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

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

Case No.: 2014 CA 000426

Plaintiffs,

v.

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

Defendant.

_____/

MOTION TO DISBURSE ATTORNEYS' FEES, COSTS, CLASS REPRESENTATIVES' SERVICE AWARDS, AND CLASS REFUNDS AND INCORPORATED MEMORANDUM OF LAW

Plaintiffs, Discount Sleep of Ocala, LLC, individually and as a Representative of a Class of all similarly situated others, and Dale W. Birch, individually and as a Representative of a Class of all similarly situated others (collectively referred to as "Class Representatives"), by and through their undersigned counsel, move this Court for entry of an order disbursing from the $79,282,909.44 Common Fund[1]: (1) refunds to class members of illegal taxes in the amount of $72,633,228.36, (2) attorneys' fees in the amount of $6,480,957.75, (3) reimbursement of Class Counsels' non-taxable costs of $68,723.33, and (4) service awards of $50,000.00 to each Class Representative.[2]

[1] As established by this Court's October 13, 2021 Order Granting Motion to Compel the City to Fund the Common Fund (the "Common Fund").

[2] See Affidavit of Lead Class Counsel Derek A. Schroth attached as Exhibit "A" (hereafter "Schroth Affidavit"), Hemke Affidavit of Reasonable Attorney's Fees for Class Counsel Against Common Fund Through November 1, 2021 and Hemke Affidavit Concerning Education, Experience and Qualifications to Opine Concerning Reasonable Attorney's Fee For Class Counsel Against Common Fund attached as Composite Exhibit "B" (hereafter "Hemke Affidavit"), and Declaration of J. Theodore Schatt attached as Exhibit "C" (hereafter "Schatt Declaration"), all incorporated by reference in their entireties.

I. INTRODUCTION

This extraordinary case is one of first impression with unprecedented results.[3] Defendant, the City of Ocala (the "City"), imposed a purported fire service user fee (hereafter the "Fire Fee") on its utility customers to pay for a portion of the City's fire department's operational costs. Failure to pay the unlawful tax resulted in the City disconnecting the utility customer's water, sewer, and electricity services and resulted in a lien on the property that the City treated as a special assessment lien against the real property equal in rank and dignity with the lien of ad valorem taxes.[4] After Class Representatives hired Class Counsel in 2013, and after many years of litigation and two appellate victories for Class Representatives on multiple issues, the case was tried. After trial, the trial court ruled the Fire Fee was a valid user fee. The Fifth District Court of Appeal ("Fifth DCA"), on the third appeal in this case, determined the Fire Fee was an unlawful tax and remanded the case to the trial court for establishment of a common fund to refund the illegally collected tax.[5] On October 11, 2021, the trial court ordered the City to fund the common fund in the amount of $79,282,909.44 to pay for fees, costs, and refunds. Class Representatives seek disbursement of the Common Fund.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

1. Between 2006 and 2010, the City enacted several ordinances that established, repealed, and then re-established the Fire Fee to offset a portion of the general operating costs of its fire department. On May 4, 2010, the City re-established its unlawful tax by enacting Ordinance 2010-43 which Class Representatives challenged.

2. On September 12, 2013, Bowen|Schroth was hired to challenge the City's unlawful tax.

[3] Prior to enacting the fee, the City requested and obtained a legal opinion from an independent law firm which advised a challenge to the proposed fee "would be one of first impression." The $79,282,909.44 Common Fund is the largest ever against a Florida municipality.
[4] *Discount Sleep of Ocala, LLC, et al v. City of Ocala,* 300 So.3d 316, 322 (Fla. 5th DCA 2020*)* ("Discount III").
[5] *Id*. at 324.

3. On December 3, 2013, Class Representatives sent a letter to the City requesting it cease collection of and refund the unlawful tax. The City ignored Class Representatives' demand.

4. On February 20, 2014, Class Representatives filed a class action lawsuit against the City challenging the City's Fire Fee as an unconstitutional tax imposed in violation of Article VII, Section 1(a) of the Florida Constitution. Class Representatives requested the trial court declare the Fire Fee unlawful and order class wide refunds to the greatest extent permitted under law.

5. The City asked its lobbyists to work on a "statutory fix" to Section 166 of the Florida Statutes which would allow a fire service user fee to be authorized by local government ordinance. By March 19, 2014, less than one month after being served with this lawsuit, the City obtained its lobbyists proposed statutory language changes.

6. On March 31, 2014, the City Attorney sent a demand letter to Class Counsel demanding Class Representatives immediately voluntarily dismiss their complaint or face sanctions pursuant to Section 57.105, Florida Statutes.[6]

7. Also on March 31, 2014, the City filed a Motion to Dismiss the Complaint alleging, among other things, the statute of limitations barred the suit. Ruling the City never repealed its Fire Fee, on February 16, 2015, the trial court dismissed the entire case with prejudice on statute of limitations grounds.[7] Class Representatives immediately appealed the ruling, and this became the first of three appeals to the Fifth DCA in this case.

8. On June 17, 2016, the Fifth DCA reversed the trial court's dismissal, ruling as a matter of law Ordinance 2010-43 "triggered a new four-year statute of limitations period."[8] The appellate court also

[6] A copy of the demand letter is attached as Exhibit "D".
[7] In its motion the City did not request dismissal with prejudice; the trial court's decision to dismiss the suit with prejudice was *sua sponte*. The honorable Judge Edward L. Scott was the trial judge in *Smith Lake Shores Village, LLC v. Marion County*, 7 So.3d 595 (Fla. 5th DCA 2009), a similar, but distinguishable case, where the Fifth District Court of Appeal upheld and affirmed Judge Scott's denial of class certification in a fire services assessment case.
[8] *Discount Sleep of Ocala, LLC v. City of Ocala*, 200 So. 3d 156, 157 (Fla. 5th DCA 2016) ("Discount I").

adjudged, as a matter of law pursuant to Section 2.04, Florida Statutes, in Ordinance 6015 the City repealed its Fire Fee on October 8, 2009, and the new statute of limitations began with Ordinance 2010-43 "on May 4, 2010."[9]

9. On June 21, 2016, seeking to certify a class of all those who paid the Fire Fee from February 20, 2010, Class Representatives filed a Second Amended Motion for Class Certification and Memorandum of Law and Request for Hearing.

10. On July 5, 2016, the City filed a Motion for Clarification with the Fifth DCA arguing the City intended to repeal its Fire Fee on a different day and year than what Ordinance 6015 plainly stated. The Fifth DCA denied the City's Motion for Clarification on July 7, 2016, and issued its mandate on July 26, 2016, remanding the case to the trial court for further proceedings consistent with its ruling.

11. On November 11, 2016, the City adopted Ordinance 2017-7 which purported to change the date of the City's Fire Fee repeal in Ordinance 6015 from October 8, 2009 to October 1, 2010. This was the City's attempt to create a new statute of limitations based on the intervening legislation doctrine.

12. On January 18, 2017, the trial court denied Class Representatives' class certification motion on each of the following grounds:[10]

i. The Fire Fee was never repealed. The trial court denied class certification ruling the "City Council for the City of Ocala repealed the prior repeal and left in effect the original fire service user fee ordinance."[11]

ii. Class Representatives lacked standing to represent the class. The trial court denied class certification ruling Class Representatives failed to demonstrate that a case or controversy exists between them and the City and thus Class Representatives lacked standing to represent the class.[12]

[9] *Id.*
[10] Findings of Fact, Conclusions of Law and Order Denying Plaintiffs' Second Amended Motion for Class Certification (Docket Entry 195) ("Order").
[11] Order at ¶ 49.
[12] Order at ¶ 88.

iii. The Class could not be certified because some class members lacked standing. The trial court denied class certification because the class would contain members who would not have standing to contest the validity of the Fire Fee, i.e., persons who paid the Fire Fee but who are no longer required to do so.[13]

iv. Class Representatives failed to satisfy the commonality requirement of F.R.C.P. 1.220 (a). The trial court denied class certification ruling Class Representatives failed to meet the commonality requirement because some class members are no longer subject to the Fire Fee and those class members could not base their claims on the same legal theory as Class Representatives.[14]

v. Class Representatives failed to satisfy the typicality requirement of F.R.C.P. 1.220 (a). The trial court denied class certification concluding that ad valorem taxes would likely be increased on developed properties within the City in order to make up for the loss of funding if the Fire Fee was declared invalid making Class Representatives' claims antagonistic to prospective class members who own developed property in the City, thus preventing class certification.[15]

vi. Class Representatives failed to satisfy the class representative adequacy requirement of F.R.C.P. 1.220(a). The trial court denied class certification ruling that an impermissible conflict existed between Class Representatives and class members who pay ad valorem taxes because those class members would fund the judgment and benefit the class members who do not pay ad valorem taxes or no longer reside in the city.[16] The trial court also ruled that Class Representatives had not demonstrated the "minimal level of interest in the action" required for them to represent the class and were inadequate.[17]

vii. Class Representatives failed to satisfy the class counsel adequacy requirement of F.R.C.P. 1.220(a). The trial court denied class certification ruling Class Counsel could not adequately represent the class because if Class Representatives prevailed, the City would be required to create a common fund for the refunds, which would be used in part to pay Class Representatives' attorneys' fees, creating an impermissible conflict of interests between Class Counsel and a portion of the Class.[18]

viii. Class Representatives failed to satisfy the predominance requirement of F.R.C.P. 1.220 (b)(2). The trial court denied class certification ruling that certification under Rule 1.220(b)(2) was not appropriate because Class Representatives had done nothing to address their purported dissatisfaction with the Fire Fee until this suit was filed and concluded the case relates predominately to money damages.[19]

