

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT IN AND
FOR POLK COUNTY, FLORIDA

Case No.: 53-2017-CA-001446

Section: 04

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

Plaintiffs,

v.

AVATAR PROPERTIES, INC.,

Defendant.

_____/

**ORDER REGARDING PLAINTIFFS' MOTION APPROVING
PARTIAL DISTRIBUTION, AND AWARDING CLASS COUNSEL FEES
AND EXPENSES, AND INCENTIVE AWARDS TO NAMED PLAINTIFFS**

THIS MATTER came before the Court on December 17, 2024 on Plaintiffs' motion for distribution to the Solivita Class and approval of Class Counsel fees and expenses and incentive awards to named Plaintiffs (Doc. 812, 7/17/24), and Plaintiffs' supplemental memorandum in support (Doc. 902, 12/8/24). The Court, having considered the motion and supplemental memorandum, the declarations filed in support, the memorandum filed by Defendant, Avatar Properties, Inc. (Doc. 910, 12/16/24), the arguments of counsel, the evidence, and the record, having noted that no objections were made to the awards and distribution, and being otherwise fully advised of the premises,

ORDERED AND ADJUDGED as follows:

1. **Review:** Plaintiffs seek a distribution of the \$67 Million currently on hand in the Solivita class 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.

2. **Class Common Fund.** The 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). Since that payment, the fund has been 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 to date 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.

3. **This is a rare and extraordinary case.** The Class contends that it recovered a total value of \$280 Million, inclusive of over \$64 Million in monetary damages and interest awarded, and injunctive relief valued at over \$189 Million. The class common fund is currently \$67,316,631.76. Combined with the prevailing party attorneys' fees and costs award that is to be paid into the common fund by Defendant (Order, Doc. 892, 11/4/24), if the

attorney's fee award is affirmed by the Sixth District Court of Appeal the Class monetary recovery will total \$90,427,512.30.

4. **Incentive Awards:** 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 *Dreidame v. Vill. Ctr. Cmty. Devel. Dist.*, 2008 WL 7079074 *12 (Fla. Cir. Ct., 5th Cir. 2008) (discussing incentive awards and approving \$300,000 award to named plaintiffs "given their unique and extraordinary contributions"); *Altamonte Springs Imaging v. State Farm Mut. Auto. Ins. Co.*, 12 So. 3d 850, 857 (Fla. 3d DCA 2009) (approving incentive award and stating "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.").

5. **Class Counsel Award of Fees and Costs:** Class Counsel is entitled to be compensated for their services from the class common fund subject to court approval. See *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)).

6. The Court’s analysis of the reasonableness of Class Counsel’s fee request of \$36,000,000 considered the total lodestar, contingency risk factor, and results obtained by Class Counsel. *Florida Patient’s Cop. Fund v. Rowe*, 472 So. 2d 1145, 1146 & 1151 (Fla. 1985). See Order (Doc. 892, 11/4/24) (lodestar and contingency risk analysis).

7. Here, in this common fund class action, the 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” and awarding a five multiplier in class common fund of \$300 Million medical foundation fund, without any monetary relief paid to class members, but other evidentiary stipulations); *Dreidame v. Vill. Ctr. Cmty. Devel. Dist.*, 2008 WL 7079074 (Fla. Cir. Ct., 5th Cir. 2008) (awarding a five multiplier in a class common fund of \$13.2 Million paid immediately, and \$28 Million over 13 years).

8. Applying a *Kuhnlein* multiplier analysis, the Court considered not only the lodestar awarded for work through December 2023 (consisting of 10,850.1 hours at the reasonable hourly rates as previously determined, see Order (Doc. 892, 11/4/24)), but also the total hours reasonably incurred by Class Counsel of 15,650 in protecting the Class, including hours not statutorily recoverable against the Defendant as well as other ongoing matters through the ultimate completion of the case. The Court also considered the rare and exceptional results obtained by Class Counsel in comparison to other common fund class actions. The Court, having considered the evidence presented, declarations, and arguments of counsel, hereby approves as fair and reasonable to Class Counsel a fee award of \$36,000,000, and costs and expenses previously awarded of \$577,755. The partial distribution of this award (\$27,000,000 + \$577,755), along with the distribution of the incentive awards (\$300,000) and the remaining class common fund (\$39,438,876) is further summarized below. The estimated

final distribution after appeal is based on the amount ordered but, at Class Counsel’s request, if the appeal results in a reduced award then the estimated final distribution after appeal will be reduced accordingly with the reduction shared *prorata* between Class Counsel (39%) and the Class Distribution (61%).

9. **Approval of Partial Distribution:** This Court approves a partial distribution of the available class common funds as set forth below:

	Total	Partial Distribution	After Appeal Final Distribution, Assuming Affirmance (Estimated)
Class Fund (Damages)	\$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)

These amounts do not include additional accruing interest, service fees, and taxes to be paid from the common fund held at Raymond James through the

date of distribution. In addition, these amounts do not include estimated statutory interest accruing on the prevailing party fees and costs awarded to the Solivita Class and such amounts will be included in the final distribution on the same *prorata* basis to the Class and Class Counsel.

10. **Class Administration and Status Report:** As set forth in its recent status report (Doc. 901, 12/6/24) and in accordance with this Order, AB Data shall communicate with class members and provide them with a proposed distribution amount, and it shall give them an opportunity to correct the transactional data on which each class member's proposed distribution amount is based, if necessary. The form of such communication is substantially the form attached as Exhibit A to the status report is approved. Class members who wish to correct the transactional data shall have 60 days from the date of the mailing of such communication to provide corrective data to AB Data. After receiving such data for those class members who seek corrections, AB Data shall confer with Class Counsel and Avatar's counsel to agree upon the appropriate distribution of the funds to those class members, without delay to the remainder of the class. Thereafter, once Class Counsel and Avatar's counsel agree as to any class members who seek corrections, AB Data shall administer and distribute the funds to those class members.

ORDERED in Polk County, Florida on Friday, January 24, 2025.

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Michael McDaniel, Circuit Judge
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