SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NEIL LEVENTHAL, as representative of a Class consisting of himself and all others similarly situated, Plaintiff, v. BAYSIDE CEMETERY, CONGREGATION SHAARE ZEDEK AND COMMUNITY ASSOCIATION FOR JEWISH AT-RISK CEMETERIES, INC., Defendants.	New York County Index No. 100530/2011E Hon. Debra A. James **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND RELEASE AND CERTIFICATION OF A SETTLEMENT CLASS**

PRELIMINARY SATEMENT

Pursuant to CPLR §§ 907 and 908, Plaintiff Neil Leventhal, by and through his undersigned counsel, respectfully submits this Memorandum of Law in Support of Plaintiff's Motion for Final Approval of the Class Action Settlement and Certification of a Settlement Class with Defendants Congregation Shaare Zedek and Bayside Cemetery (collectively, "Defendants"). The Class Action Settlement before this Court satisfies all criteria for final approval. Plaintiff Neil Leventhal, therefore, respectfully requests that the Court: (1) grant final approval to the Settlement; (2) certify the settlement class; (3) and dismiss this action with prejudice.

The Court has already taken the first steps in the settlement approval process by granting preliminary approval and conditionally certifying the Class on January 15, 2025. The Class Members have been notified of the terms of the settlement and their right to object or opt-out of the Settlement. Zero individuals opted out and no Class Members have objected. In light of the Settlement's strong support, and for the reasons stated below, Plaintiff respectfully requests that the Court grant final approval.

FACTUAL AND PROCEDURAL BACKGROUND

In 2007, John R. Lucker and several other litigants commenced a breach of contract class action in the United States District Court for the Eastern District of New York against Bayside Cemetery and Congregation Shaare Zedek alleging that, for decades, Defendants had abused perpetual care trust monies in order to fund and maintain the synagogue. Chief Judge Raymond J. Dearie dismissed the action on jurisdictional grounds under 28 U.S.C. § 1332(d)(2). *Lucker v. Bayside Cemetery*, 262 F.R.D. 185 (E.D.N.Y. 2009). Later, a new action was filed in this Court. Defendants filed a motion to dismiss on the grounds that the Plaintiffs lacked standing because they were not parties to the perpetual care arrangements, but merely relatives of deceased family members who allegedly purchased such care. The motion was granted. *See Lucker v. Bayside Cemetery et. al*, 2011 N.Y. Slip. Op 32466. On appeal, the First Department affirmed in part and modified the lower court's decision to dismiss Plaintiff's breach of fiduciary duty claim, which the lower court had allowed to proceed. *See Lucker v. Bayside Cemetery*, 114 A.D.3d 162, 175–76 (1st Dep't 2013).

The Settlement Agreement is the product of extensive, arm's-length negotiations with Defendants in an effort to resolve Plaintiff's claims. The negotiations between counsel were informed by extensive discovery, which included the production of documents and an examination before trial. The parties also engaged in significant motion practice in litigating the claims at issue, including a dispute concerning the disqualification of counsel. The parties also litigated a significant crime-fraud discovery motion in which Plaintiff sought documents on the grounds that Defendants have been committing a crime or fraud by commingling monies and diverting Bayside Cemetery's perpetual care trust monies since at least the 1960s. Although this Court initially ruled from the bench to compel a limited number of crime-fraud documents, it later denied the motion in its entirety. The First Department affirmed. *See Leventhal v. Bayside Cemetery*, 163 A.D.3d 433 (1st Dep't 2018).

In parallel to this proceeding, Defendant Shaare Zedek entered into negotiations with a developer to demolish the synagogue building and construct a new mixed-use building on the site which included a new synagogue for the Congregation in the first three floors and residential units above the synagogue. As with any sale of real property of a religious corporation, the transaction required the approval of either the New York State Attorney General or a Justice of the Supreme Court. After considerable negotiation with the Office of the Attorney General, Shaare Zedek applied for and received the approval of this Court, which entered an Order on July 27, 2017 authorizing the sale of the synagogue, but requiring Shaare Zedek to place $8 million (half of the cash consideration it would receive in the transaction) into a Cemetery Reserve Fund to be used exclusively for the benefit of Bayside Cemetery, under terms specified in the Court's Order. Several provisions of the 2017 Order are particularly relevant to this litigation and the Settlement:

First, the Order established a *quasi*-endowment for the benefit of Bayside Cemetery known as the Cemetery Reserve Fund (the "Reserve Fund"). The income from the Reserve Fund is to be used to fund the regular operation of Bayside Cemetery, while the principal of the Reserve Fund is available, with the approval of the Attorney General or the Court, for certain capital projects designed to improve the safety, security, or (under a subsequent amendment to the Order) physical condition, appearance, or accessibility of Bayside Cemetery. This has allowed Defendants to pay for regular landscaping and maintenance of the graves at Bayside Cemetery, including those under perpetual care.

