settlement Fund").

The Settlement Fund will pay for: (1) attorneys' fees to Class Counsel in the percentage amount previously awarded by the Court, (2) costs to Class Counsel and incentive awards to Plaintiffs in the amounts previously approved by the Court, and (3) a cash settlement benefit to Class Members equal to approximately 71% of the principal sum (not including interest) of each Class Member's refundable deposit. This Settlement provides for a fundamentally fair, reasonable, and adequate resolution that will produce a substantial cash payment for every Class Member.

The Settlement Fund will be distributed to Class members on a pro rata basis, following the distribution of approved attorney fees, costs and incentive awards. Based on the controlling legal standards and supporting facts, the Settlement is fair, adequate and reasonable.

Plaintiffs and Class Counsel now seek Final Approval of the Settlement. Class Counsel also request that the Court award a Service Award to the Class Representatives, whose willingness

to represent the Settlement Class and participation in the Action helped make the Settlement possible. Finally, Class Counsel request that the Court award attorneys' fees and approve the reimbursement of certain expenses incurred in prosecuting the Action.

The Parties and their counsel have considered the inherent issues and risks in pursuing the appeal of the judgment. *See* Lehrman Decl., ¶ 6, attached as **Exhibit A**. They have determined that it is in the best interests (and in the best interest of the Class) to enter into a fair, reasonable, and adequate settlement. *Id*. Although Plaintiffs and Class Counsel are confident that the judgment would withstand Defendant's appeal, Plaintiffs and Class Counsel believe that it is desirable that the Action be fully and finally compromised, settled and terminated now with prejudice pursuant to the terms and conditions set forth in the Settlement Agreement in order to mitigate the risk that an adverse ruling on appeal could vitiate the significant victory that Plaintiffs obtained at trial and to ensure that Class Members receive the substantial cash payment that the Settlement will provide. *Id*., ¶ 6. Plaintiffs and Class Counsel have concluded that the terms and conditions of the Settlement Agreement are fair, reasonable and adequate to the proposed class, and that it is in the best interests of the proposed class to settle the Action. *Id*., ¶ 9. The Agreement is the result of extensive negotiations. *Id*., ¶ 8.

Plaintiffs submitted the proposed Agreement [DE 43-1], and it was determined by the Court that is fair and reasonable as was outlined in the Motion for Preliminary Approval of Class Action Settlement [DE 43]. The Agreement provides relief to the Settlement Class where their recovery, if any, would otherwise be uncertain, especially given Defendant's willingness to continue its appeal of the judgment. For these reasons, and as further discussed below, Plaintiffs request the Court's final approval of the Agreement.

On February 26, 2018, the Court entered a Preliminary Approval Order, directed that notice be provided to the Settlement Class and established a deadline for the filing of objections to final approval of the settlement. [DE 316].

Plaintiffs and Class Counsel now request that the Court grant final approval to the Settlement; approve the Plaintiffs' requested service awards; award Class Counsel attorneys' fees and reimbursement of certain expenses; and enter final judgment dismissing the Action with prejudice.[1]

II. SETTLEMENT TERMS

The Settlement terms are detailed in the Agreement. The following is a summary of its material terms.

A. The Settlement Fund

The proposed Settlement establishes a Settlement Fund of $5,446,278.72. The Settlement Fund would pay for: (1) attorneys' fees to Class Counsel in the percentage amount previously awarded by the Court (36% of the Settlement Fund), (2) costs to Class Counsel and incentive awards to Plaintiffs in the amounts previously approved by the Court, and (3) a cash settlement benefit to Class Members equal to approximately 71% of the principal sum of each Class Member's refundable deposit. The Settlement Fund will be distributed to Class Members upon final approval of the Settlement. This is not a claims-made settlement. Class Members are not required to submit any claim form to receive the full benefit of the Settlement. Upon Final

[1] Plaintiffs and Class Counsel previously filed a Motion for Remand in the Eleventh Circuit requesting that the appellate court partially remand the case to the District Court so that the District Court would have jurisdiction to enter an order granting final approval of the settlement and to enter a final judgment thereon. Accordingly, Plaintiffs and Class Counsel request that the Court enter an indicative ruling, confirming its intention to promptly grant final approval of the settlement and enter a final judgment thereon, upon being vested with jurisdiction.

Approval, Class Counsel will send a check to each of the sixty-five Class Members. No portion of the Settlement Fund will revert to Defendant.

B. Notice and Settlement Administration

Class Counsel have fully implemented the court-approved notice, providing notice through First Class U.S. Mail and Website Notice. Class Counsel established and oversaw a dedicated settlement Website (www.MembershipDepositLawsuit.com) containing settlement information and related documents, including: Notice, the Settlement Agreement, and the Preliminary Approval Order. Lehrman Decl., ¶ 15. These documents have been continuously available on the Website since March 5, 2018. *Id*. Class Counsel have also maintained a toll-free telephone number at all times since the entry of the preliminary approval order. *Id*. In addition, CAFA notice of the settlement was sent to the U.S., state and other attorneys' general pursuant to 28 U.S.C. §1715. *Id*., ¶16.

C. Objections Procedure

Settlement Class Members were given an opportunity to object to approval of the Settlement. The deadline for filing objections was conspicuously listed in the Notice, as well as on the settlement website. The process for filing objections was also explained in the Notice and outlined in documents available on the website. With regard to objections, the Notice informs Settlement Class Members that the Final Approval Hearing will be the only opportunity for them to appear and have their objections heard. As of the filing of this motion, no objections have been filed or received by Class Counsel. Lehrman Decl., ¶ 17.

D. Attorneys' Fees and Costs

Class Counsel will petition the Court for an award of reasonable attorneys' fees plus expenses, to be paid by Defendant from the Settlement Fund. The Settlement provides for

attorneys' fees in the amount of $1,960,660.39 to Class Counsel, plus taxable costs in the amount of $23,579.32, plus non-taxable costs in the amount of $9,300.24 for a total of $1,999,539.95. Agreement ¶ 13. This award shall be Class Counsel's total recovery for attorneys' fees, costs, and/or adequately supported expenses of any kind. *Id.* The Parties negotiated and reached agreement regarding fees and costs only after agreeing on all other material terms of the Settlement. Lehrman Decl., ¶ 18.