[13] Order at ¶ 89.
[14] Order at ¶ 97.
[15] Order at ¶ 101.
[16] Order at ¶ 110.
[17] Order at ¶ 112.
[18] Order at ¶ 114.
[19] Order at ¶ 115.

ix. Class Representatives failed to satisfy the superiority requirement of F.R.C.P. 1.220 (b)(3). The trial court denied class certification ruling that no useful purpose would be served by permitting this case to proceed as a class action rather than individual actions and Class Representatives cannot show class representation is superior to other available methods for the fair and efficient adjudication of this controversy.[20]

x. The Necessity Doctrine applied to this case. The trial court denied class certification ruling the necessity doctrine[21] supported denial of class certification because if Class Representatives prevailed, the declaratory judgment finding the Fire Fee was invalid would be uniformly applicable to all others who were required to pay the Fire Fee and would have the same effect as a class action regardless of whether the trial court certified this matter as a class action.[22]

13. On February 16, 2017, Class Representatives appealed this ruling and on January 5, 2018, the Fifth DCA issued its 18-page opinion in Discount II reversing the trial court's order denying class certification in its entirety as follows:

i. Discount I is the law of the case and the Fire Fee was repealed. Confirming its prior ruling and rejecting the City's arguments, the Fifth DCA stated:

> Our decision in Discount Sleep of Ocala, LLC, which determined the fire service user fee was repealed based on the plain language of Ordinance 6015, governs this case. See Pardo v. State, 596 So. 2d 665, 666 (Fla. 1992) (explaining the appellate courts' decisions "represent the law in Florida unless and until they are overruled by [the Florida Supreme] Court)." Thus, the trial court was without authority to find that the original fire service user fee was never repealed.[23]

ii. Class Representatives have standing to represent the Class. The Fifth DCA ruled the Class Representatives satisfied the actual injury requirement of standing in their claim for declaratory relief and damages against the City as Class Representatives have alleged an economic injury, i.e., payment of the Fire Fee, which Class Representatives and the other putative class members have paid and continued to pay.[24]

iii. The Class can be certified even if some members no longer pay the Fire Fee. The Fifth DCA ruled that even if a customer no longer pays the Fire Fee, the customer would still be able to be a part of the class if the customer paid the Fire Fee during the relevant time period.

[20] Order at ¶ 116.
[21] The necessity doctrine under federal case law prevents certification in some "public law cases because government agencies can be expected to implement their rulings in good faith." *Discount Sleep of Ocala v. City of Ocala,* 245 So. 3d 842, 856-857 (Fla. 5th DCA 2018) ("Discount II").
[22] Order at ¶ 93.
[23] See *Discount II*, 245 So.3d at 849, n. 1.
[24] See *Id*. at 849-850.

Those members suffered the same injury, i.e., their payment of the allegedly invalid Fire Fee; their injury is concrete and particularized; and their injury would be redressed by the requested refund.[25]

iv. Class Representatives satisfied the commonality requirement of F.R.C.P. 1.220 (a). The Fifth DCA decided it was immaterial that some members of the proposed class were no longer subject to the Fire Fee as a single common question will satisfy the commonality requirement. Class Representatives presented a common issue of law and fact regarding the City's collection of the Fire Fees on its utility bills, which satisfies the "low hurdle" commonality requirement.[26]

v. Class Representatives satisfied the typicality requirement of F.R.C.P. 1.220 (a). The Fifth DCA determined the trial court's conclusion that ad valorem taxes would likely be increased on developed properties in the City if Class Representatives prevailed did not preclude a finding of typicality and that the trial court should not have focused on how the City would address the financial impact of an adverse judgment when considering whether Class Representatives' claim was suited for class certification. The Fifth DCA ruled the claims of the Class Representatives and putative class members are not antagonistic and Class Representatives had established the typicality element.[27]

vi. Class Representatives satisfied the class representative adequacy requirement of F.R.C.P. 1.220 (a). The Fifth DCA ruled no conflict exists between the Class Representatives and the Class as Class Representatives seek the same relief for themselves and other class members, i.e., the complete invalidation of the Fire Fee. The Fifth DCA also determined that the evidence demonstrated that Class Representatives are interested in this case, they have an understanding of the case, and they represented that they will litigate vigorously to obtain a successful result for each member of the class.[28]

vii. Class Representatives satisfied the class counsel adequacy requirement of F.R.C.P. 1.220 (a). The Fifth DCA ruled no conflict of interest existed between class counsel and certain members of the Class simply because the attorney's fees would be paid from a common fund. The Fifth DCA confirmed "our courts recognize that attorneys in class actions are entitled to attorneys' fees from a common fund."[29]

viii. Class Representatives satisfied the predominance requirement of F.R.C.P. 1.220 (b)(2). The Fifth DCA ruled the relief Class Representatives sought was primarily injunctive or declaratory, not monetary.[30] The Fifth DCA stated that prior to filing suit Class Representatives alleged they asked the City to stop charging the Fire Fees and the City refused.[31] Monetary relief is incidental to the declaratory relief, which is the focus of the Class Representatives' class petition.[32] The Fifth DCA ruled common issues predominate over

[25] See *Id*. at 850.
[26] See *Id*. at 849-851.
[27] See *Id*. at 852.
[28] See *Id*. at 853-854.
[29] See *Id*. at 854.
[30] See *Id*. at 855.
[31] See *Id*.
[32] See *Id*.

individual ones as the City treated Class Representatives and the putative class members in the same manner and if Class Representatives proved their case, they would prove the case for each class member which satisfies the predominance requirement.[33]

ix. Class Representatives satisfied the superiority requirement of F.R.C.P. 1.220 (b)(3). The Fifth DCA ruled Class Representatives satisfied both superiority requirements of F.R.C.P. 1.220 (b)(3). The Fifth DCA ruled Class Representatives satisfied the superiority requirement since allowing Class Representatives to proceed with a class action provides an economically feasible remedy given the modest potential individual damage recovery of each class member. Further, because the potential class members' claims are based on the same common course of conduct by the City against Class Representatives, a class action would be a more manageable and more efficient use of judicial resources than individual claims.[34]

x. The Necessity Doctrine does not apply to this case. In the only appellate decision in Florida rejecting the necessity doctrine, the Fifth DCA ruled that the necessity doctrine does not prevent class certification in this case because while the benefits of the injunctive and declaratory relief sought by Class Representatives would run to the putative class without class certification, the requested refund relief would not.[35]

14. On March 12, 2018, after the City's post-appellate decision requests for relief were denied, the appellate court entered its mandate remanding the case to the trial court for further proceedings consistent with its ruling that Class Representatives had standing and met all class certification requirements as set forth in Rule 1.220 of the Florida Rules of Civil Procedure.[36]

15. On March 26, 2018, the trial court entered its Order Complying with Appellate Court's Mandate and to Notify Class. In this order the trial court defined the class members as all those who paid the City a "Fire Service User Fee" on or after February 20, 2010.

16. On April 6, 2018, the trial court granted Class Representatives' attorney's fees for the City's failure to admit the truth: the City repealed the Fire Fee on October 8, 2009 and did not have an enabling ordinance for the Fire Fee from October 9, 2009 through May 3, 2010. In its order, the trial court found:

> Plaintiffs proved the truth: the City repealed its Fire Fees on October 8, 2009, and the City did not have an ordinance or any adopted code provisions concerning the

[33] See *Id*.
[34] See *Id*. at 856.
[35] See *Id*. at 857.
[36] See *Id*. at 857.

> collection of Fire Fees from October 9, 2009 through May 3, 2010. See *Discount Sleep of Ocala, LLC v. City of Ocala*, 200 So. 3d 156 (Fla. 5th DCA 2016)(The City repealed the Fire Fees on October 8, 2009); See also *Discount Sleep of Ocala, LLC v. City of Ocala*, 2018 WL 300228, at ft. note 1, (Fla. 5th DCA January 5, 2018) (Rejecting City's argument of intervening legislation and confirming (1) the Fire Fees were repealed and (2) this is the law in Florida until the Florida Supreme Court determines otherwise).[37]

17. On May 7, 2018, Class Representatives sought summary judgment on the legal question of whether the City's fee collection after the City repealed its fee was unlawful.

18. In a separate motion, on May 23, 2018, Class Representatives requested summary judgment on the legal issue of whether Ordinance 2010-43 was unlawful and whether the City's defenses applied in this case.

19. On August 29, 2018, the trial court essentially denied both summary judgment motions and the case went to trial on April 25, 2019.

20. On June 26, 2019, again on statute of limitations and other grounds, the trial court entered final judgment in favor of the City ruling the City's Fire Fee was a valid user fee.

21. Class Representatives immediately appealed the trial court's final judgment and on July 3, 2019, filed an Amended Notice of Appeal appealing both the trial court's final judgment and the trial court's order denying Class Representatives' summary judgment motions.

22. On June 19, 2020, the Fifth DCA, in a 14-page appellate decision, reversed the trial court and ruled the City's Fire Fee was an unconstitutional tax.[38]

23. On July 24, 2020, the City filed a Motion for Rehearing, Rehearing *En Banc*, and Certification, which the appellate court denied on August 10, 2020.

[37] Order Granting Plaintiffs' Entitlement to Attorney's Fees for City's Failure to Admit the Truth (Docket Entry 240 at ¶ 3).
[38] *Discount III*, 300 So. 3d at 324.

24. On August 31, 2020, the Fifth DCA issued its Mandate to the trial court remanding the case for the establishment of a common fund to refund the illegally collected fees.[39]

25. On September 2, 2020, Class Representatives filed their Motion to Order the City to Comply with Mandate to Establish Common Fund or Enter a Money Judgment Against the City.

