

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR POLK COUNTY
CIVIL DIVISION**

NORMAN GUNDEL, WILLIAM MANN,
and **BRENDA N. TAYLOR**, individually and
on behalf of all similarly situated persons,

Plaintiff,

Case No.: 17-CA-001446

Division: 11

vs

AVATAR PROPERTIES, INC.,

Defendant.

**PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
MOTION FOR FINAL DISTRIBUTION**

Plaintiffs supplement their motion for final distribution (Doc. 812, 7/17/24) following the Court's recent order granting prevailing party attorneys' fees and costs to the Solivita Class (Doc. 892, 11/4/24).

Plaintiffs seek a distribution of the \$67 Million currently on hand in the Solivita class common fund held at Raymond James Trust. As part of that distribution, Plaintiffs seek incentive awards for each class representative, a common fund fee award for Class Counsel under a *Kuhnlein* multiplier analysis, payment of awarded costs and expenses, with the Solivita Class receiving the remaining funds as a *partial* distribution on a *prorata* basis at this time until any rights to appeal are exhausted. At the conclusion of any appeal, a final distribution would then be made on a similar *prorata* basis. A proposed "Summary of Distribution of the Solivita Common Fund" is set forth below at page 7.

Solivita Class Common Fund

The Solivita Class recovered a total value of \$280 Million, inclusive of over \$64 Million in damages and interest awarded, and injunctive relief valued at over \$189 Million. The Solivita Class Fund is currently \$67,316,631.76.¹ Combined with the prevailing party attorneys' fees and costs award that will be paid by Avatar into the class common fund, the Solivita Class monetary recovery will total \$90,427,512.30.

Incentive Awards To Named Plaintiffs As Court Appointed Class Representatives

Plaintiffs seek incentive awards to be paid from the currently on hand class funds. The named Plaintiffs' commitment to their duties as class representatives, their individual risk taken in facing counterclaims by Avatar, their time invested and personal sacrifices over the last eight years – all support an incentive award of \$100,000 to each named plaintiff. Such incentive awards are supported by the record and Florida law. *See* Pl. Motion (Doc. 812, 7/17/24), ¶¶ 21-23, at pages 8-9 (discussing extensive contributions and risks faced by the named Plaintiffs). *See also Altamonte Springs Imaging v. State Farm Mut. Auto. Ins. Co.*, 12 So. 3d 850 (Fla. 3d DCA 2009) (“fiduciary for a class is less an honor than a headache. The representative plaintiff is identified as a class litigant in public records (potentially affecting credit reports and disclosures for financing), is subject to fiduciary duties to the class, may be deposed and required to produce records, and must meet with counsel and appear in court.”).

¹ The Solivita Class common fund currently includes the principal amount, \$64,665,695.72 initially paid by Avatar in December 2023 by agreement (CMC Order, Doc. 735, 1/17/24). The common fund is invested with Raymond James Trust, N.A., accruing interest and accretion of discount since December 23, 2023, at an average rate of 5.16% (\$2,940,679.02); less estimated taxes paid in amount of \$250,186; less fees paid of \$39,531.98; for a total common fund account of \$67,316,631.76 as of November 11, 2024.

Common Fund Fees and Cost Award

“Attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund . . . subject to court approval.” *Andrews v. Ocean Reef Club, Inc.*, 1993 WL 563622, at *13-14 (Fla. 3d DCA Jan. 22, 1993) (citing *Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991)); *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (noting that the Supreme Court has “recognized consistently” that “a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole”); *Community Nat. Bank v. Rishoi*, 567 So. 2d 1053, 1054 (Fla. 5th DCA 1990) (“[t]he right of an attorney to receive fees 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 bears his or her pro rata share of the cost of recovering the fund”) (citing *Fidelity & Cas. Co. v. O’Shea*, 397 So. 2d 1196, 1198 (Fla. 2d DCA 1981)).

This Court’s analysis of the reasonableness of Class Counsel’s fee request proceeds in two stages. *First*, the Court determines an appropriate “lodestar” fee amount; that is, the number of hours reasonably expended on the case, multiplied by a reasonable hourly rate. *See Florida Patient’s Cop. Fund v. Rowe*, 472 So. 2d 1145, 1146 & 1151 (Fla. 1985). Then, “[o]nce the court arrives at the lodestar figure, it may add or subtract from the fee based upon a ‘contingency risk’ factor and the ‘results obtained.’” *Id.* *See Order* (Doc. 892, 11/4/24) (lodestar and contingency risk analysis).

In a “common fund case” where the “defendant pays a specific sum for the benefit of class members” (whether by settlement or by judgment like here), a court may apply a multiplier of up to five “to place greater emphasis on the monetary results achieved” and “to alleviate the

contingency risk factor involved and attract high level counsel to common fund cases.” *Kuhnlein v. Dep’t of Revenue*, 662 So. 2d 309, 310 & 315 (concluding that class counsel were entitled to maximum five-times multiplier); *see also Ramos v. Philip Morris Cos.*, 73 So. 2d 24, 33 (Fla. 3d DCA 1999) (“a multiplier of five” can be applied “regardless of whether the fee is paid from the common fund or is negotiated separately”).

