

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
John R. Lucker, Elizabeth A. Lucker, Nancy L. Rousseau Individually and On Behalf of All Others Similarly Situated

**(b) County of Residence of First Listed Plaintiff**  
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorney's (Firm Name, Address, and Telephone Number)**

**DEFENDANTS**

Bayside Cemetery and Congregation  
County of Residence of First Listed Defendant

NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE LAND INVOLVED.

Att: **DEARIE, CH. J.**  
**AZRACK, J. J.**

**CV 07 3823**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)  
 1 U.S. Government Plaintiff  
 2 U.S. Government Defendant  
 3 Federal Question (U.S. Government Not a Party)  
 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
(For Diversity Cases Only)  
Citizen of This State: PTF  1 DEF  1  
Citizen of Another State: PTF  2 DEF  2  
Citizen or Subject of a Foreign Country: PTF  3 DEF  3  
Incorporated or Principal Place of Business in This State: PTF  4 DEF  4  
Incorporated and Principal Place of Business in Another State: PTF  5 DEF  5  
Foreign Nation: PTF  6 DEF  6

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 490 State Reapportionment	
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deputation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 801 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 260 Other Personal Injury		<b>LABOR</b>	<input type="checkbox"/> 802 Block Lung (923)	<input type="checkbox"/> 810 Selective Service	
<input checked="" type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 803 DIWC/DJWW (405(p))	<input type="checkbox"/> 850 Securities/Commodities/Exchange	
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 804 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 805 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions	
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 750 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff vs Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General			<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty			<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice Act	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 950 Constitutionality of State Statutes	
	<input type="checkbox"/> 447 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition				

**V. ORIGIN** (Place an "X" in One Box Only)  
 1 Original Proceeding  
 2 Removed from State Court  
 3 Remanded from Appellate Court  
 4 Reinstated or Reopened  
 5 Transferred from another district (specify)  
 6 Multidistrict Litigation  
 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**  
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Class Action Fairness Act  
Brief description of cause:  
Breach of Contract/Conversion/Deceptive Trade Practices

**VII. REQUESTED IN COMPLAINT:**  
 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
DEMAND \$ \_\_\_\_\_  
CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions) JUDGE N/A DOCKET NUMBER \_\_\_\_\_

DATE: 09/11/2007  
SIGNATURE OF ATTORNEY OF RECORD: *Michael M. [Signature]* (MB-172)

FOR OFFICE USE ONLY  
RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG JUDGE \_\_\_\_\_

ARBITRATION CERTIFICATION

I, Michael M. Buchman, counsel for Plaintiffs do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs.
Injunctive Relief other than monetary damages is sought.

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

Please refer to NY-E Division of Business Rule 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District of New York removed from a New York State court located in Nassau or Suffolk County: NO

2.) If you answered "no" above:

a.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County: occurs in NY

b.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes [checked]

No

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes (If yes, please explain)

No [checked]

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

ATTORNEY BAR CODE: MB-1172

E-MAIL Address: mbuchman@pomlaw.com

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures(EFP)", and consent to the electronic service of all papers.

Signature: [Handwritten Signature]

UNITED STATES DISTRICT COURT

Eastern

District of

New York

John R. Lucker, Elizabeth A. Lucker, Nancy L. Rousseau Individually and On Behalf of All Others Similarly Situated,

V.

Bayside Cemetery and Congregation Shaare Zakek

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

CV 07 3823

DEARIE, CH. J.

AZRACK, J.

TO: (Name and address of Defendant)

Bayside Cemetery
80-35 Pitkin Avenue
Ozone Park, New York

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Michael M. Buchman, Esq.
511 East 82nd Street, Apt. 1E
New York, New York 10028
Tel. (917) 494-8978

an answer to the complaint which is served on you with this summons, within twenty days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

ROBERT C. HEINEMANN

SEP 12 2007

CLERK

H. Misulaly (Signature)

DATE

(By) DEPUTY CLERK

**RETURN OF SERVICE**

Service of the Summons and complaint was made by mc <sup>(1)</sup>	DATE
NAME OF SERVER ( <i>PRINT</i> )	TITLE