26. On September 8, 2020, the City sought to invoke the Florida Supreme Court's Discretionary Jurisdiction and filed its jurisdictional brief on October 1, 2020. Class Representatives filed their response on October 30, 2020. On November 16, 2020, the Florida Supreme Court declined to accept discretionary jurisdiction.

27. On January 29, 2021, after hearing on Class Representatives' Motion to Order the City to Comply with Mandate to Establish Common Fund or Enter a Money Judgment Against the City, this Court ordered the City to comply with the Fifth DCA's August 31, 2020 Mandate (hereafter referred to as "Mandate Compliance Order").[40]

28. The City argued its set-off defense remained and sought a jury trial on damages and its set-off defense to prove the benefits received by the class would reduce, if not eliminate, any monies owed to the Class.

29. On June 4, 2021, Class Representatives filed their Motion to Compel the City to Fund the Common Fund because the City had not established nor funded the Common Fund with any monies since entry of the Mandate Compliance Order. The City continued to argue its set-off defense necessitated a jury trial.

30. On October 11, 2021, the Court held a hearing on Class Representatives' Motion to Compel the City to Fund the Common Fund. The Court found the Fifth DCA's mandate was the final judgment in the case, the Fifth DCA had resolved all legal issues and properly considered and disposed of all the City's

[39] *Id*.
[40] Order Complying with Appellate Court Mandate (Docket Entry 455).

defenses. The Court granted Class Representatives' motion, determined the City had collected $79,282,909.44 in illegal taxes from class members since February 20, 2010, and ordered the City to deposit the illegal taxes into a separate fund (the "Common Fund") within sixty (60) days.

31. This Court reserved jurisdiction regarding all remaining aspects concerning management of this class action, including disbursement of the Common Fund and payment of refunds, class representative service awards, attorneys' fees, and costs.

III. THE REQUESTED FEE IS FAIR AND REASONABLE

A. Class Counsel Should be Awarded $6,480,957.75 in Attorneys' Fees (approximately 8.2%) from the $79,282,909.44 Common Fund.

In Discount II, the Fifth DCA reiterated the long-held principal that "attorneys in class actions are entitled to attorneys' fees from [the] common fund in class action tax challenges."[41] "Common-fund cases are consistent with the American Rule, because the attorney's fees come from the fund, which belongs to the class."[42] The "right of an attorney to receive under the common fund doctrine is based on the theory that the successful efforts of the attorney benefits the class entitled to receive the fund and equity requires that each class member bear his or her pro rata share of the cost of recovering the fund."[43]

Class Counsel requests an award of $6,480,957.75 in attorneys' fees (approximately 8.2 % of Common Fund), reimbursement of $68,723.33 in non-taxable costs advanced by Class Counsel, and service awards of $50,000 for each Class Representative.

B. Class Counsel's Lodestar of $1,398,204.45 before the multiplier is reasonable.

In determining Class Counsel's reasonable attorneys' fee award, the Court must utilize the criteria and guidelines for reasonable fees the Florida Supreme Court articulated in Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985). In Rowe, the federal lodestar approach was

[41] *Discount II*, 245 So.3d at 854.
[42] *In re Home Depot, Inc*., 931 F.3d 1065, 1079 (11th Cir. 2019).
[43] *Community Nat'l Bank v. Rishoi*, 567 So.2d 1053, 1055 (Fla. 5th DCA 1990).

adopted as an objective means to assist courts in calculating reasonable attorney fee awards.[44] Under the lodestar approach, the Court must first determine the number of hours reasonably expended in the litigation. Second, determine the reasonable hourly rate for the prevailing attorney's services. And third, multiply the reasonable number of hours by the reasonable hourly rate.[45] Rowe also identified the following eight criteria (hereafter the "Rowe Factors") courts should consider in determining the reasonableness of legal fees: (1) the time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly, (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer, (3) the fee customarily charged in the locality for similar legal services, (4) the amount involved, and the results obtained, (5) the time limitations imposed by the client or by the circumstances, (6) the nature and length of the professional relationship with the client, (7) the experience, reputation, and ability of the lawyer or lawyers performing the services, and (8) whether the fee is fixed or contingent.

C. Application of the Rowe Factors

i. Rowe Factor 1(a): The Time and Labor Required

Class Counsels' dedication to achieving the incredible unprecedented outcome in this case required remarkable time and effort. After over 8 years of work, Bowen|Schroth invested over 4,000 hours in this case.[46] Class Counsel prepared hundreds of documents which required compilation, review, and analysis of thousands of pages of information. Class Counsel was involved in extensive, complex, and detailed motion practice, conducted discovery, including multiple public records requests, prepared and argued at many hearings, defended the depositions of the Class Representatives, and participated in a total of 11 depositions of City Council members, City officials, experts and other witnesses. Class Counsel

[44] *Rowe*, 472 So. 2d at 1150.
[45] *Id*. at 1150-51.
[46] See Schroth Affidavit attached as Exhibit "A"; see also Hemke Affidavit attached as Composite Exhibit "B" and Schatt Declaration attached as Exhibit "C".

monitored City Council meetings as they related to this action. The City's numerous attorneys sought many delays and extension requests which required Class Counsel to communicate extensively with the City attorneys and prepare and file corresponding responses and objections.[47]

Furthermore, this class action involved three appeals with the last appellate record consisting of 4902 pages. For the sake of brevity, a sample of critical case actions demonstrative of Class Counsels' work in this matter follow:[48]

(a) Pre-Suit.

Prior to filing this action, Class Counsel spent over 61 hours meeting with the Class Representatives, conducting pre-suit investigations and research, preparing correspondence to the City to try to avoid litigation, requesting and analyzing public records in support of the claims, and preparing an exhaustive, thorough complaint.

(b) The City attempts a "statutory fix" after the Class filed suit.

In March 2014, the City hired its lobbyist to propose a statutory "fix" to Section 166.201, Florida Statutes, to include language allowing a fire service user fee to be statutorily authorized by local government ordinance. The City's efforts to change the law post-suit required Class Counsel to invest additional time and effort requesting and reviewing additional public records from the City and monitoring and researching legislative actions and caused the need for multiple additional strategic conferences among Class Counsel.

(c) Marion County School Board Intervention.

On April 7, 2014, Class Counsel filed a motion to intervene in an ongoing lawsuit the City filed against the Marion County School Board for non-payment of the Fire Fee. Since the Fire Fee was at issue,

[47] See List of City's delays attached as Exhibit "E".
[48] The lengthy and contentious litigation is memorialized in the trial and appellate court dockets which are attached as Composite Exhibit "F".

any ruling made in the suit against the Marion County School Board as to the nature of the Fire Fee would affect the putative class. Class Counsels' duty to the Class drove the intervention attempt which required Class Counsel to conduct research, prepare pleadings, and correspond with the parties to the original suit, among other actions. To fulfill their duty to the class, Class Counsel monitored all activity in the Marion County School Board case and obtained an order protecting the Class's interest which required the parties to provide copies of all pleadings to Class Counsel and serve them with any request for an order pertaining to the Fire Fee. Further, Class Counsel obtained the right to file written objections to any request for an order pertaining to the Fire Fee.

(d) The First Appeal, *Discount I.*

After a hearing on the City's Motion to Dismiss Class Representatives' Amended Complaint, on February 16, 2015, the trial court dismissed the entire case with prejudice on statute of limitations grounds. Class Representatives immediately appealed the ruling. Class Counsel invested substantial time researching novel unprecedented issues, preparing appellate briefs and filings, and conferring with City Counsel, among many other necessary tasks. On June 17, 2016, the Fifth DCA reversed the trial court's dismissal. Class Representatives defeated all of the City's post appellate decision attacks and prevailed entirely on the statute of limitations defense under Section 2.04, Florida Statutes.

(e) The City passes Ordinance 2017-7 to create a new statute of limitations under the "intervening legislation" doctrine.

On November 8, 2016, the City adopted Ordinance 2017-7 which purported to clarify the Fire Fee repeal date in Ordinance 6015 from October 8, 2009, to October 1, 2010. As a result of this action, heightened monitoring of City Council meetings by Class Counsel was required. Further, Class Counsel requested additional public records and conducted significant research on the intervening legislation doctrine.

(f) The Second Appeal, *Discount II.*

On January 18, 2017, the trial court denied Class Representatives' class certification motion. See Statement of Facts and Procedural History, *supra*, ¶12. On February 16, 2017, Class Representatives appealed this ruling. The City filed a cross-appeal on trial evidentiary issues. Class Counsel invested substantial time conducting extensive research on novel complex issues, preparing appellate briefs and filings, including responding to the City's cross-appeal and conferring with City Counsel, among many other necessary tasks. Class Counsel also defended against the City's motion for rehearing and rehearing *en banc.*

(g) On Remand from *Discount II.*

After the Fifth DCA certified the Class, Class Counsel continued with extensive discovery and taking additional depositions. Class Counsel prepared various motions, including but not limited to dispositive motions, motions related to class notices and motions to compel against the City. Class Counsel prepared for and argued on behalf of the Class at numerous contentious hearings, including defending against the City's attempt to decertify the Class and conducting a trial on the merits of the case.

(h) The Third Appeal, *Discount III.*

After trial, on June 26, 2019, the trial court entered final judgment in favor of the City ruling the City's Fire Fee was a valid user fee. Class Representatives appealed. Class Counsel again prepared extensively to win this appeal by researching novel complex issues, preparing appellate briefs and filings, and conferring with City Counsel, among many other necessary tasks. Class Counsel also prepared for and represented the Class at oral argument before the Fifth DCA.[49] On June 19, 2020, the Fifth DCA reversed the trial court and ruled the City's Fire Fee was an unconstitutional tax. Thereafter, the City hired appellate experts at the law firm of Brannock, Humphries & Berman to overturn Class Counsel's appellate

[49] See May 7, 2020 Oral Argument Video, https://www.youtube.com/watch?v=vPwlLzk1ZEo&feature=emb_imp_woyt

victory. Class Counsel defended against the City's new lawyers' motions for rehearing and rehearing *en banc*. After the Fifth DCA denied the City's motions, the City's new lawyers sought to invoke the Supreme Court's discretionary jurisdiction. Class Counsel engaged in numerous complicated strategy meetings and extensively researched in advance of preparing responsive pleadings to the Florida Supreme Court.