Second, the Order requires Defendants to maintain a separate perpetual care fund of $552,346 in accordance with Section 1507(c) of the Not-for-Profit Corporation Law.

Third, the Order permits Shaare Zedek to apply to the Court for the release of some portion of the Reserve Fund if it can show that "the reservation of such funds pursuant to [the] Order is unnecessary to ensure that Bayside Cemetery is maintained in a safe and respectful

condition." As set forth in the 2017 Order, there are no express limitations as to how much Shaare Zedek may seek to withdraw, although no such application has been made and any application would be subject to Court approval on notice to the Office of the Attorney General. A parallel provision of the 2017 Order recognizes that, if Shaare Zedek were to seek Court approval to sell Bayside Cemetery to a third-party, it could seek to transfer some (but not all) of the Reserve Fund to that purchaser and, if the Court were satisfied as to the reasonableness of those terms, the remainder would revert to Shaare Zedek for its "lawful charitable and religious purposes." These provisions are the subject of the amendments agreed to as part of the Settlement Agreement.

The parties renewed settlement discussions, which began in 2018, during the onset of COVID and eventually reached the Settlement. On March 12, 2024 Plaintiff moved for Preliminary Approval of the Class Action Settlement and Release and Certification of the Class. On January 15, 2025 the Court ordered that "motion of plaintiff for an Order preliminarily approving the Class Action Settlement and Release, which conditionally certifies a settlement class, [is] granted, without opposition." Thereafter on January 23, 2025, counsel for the parties conferred with the Court to schedule a Final Approval Hearing on May 1, 2025 and to finalize scheduling of dissemination of the notice to the Class.

Commencement of the Notice program began on February 13, 2025. The disseminated notices apprised Class members of their rights regarding the Settlement and provided the opt out and objection deadline, the date of the Final Approval Hearing, and the dedicated website for the settlement[1] along with a toll free number[2] class members could dial for more information.

[1]The dedicated settlement website is located at www.baysidecemeterysettlement.com
[2] The toll free number class members could dial for more information is 1-877-495-0817

On February 14, 2025, the Short-Form Notice, in the form of a Postcard, was sent via USPS First-Class Mail to potential class members. *See* Declaration of Michael M. Buchman dated April 21, 2025, Exhibit A Declaration of Kayla Kopetsky Regarding the Completion of Class Notice at ¶5. This was complimented by a paid media notice program. That program consisted of publishing the Short-Form Notice once in each of the weekly newspapers, *Jewish Standard* and *Jewish Press Id.* at ¶7. The paid media notice also involved a 30 day targeted media advertising campaign involving (1) digital banner and social media ads appearing on Google Display Network, YouTube, and the 70 Faces Media network (generating 1,444,677 geo-targeted gross impressions in New York City) and (2) banner ads appearing in the NY Jewish Week electronic newsletters. *Id.* at ¶8.

A.B. Data, Ltd. hereby submits in a Declaration, attached as Exhibit A to the Declaration of Michael M. Buchman dated April 22, 2025, how it has complied with the postcard and publication notice program described above. *See Id.* at ¶2

Following the end of the notice period on April 16, 2025, Plaintiff and Defense counsel received zero opt outs or objections to the Settlement before this Court. *See Id.* at ¶12; 13

I. THE SETTLEMENT WARRANTS FINAL APPROVAL

A. The Settlement Approval Process

CPLR § 908 provides that a class action cannot be settled, discontinued or compromised without court approval. *See, e.g., Desrosiers v. Perry Ellis Menswear LLC*, 139 A.D.3d 473 (1st Dep't 2016). "Court approval is required for the settlement of a class action, and '[n]otice of the proposed . . . compromise shall be given to all members of the class in such manner as the court directs.'" *In re Colt Indus. Shareholder Litig.*, 155 A.D.2d 154, 160 (1st Dep't 1990) (citing CPLR § 908). While there is no express requirement for final approval under Article 9, in reviewing and approving a class settlement, courts typically intervene only at two stages: first, in granting preliminary approval and, second, in granting final approval. *See id.* (citing CPLR § 908); *Saska*

v. Metro. Museum of Art, 2016 N.Y. Misc. LEXIS 4184, at *27-28 (Sup. Ct. N.Y. Cnty. Nov. 10, 2016). The leading treatise on class actions summarizes the settlement approval process as follows:

> *First*, the parties present a proposed settlement to the court for so-called "preliminary approval." If a class has not yet been certified, the parties will typically simultaneously ask the court to conditionally certify a settlement class.
>
> *Second*, if the court does preliminarily approve the settlement (and conditionally certify the class), notice is sent to the class describing the terms of the proposed settlement, class members are given an opportunity to object or . . . to opt out of the settlement, and the court holds a fairness hearing at which class members may appear and support or object to the settlement.
>
> *Third*, taking account of all of the information learned during that process, the court decides whether or not to give "final approval" to the settlement. As the parties may also have moved for class certification at this point in the litigation, final approval can also encompass a decision certifying the class.

Newberg on Class Actions § 13:1 (5th ed.). New York courts follow this same, three-stage procedure. *See*, e.g., *In re Colt*, 155 A.D.2d at 160, *aff'd as modified sub nom*, *Colt Indus. S'holder Litig. v. Colt Indus. Inc.*, 77 N.Y.2d 185 (1991) (setting forth procedure).

B. **The Standard for Final Approval**

The Court may approve the settlement of a class action "only if the proposed settlement is fair, adequate, reasonable and in the best interest of class members." *See*, *e.g.*, *Conolly v. Universal Am. Fin. Corp.*, 873 N.Y.S.2d 232 (Sup. Ct. 2008) (citations omitted). While CPLR § 908 does not provide specific guidelines for determining the merits of a class action settlement, New York courts have suggested consideration of the following factors: (1) likelihood of success; (2) whether and to what extent the settlement is supported by the parties; (3) the judgment of counsel; (4) whether the settlement was achieved as a result of good faith bargaining; and (5) the nature of the legal and factual issues. *Id.* The factors need not be applied in a formulistic manner, rather the court must decide what weight to give these factors in light of the circumstances presented. *Id.* The court should also take into account the risks and costs of continued litigation and balance those risks and costs against the benefits to be derived from the settlement.

Ultimately, "'[c]ourts judge the fairness of a proposed compromise by weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the settlement.'" *Pressner v. MortgageIT Holdings, Inc.*, 841 N.Y.S.2d 828 (Sup. Ct. 2007) (quoting *Carson v. American Brands*, 450 U.S. 79, 88, n.14 (1981)).

The Settlement Agreement before this Court meets the standards required for final approval. Accordingly, Plaintiff respectfully submits that the request for Final Approval should be granted by the Court for the reasons set forth below.

C. The Settlement is an Excellent Result for the Class

As an initial matter, the Settlement Agreement before this Court represents an excellent result for the Class. Under the terms of the Settlement Agreement, $6.5 million will remain untouched in the Reserve Fund in perpetuity and the income from such monies will be used to maintain Bayside Cemetery, including lots, plots, mausoleums and graves, subject only to the provisions of the 2017 Order. If Bayside Cemetery is transferred or sold the Reserve Fund will be transferred to the successor-in-interest upon the condition that $6.5 million must irrevocably remain in the Reserve Fund and the interest income will be used to maintain Bayside Cemetery. Plaintiff has previously estimated that between five and ten million dollars were improperly taken from what should have been a Perpetual Care Trust for Bayside Cemetery. Therefore, the Settlement Agreement is a very favorable outcome since it will provide future financial security and the ability to generate significant interest income that may be used for the care and maintenance of Bayside Cemetery and lots, plots, mausoleums and graves at Bayside Cemetery. Further, the Settlement Agreement serves the best interest of the Class by securing a substantial recovery while avoiding the delays, risks, and uncertainties associated with future litigation while achieving a fair, reasonable and adequate result based upon compromise. Accordingly, Final Approval of this Settlement Agreement is appropriate.