Plaintiffs seek a common fund fee award from the currently available class funds, along with payment of all costs and expenses awarded by the Court (as of July 30, 2024, \$577,755.54). In its Order Granting Prevailing Party Fees and Costs, the Court found Class Counsel’s lodestar of fees payable by Avatar to be 10,850.1 hours *as of December 2023*. That order recognized that there were additional hours expended by Class Counsel that were not statutorily recoverable against Avatar but were incurred for the benefit of the class. *See Order*, at page 27 (Doc. 892, 11/4/24); Class Counsel’s Affidavits (Pl. Trial Exhs. 1-8).

Applying a *Kuhnlein* multiplier analysis, Class Counsel submit they are entitled to a *five times multiplier*. Nonetheless, in an effort to increase the recovery to all class members, Class Counsel herein seek a total common fund fee award of \$36,000,000, which is inclusive of the fees already awarded to the Class to be paid into the common fund by Avatar. Such an award is wholly supported by the record, whether applying a *4 times multiplier* to the lodestar awarded by the Court for work through December 2023 (\$9,013,250 lodestar based on 10,850.1 hours as of 12/31/2023), or applying a *3 times multiplier* using similar analysis to the more than 15,000 hours incurred by Class Counsel through the ultimate completion of the case after appeal (estimated at approximately \$12,000,000 lodestar based on 15,000 hours through completion). *See Pl. Motion* (Doc. 812, 7/17/24), ¶¶ 6-20, at pages 3-8; *Order*, at page 27 (Doc. 892, 11/4/24); Class Counsel’s Affidavits (Pl. Trial Exhs. 1-8). *See also Declaration of John Yanchunis* (Exh. A, ¶ 17, at page 5).

Compare the rare and exceptional results obtained here by the Solivita Class with other comparable class actions in Florida² – considering the monetary recovery; injunctive relief, if any; total length of time and hours spent:

	<i>Kuhnlein</i>	<i>Ramos</i>	<i>Dreidame</i>	Solivita Class
Monetary Recovery	\$188,100,000	\$0.00	\$41,200,000	\$90,427,512
Injunctive Relief	\$0.00	\$300,000,000	\$0.00	\$189,848,420 ³
Total	\$188,100,000	\$300,000,000	\$41,200,000	\$280,275,932
Hours/Years	6,730.9/5 Yrs	67,166/6 Yrs	3,753.4/1 Yr	15,000/8 Yrs.
Multiplier	5X	5X	5X	TBD

An award of \$36,000,000 in this common fund class action is not excessive or unreasonable. *First*, the requested award is presumptively reasonable and well within the range set by *Kuhnlein* whether applying a 4-times multiplier to the lodestar calculation (as of December 31, 2023), or a 3-times multiplier to the total lodestar incurred by Class Counsel through completion of the case. *Second*, by way of percentage cross-check, federal courts calculating fee awards as a percentage of overall recovery routinely permit awards of 40% of an overall common fund, and sometimes even more. *See, e.g., Dunkle*, 946 F.2d at 774 (“To avoid depleting the funds available for distribution to the class, an upper limit of 50% of the fund may be stated as a general rule, although even larger percentages have been awarded.”).

Here, an award of \$36,000,000 is just ***under 40%*** of the monetary recovery of \$90,427,512.30, or ***less than 15%*** of the total value afforded to the class with over \$189 Million

² Other comparable class actions include *Kuhnlein*, 662 So. 2d at 309; *Ramos*, 743 So. 2d at 24; and *Dreidame v. Vill. Ctr. Cmty. Devel. Dist.*, 2008 WL 7079074 (Fla. Cir. Ct., 5th Cir. 2008).

³ The future savings of \$189,848,420 to the Solivita Class is based on calculations of the Club Membership Fees (2024-2050) and included in the value of the class common fund. *See* Plaintiffs’ Amended Notice, (Doc. 541). *See also In re Checking Account Overdraft Liti.*, 2013 WL 11319243 at *13 (S.D. Fla. Aug. 2, 2013) (holding when non-cash relief by way of injunction can be reliably valued, “court may include such relief as part of the value of a common fund”); *Ramos*, 743 So. 2d at 24 (Fla. 3d DCA 1999) (class common fund of \$300 Million medical foundation fund, without any monetary relief paid to class members, but other evidentiary stipulations).

in future club membership fees permanently enjoined, benefiting the class in savings at approximately \$5 Million annually. *See Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp.2d 1334, 1342-43 (S.D. Fla. 2007) (“when determining the total value of a class action settlement for purposes of calculating the attorneys’ fee award, courts usually consider not only the compensatory relief, but also the economic value of any prospective injunctive relief obtained for the class”). *See supra* note 3.