E. Release

Upon entry of final approval of the Settlement, the parties provide each other with reciprocal releases. Agreement, ¶ 18. Plaintiffs and Class Members release Defendant and its designated related parties from any and all fees, dues, deposits or other amounts arising from or in any way relating to Plaintiffs' and Class Members' memberships in and at the Trump National Jupiter Golf Club, the Ritz-Carlton Golf Club & Spa and any predecessor club thereof (together, "Membership Deposit Related Claims"). *Id.* Likewise, Defendant releases Plaintiffs and Class Members from all Membership Deposit Related Claims. *Id.*

III. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

The federal courts have long recognized a strong policy and presumption in favor of class settlements. The Rule 23(e) analysis should be "informed by the strong judicial policy favoring settlements as well as the realization that compromise is the essence of settlement." *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. Unit B 1982). In evaluating a proposed class settlement, the Court "will not substitute its business judgment for that of the parties; 'the only question . . . is whether the settlement, taken as a whole, is so unfair on its face as to preclude judicial approval.'" *Rankin v. Rots*, 2006 WL 1876538, at *3 (E.D. Mich. June 28, 2006) (quoting *Zerkle v. Cleveland-Cliffs Iron Co.*, 52 F.R.D. 151, 159 (S.D.N.Y. 1971)). Indeed, "[s]ettlement

agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and uncertainties and preventing lawsuits." *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1105 (5th Cir. 1977). Class settlements minimize the litigation expenses of the parties and reduce the strain that litigation imposes upon already scarce judicial resources. Therefore, "federal courts naturally favor the settlement of class action litigation." *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996). The Settlement here is more than sufficient under Rule 23(e) and Final Approval is clearly warranted.

A. The Court Has Personal Jurisdiction Over the Settlement Class Because the Settlement Class Received Adequate Notice and an Opportunity to Be Heard.

In addition to having personal jurisdiction over the Plaintiffs, who are a party to this Action, the Court also has personal jurisdiction over all members of the Settlement Class because they received the requisite notice and due process. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950)); *see also In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 306 (3d Cir. 1998).

1. The Best Notice Practicable Was Furnished.

The Notice Program was comprised of two parts: (1) direct mail notice to all Class Members; and (2) a Settlement Website which provides access to the Notice, Agreement, and other documents. Agreement, ¶ 4; Lehrman Decl., ¶¶ 10-11. Each facet of the Notice Program was timely and properly accomplished. *See* Lehrman Declaration, ¶ 15.

Class Counsel also established the Settlement Website, http://membershipdepositlawsuit.com, which published notice and other Settlement related documents on March 5, 2018. *Id*. at ¶ 15. The Notice, along with other key pleadings, have been and will continue to be available on the Settlement Website to enable Settlement Class members to obtain detailed information about the Action and the Settlement. *Id*. ¶ 15.

2. The Notice and Notice Program Were Reasonably Calculated to Inform the Settlement Class of Their Rights.

The Court-approved Notice satisfied due process requirements because they described "the substantive claims . . . [and] contain[ed] information reasonably necessary to make a decision to remain a class member and be bound by the final judgment." *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d at 1104-05. The Notice, among other things, defined the Settlement Class, described the release provided under the Settlement, as well as the amount and proposed distribution of the Settlement proceeds, and informed Settlement Class members of their right to object, the procedures for doing so, and the time and place of the Final Approval Hearing. It also told them where they could get more information – for example, at the Settlement Website that has a copy of the Agreement, as well as other important documents. Further, the Notice described Class Counsel's attorneys' fees and reasonable expenses approved by the Court and Incentive Payments for Plaintiffs. Hence, Settlement Class members were provided with the best practicable notice that was "reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Shutts*, 472 U.S. at 812 (quoting *Mullane*, 339 U.S. at 314-15); *see* Lehrman Decl. ¶¶ 10, 11, 15.

As of April 6, 2018, no objections to the Settlement had been filed. Lehrman Decl. ¶ 17. The objection period ends on April 13, 2018.

B. The Settlement Should Be Approved as Fair, Adequate and Reasonable.[2]

In deciding whether to approve the Settlement, the Court will analyze whether it is "fair, adequate, reasonable, and not the product of collusion." *Leverso v. Southtrust Bank*, 18 F.3d 1527, 1530 (11th Cir. 1994); *see also Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). A settlement is fair, reasonable and adequate when "the interests of the class as a whole are better

[2] In the event any timely objections are submitted Class Counsel will file a response.

served if the litigation is resolved by the settlement rather than pursued." *In re Lorazepam & Clorazepate Antitrust Litig.*, MDL No. 1290, 2003 WL 22037741, at *2 (D.D.C. June 16, 2003) (quoting *Manual for Complex Litigation (Third)* § 30.42 (1995)). Importantly, 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." *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1014 (N.D. Ill. 2000) (citations omitted).

The Eleventh Circuit has identified six factors to be considered in analyzing the fairness, reasonableness and adequacy of a class settlement under Rule 23(e):

(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 the class counsel, class representatives, and the substance and amount of opposition to the settlement.

Leverso, 18 F.3d at 1530 n.6; *see also Bennett*, 737 F.2d at 986. The analysis of these factors set forth below shows this Settlement to be eminently fair, adequate and reasonable.

1. The Settlement Was the Result of Arm's-Length Negotiation Between the Parties.

The context in which the Settlement was reached confirms that it was the result of arm's-length and informed negotiations as opposed to collusion among the parties. The Settlement was reached only after a trial, the entry of a final judgment in favor of Plaintiffs and the Class, Defendant's appeal of the judgment, the completion of appellate briefing and several court-

appointed mediation sessions. Moreover, the Parties agreed on the terms of the Settlement through experienced counsel, who had at their disposal ample information to evaluate the terms of any proposed agreement so as to reach a fair and reasonable compromise. As such, it is clear that the Settlement was the result of arm's-length and informed negotiation between the Parties, and given that, this Court should not hesitate to approve it.

