

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

STEVEN R. 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.

Index No. 100530/2011E

Hon. Debra A. James

JURY TRIAL DEMANDED

ANSWER

Defendants Congregation Shaare Zedek and Bayside Cemetery (“Defendants”), by and through their attorneys Axinn, Veltrop & Harkrider LLP, answer Plaintiff’s Complaint upon information and belief formed after an inquiry reasonable under the circumstances as follows:

PRELIMINARY STATEMENT

1. Defendants deny each and every allegation contained in paragraph 1 of the Complaint, except that Defendants (i) admit that “according to Jewish law, burial grounds are sacred places in perpetuity and deserve to be respected”; (ii) admit that this action is purportedly “brought on behalf of all persons or entities who purchased a perpetual care or annual care contract from Defendants Bayside Cemetery and/or Congregation Shaare Zedek (“Defendants”) or their agents or assigns,” but deny that this action is properly brought as a class action under Article 9 of the CPLR; and (iii) admit that the final sentence of paragraph 1 of the Complaint

substantially accurately quotes a portion of a 2004 news article, but deny the allegations contained therein.

2. Defendants deny each and every allegation contained in paragraph 2 of the Complaint.

3. Defendants deny each and every allegation contained in paragraph 3 of the Complaint, except that they admit that the third sentence of paragraph 3 accurately quotes a portion of a 2009 statement by Shaare Zedek's then-rabbi.

4. Defendants deny each and every allegation contained in paragraph 4 of the Complaint.

5. Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint.

6. Defendants state that the second sentence of paragraph 6 states a legal conclusion that does not require a response, but to the extent that a response is required, Defendants deny the allegation contained therein. Defendants otherwise deny each and every allegation contained in paragraph 6 of the Complaint.

JURISDICTION AND VENUE

7. Defendants admit that Congregation Shaare Zedek has its principal place of business in New York County. The other allegations of paragraph 7 of the Complaint state legal conclusions that do not require a response, but to the extent that a response is required, Defendants admit that the Court has jurisdiction over them and that venue is proper in this Court and otherwise deny the allegations contained in paragraph 7 of the Complaint.

PARTIES

8. Defendants deny each and every allegation contained in paragraph 8 of the Complaint, except that Defendants state that they lack knowledge or information sufficient to

form a belief as to the truth of the first sentence of paragraph 8 of the Complaint and Defendants admit the allegations contained in the second and third sentences of paragraph 8 of the Complaint.

9. Defendants deny each and every allegation contained in paragraph 9 of the Complaint, except that Defendants (i) admit that Congregation Shaare Zedek is a religious corporation organized and existing under the laws of the State of New York with its principal place of business located at 212 West 93rd Street, New York, New York and that Congregation Shaare Zedek is a multi-generational, egalitarian Conservative congregation on the Upper West Side of Manhattan embracing a traditional approach to contemporary Judaism; (ii) admit that Congregation Shaare Zedek owns, operates, manages, maintains and controls Bayside Cemetery, subject to deeds granting exclusive burial rights over portions of the cemetery to independent third parties, which third parties have certain contractual obligations to operate, manage, maintain and control those portions of the cemetery; and (iii) admit that Congregation Shaare Zedek received funds for the perpetual or annual care of graves in Bayside Cemetery from individuals who are members of the purported class described in paragraph 37 of the Complaint, but deny the allegation as to the amount of such funds and further deny that such individuals constitute a class properly entitled to bring a class action under Article 9 of the CPLR.

10. Defendants deny each and every allegation contained in paragraph 10 of the Complaint, except that Defendants (i) admit that 80-35 Pitkin Avenue, Ozone Park, New York is the address of Bayside Cemetery; and (ii) admit that Congregation Shaare Zedek received funds for the perpetual or annual care of graves in Bayside Cemetery from individuals who are members of the purported class described in paragraph 37 of the Complaint, but deny that such individuals constitute a class properly entitled to bring a class action under Article 9 of the CPLR.