Class counsel acknowledge that Avatar has filed an appeal of the order granting fees and costs. It is anticipated that the appeal will not be successful. But to accommodate any possibility that the fee and cost award could be reduced due to the appeal, Class Counsel seeks only a partial distribution at this time. And in the event of any reduction below the anticipated amount, Class Counsel proposes that the final distribution after appeal would be reduced with the reduction shared *prorata* between Class Counsel (39%) and the Class Distribution (61%). This would ensure the Class’s recovery would never be reduced beyond 40% of the overall common fund.

Class Counsel further supports such an award with declarations from John Yanchunis, Esq., and the Honorable Manuel Menendez (Retired, Chief Judge, Thirteenth Judicial Circuit). See **Exhibit 1** (Yanchunis Declaration) and **Exhibit 2** (Menendez Declaration).

Summary of Proposed Distribution of the Solivita Class Fund

In light of the appeal of the prevailing party attorneys’ fees and cost award to the Solivita Class, Plaintiffs propose the following distribution of the currently available Solivita Class Funds: *(These amounts do not include estimated statutory interest accruing on the prevailing party fees and costs awarded to the Solivita Class and such amounts would be included in the final distribution on the same prorata basis to the Class and Class Counsel.)*

	Total	<i>Partial</i> Distribution	After Appeal <i>Final</i> Distribution (Estimated)
Class Fund (Refund)	\$50,545,719		
Class Fund (Interest)	\$14,119,976		
Class Fund (Fees & Costs Award)	\$23,110,880		
Class Fund (RJ Investment)	\$2,650,936		
Class Common Fund	\$90,427,512	\$67,316,631	\$23,110,880
Incentive Award (Gundel)	(\$100,000)	(\$100,000)	N/A
Incentive Award (Taylor)	(\$100,000)	(\$100,000)	N/A
Incentive Award (Mann)	(\$100,000)	(\$100,000)	N/A
Costs & Expenses	(\$577,755)	(\$577,755)	N/A
Common Fund Fee Award	(\$36,000,000)	(\$27,000,000)	(\$9,000,000)
Subtotal	\$53,549,756	\$39,438,876	\$14,110,880
Class Distribution	(\$53,549,756)	(\$39,438,876)	(\$14,110,880)

[Attorney’s signature appears on the following page.]

CERTIFICATE OF SERVICE

I HERBY CERTIFY that a true and correct copy of the foregoing has been Electronically served through Florida Courts E-filing portal to all counsel of record, on this 8th day of December 2024.



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**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
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CIVIL DIVISION**

NORMAN GUNDEL, WILLIAM MANN,
and **BRENDA N. TAYLOR**, individually and
on behalf of all similarly situated persons,

Case No.: 17-CA-001446

Plaintiff,

Division: 11

vs

AVATAR PROPERTIES, INC.,

Defendant.

_____ /

DECLARATION OF JOHN A. YANCHUNIS

I, John A. Yanchunis, hereby declare pursuant to Section 95.525, Florida Statutes, as follows:

1. I have been retained by Class Counsel in the above styled action and am providing these opinions in support of Plaintiffs' Motion For Final Distribution (Doc. 812, 7/17/24), and Supplemental Memorandum filed simultaneously with this Declaration.

2. I have given testimony before this Court about my background and experience. To briefly summarize, I have practiced law for 44 years, specializing in class actions for more than 30 years. My experience, including honors, appointments, and class action expert work for the Florida Bar has been previously submitted into evidence (Plfs Exh. 58), an updated curriculum vitae is attached as **Exhibit A**.

3. I have previously reviewed certain pleadings from the trial and appellate court proceedings, biographical information on Class Counsel, and other filings to date.

4. I have also reviewed this Court's Order Granting Prevailing Party Attorneys' Fees and Costs (Doc. 892, 11/4/24), in which the Court addressed the lodestar analysis for Class Counsel's rates and hours, and contingency risk multiplier to be awarded to the class as the prevailing party against Avatar Properties, Inc.

5. I have now been asked by Class Counsel in this case to render an opinion as to the reasonableness of their request for a common fund fee award as set forth in Plaintiffs' Motion For Final Distribution and Supplemental Memorandum.

6. As discussed more in detail below, in my opinion, the requested common fund fee award of \$36,000,000 is substantially reasonable and fair taking in consideration the history of this case, the risk factors involved, the competency and high level of experience provided by Class Counsel over the extended length of this class action, and the extraordinary and rare results obtained by Class Counsel

7. As this Court is aware, in a "common-fund case" like this one, the Court can apply a multiplier of up to five to the lodestar. *Kuhnlein v. Department of Revenue*, 662 So. 2d 309, 310, 315 (Fla. 1995).

8. To determine whether a contingency fee multiplier should apply a court considers: "(1) whether the relevant market requires a contingency fee multiplier to obtain competent counsel; (2) whether the attorney was able to mitigate the risk of nonpayment in any way; and (3) whether any of the factors set forth in *Rowe* are applicable, especially, the amount involved, the results obtained, and the type of fee arrangement between the attorney and his client." *Standard Guaranty Ins. Co. v. Quanstrom*, 555 So.2d 828, 834 (Fla. 1990); *see also Kuhnlein*, 662 So. 2d at 315 n.9 ("The criteria set forth in *Quanstrom* are to be used to determine initially whether a multiplier is needed and thereafter to set the amount of the multiplier").