2. The Settlement Satisfies Each of the *Bennett* Factors.

In addition to being the result of arm's-length negotiations free from fraud or collusion, the Settlement here also satisfies each of the *Bennett* factors. While the Eleventh Circuit instructs district courts to consider the *Bennett* factors, "[i]n evaluating these considerations, the district court should not try the case on the merits." *Perez v. Asurion Corp*., 501 F. Supp. 2d 1360, 1380 (S.D. Fla. 2007) "Rather, the court must rely upon the judgment of experienced counsel and, absent fraud, should be hesitant to substitute its own judgment for that of counsel." *Id*. Here, as explained below, each of the *Bennett* factors weighs in favor of approving the Settlement Agreement.

a. Likelihood of Success at Trial

The first *Bennett* factor to consider in determining whether a settlement is fair, reasonable, and adequate is the likelihood of success at trial. "The likelihood of success on the merits is weighed against the amount and form of relief contained in the settlement." *Lipuma*, 406 F. Supp. 2d at 1319; s*ee also Figueroa v. Sharper Image Corp.*, 517 F. Supp. 2d 1292, 1323-24 (S.D. Fla. 2007). Where success at trial is not certain for plaintiffs, this factor weighs in favor of approving the settlement. *See Fresco v. Auto. Directions, Inc*., No. 03-CIV-61063-MARTINE, 2009 WL 9054828, at *4 (S.D. Fla. Jan. 20, 2009); *Perez*, 501 F. Supp. 2d at 1380. Although Plaintiffs won the trial and obtained a substantial judgment, Defendant has appealed the judgment and asserted several bases to set aside the judgment. If Defendant should succeed on its appeal, then Plaintiffs and the class may recover nothing. Although Plaintiffs won class certification and then won the

trial, there is a genuine risk that the judgment could be set aside on appeal.

b. Range of Possible Recovery and Point at which Settlement is Fair, Reasonable, and Adequate

Analysis of the second and third *Bennett* factors—the range of possible recovery and the point on or below the range at which a settlement is fair, adequate and reasonable—is often combined. *In re Sunbeam*, 176 F. Supp. 2d at 1331. As in most litigation, "[t]he range of potential recovery spans from a finding of non-liability through varying levels of injunctive relief, in addition to any monetary benefits to class members." *Fresco*, 517 F. Supp. 2d at 1326 (citing *Lipuma*, 406 F. Supp. 2d at 1322) (internal quotation omitted). However, "the Court's role is not to engage in a claim-by-claim, dollar-by-dollar evaluation, but rather, to evaluate the proposed settlement in its totality." *Figueroa*, 517 F. Supp. 2d at 1326

After deduction of court-approved attorneys' fees, costs, and incentive awards, the Settlement will provide a cash benefit to every Class Member of approximately 71% of the principal sum of their refundable deposit. Considering the circumstances, this settlement benefit and the Settlement as a whole is fair, adequate and reasonable. Thus, the second and third *Bennet* factors weigh in favor of approval.

c. Complexity, Expense, and Duration of Litigation

The next *Bennett* factor to consider is the complexity, expense, and duration of litigation. As the Eleventh Circuit has noted, "settlements contribute greatly to the efficient utilization of our scarce judicial resources." *Cotton*, 559 F.2d at 1331 "The law favors compromises in large part because they are often a speedy and efficient resolution of long, complex, and expensive litigation." *Perez*, 501 F. Supp. 2d at 1381. In evaluating this *Bennett* factor, courts "should consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation."

Lipuma, 406 F. Supp. 2d at 1323. Here, this factor weighs in favor of approving the Settlement Agreement.

The expense and duration of this litigation has been substantial and protracted. There have been multiple appeals to the Eleventh Circuit in this litigation. Continued litigation of this matter would delay its resolution and inflict unnecessary additional expense on both sides. Where unnecessary additional costs and delay are likely to be incurred absent a settlement, "it [is] proper to take the bird in the hand instead of a prospective flock in the bush." *Lipuma*, 406 F. Supp. 2d at 1323 (quoting *In re Shell Oil Refinery*, 155 F.R.D. 552, 560 (E.D.La.1993)). *See also Perez*, 501 F. Supp. 2d at 1381 ("With the uncertainties inherent in pursuing trial and appeal of this case, combined with the delays and complexities presented by the nature of the case, the benefits of a settlement are clear."). Thus, the complexity, expense, and duration of litigation thus weigh in favor of approving the Parties' settlement.

d. Substance and Amount of Opposition to Settlement

The next *Bennett* factor to consider is the substance and amount of opposition to the settlement. Here, the Court-approved notice plan prompted no objections. Class Counsel received calls from more than a dozen Class Members expressing their strong support of the Settlement and appreciation for the work performed by Class Counsel and the Class Representatives. Lehrman Decl., 19. The fact there are no objections demonstrates that class members find the agreement reasonable and fair, and strongly favors approval of the settlement. *See Lipuma*, 406 F. Supp. 2d at 1324 ("a low percentage of objections points to the reasonableness of a proposed settlement and supports its approval."); *Allapattah Servs., Inc. v. Exxon Corp.*, No. 91-cv-0986, 2006 WL 1132371, at *13 (S.D. Fla. Apr. 7, 2006) ("I infer from [the] absence of a significant number of objections that the majority of the Class found [the settlement agreement] reasonable and fair.").

Accordingly, the clear lack of opposition weighs heavily in favor of final approval.

e. Stage of Proceedings at which Settlement Achieved

The final *Bennett* factor looks to the stage of proceedings at which the settlement was achieved. Courts look at this factor "to ensure that the plaintiffs have access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of the settlement against further litigation." *Perez*, 501 F. Supp. 2d at 1383; *see also Access Now, Inc. v. Claire's Stores, Inc.*, 00-cv-14017, 2002 WL 1162422, at *7 (S.D. Fla. May 7, 2002) ("Because the parties have expended much effort in analyzing the issues, this Court should find that the parties are at a proper juncture with sufficient information to settle this action."); *In re Sunbeam*, 176 F. Supp. 2d at 13328 ("Obviously, the case had progressed to a point where each side was well aware of the other side's position and the merits thereof. This factor weighs in favor of the Court finding the proposed settlement to be fair, adequate, and reasonable.").