*Check one box below to indicate appropriate method of service*

Served personally upon the defendant. Place where served:

  

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  
 Name of person with whom the summons and complaint were left:

Returned unexecuted:

  

Other (specify):

**STATEMENT OF SERVICE FEES**

TRAVEL	SERVICES	TOTAL \$0.00
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**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_  
Date *Signature of Server*

  

\_\_\_\_\_  
*Address of Server*

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

UNITED STATES DISTRICT COURT

Eastern

District of

New York

John R. Lucker, Elizabeth A. Lucker, Nancy L. Rousseau Individually and On Behalf of All Others Similarly Situated,

SUMMONS IN A CIVIL ACTION

V.

Bayside Cemetery and Congregation Shaare Zakek

CASE NUMBER:

CV 07 3823

TO: (Name and address of Defendant)

Congregation Shaare Zedek
212 West 93rd Street
New York, New York

DEARIE, CH. J.

AZRACK, J.

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Michael M. Buchman, Esq.
511 East 82nd Street, Apt. 1E
New York, New York 10028
Tel. (917) 494-8978

an answer to the complaint which is served on you with this summons, within twenty days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

ROBERT C. HEINEMANN

SEP 12 2007

CLERK

DATE

[Handwritten signature of H. Misiralis]

(By) DEPUTY CLERK

<b>RETURN OF SERVICE</b>		
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	
NAME OF SERVER ( <i>PRINT</i> )	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<input type="checkbox"/> Served personally upon the defendant. Place where served:  <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left:  <input type="checkbox"/> Returned unexecuted:  <input type="checkbox"/> Other (specify):		
<b>STATEMENT OF SERVICE FEES</b>		
TRAVEL	SERVICES	TOTAL \$0.00
<b>DECLARATION OF SERVER</b>		
<p style="text-align: center;">I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____  <span style="margin-left: 100px;">Date</span> <span style="margin-left: 150px;">Signature of Server</span></p> <p style="text-align: center;">_____                      Address of Server</p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JOHN R. LUCKER, ELIZABETH A. LUCKER, )  
NANCY L. ROUSSEAU Individually and On Behalf )  
of All Others Similarly Situated, )

Plaintiffs,

-against-

BAYSIDE CEMETERY and CONGREGATION )  
SHAARE ZEDEK, )

Defendants. )

Civil Action No.:

CV 07 3823  
CLASS ACTION COMPLAINT

Jury Trial Demanded

DEARIE, CH. J. AZRACK, J. M.

Plaintiffs, on behalf of themselves and all others similarly situated, allege as follows against Defendants Bayside Cemetery and Congregation Shaare Zedek on information and belief formed after an inquiry reasonable under the circumstances:

**BACKGROUND ALLEGATIONS**

1. It has been said that a Jewish cemetery is eternity in the eyes of Jews. According to Jewish law, burial grounds are sacred places in perpetuity and deserve to be respected. This is a consumer class action which concerns respect for the deceased (the Hebrew term being "kavod hameit"). This action is brought as a class action on behalf of all persons, or relatives of persons, who purchased a perpetual care or annual care contract from Defendants Bayside Cemetery and/or Congregation Shaare Zedek ("Defendants") or their agents or assigns (the "Class") from January 1, 1970 to present (the "Class Period").

2. While headstones at Bayside Cemetery read "Gone but not forgotten," Defendants have all but forgotten the cemetery and now refuse to honor perpetual care or annual care contracts which were entered into in accordance with New York and Jewish law. As a result,

Bayside Cemetery has fallen into shameful disrepair. See Exhibit A. *The Jewish Week* news article entitled *Weeding Out An Eyesore* dated June 6, 2004 described the cemetery as follows:

much of the cemetery remains mired in overgrowth, and large swaths continue to look like rainforest, where fallen headstones are buried under vines, weeds, wildflowers and fallen trees.

3. Bayside Cemetery, located at 80-35 Pitkin Avenue, Ozone Park, New York (the “cemetery”), is one of the oldest Jewish cemeteries in New York City. The cemetery, founded in the mid-nineteenth century, includes the graves of Jewish veterans of the Civil War and subsequent conflicts. It is the final resting place for approximately 35,000 Jews.