9. As the Florida Supreme Court found in *Kuhnlein*, a five times multiplier 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." *Id.* at 315. See also *Ramos v. Philip Morris Companies, Inc.*, 7 43 So. 2d 24, 33 (Fla. 3d DCA 1999) (finding five times multiplier "justified" in "analogous circumstances" to *Kuhnlein*, specifically, when there was "a high contingency risk and the need for high level counsel").

10. As the Court in *Kuhnlein* makes clear, "what multiplier, if any, applies depends on the particular case." 662 So. 2d at 315.

11. In my opinion, the applicable factors here support the use of the maximum multiplier of five. However, as explained below, the requested award seeks a multiplier of four times the lodestar as of December 2023, and in comparison, a multiplier of three times the estimated lodestar of all work through completion.

12. Based on my experience, no qualified plaintiff's attorney of whom I am aware would have taken this case without the possibility of compensation for the high level of risk.

13. Due to the complexity of the case, its long expected duration, and the unequal financial positions of the parties, it is my opinion that a limited number of firms would have the risk appetite and resources, much less the relevant expertise, to assume responsibility for a dispute of this magnitude and invest the attorney time and other resources to see it through to a conclusion.

14. As I previously testified, there were multiple obstacles to the highly successful and extraordinary result achieved here, one that is rare in class actions. The monetary recovery of a full refund of illegal club membership fees paid by the class, plus sales tax, plus statutory prejudgment interest, and prevailing party attorneys' fees, costs, and expenses, is both extraordinary and rare.

15. Beyond securing a recovery of \$64.6 Million in refunds and interest, plus a prevailing party attorneys' fees and cost award of \$23.1 Million, the class also received a real, actual savings valued at approximately \$5 Million annually in injunctive relief – an estimated \$189 Million in future club membership fees permanently enjoined. In summary, the total value of the recovery obtained in this case exceeds \$280 Million. In my opinion, and based on my experience, when evaluating a result, it is important to consider the total benefits including non-monetary relief and injunctive relief that accrue to class members. *See, e.g., George v. Acad. Mortg. Corp. (UT)*, 369 F. Supp. 3d 1356, 1372 (N.D. Ga. 2019) ("Courts also take into account the fact that non-monetary relief adds value to a settlement."); *Wilson v. EverBank*, 2016 WL 457011, at *11 (S.D. Fla. Feb. 3, 2016) ("Finally, courts rightly consider the value of injunctive and monetary relief together in assessing whether a class action settlement provides sufficient relief to the class."). Here, that includes recognizing that the efforts by Class Counsel and named Plaintiffs saved the class from paying \$189 Million in illegal club fees over the next 30 years.

16. In my opinion, applying a *Kuhnlein* multiplier analysis in this common fund class action, Class Counsel is entitled to the maximum five times multiplier based on the rare and extraordinary results obtained for the class. But in their motion, Class Counsel is requesting a common fund fee award of \$36,000,000 based on a lower *four times* multiplier calculated using the lodestar awarded by the Court in its Order (\$9,013,250 lodestar based on 10,850.1 hours as of 12/31/2023), or, in comparison and more commensurate with their efforts through completion, a *three times* multiplier to Class Counsel's full lodestar using similar analysis to the more than 15,000 hours incurred by Class Counsel (estimated \$12,000,000 lodestar based on 15,000 hours through completion of the case after appeal).

17. Class Counsel has explained, and as the Court noted in its prior Order, that counsel incurred substantial time protecting the interest of the class, which was not statutorily recoverable by the class as prevailing party attorneys' fees against Avatar. Considerable time was spent in the related bond validation proceeding (2,340 hours); Avatar's jurisdictional briefing (129.3 hours); fees fighting over fees (1,250 hours); anticipated hours through completion including all class administration (580 hours) and anticipate future appeals (500 hours). A sum that totals an estimated 15,650 hours. *See* Order, at page 27 (Doc. 892, 11/4/24); Class Counsel's Affidavits (Pl. Trial Exhs. 1-8).

18. In my opinion, the requested common fund fee of \$36,000,000 is extremely reasonable compared to the normal recovery in a percentage-of-fund case. *See Suzuki v. Hitachi Global Storage Technologies, Inc.*, 434 Fed. Appx. 695, 696 (9th Cir. 2011) (noting approvingly that the trial court "began with the lodestar method of calculating attorneys' fees and then permissibly used the percentage of common fund cross-check to arrive at a reasonable fee award under [state] law").