Here, the Settlement Agreement was not reached until the Parties had completed discovery, taken extensive depositions, filed and adjudicated dispositive motions, completed a bench trial, won a judgment, and then fully briefed Defendant's appeal of the judgment. Lehrman Decl., 8. There can be no question that certainly Plaintiffs and Class Counsel possessed sufficient information to adequately assess the litigation risks and the benefits of the proposed settlement.

Hence, there should be no question that, by the time the Settlement was reached, Plaintiffs had enough information to sufficiently evaluate the strength of the claims of the Settlement Class and weigh the benefits of Settlement against continued litigation. The stage of proceedings factor thus weighs in favor of approval as well.

IV. APPLICATION FOR SERVICE AWARDS

Pursuant to the Settlement, Class Counsel respectfully request, and Defendant does not oppose, Service Awards for each of the Class Representatives in the amount of $2,000 that was previously approved by the Court. Agreement ¶ 13. Service awards "compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006). "[T]here is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action." *David v. American Suzuki Motor Corp.*, 2010 WL 1628362, at *6 (S.D. Fla. Apr. 15, 2010). Courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become class representatives. *See, e.g., Stallworth v. Monsanto Co.*, No. PCA 73-45. 198) U.S. Dist. LEXIS 12858, at *20-21 (N.D. Fla. June 26, 1980) (approving service awards ranging from $10,000 to $20,000 to four named plaintiffs, "each of whom devoted substantial time to the prosecution of th[e] lawsuit"); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (awarding class representatives $300,000 each, explaining that "the magnitude of the relief the Class Representatives obtained on behalf of the class warrants a substantial incentive award."); *Spicer v. Chicago Bd. Options Exchange, Inc.*, 844 F. Supp. 1226, 1267-68 (N.D. Ill. 1993) (collecting cases approving service awards ranging from $5,000 to $100,000, and awarding $10,000 to each named plaintiff).

The relevant factors include: (1) the actions the class representatives 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. *See, e.g., Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). These factors, as applied to this Action,

demonstrate the reasonableness of the requested Service Awards to Plaintiffs. Plaintiffs provided substantial assistance that enabled Class Counsel to successfully prosecute the Action including submitting to interviews with Class Counsel, and reviewing material filings, locating and forwarding responsive documents and information. Lehrman Decl., ¶ 20. Plaintiffs devoted substantial time to the litigation of this action, which included their preparing for and testifying at depositions and preparing for and attending trial. *Id.*, ¶ 21. Plaintiffs demonstrated their substantial and unwavering commitment to this cause through the considerable time, effort and risk which they invested over more than four years of contentious litigation. *Id*., ¶ 22.

Plaintiffs not only devoted substantial time and effort to the litigation, but the end result of their efforts, coupled with those of Class Counsel, provided a substantial benefit to the Settlement Class. The total Service Awards of $6,000 are less than 0.001% of the Settlement Fund, a ratio that falls well below the range of what has been deemed to be reasonable. *Id.*; s*ee, e.g*., *Enter. Energy Corp. v. Columbia Gas Transmission*, 137 F.R.D. 240, 251 (S.D. Ohio 1991) (approving service awards totaling $300,000, or 0.56% of a $56.6 million settlement). The Service Awards requested here are reasonable.

V. APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

The Settlement incorporates the award of attorney fees [DE 313], taxable costs [DE 296], and non-taxable costs [DE 313] to Class Counsel, including all findings of fact and conclusions of law. The Settlement Notice provided notice, inter alia, that the previously awarded fees, costs and incentive awards are fully incorporated into the settlement. Plaintiffs and Class Counsel request attorney fees of thirty-six percent (36%) of the Settlement Fund; plus taxable costs and non-taxable costs in the amounts previously awarded; and incentive awards of $2,000 for each Plaintiff, consistent with the awards previously made by the Court. Class Counsel and Plaintiffs request

and Defendant does not to oppose the following requests for attorney fees, costs and incentive awards:

a. Attorney Fees in the amount of $1,960,660.39, representing 36% of Settlement Fund of $5,446,278.72; plus

b. Taxable Costs in the amount $23,579.32; plus

c. Non-Taxable Costs in the amount of $9,300.24; plus

d. Incentive Awards in the amount of $2,000 each to Hirsch, Dwyer and Willard, totaling $6,000.00.

The total award of attorney fees, costs and incentive awards requested by Plaintiffs and Class Counsel is $1,999,539.95. Agreement, ¶ 13. Class Counsel and Defendant negotiated and reached agreement regarding attorneys' fees and costs only after reaching agreement on all other material Settlement terms. *Id*. ¶ 18. The requested fee is within the range of reason under the factors listed in *Camden I Condo. Ass'n. v. Dunkle*, 946 F.2d 768 (11th Cir. 1991). For the reasons detailed herein, Class Counsel submit that the requested fee is appropriate, fair and reasonable and respectfully requests that it be approved by the Court.

Plaintiffs and Class Counsel previously filed a request for attorney fees, costs, and incentive awards. Defendant had an opportunity to oppose the motion but did not do so. Following a hearing on the fee motion, the Court granted Plaintiffs' and Class Counsel's request in full. See [DE 313]. The Court previously awarded Class Counsel attorney fees representing 36% of the total judgment amount, plus taxable and non-taxable costs in the amounts requested and incentive awards to Plaintiffs. [DE 313 and 296]. The Court had previously found that Class Counsel were entitled to attorney fees based on a percentage of the common fund that they won for the class and that a fee request of 36% of the common fund was reasonable under both *Camden I* and the

Johnson factors. [DE 313]. Likewise, the Court found that Class Counsel are entitled to an award of reasonable expenses from the common fund and their requested expenses were reasonable. *Id.* Accordingly, Plaintiffs and Class Counsel request that the Court adopt its earlier findings, pursuant to the Settlement, affirm Class Counsel's entitlement to its requests to attorney fees and costs and the entitlement of Plaintiffs' to incentive awards, find that such requests are reasonable, and award the requested amounts.