D. The Judgment of Experienced Counsel Supports the Settlement

The next factor, "the judgment of counsel," strongly weighs in favor of Final Approval of the Settlement Agreement. Plaintiff is represented by experienced class action counsel who has approximately thirty years of class action experience in some of the largest antitrust cases in the country.[3] Plaintiff's counsel has taken this matter on a *pro bono* basis, financed the litigation, and vigorously pursued this matter for approximately eighteen years. During that time, Plaintiff's counsel has worked closely with individuals whose family members are buried at Bayside Cemetery. Plaintiff's counsel has also been in communication with local Bayside community leaders to discuss and plan the future of Bayside Cemetery. These family members, as well as the greater Bayside Community, have demanded that Congregation Shaare Zedek ensure the financial health of Bayside Cemetery by dedicating enough funds to generate sufficient interest income to maintain the grounds. Plaintiff's counsel has negotiated a Settlement Agreement which meets the desires of the Class and the greater Bayside community. *See* Declaration of Michael M. Buchman ISO of Motion for Preliminary Approval of Class Action Settlement and Release and Certification of a Settlement Class, Exhibit C Declaration of Sam Saverio Esposito dated June 28, 2023, NYSCEF Doc. No. 158. Moreover, the President of the Ozone Park Block Association has worked closely with Plaintiff's counsel concerning Bayside Cemetery and he and the Association support the Settlement Agreement. *Id.* Given Plaintiff's counsel's extensive class action experience and direct involvement with class members and the greater Bayside community, Plaintiff's counsel strongly believes that the Settlement Agreement is fair, reasonable and adequate. Accordingly, the judgment of experienced counsel strongly supports Final Approval of the Settlement.

[3] https://www.motleyrice.com/attorneys/michael-m-buchman

E. The Settlement Is the Product of Good Faith Bargaining

Another factor, "the presence of good faith bargaining," also strongly supports Final Approval of the Settlement Agreement. The Settlement Agreement was reached by experienced and well-informed counsel after nearly seventeen years of contentious litigation. During the course of this case, there has been significant motion practice, two appeals to the First Department, and extensive discovery, including a large document production and an examination before trial. At the time settlement discussion began in 2018, this case was significantly developed, and the parties were fully informed and aware of the risks and rewards of proceeding with further litigation. In light of this record, the Settlement Agreement is the product of arm's length negotiations conducted by well-informed counsel in good faith and should be approved.

F. The Complexity of the Issues Supports Final Approval

Lastly, the following factor, the "complexity and nature of the issues of fact and law," strongly supports Final Approval of the Settlement. This case involves decades of alleged misconduct involving witnesses who are no longer living and evidence which likely no longer exists. While the parties are confident that they will prevail throughout the remaining course of this proceeding, they are equally aware of the risks associated with proceeding further. The history of the alleged misconduct, coupled with the age of this case, create significant problems for each side. Accordingly, Final Approval of the Settlement is wholly appropriate.

II. CLASS CERTIFICATION IS APPROPRIATE FOR SETTLEMENT PURPOSES

In determining whether an action may be maintained as a class action pursuant to CPLR § 901(a), a court should determine whether the class satisfies the following requirements:

1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members;
3. the claims or defenses of the representative parties are typical of the claims or defenses of the class;

4. the representative parties will fairly and adequately protect the interests of the class; and
5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

CPLR § 901(a). "The determination of whether a lawsuit qualifies as a class action under the statutory criteria 'ordinarily rests within the sound discretion of the trial court.'" *City of New York v. Maul*, 14 N.Y.3d 499, 509 (2010) (quoting *Small v. Lorillard Tobacco Co.*, 94 N.Y.2d 43, 52 (1999)). "The criteria set forth in CPLR § 901(a) tracks the standard set forth in Federal Rule 23(a); thus, federal authorities are useful guides in applying the often subtle requisites of CPLR § 901(a)." *Naftulin v. Sprint Corp.*, 16 Misc. 3d 1131(A), n.1, 847 N.Y.S.2d 903 (Sup. Ct. 2007) (citations omitted); *Accord City of New York v. Maul*, 14 N.Y.3d at 373 ("Federal jurisprudence is helpful in analyzing CPLR 901 issues, because CPLR article 9 has much in common with Federal Rule 23." (citations omitted)).

A. The Requirement of Numerosity is Satisfied

The first requirement for class certification is that "the class is so numerous that joinder of all members . . . is impracticable." CPLR § 901(a)(1). "There is no mechanical test to determine whether the numerosity requirement has been met . . . However, both federal and state courts presume that numerosity is satisfied where the proposed class contains around 40 members." *Krebs v. Canyon Club, Inc.*, 22 Misc. 3d 1125(A), 5, 880 N.Y.S.2d 873 (Sup. Ct. 2009) (collecting cases). Based on information provided by Defendants in discovery, Plaintiffs reasonably estimate that there are well over 300 perpetual care contracts at issue in this case concerning this approximately 14-acre cemetery which has been in use since 1846 such that joinder of all parties is impractical. *See, e.g., Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001) (generally more than 40 is sufficient); *Pruitt v. Rockefeller Ctr. Properties, Inc.*, 167 A.D.2d 14, 21 (1st Dep't 2015). *See also* Declaration of Michael M. Buchman ISO of Motion for Preliminary Approval of Class

Action Settlement and Release and Certification of a Settlement Class, Exhibit D NYSCEF Doc. 159.