19. Indeed, had the class action been filed in federal court - which was an option - Class Counsel would have been entitled to a much greater fee award (likely in the range of 30% of full value received, \$280m, or upwards of \$84m). *See, e.g., George v. Acad. Mortg. Corp. (UT)*, 369 F. Supp. 3d 1356, 1382 (N.D. Ga. 2019) ("Plaintiffs request for approval of Class Counsel's 33% fee falls within the range of the private marketplace, where contingency-fee arrangements are often between 30 and 40 percent of any recovery"); *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 201 (N.D. Ill. 2018) ("a typical contingency agreement in this circuit might range from 33% to 40% of recovery").


20. Indeed, according to one leading treatise, "[u]sually, 50% of the fund is the upper limit on a reasonable fee award from any common fund, in order to assure that fees do not consume a disproportionate part of the recovery obtained for the class, though somewhat larger percentages are not unprecedented." 5 Newberg and Rubenstein on Class Actions § 15:83 (6th Ed.).

21. Here, the requested common fund fee award of \$36,000,000 represents just *under* 40% of the monetary recovery, and *less than* 15% of the total benefit to the class.

22. The comparison with a percentage-of-fund method, in my view, reinforces the reasonableness of the total common fund fee request by Class Counsel.

Under penalties of perjury, I declare that I have read the foregoing declaration and that the facts stated in it are true and correct.

Executed this 2 day of December 2024 in Tampa, Florida.



John Yanchunis, Esq.

Biography Overview

John A. Yanchunis leads the Class Action Department of Morgan & Morgan. Mr. Yanchunis' practice – which began after completing a two-year clerkship with United States District Judge Carl O. Bue, Jr., Southern District of Texas – has concentrated on complex litigation and spans over 42 years, including class actions for almost two-thirds of that time.

Mr. Yanchunis has served as lead, co-lead, or class counsel in numerous class actions in a wide variety of areas affecting consumers, including but not limited to anti-trust, civil rights, defective products, environmental claims, life insurance, annuities, and unfair and deceptive practices. He has been appointed by courts to leadership positions in multidistrict class action litigation, and presently serves as the lead in *In re: Yahoo! Inc. Customer Data Breach Security Litigation*, 5:16-md-02752 (N.D. Cal.), as a member of the plaintiffs' steering committee *In re Equifax, Inc. Customer Data Sec. Breach Litig.*, 1:17-md-02800 (N.D. Ga.); on the three-member Plaintiffs' Steering Committee in MDL No. 2664, *In re: U.S. Office Personnel Management Data Security Breach Litigation*, and serves on the Executive Committee overseeing the consumer class, the financial institution class, and the shareholder derivative litigation pending against Target Corporation—one of the largest data-breach cases to date—in *In re Target Corporation Customer Data Security Breach Litigation*, MDL No. 2522 (D. Minn.).

As a result of his experience in insurance and complex litigation, beginning in 2005, Mr. Yanchunis served as lead counsel for the Florida Department of Financial Services and the Florida Department of Insurance Regulation (the insurance regulators of Florida) in their investigation of the insurance industry on issues concerning possible antitrust activity and other possible unlawful activities regarding the payment of undisclosed compensation to insurance brokers. Mr. Yanchunis served as lead regulator counsel and worked with a core group of state Attorneys General from the National Association of Attorneys General, which were selected to conduct the investigations. The insurance regulators for Florida were the only insurance regulators in the group. The litigation that was filed and the other investigations recovered millions of dollars in restitution for Florida consumers and resulted in significant changes in the way commercial insurance is sold in Florida and across the country.

During his career, Mr. Yanchunis has tried numerous cases in state and federal courts, including one of the largest and longest insurance coverage cases in U.S. history, which was filed in 1991 by The Celotex Corporation and its subsidiary, Carey Canada, Inc. During the seventeen years the case was pending, Mr. Yanchunis served as lead counsel for several insurance companies, regarding coverage for asbestos and environmental claims. The case was tried in 3 phases over several years beginning in 1992. Mr. Yanchunis was also lead counsel for these parties in the subsequent appeals which followed a judgment in favor of his clients.

Mr. Yanchunis served as an elected member of the Young Lawyers Board of Governors (two terms) and Board of Governors of The Florida Bar (the governing body of The Florida Bar) (two terms), served as a member of The Board of Directors of The Florida Bar Foundation, and was appointed by The Supreme Court of Florida to serve as a member The Florida Board of Bar Examiners. After the completion of his five-year term on the Board of Bar Examiners, Mr. Yanchunis has been reappointed annually by the Florida Supreme Court since 2002 to serve as an Emeritus Member on character and fitness panels and as an arbiter in final hearings.

Mr. Yanchunis has also served on many committees of The Florida Bar, including leadership positions. Most recently, he completed a term as the Chair of the Consumer Protection Committee of the Florida Bar. Mr. Yanchunis has also represented The Florida Bar in a number of matters. He was also appointed by the Florida Supreme Court to enforce an injunction of the Court, and his efforts resulted in the incarceration of the respondent in that case on the finding that the respondent had engaged in indirect criminal contempt. As a result of his experience in the area of class litigation and ethics, he has served as an expert for The Florida Bar on ethical issues arising in class action litigation.