11. To the extent that paragraph 11 of the Complaint requires a response in light of the Court's decision and order dated January 9, 2012 (Motion Sequence No. 1) dismissing CAJAC from this action (the "CAJAC Dismissal Order"), Defendants deny each and every allegation contained therein, except that Defendants (i) admit the allegations contained in the first and third sentences of paragraph 11, (ii) admit that CAJAC has entered into at least one contract concerning Bayside Cemetery and (iii) state that they lack knowledge or information sufficient to form a belief as to the allegations contained in the fourth sentence of paragraph 11 of the Complaint (except as to the allegation that Mr. Katz is a member of Congregation Shaare Zedek, which allegation Defendants deny).

FACTS

A. Facts Specific to All Defendants

12. Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint, except that Defendants admit that Bayside Cemetery is located at 80-35 Pitkin Avenue, Ozone Park, New York, that Bayside Cemetery was established in the mid-nineteenth century and that veterans of several wars are among the at least 30,000 individuals buried at the cemetery.

13. Defendants deny each and every allegation contained in paragraph 13 of the Complaint, except that Defendants admit that, in 1842, Congregation Shaare Zedek's principal place of business was on the Lower East Side of Manhattan, that Congregation Shaare Zedek acquired the land at Bayside Cemetery in one or more transactions and that Congregation Shaare Zedek sold burial plots to individuals and burial societies.

14. Defendants deny each and every allegation contained in paragraph 14 of the Complaint, except that Defendants admit that they have accepted funds for the annual and perpetual care of plots in the cemetery.

15. Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint, except that Defendants admit that they have, at times relevant to the Complaint, used a standard form "Trust Fund Receipt" to acknowledge payments in trust for the perpetual care of graves at Bayside Cemetery and that some graves at Bayside Cemetery bear stickers of the type described in paragraph 15 of the Complaint.

16. Defendants deny each and every allegation contained in paragraph 16 of the Complaint.

17. Defendants deny each and every allegation contained in paragraph 17 of the Complaint.

18. Defendants deny each and every allegation contained in paragraph 18 of the Complaint, except that Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegation contained in the last sentence of paragraph 18 of the Complaint.

19. Defendants deny each and every allegation contained in paragraph 19 of the Complaint, except that Defendants admit the allegations contained in the second sentence of paragraph 19 and further admit that Congregation Shaare Zedek owns the property on which its synagogue building is now located on the Upper West Side of Manhattan and that Congregation Shaare Zedek has worked with other Jewish communal organizations to formulate a long-term plan for Bayside Cemetery.

20. Defendants deny each and every allegation contained in paragraph 20 of the Complaint.

21. Defendants deny each and every allegation contained in paragraph 21 of the Complaint, except that Defendants state that all of the funds required to be held in trust for the

perpetual care of graves at Bayside Cemetery are on deposit in appropriate trust funds as required by law. Defendants further admit that Trust Fund Receipts issued by Defendants cite to section 92 of the Membership Corporation Law.

22. Defendants deny each and every allegation contained in paragraph 22 of the Complaint.

23. Defendants deny each and every allegation contained in paragraph 23 of the Complaint, except that Defendants admit that paragraph 23 purports to quote a 2003 article in the Jewish Week and state that they lack sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.

24. Defendants deny each and every allegation contained in paragraph 24 of the Complaint, except that Defendants admit that vandalism has been a problem from time-to-time at Bayside Cemetery, as at other cemeteries.

25. Defendants deny each and every allegation contained in paragraph 25 of the Complaint, except that Defendants admit that paragraph 25 purports to quote and paraphrase a 2003 article in the Jewish Week and state that they lack sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.

26. Defendants deny each and every allegation contained in paragraph 26 of the Complaint.

27. Defendants deny each and every allegation contained in paragraph 27 of the Complaint.

B. Facts Specific to CAJAC

28. Defendants respectfully submit that paragraph 28 of the Complaint does not require a response in light of the CAJAC Dismissal Order. However, without prejudice to that contention, and to the extent that a response is required, Defendants deny each and every

allegation contained in paragraph 28 of the Complaint, except that Defendants admit that the original corporate name of CAJAC was “Friends of Bayside Cemetery, Inc.,” that members of Congregation Shaare Zedek acting in their individual capacities helped to form CAJAC, that CAJAC listed 212 West 93rd Street, which is Congregation Shaare Zedek’s address, as its mailing address for purposes of incorporation and that Gary Katz and Ethan Klingsberg each became an officer of Friends of Bayside Cemetery, Inc.