VI. CONCLUSION

The proposed Settlement is an excellent result which more than satisfies the fairness and reasonableness standard of Rule 23(e). Further, Class Counsel's request for Service Awards for the Plaintiffs and the application for attorneys' fees and expenses is reasonable under all the circumstances. The fee request satisfies the guidelines of *Camden I* given the results achieved, the notable litigation risks, the extremely complicated nature of the factual and legal issues, and the time, effort and skill required to litigate claims of this nature to a satisfactory conclusion.

Accordingly, Plaintiffs and Class Counsel respectfully request that this Court: (1) enter an indicative ruling pursuant to Fed. R. App. Proc. 12.1(b) stating that it will grant the instant motion and grant final approval of the Settlement once the court of appeals remands the action (a proposed indicative ruling is attached as **Exhibit B**); and (2) upon remand (i) grant Final Approval to the Settlement and enter the proposed order attached as **Exhibit C,** (ii) approve the requested Service Awards,(iii) award Class Counsel attorneys' fees, costs and expenses in the amount requested, to be paid out of the Settlement Fund; (iv) enter Final Judgment dismissing the Action with prejudice and (v) grant such other and further relief as may be deemed just.

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Dated: April 6, 2018

Respectfully submitted,

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Plaintiffs' and Class Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 6, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Seth M. Lehrman
Seth M. Lehrman

EXHIBIT “A”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
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Defendants.
_____/

DECLARATION OF SETH LEHRMAN IN SUPPORT OF PLAINTIFFS' *UNOPPOSED* MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I, SETH LEHRMAN, pursuant to 28 U.S.C. Sec. 1746, declare under perjury that the following is true and correct:

1. I, Seth Lehrman, along with Bradley J. Edwards and Mark S. Fistos, are Class Counsel in this action. As Class Counsel, I have personal knowledge of the matters set forth in this declaration and, if called to testify to them, would competently do so. I submit this declaration in support of the Plaintiffs' Unopposed Motion for Final Approval of the Settlement Agreement.

2. Plaintiffs and Class Counsel have diligently pursued this litigation for more than four years. We avoided dismissal, obtained class certification and defeated in part Defendant's summary judgment challenge. We obtained extensive discovery. I deposed Defendant's representatives, and other witnesses and, along with Brad Edwards, tried the case to verdict on behalf of Plaintiffs and the class.

3. Plaintiffs and the Class sought to recover $4,849,000, representing the principal amount of refundable membership deposits which Plaintiffs claimed were owing to them and the Class, plus interest.

4. Following trial, the Court awarded the principal sum of $4,849,000 plus prejudgment interest of $925,010 for a full judgment of $5,774,010 for Plaintiffs and the Class. This judgment represented the full relief that was requested at trial.

5. Defendant appealed the judgment to the U.S. Court of Appeals for the Eleventh Circuit (the "Appeal"). The parties have fully briefed the Appeal. Oral argument has been set the week of May 14 through May 18, 2018.

6. Class Counsel and Plaintiffs have considered the inherent issues and risks in pursuing the Appeal. Class Counsel have determined that it is in the best interests of the Plaintiffs and the Class to enter into a fair, reasonable, and adequate settlement.

7. Although Plaintiffs and Class Counsel are confident that the judgment would withstand Defendant's appeal, Plaintiffs and Class Counsel believe that it is desirable that the Action be fully and finally compromised, settled and terminated now with prejudice pursuant to the terms and conditions set forth in the Settlement Agreement in order to mitigate the risk that an adverse ruling on appeal could vitiate the significant victory that Plaintiffs obtained at trial and to ensure that Class Members receive the substantial cash payment that the Settlement will provide.

8. Class Counsel negotiated the proposed Settlement with Plaintiffs' authority after more than four years of contentious litigation, contested class certification, summary judgment motions, a trial, multiple appeals and extensive arm's-length settlement negotiations.

9. Plaintiffs and Class Counsel have concluded that the terms and conditions of the Settlement Agreement are fair, reasonable and adequate to the proposed class, and that it is in the best interests of the proposed class to settle the Action.

10. Class Members were advised of their rights and options through direct mail notice and a dedicated web-site through which they can receive updates, access settlement documents and receive answers to frequently asked questions.

11. A substantially similar notice plan has been approved by this Court several times previously in the instant action and has been provided to Class Members several times to notify Class Members that a class had been certified, to give notice of a proposed settlement with RBF LLC, and to give notice of Class Counsel's fee application. See DEs 131, 183 and 311. The notice plan utilized the notice website and toll-free number that have been previously used in this litigation for all prior notices and which have been accessible to Class Members continuously since the first notice was provided in this litigation.

12. The proposed Settlement establishes a Settlement Fund of $5,446,278.72. The Settlement Fund represents more than 93% of the total judgment amount, inclusive of prejudgment interest, postjudgment interest, and taxable costs.

13. After deduction of attorneys' fees, costs and incentive awards, the Settlement Fund will provide a cash settlement benefit to Class Members equal to 71% of the principal sum of each Class Member's refundable deposit.

14. The proposed settlement provides significant monetary benefits to Class Members on fair, reasonable, and adequate terms.

15. Class Counsel established and oversaw a dedicated settlement Website (www.MembershipDepositLawsuit.com) containing settlement information and related

documents, including: Notice, the Settlement Agreement, and the Preliminary Approval Order. These documents have been continuously available on the Website since March 5, 2018. Class Counsel have also maintained a toll-free telephone number at all times since the entry of the preliminary approval order.

16. In addition, CAFA notice of the settlement was sent to the U.S., state and other attorneys' general pursuant to 28 U.S.C. §1715.

17. As of the filing of this motion, no objections have been filed or received by Class Counsel.

18. The Parties negotiated and reached agreement regarding fees and costs only after agreeing on all other material terms of the Settlement.

19. Class Counsel has received calls from more than a dozen Class Members expressing their strong support of the Settlement and appreciation for the work performed by Class Counsel and the Class Representatives.