During the third appeal, but before the Fifth DCA ruled for Class Representatives, the City filed a Motion to Tax Costs against Class Representatives based on the favorable judgment the City obtained at the trial level. Class Counsel researched and prepared pleadings necessary for the Court to consider a stay pending appeal which the trial court granted after a contested hearing.

(i) On Remand from *Discount III.*

Class Counsel prepared for and argued at various hearings to enforce the mandate with the trial court. Class Counsel continued discovery efforts, involving additional public records requests and extensive motion practice, including compelling City compliance.

On November 30, 2020, Class Counsel filed a motion to provide notice to more than 23,000 class members who did not begin paying the Fire Fee until after March 7, 2018 (the date through which the City had previously provided a list of class members) and who had not yet been given an opportunity to opt out of the class. The City sought to exclude those class members by claiming they were not members of the Class and were not entitled to a refund because their right to a refund was time barred.[50] Class Counsel's efforts defeated the City's statute of limitations defense for a fourth time and preserved every class member's right to a refund.

Further, Class Counsel sought to limit the City's communication with the Class as some City officials made false, misleading, and defamatory statements about this case to the Class at City Council

[50] See January 22, 2021 Hearing Transcript (Docket Entry 457 at 20:17-22) ("The Court: Well, Mr. Gilligan, are you arguing that anyone who paid the tax after 2014 doesn't get a refund? Mr. Gilligan: I am. And I'm also arguing they're not – they're not part of the class in the first place").

meetings. Ultimately, Class Counsel filed a Motion to Compel the City to Fund the Common Fund in light of the City's continued adherence to their set-off defense and lack of compliance with the Court's prior order requiring establishment of a Common Fund.

Considering the difficult and novel nature of this action, the 4,007.75 hours Class Counsel expended on this case from September 12, 2013, through November 1, 2021, are reasonable.[51] Given the City's aggressive defense of every issue in this case and the complexity of this case, Class Counsel anticipates additional time and expense to conclude this case will be required. Class Counsel reserves all rights to seek payment for any additional time and expenses incurred after November 1, 2021. The Court should find the time and labor Class Counsel expended in this case, including obtaining three appellate reversals on complicated issues, obtaining a complete win for the Class after nearly 8 years of litigation, and ensuring the City issue refunds to the Class, is reasonable.

Because Class Counsels' two highly qualified experts disagree slightly on the number of compensable hours for certain billers, Class Counsel averaged the number of hours opined by both expert's where they differed and seek the following reduced number of hours (3,931.74) for compensation as follows:

Biller's Name	PC Law ID	Role	Hours Sought
Derek A. Schroth	DAS	Lead Counsel	1,756.86
Jason M. Radson	JMR	Former Partner	2.10
Lennon E. Bowen, III	LEB	Senior Partner	7.4
James A. Myers	JAM	Partner	1,128.05
Zachary T. Broome	ZTB	Partner	31.45
Sasha O. Garcia	SG	Partner	513.80
Amy Hasselbring	AH	Paralegal	368.63
Todd J. Mazenko	TJM	Former Partner	5.10
Kevin B. Rossi	KBR	Associate	68.70

[51] See Schroth Affidavit attached as Exhibit "A"; see also Schatt Declaration attached as Exhibit "C".

Elizabeth Bradley	EB	Law Clerk	12.90
Jonathan Graham	JG	Law Clerk	34.80
Debra Morton	DM	Paralegal	.40
Jennifer Sampson-Young	JSY	Paralegal	.30
Kathy Dillinger	KD	Paralegal	1.25

ii. Rowe Factor 1(b): The Novelty and Difficulty of the Question Involved

In determining the number of hours reasonably expended on the litigation, "the novelty and difficulty of the question involved should be considered."[52] It is "common knowledge that class action suits have a well-deserved reputation as being most complex."[53] A class action that presents a case of first impression is particularly so,[54] as cases of first impression "generally require more time and effort on the attorney's part."[55] This case certainly presented various novel complex questions of law and difficult issues necessitating dozens of pages of appellate analysis for resolution in three different appeals.

Until Discount I, no Court had applied Section 2.04, Florida Statutes, to a municipal tax challenge. Class Representatives used this statute to defeat the City's statute of limitations defense in its appellate argument. The Fifth DCA agreed with Class Representatives' statutory interpretation of Section 2.04, stating: "[W]ithout express revival, Ordinance 2010-43 could not reinstate prior ordinances governing the imposition of fire service fees. See § 2.04, Fla. Stat. (2014). Therefore, while Ordinance 2010-43 repealed Ordinance 6015, it also triggered a new four-year statute of limitations on May 4, 2010."[56] This novel and difficult issue was completely resolved in Class Representatives' favor.

Discount II is the seminal case on class action law in the Fifth District and is the only appellate decision to apply Florida class action law and the necessity doctrine in the taxpayers' favor.[57] The trial

[52] *Bell v. U.S.B. Acquisition Co., Inc*., 734 So.2d 403 (Fla. 1999).
[53] *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977).
[54] *Pinto v. Princess Cruise Lines, Ltd*., 513 F.Supp.2d 1334, 1342 (S.D. Fla. 2007).
[55] *Johnson v. Georgia Highway Exp., Inc*., 488 F.2d 714, 718 (5th Cir. 1974).
[56] *Discount I*, 200 So. 3d at 157.
[57] *Discount II*, 245 So. 3d at 857.

court concluded that if Class Representatives prevailed on their individual claims, the judgment would apply to all who paid the Fire Fees, thus eliminating the need for Class Representatives' challenge to proceed as a class action.[58] Relying on necessity doctrine analysis from federal cases outside of Florida, the Fifth DCA ruled for Class Representatives and explained that while the benefits of the injunctive and declaratory relief Class Representatives sought would run to the putative class without class certification, the requested refund relief would not.[59]

In addition, the Fifth DCA distinguished its own precedent in Smith Lake Shores Village, LLC v. Marion County, 7 So.3d 595 (Fla. 5th DCA 2009), in confirming the Class Representatives could adequately represent the Class. Citing Smith Lake, the trial court determined that Class Representatives could not fairly and adequately represent the Class because if Class Representatives prevailed the class members who pay ad valorem taxes would fund the judgment and benefit the class members who do not pay ad valorem taxes or no longer reside in the City, thereby, creating an impermissible conflict.[60] However, the Fifth DCA distinguished this case from Smith Lake. The appellate court explained that in Smith Lake the conflict arose from the county's apportionment methodology of a special assessment for fire rescue services, which if reapportioned based on plaintiff's theory, would benefit plaintiff to the detriment of other class members.[61] The Fifth DCA determined no such conflict existed in this case since the relief Class Representatives sought for themselves was the exact relief sought for the Class, i.e., complete invalidation of the Fire Fee and refund of the Fire Fees paid.[62]

Discount III created new precedent in Florida local government law. Until Discount III, no Florida appellate court had declared a user fee for public fire safety services to be an unlawful tax. Discount III is the only class action case from the Fifth DCA (i) invalidating a municipal user fee as an illegal tax,

[58] Order at ¶ 93.
[59] *Discount II*, 245 So. 3d at 857.
[60] Order at ¶ 110.
[61] *Discount II*, 245 So. 3d at 853.
[62] *Id*. at 853-854.

(ii) rejecting the voluntary payment defense, and (iii) analyzing the Gulesian[63] good faith defense. Discount III is also the first appellate case to analyze a local government user fee as a funding mechanism for public safety fire services. All existing case law on fire services fees involved special assessments. As a case of first impression, Class Counsel had no case law directly on point to rely on as precedent.

iii. Rowe Factor 1(c) and 7: The Skill Required to Adequately Perform the Legal Service Properly and the Ability of the Attorneys.

The prosecution and management of a complex class action requires unique legal skills and abilities. When determining fees, the Court should consider "the skill and acumen required to successfully investigate, file, [and] litigate … a complicated class action lawsuit such as this one,"[64] and the "experience, reputation, and ability of the lawyer or lawyers performing the services."[65] This highly complex case, characterized by difficult and novel factual and legal issues, required considerable litigation skills and legal acumen. Given the complexity of this class action and the numerous novel and contested issues, the quality of Class Counsels' representation and their experience are clearly reflected in their work performance and the remarkable results achieved for the benefit of the Class.