29. Defendants respectfully submit that paragraph 29 of the Complaint does not require a response in light of the CAJAC Dismissal Order. However, without prejudice to that contention, and to the extent that a response is required, Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint, except as to the first sentence of paragraph 29, which Defendants admit.

30. Defendants respectfully submit that paragraph 30 of the Complaint does not require a response in light of the CAJAC Dismissal Order. However, without prejudice to that contention, and to the extent that a response is required, Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint, except that Defendants admit that Mr. Klingsberg is a former trustee-at-large of Congregation Shaare Zedek whose final term expired in 2009 and that Mr. Klingsberg served as chairman of the Congregation’s cemetery committee at various points prior to approximately 2007.

31. Defendants respectfully submit that paragraph 31 of the Complaint does not require a response in light of the CAJAC Dismissal Order. However, without prejudice to that contention, and to the extent that a response is required, Defendants deny each and every allegation contained in paragraph 31 of the Complaint, except that Defendants admit that they

have not provided any funds to CAJAC related to the perpetual or annual care of graves at the cemetery or related to the allegations of this lawsuit.

32. Defendants respectfully submit that paragraph 32 of the Complaint does not require a response in light of the CAJAC Dismissal Order. However, without prejudice to that contention, and to the extent that a response is required, Defendants deny each and every allegation contained in paragraph 32, except that Defendants admit that Congregation Shaare Zedek has publicly stated its desire to transfer ownership of the cemetery, as well as related trust funds, to an independent, appropriately-capitalized not-for-profit cemetery corporation at some point in the future.

33. Defendants respectfully submit that paragraph 33 of the Complaint does not require a response in light of the CAJAC Dismissal Order. However, without prejudice to that contention, and to the extent that a response is required, Defendants deny each and every allegation contained in paragraph 33 of the Complaint, except that Defendants admit that they entered into certain agreements with UJA Federation of New York and CAJAC to allow a substantial UJA grant to be used to pay for a professional landscaping and restoration of Bayside Cemetery.

34. Defendants respectfully submit that paragraph 34 of the Complaint does not require a response in light of the CAJAC Dismissal Order. However, without prejudice to that contention, and to the extent that a response is required, Defendants deny each and every allegation contained in paragraph 34 of the Complaint, except that Defendants admit that CAJAC entered into a contract with a landscaper to perform restoration work at Bayside Cemetery.

35. Defendants respectfully submit that paragraph 35 of the Complaint does not require a response in light of the CAJAC Dismissal Order. However, without prejudice to that

contention, and to the extent that a response is required, Defendants deny each and every allegation contained in paragraph 35 of the Complaint.

36. Defendants respectfully submit that paragraph 36 of the Complaint does not require a response in light of the CAJAC Dismissal Order. However, without prejudice to that contention and their contention that paragraph 36 of the Complaint states legal conclusions that do not require a response (but with which Defendants disagree), to the extent that a response is required, Defendants deny each and every allegation contained in paragraph 36 of the Complaint, with the exception of the specific facts admitted in paragraphs 28-35 above, or those allegations with respect to which Defendants have stated above that they lack knowledge or information sufficient to form a belief as to their truth.

CLASS ACTION ALLEGATIONS

37. Defendants admit that Plaintiff purports to bring this action as a class action as described in paragraph 37 of the Complaint, but deny that this action is properly brought as a class action under Article 9 of the CPLR or that the putative class described in paragraph 37 of the Complaint can properly be certified under Article 9 of the CPLR.

38. Defendants admit that Plaintiff purports to limit the putative class as described in paragraph 38 of the Complaint, but deny that the putative class, even so limited, can properly be certified under Article 9 of the CPLR.

39. Defendants deny each and every allegation contained in paragraph 39 of the Complaint, except that Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein with respect to Plaintiff's knowledge or beliefs.

40. Paragraph 40 of the Complaint states legal conclusions that do not properly require a response. To the extent, however, that a response is required, Defendants deny each and every allegation contained in paragraph 40 of the Complaint.

41. Paragraph 41 of the Complaint states legal conclusions that do not properly require a response. To the extent, however, that a response is required, Defendants deny each and every allegation contained in paragraph 41 of the Complaint.

42. Paragraph 42 of the Complaint states legal conclusions that do not properly require a response. To the extent, however, that a response is required, Defendants state that they lack knowledge or information sufficient form a belief as to the truth of the allegations contained therein.