20. Plaintiffs provided substantial assistance that enabled Class Counsel to successfully prosecute the Action including submitting to interviews with Class Counsel, and reviewing material filings, locating and forwarding responsive documents and information.

21. Plaintiffs devoted substantial time to the litigation of this action, which included their preparing for and testifying at depositions and preparing for and attending trial.

22. Plaintiffs demonstrated their substantial and unwavering commitment to this cause through the considerable time, effort and risk which they invested over more than four years of contentious litigation.

Executed this 6th day of April, 2018, in Fort Lauderdale, Florida.

/s/ Seth M. Lehrman
SETH M. LEHRMAN

EXHIBIT “B”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-80456-CIV-MARRA/MATTHEWMAN

NORMAN HIRSCH, MATTHEW DWYER, and RALPH WILLARD, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

JUPITER GOLF CLUB LLC, a Delaware LLC d/b/a TRUMP NATIONAL GOLF CLUB JUPITER and RBF, LLC d/b/a THE RITZ-CARLTON GOLF CLUB & SPA JUPITER,

Defendants.
_____/

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION PURSUANT TO FRAP 12.1

WHEREAS, Plaintiffs Norman Hirsch, Matthew Dwyer and Ralph Willard on behalf of themselves and the Settlement Class have applied to the Court pursuant to Federal Rules of Appellate Procedure for an indicative ruling and Defendant Jupiter Golf Club, LLC does not oppose this request.

WHEREAS, the Court is familiar with and has reviewed the record in the action and has reviewed the papers submitted in support hereof.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

The Court, upon finding that the proposed Settlement is fair, reasonable and adequate and after providing an opportunity to Settlement Class Members to be heard, will grant the final approval of the Settlement if, for purposes of approving the Settlement, the United States Court of

Appeals for the Eleventh Circuit, remanded the case currently pending before it, captioned *Hirsch, et al. v. Jupiter Golf Club, LLC*, Case No. 17-10939 (11th. Cir.).

IT IS SO ORDERED.

This _____ day of _____, 2018.

KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc: All Counsel of Record

EXHIBIT “C”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-80456-CIV-MARRA/MATTHEWMAN

NORMAN HIRSCH, MATTHEW DWYER, and RALPH WILLARD, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

JUPITER GOLF CLUB LLC, a Delaware LLC d/b/a TRUMP NATIONAL GOLF CLUB JUPITER and RBF, LLC d/b/a THE RITZ-CARLTON GOLF CLUB & SPA JUPITER,

Defendants.
_____/

[PROPOSED] ORDER GRANTING FINAL APPROVAL TO CLASS ACTION SETTLEMENT AND FINAL JUDGMENT

On February 26, 2018, this Court granted preliminary approval to the proposed class action settlement set forth in Plaintiffs' Unopposed Motion and Supporting Memorandum for Preliminary Approval of Class Action Settlement (the "Motion") and Settlement Agreement (the "Settlement Agreement") between Plaintiffs, Norman Hirsch, Matthew Dwyer, and Ralph Willard ("Plaintiffs"), on behalf of themselves and all members of the Settlement Class,[1] and Defendant Jupiter Golf Club LLC, LLC d/b/a Trump National Golf Club Jupiter ("Trump National") (collectively, the "Parties"). The Court also provisionally certified the Settlement Class for settlement purposes, approved the procedure for giving Class Notice to the Settlement Class Members, and set a Final Approval Hearing to take place on April 20, 2018 at 9:00 a.m., to: (a) determine whether the Settlement is fair, reasonable and adequate, and should be approved by the

[1] Unless otherwise defined, capitalized terms in this Order have the definitions found in the Settlement Agreement.

Court; (b) resolve any Objections to the Settlement, if any; (c) determine whether the judgment as provided under the Settlement Agreement should be entered; (d) consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and (e) consider and rule upon such other matters as the Court may deem appropriate.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

I. JURISDICTION OF THE COURT

1. The Court has personal jurisdiction over the Plaintiffs, who are parties to this Action, the Court also has personal jurisdiction over all members of the Settlement Class because they received the requisite notice and due process. Venue is proper, and the Court has subject matter jurisdiction to approve the Settlement Agreement, including all Exhibits thereto, and to enter this Final Order and Judgment. Without in any way affecting the finality of this Final Order and Judgment, this Court hereby retains jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and of this Final Order and Judgment, and for any other necessary purpose.

2. The Settlement was reached only after a trial, the entry of a final judgment in favor of Plaintiffs and the Class, Defendant's appeal of the judgment, the completion of appellate briefing and several court-appointed mediation sessions. Moreover, the Parties agreed on the terms of the Settlement through experienced counsel, who had at their disposal ample information to evaluate the terms of any proposed agreement so as to reach a fair and reasonable compromise. As such, it is clear that the Settlement was the result of arm's-length and informed negotiation between the Parties, and given that, this Court should not hesitate to approve it.

3. The Settlement here is more than sufficient under Rule 23(e) and Final Approval is clearly warranted.

II. SETTLEMENT

4. After more than four years of aggressive litigation, Plaintiffs won a substantial monetary judgment for themselves and the class following a bench trial. The principal sum of the judgment, $4,849,000, represented 100% of the damages sought by Plaintiffs at trial. In addition, the judgment included $925,010 of prejudgment interest, totaling $5,774,010. Defendant appealed the judgment. In addition to the judgment, Plaintiffs were awarded taxable costs, attorney fees, non-taxable costs and incentive awards. Oral argument before the U.S. Court of Appeals in the Eleventh Circuit is presently set in May. Plaintiffs-Appellees have a filed an unopposed motion for remand or stay of appellate proceedings in light of Class Settlement on March 9, 2018. The parties have entered into a proposed class Settlement Agreement ("Settlement Agreement"). The terms of the Settlement Agreement require Defendant Jupiter Golf Club LLC dba Trump National Golf Club Jupiter ("Trump National") to pay $5,446,278.72 (the "Settlement Fund").