Appointed Lead Class Counsel, Derek A. Schroth, owner and managing partner at Bowen|Schroth, has considerable class action experience having successfully litigated 8 class actions[66] over his 21 years in practice. He has also handled 37 appeals throughout his legal career. Mr. Schroth is a board-certified expert in City, County, and Local Government Law and Business Litigation. He is one of only two Florida attorneys certified as an expert in both fields. Mr. Schroth served as president and vice president of the

[63] *Gulesian v. Dade County School Board*, 281 So. 2d 325 (Fla. 1973).
[64] *David v. Am. Suzuki Motor Corp*., 2010 WL 1628362 at *8 n.15 (S.D. Fla. April 15, 2010).
[65] *Rowe*, 472 So.2d at 1150.
[66] E.g. *Owner-Operator Inc. Drivers Ass'n, Inc. v. 4 Points Logistics, LLC*, No. 5:05-cv-440-OC-10GRJ, 2007 WL 2071389 (M.D. Fla. 2007); *Gagnon v. Service Trucking, Inc*., 266 F.Supp.2d 1361 (M.D. Fla. 2003), vacated by agreement of the parties in *Gagnon v. Service Trucking, Inc*., No. 5:02-CV-342-OC-10GRJ, 2004 WL 290743 (M.D. Fla. 2004); *Harris v. Wildwood Villages, LLC*, No. 12-1348 (Fla. 5th Cir. Ct. March 17, 2017); *Weaver v. City of Wildwood*, 22 Fla. L. Weekly Supp. 537b (Fla. 5th Cir. Ct. 2014); *Richardson v. City of Fruitland Park*, No. 14-400 (Fla. 5th Cir. Ct. April 14, 2014); *Sunlake Homeowners Ass'n, Inc. v. American Land Lease, Inc*., No. 05-707 (Fla. 5th Cir. Ct. April 12, 2007); *Shamrock Homes, Inc. v. City of Eustis*, No. 01-1073 (Fla. 5th Cir. Ct. September 27, 2001), *Discount Sleep of Ocala, LLC v. City of Ocala*, 300 So.3d 316 (Fla. 5th DCA 2020).

Lake County Bar Association and also as chair of the Judicial Nominating Committee for Florida's Fifth Judicial Circuit for over 6 years. Mr. Schroth is also General Counsel for the Lake County Sheriff's Office, City Attorney for the City of Eustis, and Town Attorney for the Town of Lady Lake. Mr. Schroth is a quasi-judicial hearing officer for the City of Orlando and the City of Tampa. Mr. Schroth was also recently retained as special counsel for the City of Venice regarding a building fee dispute. The Fifth DCA in Discount II determined Lead Class Counsel was able to effectively advocate and represent the Class and that his prior experience in a similar case was "competent, substantial evidence of adequacy."[67] Bowen|Schroth and its lawyers are well-known for local government expertise and are well-respected members of the Central Florida legal community.[68]

In evaluating the quality of Class Counsels' work, it is also important to consider the quality of the opposition the Class Representatives' attorneys faced."[69] For this factor, the Court may draw on past experience as a lawyer and observations from the bench of the representation quality of other lawyers.[70] Here, Class Counsel faced a well-funded City with tremendous financial and legal resources. The City has an annual budget over $800,000,000.00 and had 12 lawyers perform work on this case from the following 4 highly experienced and prominent law firms:

> (1) *Gilligan, Gooding, Batsel, Anderson & Phelan, P.A.*: This well-respected extremely aggressive Marion County law firm has vast local government and litigation experience. They have represented the City for over 30 years. The City with this law firm has a reputation as a "voracious litigator."[71] On December 14, 2021, the Editorial Board for the Ocala Gazette opined about this firm stating: "You would be hard-pressed to identify a law firm in Ocala better connected, or more powerful, than the private firm who has represented the city for more than 30 years, Gilligan, Gooding, Batsel, Anderson & Phelan, P.A. If any of you have listened to either Patrick Gilligan or Jimmy Gooding argue their point, it's easy to be impressed. They are smart fellows."

[67] *Discount II*, 245 So. 3d at 854.
[68] See Hemke Affidavit attached as Composite Exhibit "B" and Schatt Declaration attached as Exhibit "C".
[69] *In re Sunbeam Sec. Litig*., 176 F. Supp. 2d 1323, 1334 (S.D. Fla. 2001).
[70] *Johnson*, 488 F.2d at 718.
[71] See Schatt Declaration attached as Exhibit "C" at ¶ 4.

(2) *Susan Schoettle-Gumm, PLLC*: Attorney Schoettle-Gumm has been practicing law in Florida for over 27 years specializing in City, County and Local Government Law, among other areas of law. She is a well-known litigator in the area of local government taxation and fees. She has worked on the provision of public facilities and services with numerous funding mechanisms, including a variety of taxes, fees and special assessments. She was also the Assistant County Attorney for Sarasota County, Florida for over nine years where she provided primary legal support for the County on all impact fees, special assessments (including assisting in the development and defense of the County's stormwater assessments that were upheld by the Florida Supreme Court), utility fees/rates, taxes, and capital facilities funding.

(3) *Brannock, Humphries & Berman*: This formidable appellate firm was hired to represent the City in Discount III and to seek discretionary jurisdiction of the Supreme Court. Lead appellate counsel, Steven Brannock, is board certified in Appellate Law. Before founding his own firm, he spent 28 years with Holland & Knight where he supervised its central Florida appellate practice. His legal career has focused almost exclusively in appellate practice where he has handled appellate matters in all five Florida District Courts of Appeal, the Florida Supreme Court, six federal circuit courts of appeal, and the United States Supreme Court. He was appellate counsel for the City of Gainesville in City of Gainesville v. State, 863 So.2d 138 (Fla. 2003). As appellate counsel in City of Gainesville, he succeeded in overturning the trial court's invalidation of the City's user fees with a favorable ruling for the City of Gainesville from the Supreme Court of Florida.

(4) *GrayRobinson, P.A*: This is a national full-service law and government consulting firm with attorneys, lobbyists, and consultants providing legal and government affairs counsel. Attorney Thomas Cloud is board certified in City, County, and Local Government Law. In addition, his areas of practice include municipal utilities law and utility rates law. Over his 41 years in practice, he has represented over 80 Florida cities and previously served as president of the Florida Municipal Attorneys Association. He currently serves as city attorney for 4 cities across Florida and serves as general counsel to the Utilities Commission of New Smyrna Beach.

Class Counsels' skill and ability to aggressively and persistently pursue this litigation over an eight-year period led to three hard-fought appellate victories and the establishment of the $79,282,909.44 Common Fund. Class Counsels' skill and ability to pursue and obtain unprecedented results despite formidable adversaries with unlimited funds and despite losing the case three times at the trial level

confirms the quality of Class Counsels' representation.[72] The Court should find Class Counsels' skill, ability, and high quality supports the requested lodestar fee.

iv. Rowe Factor 2: Preclusion of Other Employment

Once "employment is undertaken the attorney is not free to use the time spent on the client's behalf for other purposes."[73] Since being hired in 2013, Class Counsel has dedicated over 4,000 hours of time to prosecuting this case. Class Counsel were precluded from taking on new cases and turned down opportunities to work on other cases to devote the necessary amount of energy, time, and resources to successfully prosecute this case.[74] The Court should find Class Counsels' preclusion of other employment supports the requested lodestar fee.

v. Rowe Factor 3: The Customary Fee for Similar Work in the Community

"The party who seeks the fees carries the burden of establishing the prevailing 'market rate,' i.e., the rate charged in that community by lawyers of reasonably comparable skill, experience and reputation, for similar services."[75] The following hourly rates are representative of the customary rates in Florida's Fifth Judicial Circuit for knowledgeable and capable attorneys with complex litigation experience.[76]

Title	Base Rates
Lead Counsel	$450/hour
Partner	$300-$350/hour
Associate	$200/hour
Law Clerk	$150/hour
Paralegal	$135/hour

[72] See *Columbus Drywall & Insulation, Inc. v. Masco Corporation*, 2012 WL 12540344 at *4. ("The appropriate fee should also reflect the degree of experience, competence, and effort required by the litigation").
[73] *Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1209 (S.D. Fla. 2006).
[74] See Schroth Affidavit attached as Exhibit "A"; see also Hemke Affidavit attached as Composite Exhibit "B" and Schatt Declaration attached as Exhibit "C".
[75] *Rowe*, 472 So.2d at 1150.
[76] See Schroth Affidavit attached as Exhibit "A"; see also Hemke Affidavit attached as Composite Exhibit "B" and Schatt Declaration attached as Exhibit "C".

Lead Counsel, Derek A. Schroth, seeks an hourly rate of $450.00. Partners James A. Myers and Zachary T. Broome seek an hourly rate of $325.00. Partner Sasha O. Garcia and remaining partners seek an hourly rate ranging from $300.00 to $350.00. Class Counsel seeks an hourly rate of $200.00 for associates, $150.00 for law clerks and $135.00 for paralegals. The above rates conform with the customary rates charged in the area for similar complex work and should be approved by this Court. The Court should find Class Counsels' below rates are customary and reasonable for similar complex work in the legal community. [77]

Biller Name	PC Law ID	Role	Hourly Rate
Derek A. Schroth	DAS	Lead Counsel	$450
Jason M. Radson	JMR	Former Partner	$350
Lennon E. Bowen, III	LEB	Senior Partner	$450
James A. Myers	JAM	Partner	$325
Zachary T. Broome	ZTB	Partner	$325
Sasha O. Garcia	SG	Partner	$300
Amy Hasselbring	AH	Paralegal	$135
Todd J. Mazenko	TJM	Former Partner	$325
Kevin B. Rossi	KBR	Associate	$200
Elizabeth Bradley	EB	Law Clerk	$150
Jonathan Graham	JG	Law Clerk	$150
Debra Morton	DM	Paralegal	$135
Jennifer Sampson-Young	JSY	Paralegal	$135
Kathy Dillinger	KD	Paralegal	$135

[77] See Schroth Affidavit attached as Exhibit "A"; see also Hemke Affidavit attached as Composite Exhibit "B" and Schatt Declaration attached as Exhibit "C".

vi. Rowe Factor 4: The Amount Involved and the Results Obtained

The recovery of over $79 million dollars from a local government is substantial, remarkable, and unprecedented. Our research reveals this case represents the largest tax refund case against any local government in Florida history and the largest tax refund case since the Florida Supreme Court decided Kuhnlein[78] over 25 years ago. Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award.[79] This factor supports the requested lodestar fee.