43. Paragraph 43 of the Complaint states legal conclusions that do not properly require a response. To the extent, however, that a response is required, Defendants deny each and every allegation contained in paragraph 43 of the Complaint, except that Defendants admit that Plaintiff's counsel is experienced and competent in the prosecution of complex class action litigation.

TOLLING OF APPLICABLE STATUTES OF LIMITATIONS

44. Defendants deny each and every allegation contained in paragraph 44 of the Complaint.

COUNT I

Action For Damages Under New York Gen. Bus. Law § 350

45. Defendants respectfully submit that Paragraph 45 of the Complaint does not require a response in light of the Court's decision and order dated January 9, 2012 dismissing Counts I, II, III, V, VII and VIII of the Complaint (Motion Sequence No. 2) (the "Partial Dismissal Order"). Without prejudice to that contention, and to the extent that a response is

nonetheless required, Defendants repeat and reallege each and every prior response contained in paragraphs 1 through 44 hereof with the same force and effect as if fully set forth herein.

46. Defendants respectfully submit that Paragraph 46 of the Complaint does not require a response in light of the Partial Dismissal Order and further states a legal conclusion to which no response is required. Without prejudice to those contentions, and to the extent that a response is nonetheless required, Defendants admit that paragraph 46 of the Complaint accurately quotes a portion of General Business Law § 350.

47. Defendants respectfully submit that Paragraph 47 of the Complaint does not require a response in light of the Partial Dismissal Order and that the first sentence of paragraph 47 further states a legal conclusion to which no response is required. Without prejudice to those contentions, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 47 of the Complaint, except that Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third and fourth sentences of paragraph 47.

48. Defendants respectfully submit that Paragraph 48 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the Complaint.

49. Defendants respectfully submit that Paragraph 49 of the Complaint does not require a response in light of the Partial Dismissal Order and that Paragraph 49 of the Complaint further states legal conclusions to which no response is required. Without prejudice to those contentions, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 49 of the Complaint.

COUNT II

New York Gen. Bus. Law § 349

50. Defendants respectfully submit that Paragraph 50 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants repeat and reallege each and every prior response contained in paragraphs 1 through 49 hereof with the same force and effect as if fully set forth herein.

51. Defendants respectfully submit that Paragraph 51 of the Complaint does not require a response in light of the Partial Dismissal Order and further states a legal conclusion to which no response is required. Without prejudice to those contentions, and to the extent that a response is nonetheless required, Defendants admit that paragraph 51 of the Complaint accurately quotes a portion of General Business Law § 349.

52. Defendants respectfully submit that Paragraph 52 of the Complaint does not require a response in light of the Partial Dismissal Order and further states a legal conclusion to which no response is required. Without prejudice to those contentions, and to the extent that a response is nonetheless required, Defendants admit that paragraph 52 of the Complaint accurately quotes a portion of General Business Law § 349(h).

53. Defendants respectfully submit that Paragraph 53 of the Complaint does not require a response in light of the Partial Dismissal Order and further states legal conclusions to which no response is required. Without prejudice to those contentions, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 53 of the Complaint.

54. Defendants respectfully submit that Paragraph 54 of the Complaint does not require a response in light of the Partial Dismissal Order and states legal conclusions to which no

response is required. Without prejudice to those contentions, and to the extent that a response is nonetheless required, Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the Complaint.

COUNT III

New York Gen. Bus. Law § 349-c

55. Defendants respectfully submit that Paragraph 55 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants repeat and reallege each and every prior response contained in paragraphs 1 through 54 hereof with the same force and effect as if fully set forth herein.

56. Defendants respectfully submit that Paragraph 56 of the Complaint does not require a response in light of the Partial Dismissal Order and further states a legal conclusion to which no response is required. Without prejudice to those contentions, and to the extent that a response is nonetheless required, Defendants admit that paragraph 56 of the Complaint accurately quotes a portion of General Business Law § 349.

57. Defendants respectfully submit that Paragraph 57 of the Complaint does not require a response in light of the Partial Dismissal Order and further states a legal conclusion to which no response is required. Without prejudice to those contentions, and to the extent that a response is nonetheless required, Defendants admit that paragraph 57 of the Complaint accurately quotes a portion of General Business Law § 349(h).

