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.
_______________________________________/

**ORDER GRANTING PLAINTIFFS'**
**MOTION PURSUANT TO FRAP 12.1 FOR INDICATIVE RULING**

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.

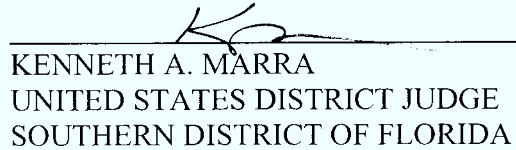
**NOW, THEREFORE, IT IS HEREBY ORDERED THAT**:

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 enter the attached Order Granting Final Approval To Class Action Settlement and Final Judgment if the United States Court of Appeals for the Eleventh Circuit remands the case currently pending before it, captioned

*Hirsch, et al. v. Jupiter Golf Club, LLC*, Case No. 17-10939 (11th. Cir.), to allow entry of that Order and Judgment.

IT IS SO ORDERED.

This 20th day of April, 2018.



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

cc: All Counsel of Record

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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.

_______________________________________/

**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 Court; (b) resolve any Objections to the Settlement, if any; (c) determine

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

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 hard fought 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 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 provides for attorneys' fees in the amount of $1,960,660.39 to Class Counsel, plus

[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).

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