This result is outstanding based only on the amount recovered on behalf of the Class, but even more so when factoring in that Class Counsel diligently prosecuted this case through trial[80] and successfully appealed three adverse trial court rulings obtaining three complete reversals. A 2015 study conducted by two Cornell law professors of appellate outcomes of a statistically relevant sample of civil cases across 40 states and 141 counties that terminated in 2005 found that plaintiffs achieve reversal of adverse trial court judgments only 21% of the time.[81] The statistical probability of Class Counsel completely winning three consecutive appeals is only 3%.[82] Class Counsel, after the third loss, estimated less than 1% chance of prevailing.

Class Counsel also generated significant benefits for the Class beyond the creation of a sizeable Common Fund. "[F]or purposes of calculating the attorney's fee award, courts usually consider not only the compensatory relief, but also the economic value of any prospective injunctive relief obtained for the

[78] *Kuhnlein v. Dept. of Revenue*, 646 So. 2d 717 (Fla. 1994).
[79] *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *Ressler v. Jacobson*, 149 F.R.D. 651, 655 (M.D. Fla. 1992) ("It is well-settled that one of the primary determinants of the quality of the work performed is the result obtained").
[80] The fact class action cases rarely proceed through trial led the California Supreme Court to recently label such a case "an exceedingly rare beast." *Duran v. U.S. Bank Nat'l Ass'n*, 325 P.3d 916, 920 (Ca. 2014). Class actions settled prior to trial tend to net "between 5.5% and 6.2% of the class members' estimated losses.' *In re Rite Aid Corp. Securities Litigation*, 146 F.Supp.2d 706, 715 (E.D. Penn. 2001); see also Mayer Brown LLP, *Do Class Actions Benefit Class Members? An Empirical Analysis of Class Actions*, U.S. Chamber Institute of Legal Reform (2013) (finding the vast majority of cases studied produced little to no benefit to class members).
[81] Theodore Eisenberg and Michael Heise, *Plaintiphobia in State Courts Redux? An Empirical Study of State Court Trials on Appeal*, 12-1 Journal of Empirical Legal Studies 100 (2015).
[82] See Hemke Affidavit attached as Composite Exhibit "B".

Class." After the unprecedented decision in Discount III, on July 21, 2020, the City finally stopped charging its unlawful tax. The amount involved, $79,282,909.44, and the results obtained, an order for a $79,282,909.44 Common Fund, support Class Counsels' requested lodestar fee.

vii. Rowe Factor 5: Time Limitations Imposed by the Client or the Circumstances

"Priority work that delays the lawyer's other legal work is entitled to some premium."[83] "In considering this factor, many courts have found that time pressures warrant an increased fee award."[84] Class actions require heightened judicial oversight and Class Counsel had to prioritize this case ahead of other active cases to fulfill their duty to the Class and comply with requirements imposed by the trial and appellate courts.[85] This factor supports Class Counsels' requested lodestar fee.

viii. Rowe Factor 6: Nature and Length of the Professional Relationship with the Client

For this factor, the Court may consider whether a lawyer in private practice might vary his fee for similar work in light of an existing client relationship.[86] However, "a higher fee may be warranted in class actions where counsel for the class had no prior relationship with the named plaintiffs."[87] This is Lead Class Counsel's first time representing Discount Sleep of Ocala, LLC. It is also Lead Class Counsel's first-time representing Dale W. Birch. Because this case is the first time Lead Class Counsel represented the Class Representatives, this factor supports the requested lodestar fee.

ix. Rowe Factor 8: Whether the Fee is Fixed or Contingent

Determination of a reasonable fee in common fund cases "must include consideration of the contingent nature of the fee, the wholly contingent outlay of out-of-pocket sums by Class Counsel, and

[83] *Johnson*, 488 F.2d at 718.
[84] *Allapattah*, 454 F.Supp.2d at 1215.
[85] See Schroth Affidavit attached as Exhibit "A".
[86] *Johnson*, 488 F.2d at 719.
[87] *Allapattah*, 454 F.Supp.2d at 1216.

the fact that the risks of failure and nonpayment in a class action are extremely high."[88] The attorneys' risk is "'perhaps the foremost factor" in determining an appropriate fee award.[89]

Class Counsel handled this case on a contingent basis for more than eight years. The fee agreement Class Representatives executed states, in part: "In the event there is no recovery, you are not responsible for the firm's costs or reimbursing the firm for any such expenses advanced by the firm on your behalf. If we do not recover money, you will not owe us anything."[90] By accepting the case, Class Counsel assumed the considerable risk of incurring significant expenses through protracted litigation against experienced well-funded litigators without any compensation. Class Counsel lost the case at the trial level three times but continued litigating with no assurance of being compensated. The fee in this case was 100% contingent on the result Class Counsel achieved. The Court should find this factor and all other Rowe factors support Class Counsels' requested lodestar fee of $1,398,210.30 as set forth below.

Biller's Name	Role	Hours Sought	Hourly Rate	Total
Derek A. Schroth	Lead Counsel	1,756.86	$450	$790,587.00
Jason M. Radson	Former Partner	2.10	$350	$735.00
Lennon E. Bowen, III	Senior Partner	7.4	$450	$3,330.00
James A. Myers	Partner	1,128.05	$325	$366,616.25
Zachary T. Broome	Partner	31.45	$325	$10,221.25
Sasha O. Garcia	Partner	513.80	$300	$154,140.00
Amy Hasselbring	Paralegal	368.63	$135	$49,765.05
Todd J. Mazenko	Former Partner	5.10	$325	$1,657.50
Kevin B. Rossi	Associate	68.70	$200	$13,740.00
Elizabeth Bradley	Law Clerk	12.90	$150	$1,935.00
Jonathan Graham	Law Clerk	34.80	$150	$5,220.00
Debra Morton	Paralegal	.40	$135	$54.00
Jennifer Sampson-Young	Paralegal	.30	$135	$40.50

[88] *Pinto*, 513 F.Supp.2d at 1338.
[89] *Id*. at 1339.
[90] A copy of Class Counsels' fee agreements with Class Representatives is attached as Composite Exhibit "G".

Kathy Dillinger	Paralegal	1.25	$135	$168.75
	Total Hours:	3,931.74	Total Lodestar:	$1,398,210.30

D. Class Counsel are entitled to a 5x Multiplier of Class Counsel's Lodestar for work performed from September 12, 2013, through November 16, 2020, and a 2.5x multiplier for work performed from November 17, 2020, through October 11, 2021.

Following the calculation of the lodestar, the court is to consider "whether a multiplier is needed in the case to give effect to the contingency factor and in recognition of the substantial benefit class counsel conferred upon the class members."[91] A contingency fee multiplier "ensure[s] that lawyers, who take a difficult case on a contingency basis, are adequately compensated."[92] "The point being, the lodestar amount, which awards an attorney for the work performed on the case, is properly analyzed through the hindsight of the actual outcome of the case, whereas the contingency fee multiplier, which is intended to incentivize the attorney to take a potentially difficult or complex case, is properly analyzed through the same lens as the attorney when making the decision to take the case."[93]

In other words, "[b]oth Rowe and Quanstrom … make clear that where the chances of success at the outset of litigation is less than 50-50, a multiplier at or near the maximum is indicated."[94] The Florida Supreme Court determined that "a multiplier which increases fees to five times the accepted hourly rate is sufficient to alleviate the contingency risk factor involved and attract high level counsel to common fund cases while producing a fee which remains within the bounds of reasonableness."[95]

The risk Class Counsel took justifies the maximum multiplier award in this case.[96] Courts acknowledge a "financial incentive is necessary to entice capable attorneys, who otherwise could

[91] *Kuhnlein*, 662 So. 2d at 315.
[92] *Joyce v. Federated Nat'l Insurance Co*., 228 So.3d 1122, 1132 (Fla. 2017).
[93] *Id*. at 1133.
[94] *In re Bluegreen Corp. S'holder Litig.*, 2015 WL 6866226 at *3 (Fla. 15th Cir. Ct. Sept. 22, 2015). See also *Standard Guaranty Ins. Co. v. Quanstrom*, 555 So. 2d 828, 834 (Fla. 1990) ("A maximum contingency fee multiplier is warranted if success was unlikely at the outset of a case").
[95] *Kuhnlein*, 662 So.2d at 315.
[96] See Schroth Affidavit attached as Exhibit "A"; see also Hemke Affidavit attached as Composite Exhibit "B".

be paid regularly by hourly-rate clients, to devote their time to complex, time-consuming cases for which they may never be paid."[97] "Courts have recognized that the novelty, difficulty and complexity of the issues involved are significant factors in determining a fee award."[98]

At the outset, this case presented an uphill battle with low probability of success. Challenging the Fire Fee more than seven years after it was first enacted raised the possibility that this case would be dismissed on statute of limitations grounds. As a case of first impression, Class Counsel would have to create new law while proving the Fire Fee was unconstitutional even though, under Florida law the City's ordinances enacting the Fire Fee were "clothed with a presumption of constitutionality."[99] Class Counsel also predicted that, due to the sheer magnitude of this case and the potential financial impact to the City, the City would mount a vigorous defense of all issues throughout the duration of the case.

Class Counsels' risk analysis at the outset of this case was justified. This case repeatedly concerned complex difficult issues without controlling precedent. Class Representatives did not simply face a real risk of losing this case, but in fact lost this case at the trial level three different times. Class Representatives had to overcome the City's statute of limitations defense numerous times, denial of class certification, and the trial court's ruling the Fire Fee was a valid user fee and not an unlawful tax. Class Representatives faced a real risk of losing on the merits and decertification of the Class if the appellate court accepted any of the trial court's rulings on any of the appeals. Even after Class Representatives finally prevailed, the City threatened filing for bankruptcy requiring Class Counsel conduct substantial research on the complex subject of municipal bankruptcies. The City also challenged the viability of class refunds by contending its set-off defense applied. The City also hired its lobbyists to try to change statutory language in order to

[97] *Francisco v. Numismatic Guaranty Corp. of America*, 2008 WL 649124 at *13 (S.D. Fla. 2008).
[98] *Spann v. J.C. Penney Corporation*, 211 F. Supp. 3d at 1263-64 (internal citations omitted).
[99] *Blue Cross Blue Shield of Fla. Inc. v. Outpatient Surgery Ctr. of St. Augustine*, 66 So.3d 952, 953 (Fla. 1st DCA 2011).

make their unlawful tax a valid user fee. Had the City's lobbyists been successful, the Class Representatives would lose this case.