58. Defendants respectfully submit that Paragraph 58 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 58 of the Complaint.

59. Defendants respectfully submit that Paragraph 59 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 59 of the Complaint.

60. Defendants respectfully submit that Paragraph 60 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 60 of the Complaint.

61. Defendants respectfully submit that Paragraph 61 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the Complaint.

COUNT IV

Breach of Contract

62. Defendants repeat and reallege each and every prior response contained in paragraphs 1 through 61 hereof with the same force and effect as if fully set forth herein.

63. Defendants deny each and every allegation contained in paragraph 63 of the Complaint, except that Defendants admit that Exhibit A to the Complaint is a copy of a Trust Fund Receipt issued by Defendants to record the receipt of funds in trust for the perpetual care of graves or plots at Bayside Cemetery and that Defendants have issued similar Trust Fund Receipts for approximately forty years prior to the filing of the Complaint.

64. Defendants deny each and every allegation contained in paragraph 64 of the Complaint, except that Defendants admit that Congregation Shaare Zedek accepted funds from

certain members of the putative class described in paragraph 37 of the Complaint (including the Plaintiff, Mr. Leventhal) to hold in trust for the perpetual care of specified graves or plots at Bayside Cemetery and from other members of the putative class described in paragraph 37 of the Complaint for the annual care of specified graves or plots at Bayside Cemetery, but deny that such individuals (individually or collectively) can properly be certified as a class under Article 9 of the CPLR.

65. Defendants deny each and every allegation contained in paragraph 65 of the Complaint.

66. Defendants deny each and every allegation contained in paragraph 66 of the Complaint, except that Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of paragraph 66 of the Complaint, which relate to Plaintiff's intentions or beliefs and those of other members of the putative class.

COUNT V

Unjust Enrichment

67. Defendants respectfully submit that Paragraph 67 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants repeat and reallege each and every prior response contained in paragraphs 1 through 66 hereof with the same force and effect as if fully set forth herein.

68. Defendants respectfully submit that Paragraph 68 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 68 of the Complaint.

69. Defendants respectfully submit that Paragraph 69 of the Complaint does not require a response in light of the Partial Dismissal Order and states a legal conclusion to which no response is required. Without prejudice to those contentions, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 69 of the Complaint.

COUNT VI

Breach of Fiduciary Duty Against Defendants

70. Defendants respectfully submit that Paragraph 70 of the Complaint does not require a response in light of the Decision and Order of the Supreme Court, Appellate Division, First Department entered December 31, 2013, which modified the Partial Dismissal Order so as to dismiss Count VI of the Complaint (the “First Department Order”). Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants repeat and reallege each and every prior response contained in paragraphs 1 through 69 hereof with the same force and effect as if fully set forth herein.

71. Defendants respectfully submit that Paragraph 71 of the Complaint does not require a response in light of the First Department Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 71 of the Complaint.

72. Defendants respectfully submit that Paragraph 72 of the Complaint does not require a response in light of the First Department Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 72 of the Complaint.

73. Defendants respectfully submit that Paragraph 73 of the Complaint does not require a response in light of the First Department Order. Without prejudice to that contention,

and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 73 of the Complaint.

COUNT VII

Aiding and Abetting Breaches of Fiduciary Duty Against Defendants

74. Defendants respectfully submit that Paragraph 74 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants repeat and reallege each and every prior response contained in paragraphs 1 through 73 hereof with the same force and effect as if fully set forth herein.

75. Defendants respectfully submit that Paragraph 75 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 75 of the Complaint.

76. Defendants respectfully submit that Paragraph 76 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 76 of the Complaint.

77. Defendants respectfully submit that Paragraph 77 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 77 of the Complaint.

78. Defendants respectfully submit that Paragraph 78 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention,

and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 78 of the Complaint.

COUNT VIII

Conversion

79. Defendants respectfully submit that Paragraph 79 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants repeat and reallege each and every prior response contained in paragraphs 1 through 78 hereof with the same force and effect as if fully set forth herein.