5. The Settlement Fund will pay for: (1) attorneys' fees to Class Counsel in the percentage amount previously awarded by the Court, (2) costs to Class Counsel and incentive awards to Plaintiffs in the amounts previously approved by the Court, and (3) a cash settlement benefit to Class Members equal to approximately 71% of the principal sum (not including interest) of each Class Member's refundable deposit. This Settlement provides for a fundamentally fair, reasonable, and adequate resolution that will produce a substantial cash payment for every Class Member.

6. The Settlement Fund will be distributed to Class members on a pro rata basis, following the distribution of approved attorney fees, costs and incentive awards. Based on the controlling legal standards and supporting facts, the Settlement is fair, adequate and reasonable.

IV. NOTICE AND CLAIMS PROCESS

7. The Court makes the following findings on notice to the Settlement Class:

(a) The Court finds that the distribution of the Class Notice, as provided for in the Settlement Agreement, (i) constituted the best practicable notice under the circumstances to Settlement Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of, among other things, the pendency of the Action, the nature and terms of the proposed Settlement, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law.

(b) The Court finds that the Class Notice and methodology set forth in the Settlement Agreement, the Preliminary Approval Order, and this Final Order and Judgment (i) constitute the most effective and practicable notice of the Final Order and Judgment, the relief available to Settlement Class Members pursuant to the Final Order and Judgment, and applicable time periods; (ii) constitute due, adequate, and sufficient notice for all other purposes to all Settlement Class Members; and (iii) comply fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable laws.

V. FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT

8. The Settlement Agreement is finally approved in all respects as fair, reasonable and adequate. The terms and provisions of the Settlement Agreement, including all Exhibits thereto, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable,

and adequate as to, and in the best interests of, each of the Parties and the Settlement Class Members.

VI. ADMINISTRATION OF THE SETTLEMENT

9. The proposed Settlement establishes a Settlement Fund of $5,446,278.72. The Settlement Fund would pay for: (1) attorneys' fees to Class Counsel in the percentage amount previously awarded by the Court (36% of the Settlement Fund), (2) costs to Class Counsel and incentive awards to Plaintiffs in the amounts previously approved by the Court, and (3) a cash settlement benefit to Class Members equal to approximately 71% of the principal sum of each Class Member's refundable deposit. The Settlement Fund will be distributed to Class Members upon final approval of the Settlement. This is not a claims made settlement. Class Members are not required to submit any claim form to receive the full benefit of the Settlement. Upon Final Approval, Class Counsel will send a check to each of the sixty-five Class Members. No portion of the Settlement Fund will revert to Defendant.

VII. AWARD OF ATTORNEYS FEES, EXPENSES AND INCENTIVE AWARDS

A. Under *Camden I*, Class Counsel are Entitled to Attorney's Fees Calculated as a Percentage of the Common Fund They Won for the Class.

10. Likewise, Class Counsel satisfy the second analytical prong—regarding how fees should be calculated. In Camden I, the Eleventh Circuit categorically held that, "henceforth, in this circuit, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." 946 F.2d at 774. Consistent with this mandate, judges in this District and others, and commentators, interpret *Camden I* to mean: (1) that calculating fees as "percentage of the fund is the exclusive method for awarding fees in common fund class actions;" and that (2) the lodestar approach should not be imposed in common fund cases, even indirectly, for example, through the back door via a lodestar "crosscheck." *In re*

Checking Account Overdraft Litig., 830 F. Supp. 2d 1330, 1362 (S.D. Fla. 2011) (analyzing and interpreting *Camden I*, 946 F.2d at 774, and rejecting lodestar crosscheck) (emphasis added); *Montoya v. PNC Bank, N.A.*, No. 1420474-CIV GOODMAN, 2016 WL 1529902, at *16 (S.D. Fla. Apr. 13, 2016), appeal dismissed (July 11, 2016) (citing and following *In re Checking Account Overdraft* for this proposition).

11. The second prong of the fee analysis—how the fee is to be calculated—is thus satisfied: under *Camden I* the Court must calculate Class Counsel's attorney's fees as a percentage of the $5,446,278.72 Settlement Fund they produced for the Class.

B. Class Counsel's Request for 36% of the Fund is Reasonable Under the *Camden I* Benchmark and the Johnson Factors.

12. After entitlement and calculation are established, the Court's task turns to what constitutes a reasonable fee amount under the circumstances, which is the third and final prong of the fee analysis. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). *Camden I* again guides the analysis.

i. The Eleventh Circuit Benchmark.

13. Under *Camden I*, to determine reasonableness of a requested fee amount, a court identifies a reasonable "benchmark" percentage amount to be award from the common fund, then applies the *Johnson factors* to adjust the fee up or down. *See Suzuki Motor Corp*., 2010 WL 1628362, 8 n. 15; *Camden I*, 946 F.2d 768, 775. While there is no hard-and-fast rule identifying what percentage constitutes a "reasonable percentage," in *Camden I* the Eleventh Circuit found that an upper limit of 50% of the fund may be stated as a general rule and that the "majority of common fund fee awards fall between 20% to 30% of the fund." *Id.* at 775. Here, the percentage of the fund Class Counsel seek – 36% - falls within the benchmark range for reasonable

percentage-of-the-fund awards adopted and awarded in this District, the Eleventh Circuit, and other federal Circuits.

ii. The Johnson Factors.

14. Under the circumstances of this case, the reasonableness of Class Counsel's request for 36% is likewise confirmed by the *Johnson* factors reiterated in *Camden I*. *See Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1242 (11th Cir. 2011) (finding when the requested fee exceeds 25%, the court should apply the twelve *Johnson factors*). The *Johnson Factors* adopted in *Camden I* are:

(1) the time and labor required;
(2) the novelty and difficulty of the relevant questions;
(3) the skill required to properly carry out the legal services;
(4) the preclusion of other employment by the attorney as a result of his acceptance of the case;
(5) the customary fee;
(6) whether the fee is fixed or contingent;
(7) time limitations imposed by the clients or the circumstances;
(8) the results obtained, including the amount recovered for the clients;
(9) the experience, reputation, and ability of the attorneys;
(10) the "undesirability" of the case;
(11) the nature and the length of the professional relationship with the clients; and
(12) fee awards in similar cases.