Class Counsel was aware of and bore such risks and vigorously prosecuted this case regardless of the possibility such costs and time would not be reimbursed if Class Representatives were unsuccessful in this litigation. Class Counsels' probabilities of a complete win at the appellate level three distinct times, as was the case here, was less than 3 percent.[100] Considering the risks and the result obtained for the Class, a five multiplier is warranted in this case for work performed from September 12, 2013, through November 16, 2020, because the contingency risk was high until the Florida Supreme Court declined to exercise its discretionary jurisdiction to review Discount III. A two and half multiplier is warranted for work performed from November 17, 2020, through October 11, 2021, because after the Florida Supreme Court declined jurisdiction, the risk of non-payment still existed due to the City's push for further review of its set-off defense. The Court should find a total attorneys' fee award of $6,480,957.75 as set forth below is reasonable.[101]

Time Period	Lodestar Amount[102]	Multiplier	Reasonable Attorneys' Fee
9/12/2013 – 11/16/2020	$1,204,639.05	5.0	$6,023,195.25
11/17/20 – 10/11/2021	$176,127.50	2.5	$440,318.75
10/12/2021 – 11/1/2021	$17,443.75	1.0	$17,443.75
		Total	$6,480,957.75

IV. THE REQUESTED MULITPLIER IS CONSISTENT WITH MULTIPLIERS AWARDED IN SIMILAR CASES.

Class Counsels' requested fee is consistent with the fee awards in similar cases.[103] In Kuhnlein, the Florida Supreme Court found class counsel was entitled to the maximum multiplier of 5 given the

[100] See Hemke Affidavit attached as Composite Exhibit "B".
[101] See Schroth Affidavit attached as Exhibit "A"; see also Hemke Affidavit attached as Composite Exhibit "B".
[102] See Lodestar Calculations attached as Exhibit "H".
[103] See Hemke Affidavit attached as Composite Exhibit "B" and Schatt Declaration attached as Exhibit "C";
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contingency factor and in recognition of the substantial benefit class counsel conferred upon the class members. Kuhnlein involved a challenge by state residents of the constitutionality of certain fees. The class sought a declaratory judgment that the fees were an unconstitutional tax. The Florida Supreme Court ruled the fee was void from its inception because the legislature acted outside its constitutional power and the only clear and certain remedy was a full refund to all who have paid the illegal tax. In Greenwald v. City of Punta Gorda, Case No. 93-1806-CA-3 (20th Judicial Circuit, Charlotte County), aff'd, Appeal No. 95-4375 (Fla. 2d DCA 1995), Class Counsel's fee expert here, Donald E. Hemke, was awarded a fee multiplier of 4.7 "in light of the fact that class attorneys undertook representation on a contingency fee basis, that class attorneys undertook substantial risk that they would not be paid, that payment to class attorneys has been delayed up to three years, and that class attorneys obtained 'the best of all possible. . .results in obtaining a full refund. . .and in the City agreeing not to pursue unpaid and future accruing [ready-to-serve] fees".[104] Kuhnlein, Dreidame,[105] and Greenwald were factually and legal similar cases to the above-captioned case, being class action recoveries against governments for illegal fees and taxes.

Florida employs the lodestar approach to determine a reasonable attorney's fee. However, even under the federal percentage approach, Class Counsels' fee request is reasonable. The Eleventh Circuit held "attorney's fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class".[106] The "majority of common fund fee awards fall between 20% to 30% of the fund."[107] As the Middle District noted in Ressler, "[a]wards of 30% or more of a

[104] See Hemke Affidavit attached as Composite Exhibit "B".
[105] *Dreidame v. Village Center Community Development District*, 2008 WL 7079074 (Fifth Circuit, Lake County 2008) (noting that "a multiplier of five (5) [would be] proper" in settling a similar class action case against the development district and that "based on the risk factor alone, the multiplier would have to be five"); See also *Ramos v. Phillip Morris Companies*, 743 So.2d 24, 32-33 (Fla. 3d DCA), review dismissed, 743 So.2d 14 (Fla. 1999) (multiplier of 5 awarded); *In re Bluegreen Corp. Shareholder Litigation*, 2015 WL 6866226 at *11-12 (15th Judicial Circuit, Palm Beach County 2015) (multiplier of 5 awarded).
[106] *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991).
[107] *Id*.

settlement fund are not uncommon."[108] Class Counsels' fee award request of $6,480,957.75 is less than 8.2% of the $79,282,909.44 Common Fund.

V. CLASS COUNSEL IS ENTITLED TO NON-TAXABLE COSTS OF $68,723.33 FROM THE COMMON FUND.

Class Counsel advanced costs and expenses to bring this case to a successful conclusion. Florida law provides that "[t]he party recovering judgment shall recover all of his or her legal costs and charges. . . ."[109] Having prevailed on all aspects of this case, Class Representatives are the prevailing party in this action and are entitled to recover taxable costs from the City. On November 4, 2021, Class Counsel filed a separate motion seeking taxable costs from the City in the amount of $67,353.89. Class Counsel seeks reimbursement from the Common Fund for the remaining costs incurred and to be incurred to successfully conclude this case, but which are unrecoverable from the City as a taxable cost.

To date, Class Counsel has incurred $148,602.41 in total costs, taxable and non-taxable. The $148,602.41 in costs were reasonably necessary to bring this case to resolution. Costs of $67,353.89 are taxable costs to be paid by the City. The remaining $68,723.33 in non-taxable costs and any additional non-taxable costs should be reimbursed to Class Counsel from the $79,282,909.44 Common Fund.[110]

VI. CLASS REPRESENTATIVES' SERVICE AWARDS OF $50,000 EACH ARE REASONABLE AND THE EFFORT EXPENDED SUPPORT THE REQUEST.

Under Florida law, class action service awards are appropriate compensation for class representatives. 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

[108] See e.g. *In re Rio Hair Naturalizer Products Liability Litigation*, 1996 WL 780512 (E.D. Mich. 1996) ("fee awards in common fund cases. . .typically rang[e] from 20 to 50 percent of the fund"); *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 249-250 (S.D. Ohio 1991) ("[t]he percentages awarded in common fund cases typically range from 20 to 50 percent of the common fund created"); *In re Warner Communications Securities Litigation,* 618 F. Supp. 735, 749 (S.D.N.Y. 1985), aff'd, 798 F.2d 35 (2d Cir. 1986) ("[t]raditionally, courts in this Circuit and elsewhere have awarded fees in the 20%-50% range in class actions").

[109] Section 57.041 (1), Florida Statutes, (2021).

[110] See Affidavit of Non-Taxable Costs attached as Exhibit "I".

deposed and required to produce records, and must meet with counsel and appear in court,"[111] and must engage in the litigation proceedings. [112]

"Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation."[113] Prior to this case, the Class Representatives never served as a plaintiff in a class action. In addition to accepting the enormous responsibility of being a class representative in a case of this magnitude and subjecting themselves to significant public attention, Class Representatives actively engaged and participated in the prosecution of this case.

Each Class Representative devoted considerable time to this case, including assisting counsel by providing information necessary to prepare the initial complaint and other pleadings, maintaining regular communication with Class Counsel about case developments to stay apprised of the progress of the litigation, responding to written discovery requests, gathering and producing documents, preparing for depositions, and testifying at trial. On January 23, 2015, the City deposed each of the Class Representatives. During those depositions, Class Representatives were each forced to answer invasive and embarrassing questions concerning past marital struggles,[114] prior foreclosures,[115] and other sensitive financial matters.[116] The City also attempted to intimidate Class Representatives by implying during

[111] *Altamonte Springs Imaging, L.C. v. State Farm Mut. Auto. Ins. Co*., 12 So.3d 850, 857 (Fla. 3d DCA 2009).
[112] See *Roth v. GEICO General Ins. Co*., 2020 WL 10818393 at *3 (S.D. Fla. 2020) (citing *Altamonte Springs Imaging, L.C. v. State Farm Mut. Auto. Ins. Co*., 12 So.3d 850 (Fla. 3d DCA 2009) ("Florida law permits incentive awards in class actions").
[113] *Ingram v. The Coca-Cola Co*., 200 F.R.D. 685, 694 (N.D. Ga. 2001) (awarding total incentive awards of $1,200,000.00, or 1.2% of the $93,000,000 common fund); see also e.g. *Weaver v. City of Wildwood*, 22 Fla. L. Weekly Supp. 537b (Fla. 5th Cir. Ct. 2014) (awarding total incentive awards of $5,000, or 1.06% of the $471,682 common fund); *Dreidame v. Village Center Comm. Dev. Dist*., 2008 WL 7079074 (Fla. 5th Cir. Ct. 2008) (awarding total incentive awards of $300,000, or .7% of the $41,224,168 in monetary benefits); *Frank v. North Broward Hospital District*, 2015 WL 4389917 (Fla. 17th Cir. Ct. 2015) (awarding total incentive awards of $96,000, or 0.69% of the $3,635,000 common fund); *Dewar v. Koesov & Assoc., PA*, 2015 WL 3948560 (Fla. 20th Cir. Ct. 2015) (awarding total incentive awards of $10,000, or 1.13% of the $884,250 common fund); *Allapattah*, 454 F.Supp.2d 1185, 1241 (S.D. Fla. 2006) (awarding total incentive awards of $15,000,000, or 1.5% of the $1.075 billion common fund).
[114] Deposition of Dale W. Birch (Docket Entry 124) at 5:6-13, 7:15-20, 10:19-11:23.
[115] *Id*. at 7:21-9:1. Deposition of Michael Woeber (Docket Entry 123) at 16:22-20:19.
[116] Deposition of Dale W. Birch (Docket Entry 124) at 16:19-17:9, 25:8-26:4; Deposition of Michael Woeber (Docket Entry 123) at 7:8-18, 21:2-22:16, 37:20-39:14.