4. In 1842, Congregation Shaare Zedek was located on the lower East Side of New York. It purchased the land at Bayside Cemetery for five percent of its congregation members and sold the remaining plots to individuals and burial societies.

5. In connection with the land it sold to individuals and burial societies, Defendants have routinely advertised and offered to the general public for sale perpetual care contracts to maintain land located at the cemetery. In addition to offering, selling and entering into perpetual care contracts concerning plots at the cemetery, Defendants have also offered, sold and entered into annual care contracts for plots at the cemetery. Perpetual care or annual care is a contractual undertaking to provide, in exchange for compensation, all general work necessary to keep one or more plots at a cemetery property in a presentable condition at all relevant times including, but not limited to: (i) the cutting of grass at reasonable intervals; (ii) raking, cleaning, filling, seeding, and/or sodding of graves; (iii) replacement, pruning, or removal of shrubs and trees; and (iv) prevention and removal of wild foliage growth in order to assure access to interment rights and grave visitation by surviving family, friends, and other interested parties.



6. Defendants used standard form contracts to enter into perpetual care or annual care agreements with consumers. Upon the purchase of a perpetual or annual care contract, Defendants recorded the appropriate information, issued necessary paperwork memorializing the purchase of the contract and marked plots to identify those plots under perpetual care or annual care. For example, Defendants placed “stickers” with the embossed large black letters “PC” on headstones for which perpetual care had been purchased in order to be able to identify such plots.

7. Despite having received hundreds of thousands of dollars for perpetual or annual care for numerous graves, Defendants have not been maintaining plots for which perpetual or annual care has been purchased.

8. In an attempt to avoid their legal obligation to provide perpetual or annual care at the cemetery, Defendant Shaare Zedek has baselessly denied that it owns Bayside Cemetery. It further denied that it has any legal obligation to Plaintiffs or members of the Class.

9. Upon information and belief, Defendants have deliberately destroyed documents which identify perpetual care plots. Graves once marked with perpetual care stickers have had stickers removed or allowed to remain missing. Defendants destroyed these and other documents in order to now contend that they cannot identify which plots are governed by perpetual care contracts. The number of perpetual care stickers visibly present at the cemetery is entirely inconsistent with adjacent cemeteries of similar or identical age and other Jewish cemeteries in the surrounding area.

10. Notwithstanding the fact that Shaare Zedek received \$145,000 from United Jewish Appeal in 2005 and likely other substantial contributions from Jewish and other organizations, Defendants have repeatedly claimed that they lack the financial resources to maintain plots at the cemetery in accordance with their contractual obligations. *See* 2005 Form

990 Return of Organization Exempt From Income Tax. For United Jewish Appeal – Federation of Jewish Philanthropies of New York, Inc. Despite having advertised and offered perpetual care or annual care contracts for sale and accepted monies for decades, Defendants, including Defendant Shaare Zedek which is now located on the Upper West Side and owns a multi-million dollar property, now contend that the cemetery should somehow become the responsibility of the broader Jewish Community. In their public statements, Defendants suggest that the perpetual or annual care monies they collected over the years have all been spent on the cemetery. That simply is neither true nor the entire story.

11. In the 1980s, Defendant Shaare Zedek was essentially defunct and suffered from a faltering budget. Statements recently made on behalf of the Defendants to the New York State Attorney General's Office make clear that the synagogue made a conscious decision to improperly remove monies originally intended for perpetual or annual care in violation of Defendants' fiduciary duties. It appears these monies were improperly taken from the perpetual/annual care account for the purpose of making significant structural repairs to the synagogue building, thereby using the money for the living and not the deceased as initially promised, represented and intended.

12. While Defendants now contend all of the improperly removed monies have been returned to the perpetual/annual care accounts, no formal, independent accounting has been conducted to show that all monies improperly removed, and earnings from those monies, have been entirely restored. Indeed, Defendants have refused to conduct such an accounting, claiming that they no longer possess or control adequate business records concerning perpetual care or annual care contracts for the cemetery. This statement is incredible since Defendants are required by law to maintain such records. Section 92 of the Membership Corporation Law of

New York, which is cited in Defendants' contracts with consumers, provides in relevant part as follows: "[t]he officers of the corporation shall keep accurate records of such funds separate and apart from its other funds."