80. Defendants respectfully submit that Paragraph 80 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 80 of the Complaint, except that Defendants admit that certain individuals falling within the putative class described in paragraph 37 of the Complaint (including the Plaintiff, Mr. Leventhal) provided Congregation Shaare Zedek with monies for placement in trust with the understanding that the interest or income derived therefrom would be used for the purpose of providing perpetual care of specified graves and plots at Bayside Cemetery, "limited, however, to the extent for which such interest or income derived therefrom will permit and pay" and subject to those other terms and conditions set forth in Exhibit A to the Complaint (and similar written agreements entered into with other members of the putative class) and applicable law. Defendants nonetheless deny that such individuals can properly be certified as a class pursuant to Article 9 of the CPLR.

81. Defendants respectfully submit that Paragraph 81 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention,

and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 81 of the Complaint, except that Defendants admit that they accepted receipt of \$1,200 from the Plaintiff (Mr. Leventhal) subject to the conditions set forth in Exhibit A of the Complaint and pursuant to applicable law, and that they accepted receipt of funds from certain other individuals falling within the putative class described in paragraph 37 of the Complaint subject to the conditions set forth in written agreements with such individuals. Defendants nonetheless deny that such individuals can properly be certified as a class pursuant to Article 9 of the CPLR.

82. Defendants respectfully submit that Paragraph 82 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 82 of the Complaint.

83. Defendants respectfully submit that Paragraph 83 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 83 of the Complaint.

84. Defendants respectfully submit that Paragraph 84 of the Complaint does not require a response in light of the Partial Dismissal Order. Without prejudice to that contention, and to the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 84 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

85. Plaintiff's payment of \$1,200 to Defendants to place in trust for the perpetual care of graves at Bayside Cemetery created an express charitable trust of which Plaintiff is not the beneficiary.

86. Without prejudice to Defendants' contention that the putative class as described in paragraph 37 of the Complaint cannot properly be certified as a class under Article 9 of the CPLR, to the extent that members of the putative class paid money to Defendants to place in trust for the perpetual care of graves or plots at Bayside Cemetery, they too created express charitable trusts of which they were not the beneficiaries.

87. Had Plaintiff or members of the putative class been the intended beneficiaries of such trusts, the trusts would have been void for violation of the rule against perpetuities.

88. In creating the trusts at issue, Plaintiff and members of the putative class did not reserve individual rights of oversight or control as to the enforcement of the trusts or the funds placed therein, nor were they entitled to such oversight or control as a matter of law.

89. Plaintiff and members of the putative class lack standing to sue to enforce the terms of such trusts, including but not limited to by way of claims for breach of contract.

90. In the alternative, Plaintiff and members of the putative class lack standing to recover damages or other relief apart from an order requiring Congregation Shaare Zedek, as trustee, to satisfy its obligations under the terms of the trusts.

SECOND AFFIRMATIVE DEFENSE

91. Without prejudice to Defendants' contention that the putative class as described in paragraph 37 of the Complaint cannot properly be certified as a class under Article 9 of the CPLR, Plaintiff and each member of the putative class lack standing to sue for breach of contract as to any purported contracts to which he or she is not individually a party or intended third-party beneficiary, including but not limited to any contracts entered into by such person's relatives.

THIRD AFFIRMATIVE DEFENSE

92. Plaintiff's cause of action for breach of contract accrued, in whole or in part, more than six years before the commencement of this action and is therefore barred, in whole or in part, by the applicable statute of limitations, including but not limited to CPLR 213(2).

93. Without prejudice to Defendants' contention that the putative class as described in paragraph 37 of the Complaint cannot properly be certified as a class action under Article 9 of the CPLR, any cause of action possessed by any member of such putative class for breach of contract accrued, in whole or in part, more than six years before the commencement of this action and is therefore barred, in whole or in part, by the applicable statute of limitations, including but not limited to CPLR 213(2).

94. Without conceding that the absence of such knowledge would affect the running of the statute of limitations, Plaintiff and members of the putative class knew, or reasonably could have known, of the alleged breaches of contract, including but not limited to as to the condition of graves at Bayside Cemetery, more than six years before the commencement of this action.

95. In addition or in the alternative, Plaintiff and members of the putative class are barred from recovering damages for breaches of contract that occurred or accrued more than six years before the commencement of this action, or such other period provided by the applicable statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

96. The Complaint, and each and every request for equitable relief contained therein, is barred by the doctrine of laches.