depositions a favorable result to Class Representatives in this case would be detrimental to their friends,[117] family,[118] customers,[119] potential customers,[120] and other putative class members[121] and a favorable result to the City would subject Class Representatives to liability for the City's legal fees and costs.[122]

If Class Representatives did not prevail after each appeal, the City would have sought reimbursement of its reasonable costs and attorney's fees from them as the City attempted to do after the trial court's final judgment in favor of the City. The City served an offer of judgment on Class Representatives on March 24, 2017. Despite the lengthy litigation, numerous appeals, and the ever-growing risk of liability for the City's attorney's fees and costs as this case continued to progress, Class Representatives remained diligent and committed to advancing the interests of the Class by encouraging Class Counsel to continue prosecuting this case in the trial court, Fifth District Court of Appeal, and Florida Supreme Court.

Considering the Class Representatives' extraordinary diligence and commitment to advancing and protecting the interests of the Class, despite their exposure to liability for the City's legal fees and costs, each Class Representative requests a service award of $50,000.00.[123] Given their invaluable contributions to the successful result of this case, the requested service awards are reasonable and should be awarded by this Court.[124]

[117] Deposition of Dale W. Birch (Docket Entry 124) at 38:13-40:1, 39:1-40:1, 42:13-43:20.
[118] *Id*. at 39:1-40:1, 42:13-43:20.
[119] Deposition of Michael Woeber (Docket Entry 123) at 25:7-13.
[120] *Id*. at 25:14-17.
[121] Deposition of Dale W. Birch (Docket Entry 124) at 15:15-23, 33:13-34:17, 36:8-9; Deposition of Michael Woeber (Docket Entry 123) at 24:4-17, 42:15-43:19, 51:17-24.
[122] Deposition of Dale W. Birch (Docket Entry 124) at 31:6-24.
[123] The incentive award is in addition to each Class Representative's prorated refund for the illegal tax paid to the City.
[124] See Schroth Affidavit attached as Exhibit "A".

VII. THIS COURT SHOULD ORDER THE CITY TO ADMINISTER THE COMMON FUND AND SEND EACH CLASS MEMBER A REFUND CHECK WITHIN 30 DAYS.

The City should administer the Common Fund, process all payments from the Common Fund, and separately pay all administrative and overhead costs related thereto. The City should pay all refunds owed and mail refund checks to all class members within 30 days of the Court's order. Each refund check to each class member should be equal to 91.61272% of all illegal taxes collected from each class member since February 20, 2010, rounded down to the nearest whole cent (the "Initial Refund Checks"). For example, if a class member paid $1,000 in illegal taxes, then that class member would receive an initial refund of $916.12 (1,000 x 0.9161272 = 916.1272). Prior to mailing each check, the City should verify each class member's current mailing address though the United States Postal Service, Experian, Xverify, Accurint, or another nationally recognized address verification service. The City should send each check only with a notice which states: "The enclosed check represents a refund of over 91% of the illegal taxes collected from you by the City of Ocala as part of your utility bill since February 20, 2010. The City was ordered to pay you this refund as the result of a lawsuit filed against the City by Discount Sleep of Ocala, LLC, d/b/a Mattress Warehouse, and Dale W. Birch. This refund check is only valid for 180 days from the date of issuance." The City should maintain an electronic log containing the following information for each of the Initial Refund Checks: (a) date issued, (b) payee name(s), (c) amount paid, (d), mailing address, and (e) date cashed or cleared. Within thirty (30) days after mailing the last Initial Refund Check, the City should file a report with the Court detailing the total number of Initial Refund Checks mailed, the total amount paid, and the anticipated Common Fund balance if all Initial Refund Checks are cashed.

No less than 270 days after the Court's order or 30 days after the City mailed the last Initial Refund Check, whichever is later, the City should pay the remaining Common Fund balance ("Remaining Balance") and mail supplemental refunds only to those class members who cashed their Initial Refund

Checks. Each Supplemental Refund Check should be calculated by multiplying the illegal taxes collected from each class member multiplied by the Remaining Balance, all of which is divided by $72,633,228.36 and then rounded down to the nearest whole cent (the "Supplemental Refund Checks"). For example, if a class member paid $1,000 in illegal taxes and the Remaining Balance is $500,000, then that class member would receive a supplemental refund of $6.88 (1,000 x 500,000 ÷ 72,633,228.36 = 6.8839).

The City should mail each of the Supplemental Refund Checks only with a notice that states: "The enclosed check represents the final refund of the illegal taxes collected from you by the City of Ocala as part of your utility bill. The City was ordered to pay you this refund as the result of a lawsuit filed against the City by Discount Sleep of Ocala, LLC, d/b/a Mattress Warehouse, and Dale W. Birch. This refund check is only valid for 180 days from the date of issuance." The City should maintain a separate electronic log containing the following information for each of the Supplemental Refund Checks: (a) date issued, (b) payee name(s), (c) amount paid, (d), mailing address, and (e) date cashed or cleared. Within thirty (30) days after mailing the last Supplemental Refund Check, the City should file a report with the Court detailing the total number of Supplemental Refund Checks mailed, the total amount paid, and the anticipated Common Fund balance if all Supplemental Refund Checks are cashed.

Within 30 days after the 180-day expiration date of the last Supplemental Refund Check, the City should provide a copy of both electronic logs to Class Counsel and file a motion to close the Common Fund. The City's motion should detail the total number of Initial Refund Checks issued, the total cashed or cleared amount of Initial Refund Checks, the total number of Supplemental Refund Checks issued, the total cashed or cleared amount of Supplemental Refund Checks, and the remaining Common Fund balance.

Until this Court orders the City to close the Common Fund, Class Counsel shall continue to represent all class members in all matters related to this class action and may seek to enforce the refund process established by this Court on behalf of any class member who is owed a refund but did not receive

one. If Class Counsel agrees the claimant is a class member entitled to a refund, Class Counsel may, in their discretion, pursue collection of the refund for the class member, including the filing of a motion for contempt, if Class Counsel deems necessary. Class Counsel will record all time and costs spent with a description of the services performed and should be awarded payment of attorneys' fees from the City for the City's failure to abide by the Court's order.

CONCLUSION

This novel and extraordinary case established precedent. The size of the Class and the scope of the relief, $79,282,909.44, in taxpayers' favor against a Florida municipality is unique. Class Representatives prevailed against several formidable defense teams by strategically creating an extensive record and successfully reversing three favorable rulings for the City. Any one of the three adverse rulings, if not reversed, would have defeated this class action case. Class Counsel devoted over 4,000 hours to this case and over $148,000 in out-of-pocket costs with no assurance of any payment. Class Counsel exhaustively investigated and researched the extensive facts, the numerous complex areas of law and nuanced legal issues, aggressively pursued discovery from the City to obtain all information and documents necessary to conclude this case, and skillfully won three appeals and defeated the City's request to the Florida Supreme Court to invoke its discretionary jurisdiction filed by seasoned successful board-certified appellate experts. The reduced hours requested (3,931.74) for this case and the requested hourly rates for a lodestar of $1,398,210.30 are reasonable.

Class Counsel earned a fee multiplier because this case was purely a contingency fee case, the chances of winning were unlikely at the outset (and especially so after losing three times at the trial court level), this case was one of first impression, established new precedent, and the results were unique, unprecedented, and exceptionally substantial in favor of the Class. Under Florida law, a 5 multiplier is warranted for work performed from September 12, 2013, through November 16, 2020, and a 2.5 multiplier

is warranted for work performed from November 17, 2020 through October 11, 2021. A total fee award to Class Counsel in the amount of $6,480,957.75 is reasonable.

WHEREFORE, Plaintiffs, Discount Sleep of Ocala, LLC, individually and as a Representative of a Class of all similarly situated others, and Dale W. Birch, individually and as a Representative of a Class of all similarly situated others, by and through their undersigned counsel, respectfully request an order:

1. Awarding Bowen|Schroth $6,480,957.75 in attorney's fees,

2. Awarding Bowen|Schroth $68,723.33 in non-taxable costs,

3. Awarding Class Representatives, Discount Sleep of Ocala, LLC, and Dale W. Birch, a total of $100,000.00, $50,000.00 each, in class representative service awards,

4. Ordering the City pay Bowen|Schroth within 10 days of this Court's order $6,649,681.08 from the $79,282,909.44 Common Fund to pay $6,480,957.75 in attorney's fees, reimburse Class Counsel for $68,723.33 in non-taxable costs, and to pay each Class Representative $50,000.00,

5. Ordering the City to pay each class member refunds from the remaining $72,633,228.36 in the Common Fund as ordered by the Court, and

6. Retaining jurisdiction to oversee and manage of all aspects of this class action case including awarding additional attorney's fees, costs, and class representative service awards as appropriate.

Respectfully submitted,

/s/ Derek A. Schroth
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed through the Florida Court's E-portal this 31st day of December, 2021, which will sent electronic notice and copies to counsel.

/s/ Derek A. Schroth
DEREK A. SCHROTH