13. For years, Defendants have marketed, sold and collected monies from consumers for perpetual or annual care knowing that perpetual and annual care contracts were not being honored and that they had no intention or inadequate resources to honor new perpetual care or annual care contracts. They did not disclose material facts to consumers concerning the perpetual/annual care fund's financial strength, or lack thereof, at the time consumers purchased contracts during the class period. Moreover, when accepting monies during the class period Defendants led consumers to believe that perpetual care or annual care services would be provided when, in fact, Defendants had not been nor would be providing such services. For example, in 2001 the Chechonover Society paid annual care monies for seasonal care which the Defendants accepted. Defendants, however, refused to provide contractual services in whole or in part. *See* The Jewish Week dated October 18, 2002 entitled *The Cemetery Nobody Wants*.

14. Defendants also frustrated this organization and others from making their own repairs or maintaining their own plots at the cemetery. For example, the Chechonover Society attempted to repair head stones in their area. When the company the Chechonover Society paid to perform such services arrived at the cemetery, a cemetery official:

denied the company access, telling its workers there was too much overgrowth and it would not be safe.

*See* The Jewish Week dated August 1 2003 entitled *Frustration at Bayside Cemetery*. The Chechonover Society also could not access their sections as a result of garbage piles blocking their plots. *See* for example Exhibit A. Defendants have essentially turned a blind-eye to Bayside Cemetery and have refused to assume responsibility for any activity which occurs on its

property. When mausoleums at Bayside Cemetery were vandalized, Defendants did virtually nothing to restore the property in accordance with traditional Jewish law. Instead, Defendants relied on the good will of non-Jewish volunteers to return exposed remains to coffins and vaults. On August 1, 2003, *The Jewish Week* noted Defendants' failure to take corrective action reporting as follows:

For two months now, Leslie and Ralph Francisco have been leading a volunteer effort to re-entomb remains in more than 30 badly vandalized mausoleums at the Bayside Cemetery.

Three days a week, in summer heat, the husband-and-wife funeral directors have taken turns putting their own business needs aside and with a group of volunteers, most of them non-Jewish, taken on the messy work of returning bones to coffins and placing the coffins in vaults in the Ozone Park, Queens, burial ground.

For their work, Leslie Francisco says the couple have 'yet to get a thank you,' from Bayside's owner, Congregation Shaare Zedek.

Worse she says, the Upper West Side Conservative shul for weeks ignored their request for [d]umpsters.

'The last time I was at the cemetery I had to walk past mice. I won't do it anymore,' she said in an interview last week. 'There are bags and bags of garbage at the front gate. It's rotting piled in bags and attracting vermin. **We've spoken to [Shaare Zedek president Daniel Werlin] and [Councilman] Joe Addabbo has spoken to him, but it falls on deaf ears. He just gives lip service.**' *Id.* (emphasis added).

15. While Defendants have insisted "the cemetery is 'one of our top priorities' . . . [it has] been vague when questioned about what they are doing to improve the situation." *Id.* News articles in *The Jewish Week* document that many other individuals have been outraged by Defendants' refusal to maintain the cemetery in accordance with their contractual obligations and Jewish law. Indeed, one individual, Ms. Beth Rocke, took Shaare Zedek to Small Claims Court and prevailed on a breach contract theory in the amount of \$2,364.00. *See* *The Jewish Week* dated October 18, 2002 entitled *The Cemetery Nobody Wants*. It is noteworthy that Shaare

Zedek refused to pay the judgment and documents were issued by Ms. Rocke to Shaare Zedek's bank which paid the judgment.

16. In sum, Defendant Shaare Zedek has raided the perpetual and/or annual care accounts they held in trust for the benefit of Bayside Cemetery. Defendant Shaare Zedek has stolen monies which it has inappropriately used for purposes other than those for which they were originally bestowed and intended. Each day Defendants refuse to restore monies, refuse to conduct a full and complete formal, independent accounting and refuse to honor perpetual care or annual care contracts they are complicit in the theft which has occurred. As a direct and proximate result of the foregoing, Defendants have falsely advertised perpetual and annual care contracts, engaged in deceptive conduct, violated their fiduciary duties, engaged in conversion and breached their perpetual and annual care contracts with Plaintiffs and hundreds or likely thousands of class members. Defendants' deliberate false statements and fraudulent conduct has resulted in the desecration of thousands of plots at the cemetery in violation of New York and Jewish law.