Mr. Yanchunis was recognized in 2024, by Law360 as 1 of 4 MVPs in the area of Cybersecurity and Privacy, the fourth year since 2019 that he has been so recognized. Similarly, in 2016 and then in 2020, Mr. Yanchunis was recognized by the National Law Journal as a Trailblazer in the Area of Cybersecurity & Data Privacy. In 2020, Mr. Yanchunis was named Florida Lawyer of the Year by ALM/LAW.COM and he was named 1 of 3 finalists for the same award in 2024. In 2022, he was awarded the Best Mentor award in the state of Florida by ALM/LAW.COM. In 2023, he was named Consumer Lawyer of the Year by The Florida Bar's Consumer Protection Committee, and in 2023, he was also recognized as a Titan of the Plaintiffs' Bar by Law360. In 2024, he was named a finalist for Lawyer of the Year in the state of Florida by ALM/LAW.COM, and the practice group that he leads at the firm was awarded Litigation Department of the Year in the state of Florida. This year he was also one of several national finalists for Lawyer of the Year by ALM/LAW.COM, and his practice group was one of several national finalists for Privacy /Data Breach.

He received the Elder Law Section of The Florida Bar Honor Award for Mr. Yanchunis' handling of a class action against the state of Florida for violations of federal law in failing to deliver a benefit under Medicaid to approximately 41,000 elderly residents of nursing homes in Florida. He is also the recipient of The Florida Bar Foundation President's Award for Excellence for his outstanding leadership in promoting the Foundation's mission to help provide legal assistance for the poor.

Mr. Yanchunis frequently lectures around the United States, in the United Kingdom and in Europe on topics related to class actions.

In the community, Mr. Yanchunis served as a member of the Elder Law Board, College of Law and the Center for Excellence in Elder Law, Stetson University College of Law. He has been a member of the Boy Scouts of America since his youth having earned the rank of Eagle, and has served in virtually every leadership position as an adult leader in Cub Scouts and Boy Scouts, including as Council President to the West Central Florida Council of the Boy Scouts of America, and as a member of National Council of the Boy Scouts of America.

Mr. Yanchunis is a member of The Florida Bar (admitted in 1981). Additionally, he is admitted to the United States Supreme Court; the United States Courts of Appeal for the First, Second, Fourth, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits; the United States District Court for the Southern, Northern, and Western Districts of Texas; the United States District Court for the Eastern and Western Districts of Wisconsin; the United States District Court for the Middle and Southern Districts of Florida; the United States District Court for the Eastern District of Michigan; the United States District Court for the Western District of Kentucky; the United States District Court for the Northern District of Illinois; the United States District Court of Connecticut; and the United States District Court of Colorado.

Martindale-Hubbell has honored Mr. Yanchunis with the prestigious "AV" rating. He has been recognized continuously as a Florida Super Lawyer and The Best Lawyers in America in his area of practice. He is a Fellow in The Trial Lawyer Honorary Society of the Litigation Counsel of America, and a Fellow of The Florida Bar Foundation.

While at the University of Florida, Mr. Yanchunis was a member of Florida Blue Key and Omicron Delta Kappa. He received his Juris Doctor degree from the South Texas College of Law in 1980, where he graduated magna cum laude. During law school, Mr. Yanchunis was a member of the Order of the Lytae, Assistant Editor-in-Chief and Technical Editor of the South Texas Law Journal.

Experience

As a result of his experience in insurance and complex litigation, beginning in 2005, Mr. Yanchunis served as lead counsel for the Florida Department of Financial Services and the Florida Department of Insurance Regulation (the insurance regulators of Florida) in their investigation of the insurance industry on issues concerning possible antitrust activity and other possible unlawful activities regarding the payment of undisclosed compensation to insurance brokers.

Practice Area

Mr. Yanchunis has served as lead, co-lead, or class counsel in numerous class actions in a wide variety of areas affecting consumers, including but not limited to anti-trust, civil rights, defective products, environmental claims, life insurance, annuities, and unfair and deceptive practices.

Education

- University of Florida, B.A. 1976
 - Florida Blue Key, Omicron Delta Kappa
- South Texas College of Law, J.D.
 - Magna cum laude, 1980; Order of the Lytae and Associate
 - Editor-in-Chief of the South Texas Law Journal

Bar Admission

- The Florida Bar – 1981
- The State Bar of Texas – 1980
- United States Supreme Court
- United States Court of Appeals: First, Second, Fourth, Fifth, Sixth, Seventh, Ninth and Eleventh Circuit
- United States District Court, Southern, Northern and Western District of Texas
- United States District Court, Eastern and Western District of Wisconsin
- United States District Court, Middle and District of Florida
- United States District Court, Eastern District of Michigan
- United States District Court, Western District of Kentucky
- United States District Court, Northern District of Illinois
- United States District Court of Connecticut
- United States District Court of Colorado