B. Common Questions of Fact and Law Predominate

The second requirement for class certification is that "there are questions of law or fact common to the class which predominate over any questions affecting only individual members." CPLR § 901(a)(2). This rule "requires predominance" but does not require "identity or unanimity among class members." *Pludeman v. N. Leasing Sys., Inc.*, 74 A.D.3d 420, 423, 904 N.Y.S.2d 372, 376 (2010) (citation omitted).

Here, the questions of law and fact concerning this breach of contract case are common to the Class and clearly predominate over the questions affecting only individual members. The following issues satisfy the commonality and predominance requirements: (i) the creation and interpretation of the Perpetual Care Trust Agreement; (ii) Congregation Shaare Zedek's fiduciary duty to establish a perpetual care trust fund; and (iii) Congregation Shaare Zedek's fiduciary duty to maintain the fund in accordance with the Perpetual Care Trust agreements while adequately maintaining Bayside Cemetery. New York courts "have uniformly certified breach of contract class actions . . . where, as here, there is uniformity in contractual agreements . . . ." *Globe Surgical Supply v. GEICO Ins. Co.*, 59 A.D.3d 129, 139 (2d Dep't 2008) (collecting cases). This case, which alleges breaches of perpetual care trust agreements involving virtually identical contracts, is especially appropriate for class certification. *See* Declaration of Michael M. Buchman ISO of Motion for Preliminary Approval of Class Action Settlement and Release and Certification of a Settlement Class, Exhibit D NYSCEF Doc. 159.; *see also Cherry v. Res. Am., Inc.*, 15 A.D.3d 1013, 788 (4th Dep't 2005) ("[H]ere the common questions of law and fact concern defendants' alleged common use of a methodology to manipulate the figure upon which plaintiffs' royalties were based."). Accordingly, the requirement that common issues predominate on Plaintiffs' claims for breach of contract is satisfied.

C. Plaintiffs' Claims Are Typical of the Claims of the Settlement Class

The third requirement for class certification is that "the claims . . . of the representative parties are typical of the claims . . . of the class." CPLR § 901(a)(3). As the Second Department has explained, "[i]f it is shown that a plaintiff's claims derive 'from the same practice or course of conduct that gave rise to the remaining claims of other class members and is based upon the same legal theory . . . [the typicality] requirement is satisfied.'" *Pludeman*, 74 A.D.3d at 423 (quoting *Friar v. Vanguard Holding Corp.*, 78 A.D.2d 83, 99 (2d Dep't 1980)) (other citations omitted); *see also City of New York v. Maul*, 59 A.D.3d 187, 190 (2d Dep't 2009), *aff'd*, 14 N.Y.3d 499, 929 N.E.2d 366 (2010) ("Plaintiffs' claims meet the typicality requirement" because "plaintiffs' claims and the claims of the class generally flow from the same alleged conduct").

Here, Plaintiffs' claims derive from the same practice—Defendants' failure to adhere to the Perpetual Care Trust agreements and maintain Bayside Cemetery in accordance thereto. *Id.* Plaintiff's claims are based on the same legal theory as the claims of other Settlement Class Members. Accordingly, the requirement of typicality is satisfied.

D. Plaintiff and His Counsel Will Fairly and Adequately Protect the Interests of the Settlement Class

The fourth requirement for class certification is that "the representative parties [] fairly and adequately protect the interests of the class." CPLR § 901(a)(4). To determine "whether plaintiffs are suitable class representatives, th[e] Court must focus on three factors: (i) whether any conflict of interest exists between the representatives and the class members; (ii) the representatives' familiarity with the lawsuit; and (iii) the competence and experience of class counsel." *Casey v. Whitehouse Estates, Inc.*, 36 Misc. 3d 1225(A), 959 N.Y.S.2d 88 (Sup. Ct. 2012) (citations omitted); *accord Ackerman v. Price Waterhouse*, 252 A.D.2d 179, 202 (1st Dep't 1998). Each of these requirements are satisfied.