#### **JURISDICTION AND VENUE**

17. This Court has jurisdiction of this class action pursuant to the Class Action Fairness Act of 2005, which, *inter alia*, amends 28 U.S.C. § 1332 to add a new subsection (d) conferring federal jurisdiction over class actions, where as here, any member of a class of plaintiffs is a citizen of a State different from any defendant and the aggregate amount of the controversy exceeds five million dollars (\$5,000,000.00), exclusive of interests and costs. 28 U.S.C. § 1332(d)(2) and (6).

18. Venue is proper in this judicial district. During the Class Period, Defendants resided, transacted business, were found, or had agents in this district, and a substantial part of the events giving rise to Plaintiffs' claims occurred. A substantial portion of the affected

interstate trade and commerce described below has been carried out, in this District. Some of the Class members likely reside and purchased perpetual or annual care policies in this District and thereby sustained injury in this District. Defendants received substantial compensation from sales of such products in this District.

### **PARTIES**

19. Plaintiff John R. Lucker resides in Simsbury, Connecticut. Mr. Lucker's grandparents are buried at the cemetery as part of the Chebra Shebath Achim Society. In the 1970s, Mr. Lucker's grandparents purchased perpetual care from a Defendant through the Chebra Shebath Achim Society. At times relevant herein, Defendants have failed and refuse to abide by their contract to provide perpetual care pursuant to their contractual obligations. *See* Exhibit B which shows that the Chebra Shebath Achim Society plots are not visible and entirely inaccessible.

20. Plaintiff Elizabeth A. Lucker resides in Little Rock, Arkansas. Ms. Lucker's grandparents are buried at the cemetery as part of the Chebra Shebath Achim Society. In the 1970s, Ms. Lucker's grandparents purchased perpetual care from a Defendant through the Chebra Shebath Achim Society. At times relevant herein, Defendants have failed and refuse to abide by their contract to provide perpetual care pursuant to their contractual obligations. *See* Exhibit B which shows that the Chebra Shebath Achim Society plots are not visible and entirely inaccessible.

21. Plaintiff Nancy L. Rousseau resides in Little Rock, Arkansas. Ms. Rousseau's grandparents are buried at the cemetery as part of the Chebra Shebath Achim Society. In the 1970s, Ms. Rousseau's grandparents purchased perpetual care from a Defendant through the Chebra Shebath Achim Society. At times relevant herein, Defendants have failed and refuse to abide by their contract to provide perpetual care pursuant to their contractual obligations. *See*

Exhibit B which shows that the Chebra Shebath Achim Society plots are not visible and entirely inaccessible.

22. Defendant Congregation Shaare Zedek ("Shaare Zedek") is a New York not-for-profit corporation with its principal place of business located at 212 West 93<sup>rd</sup> Street, New York, New York. Shaare Zedek is a multi-generational, egalitarian Conservative congregation on the Upper West Side of Manhattan purportedly embracing a traditional approach to contemporary Judaism. Shaare Zedek owns, operates, manages, maintains or controls Bayside Cemetery. During the class period, Defendant Shaare Zedek marketed and sold perpetual and annual care contracts, either directly or through its agents, to class members.

23. Based upon documents created by Defendant Shaare Zedek and other information, Defendant Bayside Cemetery is a legal entity which maintains its principal place of business at 80-35 Pitkin Avenue, Ozone Park, New York. During the class period, Defendant Bayside Cemetery marketed and sold perpetual or annual care contracts, either directly or through its agents, to members of the Class.

#### **CLASS ACTION ALLEGATIONS**

24. Plaintiffs bring this action on their own behalf and as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) and (b)(3) on behalf of the following Class:

All persons, or relatives of persons, who purchased a perpetual care or annual care contract from a Defendant or their agents or assigns from January 1, 1970 to present.