Memberships

- The Florida Board of Bar Examiners, Member, 1997 to 2002 - Presently an Emeritus Member
- The Florida Bar Foundation, Board of Directors, 2003 to 2006 – Fellow
- Standing Committee on the Unlicensed Practice of Law, Chairperson, 1995 to 1997, Vice Chairperson, 1994 to 1995, Member, 1990 to 1994
- Standing Committee on Professionalism, Member, 1991 to 1993
- Supreme Court's Judicial Management Council, Member, 2008 to Present
- Consumer Protection Law Committee, Member, 2009 to Present
- Continuing Legal Education Committee, Member, 1991 to 1992
- Public Relations Committee, Member, 1989 to 1990
- Board of Governors of Young Lawyers, Division of the Florida Bar, Sixth Circuit Representative, Member, 1988 to 1992
- Unlicensed Practice of Law Committees:
 - 6A Circuit Committee
 - 6B Circuit Committee, Chairperson, 1986 to 1995; Member, 1985; Chairperson, 1995

Community Activities

- Elder Law Advisory Board, College of Law and The Center for Excellence in Elder Law – Stetson University College of Law, Member, 2003 to 2008

- Community Law Program, Member
- St. Vincent de Paul Society, St. Petersburg Downtown Conference, Vice President, 2001
- Boy Scouts of America, National Council Member, Council Representative, 2005 to 2007
- West Central Family Council of The Boy Scouts of America, Council President, 2005 to 2007, Member of Executive Committee, 2003 to Present
- Skyway District Chairman 2003 to 2004

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR POLK COUNTY
CIVIL DIVISION**

**NORMAN GUNDEL, WILLIAM MANN,
and BRENDA N. TAYLOR**, individually and
on behalf of all similarly situated persons,
Plaintiffs,

Case No.: 17-CA-001446

vs.

Division: 11

AVATAR PROPERTIES, INC.
Defendant.

_____ /

DECLARATION OF MANUEL MENENDEZ, JR.

I, Manuel Menendez, Jr., hereby declare pursuant to Section 95.525, Florida Statutes, as follows:

1. I have been retained by Class Counsel in the above styled action and am providing these opinions in support of Plaintiffs' Motion for Final Distribution (Doc. 812, 7/17/24), and Supplemental Memorandum filed simultaneously with this Declaration.

2. I have been admitted to practice law in Florida for over 52 years. I was appointed as a Circuit Court Judge in 1984 and served as the Chief Judge of the 13th Judicial Circuit of Florida from July 2001 until my retirement in December 2014. My experience, which includes serving on numerous Supreme Court Commissions and Committees, serving as the past-chair of the Florida Conference of Circuit Judges, serving by designation on the Judicial Qualification Commissions, and on the Second District Court of Appeal, as well as various other appointments, honors, and education, is summarized in my curriculum vitae attached as **Exhibit A**.

3. I have reviewed certain pleadings from the trial and appellate court proceedings in this case, the biographical information on Class Counsel, and other filings to date, including the Court's recent "Order Granting Prevailing Party Attorneys' Fees and Costs" (Doc. 892, 11/4/24).

4. I have reviewed Mr. Yanchunis's Declaration also filed in support, and I concur with his opinions in this matter.

5. In my opinion, the common fund fee requested by Class Counsel of \$36,000,000 is very reasonable and well within the common fund multiplier analysis under *Kuhnlein v. Department of Revenue*, 662 So. 2d 309, 310, 315 (Fla. 1995), which provides up to a five times multiplier in common fund fee awards.

6. The result here is extraordinary and rare. As the record reflects, the class benefit is extraordinary, with a total value of \$280 Million, inclusive of over \$90 Million in monetary recoveries, and \$190 Million in actual future savings to the class (about \$5 Million annually).

7. I have previously testified in other common fund class actions supporting *Kuhnlein* multipliers, in which Florida courts have approved common fund fee awards. *See Healthport Technologies, LLC v Allen*, 207 So. 3d 229 (Fla. 2d DCA 2016) (*per curiam* affirmance of class action judgment); *Allen v. Healthport Technologies LLC et al*, Case No. 12-CA-013154 (Fla. 13th Jud. Cir. Aug. 22, 2017) (Honorable Judge Laurel Lee) (approving class settlement and fee award); *see also Webber v. Bactes Imaging Solutions, Inc.*, 295 So. 3d 841 (Fla. 2d DCA 2020) (reversing and remanding for judgment in favor of class); *Webber v. Bactes Imaging Solutions, Inc. et al*, Case No. 12-CA-014375 (Fla. 13th Jud. Cir. Mar. 30, 2021) (Honorable Judge Christopher Nash) (entry of final judgment of fee award).

8. In comparison, this class action recovered 100% of the class damages, plus statutory interest, plus prevailing party attorneys' fees and costs. Given these rare and exceptional

results, combined with the substantial risk faced by Class Counsel over multiple years after extensive trial and appellate proceedings, my opinion is that Class Counsel would be entitled to the highest, five times multiplier, under *Kuhnlein*.