Plaintiff and the members of the Class were injured as a result of Defendants' failure to honor perpetual care contracts, and no conflict between them exists. Plaintiff, and his father

before his passing, have actively assisted counsel in representing the best interests of the Class, and understand and accepted the responsibilities of a Class Representative. Finally, Plaintiff has retained experienced and competent counsel. As set forth above, Plaintiff's counsel has decades of class action experience and has participated in some of the largest antitrust litigations in the history of the Sherman Act. In *this* litigation, initial Plaintiff John R. Lucker, and later Class Representative Steven R. Leventhal and Plaintiff's counsel, quickly identified a claim for breach of the *actual terms* of Perpetual Care contracts and the malfeasance that existed for decades. Accordingly, Plaintiff Neil Leventhal, who is equally well versed in the facts underlying this litigation, and his counsel will continue to fairly and adequately protect the interests of the Settlement Class.

E. A Class Action Is Superior to Other Methods of Adjudication

The final requirement for class certification is that "a class action [be] superior to other available methods for the fair and efficient adjudication of the controversy." CPLR § 901(a)(5). "One of the most frequently cited grounds for a finding of class-action superiority is the economic impracticability of individual actions. . . . When class members' claims are small in value, individual litigation simply is not a realistic prospect." *Casey v. Whitehouse Estates, Inc.*, 36 Misc. 3d 1225(A), 4 (Sup. Ct. 2012) (citations omitted). In this case, the individual claims of members of the Class are far too small to warrant individual litigation and a class action is the only practical method of adjudication, as courts supervising parallel litigation have consistently found. *Id.*

In addition to the requirements of CPLR § 901, CPLR § 902 directs the Court to consider the following factors in determining whether to certify a class:

1. The interest of members of the class in individually controlling the prosecution or defense of separate actions;
2. The impracticability or inefficiency of prosecuting or defending separate actions;
3. The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

4. The desirability or undesirability of concentrating the litigation of the claim in the particular forum; [and]
5. The difficulties likely to be encountered in the management of a class action. CPLR § 902. These are the same factors guiding the "superiority" analysis set forth in Rule 23(b)(3)(A)-(D) of the Federal Rules of Civil Procedure.

As to the first two factors, as set forth above, the cost of individual litigation is prohibitive. As one court explained:

> The first two of the considerations under CPLR § 902 (interest and individual control over the action and the inefficiency of individual actions) are essentially the same as the adequacy of representation and superiority of class action requirements. Based on the Court's discussion as to these two factors under CPLR § 901, the Court concludes that there would be very little interest by members of the class in individually controlling the prosecution of this action and further concludes that it would be inefficient to do so because the amounts involved are relatively minimal and the expense of litigating . . . would be extensive.

Pino Alto Partners v. Erie Cnty. Water Auth., 21 Misc. 3d 1114(A), 7, 873 N.Y.S.2d 236 (Sup. Ct. 2008), *aff'd*, 67 A.D.3d 1375, 887 N.Y.S.2d 910 (2009) (citation omitted).

As to the third factor, it has been over nine years since Defendants began addressing the issues in this case and remediating the cemetery. But since 2007, when the federal court action was first commenced, no one who has been adversely impacted by Defendants' conduct has filed an individual case, as opposed to a class action.

As to the fourth factor, Congregation Shaare Zedek maintains its principal offices in Manhattan, and the Court has already issued substantive rulings in this litigation, making this a highly desirable forum in which to concentrate the litigation. *See Pino Alto Partners*, 21 Misc. 3d 1114(A), at 7 ("As to the fourth factor under CPLR § 902, the desirability of this forum is manifest given the residence of the likely class members and the Commercial Division's familiarity with contract issues and complex litigation.").

As the requirements of CPLR §§ 901(a) and 902 are satisfied, the Settlement Class should be certified.

III. CONCLUSION

The Settlement Agreement is an excellent result for the members of the Settlement Class, and warrants Final Approval. The requirements for final class certification are also satisfied, and the Court should certify the Settlement Class. Finally, following final approval and the certification of the Class, Plaintiff requests that this Action be dismissed with prejudice.

Dated: April 22, 2025
New York, New York

Respectfully submitted,

By: /s/ Michael M. Buchman

Michael M. Buchman
Nathaniel Blakney
c/o Motley Rice LLC
800 Third Ave, STE. 2401
New York, NY 10022
Telephone: (212) 577-0040
Facsimile: (212) 577-0054
Email: mbuchman@motleyrice.com
nblakney@motleyrice.com

Pro Bono Counsel for the Plaintiff

TO:

Russel Steinthal, Esq.
Axinn, Veltrop and Harkrider LLP
630 Fifth Avenue, 33rd Floor
New York, NY 10111
(212) 728-2207