Camden I, 946 F.2d at 772 n.3 (citing factors originally set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)).[2]

15. The Court hereby approves Class Counsel's request for an award of reasonable attorneys' fees plus expenses, to be paid by Defendant from the Settlement Fund. The Settlement

[2] The decisions of the United States Court of Appeals for the Fifth Circuit, as that court existed on September 30, 1981, handed down by that court prior to the close of business on that date, shall be binding as precedent in the Eleventh Circuit, for this court, the district courts, and the bankruptcy courts in the circuit. *Bonner v. Pritchard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

provides for attorneys' fees in the amount of $1,960,660.39 to Class Counsel, plus taxable costs in the amount of $23,579.32, plus non-taxable costs in the amount of $9,300.24 for a total of $1,999,539.95. This award shall be Class Counsel's total recovery for attorneys' fees, costs, and/or adequately supported expenses of any kind. The Parties negotiated and reached agreement regarding fees and costs only after agreeing on all other material terms of the Settlement. The Court finds that the *Johnson* factors confirm that 36% of the common fund is reasonable, and consequently this Court awards Class Counsel's requested fee.

16. Class Counsel filed and posted the motion for final approval and fee request in time for Settlement Class Members to make a meaningful decision on whether to object to the Settlement and no Settlement Class Member(s) objected.

17. The Court awards Incentive Payments in the amount of $2,000 to each of the Plaintiffs, Norman Hirsch, Matthew Dwyer and Ralph Willard, totaling $6,000, to be paid from the Settlement Fund.

18. The Court hereby adopts and incorporates by reference the findings and conclusions that it previously reached in approving Class Counsel's request for attorneys' fees, costs, expenses and incentive awards in its Order Granting Class Counsel's Second Amended Motion Requesting the Court Grant Class Counsel's Request for Attorneys' Fees, Nontaxable Costs, and Incentive Awards to Class Representatives [DE 313] and the Judgment [DE 296] granting Plaintiffs' Motion to Tax Costs.

VII. RELEASE OF CLAIMS

19. The parties provide each other with reciprocal releases. Plaintiffs and Class Members release Defendant and its designated related parties from any and all fees, dues, deposits or other amounts arising from or in any way relating to Plaintiffs' and Class Members'

memberships in and at the Trump National Jupiter Golf Club, the Ritz-Carlton Golf Club & Spa and any predecessor club thereof (together, "Membership Deposit Related Claims"). Likewise, Defendant releases Plaintiffs and Class Members from all Membership Deposit Related Claims.

20. Furthermore, all Settlement Class Members who did not validly and timely submit Requests for Exclusion in the manner provided in the Agreement are hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, either individually or as a class, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims released pursuant to the Settlement Agreement, or seeking an award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the Action or that could have been brought in the Action and/or as a result of or in addition to those provided by the Settlement Agreement.

21. The terms of the Settlement Agreement and of this Final Approval Order, including all Exhibits thereto, shall be forever binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits maintained by the Plaintiff and all other Settlement Class Members, as well as their heirs, executors and administrators, successors, and assigns.

22. The Releases, which are set forth in ¶ 18 of the Settlement Agreement and which are also set forth below, are expressly incorporated herein in all respects and are effective as of the date of this Final Order and Judgment; and the Released Parties (as that term is defined below and in the Settlement Agreement) are forever released, relinquished, and discharged by the Releasing Persons (as that term is defined below and in the Settlement Agreement) from all Released Claims (as that term is defined below and in the Settlement Agreement).

(a) Plaintiffs and each and every Class Member, on their own behalf and on behalf of each and every one of their respective heirs, executors, agents and assigns hereby releases, remises and forever discharges Defendant and each of its current and former officers, directors, shareholders, limited liability members, representatives, parents, trusts, affiliates, agents and assigns from any and all claims, demands, actions, causes of action, judgments, obligations, damages, expenses, costs and attorneys' fees, of whatever character, known or unknown, present and future, fixed or contingent, claimed or unclaimed, suspected or unsuspected, whether in law or in equity, for any and all fees, dues, deposits or other amounts arising from or in any way relating to Plaintiffs' and Class Members' memberships in and at the Trump National Jupiter Golf Club, the Ritz-Carlton Golf Club & Spa and any predecessor club thereof (together, "Membership Deposit Related Claims").

(b) Defendant, on its own behalf and on behalf of each and every one of its current and former officers, directors, shareholders, limited liability members, representatives, parents, trusts, affiliates, agents and assigns, hereby releases, remises and forever discharges Plaintiffs and each and every Class Member from any and all Membership Deposit Related Claims.

23. The Settlement Agreement shall be the exclusive remedy for any and all Settlement Class Members and the Released Parties shall not be subject to liability or expense for any of the Released Claims to any Settlement Class Member(s).

24. The Releases shall not preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein. The Releases set forth herein and in the Settlement Agreement are not intended to include the release of any rights or duties of the Settling Parties arising out of the Settlement Agreement, including the express warranties and covenants contained therein.

25. Plaintiffs and all Settlement Class Members are, from this day forward, hereby permanently barred and enjoined from directly or indirectly: (i) asserting any Released Claims in any action or proceeding; (ii) filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise), any lawsuit based on or relating to any the Released Claims or the facts and circumstances relating thereto; or (iii) organizing any Settlement Class Members into a separate class for purposes of pursuing as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on or relating to any of the Released Claims.

VIII. NO ADMISSION OF LIABILITY

26. The parties understand and agree that neither the payment of any sum of money nor the execution of this Agreement by the parties will constitute or be construed as an admission of any wrongdoing or liability whatsoever by any party.

IX. OTHER PROVISIONS

27. This Final Order and Judgment and the Settlement Agreement (including the Exhibits thereto) may be filed in any action against or by any Released Party (as that term is defined herein and the Settlement Agreement) to support a defense of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

28. Without further order of the Court, the Settling Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement.

29. This Litigation, including all individual claims and class claims presented herein, is hereby dismissed on the merits and with prejudice against Plaintiffs and all other Settlement Class Members, without fees or costs to any party except as otherwise provided herein.

DONE and ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this ____ day of _____, 2018.

KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc: All Counsel of Record