9. However, Class Counsel is seeking an award of just four times their lodestar as of December 2023 (even though additional work remains through completion) or, in comparison, three times the estimated lodestar based on a full composite of their time through completion. As such, a request for \$36 Million based on that lodestar comparison and a *Kuhnlein* multiplier analysis is substantially reasonable and fair under these circumstances.

Under penalties of perjury, I declare that I have read the foregoing declaration and that the facts stated in it are true and correct.

Executed this 5th day of December 2024 in Tampa, Florida.


Manuel Menendez, Jr.

EXHIBIT A

MANUEL MENENDEZ, JR is certified as a mediator by the Florida Supreme Court and the United State District Court for the Middle District of Florida. He is also a Florida Supreme Court qualified arbitrator.

He served as the Chief Judge of the 13th Judicial Circuit of Florida from July 2001 until his retirement in December 2014. He was appointed to the Hillsborough County Court in 1983 and to the circuit bench in 1984. He presided in all divisions of the trial court, served as a mentor judge, and as an associate judge on the Second District Court of Appeal. He also served on the Judicial Qualifications Commission and is a past-chair of the Florida Conference of Circuit Judges.

He chaired the Florida Supreme Court's Trial Court Technology Committee, and the Electronic Filing Committee, and was on the Florida Courts Technology Commission. He was also on the Florida Supreme Court Work Group on Emergency Preparedness, the Steering Committee on Families and Children in the Court, the Florida Supreme Court Committee on Diversity and Fairness, the Unified Committee on Judicial Compensation, the Florida Courts Education Council, and the Trial Court Budget Commission.

Prior to being appointed to the bench he was the Chief Assistant United States Attorney for the Middle District of Florida, Tampa Division. He also practiced law in Jacksonville, Florida, as an Assistant United States Attorney and in private practice.

He attended the University of Florida where he earned his J.D. with honors in 1972 and a B.A. in political science in 1969. While in law school he was executive editor of the University of Florida Law Review, and a member of the Phi Delta Phi honor society (Cockrell Inn). He is an honorary member of Florida Blue Key. Upon graduation from law school, and prior to reporting for duty as an officer in the U.S. Army Reserves, he served as law clerk to Judge T. Frank Hobson, Jr. of the 2d District Court of Appeal.

He is a charter member and past president of the J. Clifford Cheatwood American Inn of Court and is also a member of the Executive Board of the Herbert G. Goldberg – Ronald K. Cacciatore Inn of Court. He is a past president of the Tampa Bay Chapter of the Federal Bar Association and past vice-president of the Jacksonville Chapter. He is also a charter member of the American College of Business Court Judges.

He a past chair of The Florida Bar Rules of Judicial Administration Committee, The Florida Bar Criminal Procedure Rules Committee, and The Florida Bar Judicial Nominating Commission Procedures Committee. He also served on the Florida Bar Judicial Administration Selection & Tenure Committee, the Code & Rules of Evidence Committee, and the Continuing Legal Education Committee.

He frequently served as a lecturer and presenter at continuing legal and judicial education programs, including the Florida College of Advanced Judicial Studies, the Florida Judicial College, the Florida Circuit Judges Conference, and the County Judges Conference. He is also on the faculty of the Florida Bar's Prosecutor/Public Defender Trial Training Program, and the Trial Lawyers Section Advanced Civil Trial Advocacy Program.

He is on the board of the New York Yankees Tampa Foundation, the board of trustees of the Hillsborough County Bar Association Foundation and is an emeritus member of the board of trustees of the University of Florida Law Center Association. He has served on the advisory board of the Tampa

Hispanic Bar Association, the board of directors of Hillsborough DUI Counterattack, Inc., the Hillsborough County Public Safety Council, the board of directors of the Hillsborough County Bar Association (as judicial liaison), the advisory board for the Salvation Army of Tampa, the board of directors of the Hillsborough Association for Women Lawyers, and the advisory board of the Tampa Gator Club. He also served on the City of Tampa Ethics Commission and the Hillsborough County Transportation Tax Independent Oversight Committee.

The Hillsborough County Bar Association Young Lawyers Division presented him the Robert W. Patton "Outstanding Jurist" Award., and he has also received the "Outstanding Jurist" Award from the Young Lawyers Division of The Florida Bar. The Tampa Bay Chapter of the American Board of Trial Advocates (ABOTA) The Florida Chapter of the American Board of Trial Advocates have presented him with their "Outstanding Jurist" awards. Other awards he received include the Hillsborough County Sheriff's Hispanic Advisory Council's "Raymond E. Fernandez Award" in recognition of outstanding contributions to the criminal justice system, the "Jack Edmund" Award for professionalism and civility in the practice of criminal law from the Goldberg/Cacciatore Criminal Law Inn of Court, and the Hillsborough Bar Association's "James 'Red' McEwen" Award. He has also been inducted into the Thomas Jefferson High School Alumni Hall of Fame.

In addition to providing arbitration and mediation services, he has also served as a special master for discovery disputes, a trial consultant, an attorney fees expert witness, and a medical peer review hearing officer.