25. The Class excludes Defendants, their parents, subsidiaries, affiliates, officers, directors, agents, assigns and employees. Also excluded are any federal, state or local governmental entity, and any judge or judicial officer presiding over this matter, judicial staff, and the members of their immediate families.

26. Because information concerning the purchase and sale of perpetual care and annual care contracts is or should be in the control of Defendants, Plaintiffs do not know the exact number of members of each Class. Due to the nature of the trade and commerce involved, Plaintiffs believe that Class members number at least in the thousands and are sufficiently numerous and geographically dispersed throughout the United States so that joinder of all Class members is impracticable.

27. Plaintiffs' claims are typical of the claims of the members of the Class because Plaintiffs and all Class members were injured by the same wrongful conduct as alleged herein.

28. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual Class members. Such common questions include:

- (a) Whether the alleged conduct violates N.Y. Gen. Bus. Law § 350;
- (b) Whether the alleged conduct violates N.Y. Gen. Bus. Law § 349;
- (c) Whether the alleged conduct constitutes a breach of contract;
- (d) Whether the alleged conduct constitutes conversion;
- (e) Whether a formal accounting should be required;
- (f) Whether Defendants were unjustly enriched; and
- (g) Whether Plaintiffs and members of the Class are entitled to damages and

the appropriate measure of such damages.

29. As the claims of Plaintiffs are typical of the claims of the Class, and Plaintiffs have no interests adverse to or which irreconcilably conflict with the interests of other members of the Class, Plaintiffs are adequate class representatives.



30. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel experienced and competent in the prosecution of complex class action litigation. A class action is superior to other available methods for the fair and efficient adjudication of the controversy and substantial benefits will derive from proceeding as a class action. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not afford to individually litigate such claims against a large, well funded organization. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient group-wide adjudication of this controversy.

#### **TOLLING OF APPLICABLE STATUTES OF LIMITATION**

31. Any applicable statutes of limitation have been equitably tolled by Defendants' affirmative acts of fraudulent concealment, suppression, and denial of the true facts regarding the invasion of the fiduciary account(s) containing monies dedicated exclusively for perpetual care or annual care at Bayside Cemetery. Such acts of fraudulent concealment include intentionally covering up and refusing to publicly disclose critical documents and information concerning the deliberate invasion fiduciary account(s) containing monies dedicated exclusively for perpetual care or annual care at Bayside Cemetery to class members, their families and the general public. Through such acts of fraudulent concealment, Defendants were able to actively conceal from class members and the public for years the truth about their deceptive practices, thereby tolling the running of any applicable statutes of limitation.

## COUNT I

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

32. Plaintiffs repeat and reallege each and every prior allegation contained in paragraphs 1 through 31 hereof with the same force and effect as if fully set forth herein.

33. N.Y. Gen. Bus. Law § 350 provides that “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.”

34. As more fully described above, Defendants’ advertisement and sale of perpetual and annual care contracts and the subsequent refusal to maintain the plots in accordance with those contracts constitute violations of N.Y. Gen. Bus. Law § 350.

35. Plaintiffs and the Class seek damages for their injuries caused by these violations in an amount to be determined at trial.

36. Defendants’ willful acts and conduct, as described above, entitle Plaintiffs and the Class to an award of damages.

## COUNT II

### **New York Gen. Bus. Law § 349**

37. Plaintiffs repeat and reallege each and every prior allegation contained in paragraphs 1 through 36 hereof with the same force and effect as if fully set forth herein.

38. N.Y. Gen. Bus. Law § 349 makes unlawful “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.”

39. N.Y. Gen. Bus. Law § 349 (h) provides that “any person who has been injured by reason of any violation of this section may bring . . . an action to recover his actual damages or fifty dollars, whichever is greater . . . .”

40. Defendants engaged in deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349 which resulted in injury and broad adverse impact on the public at large, and harmed the public interest of New York State in an honest marketplace in which economic activity is conducted. Defendants' deceptive conduct caused highly vulnerable individuals who placed their trust in Defendants to pay monies for the perpetual or annual care for their own or family member's plots located at cemetery. Defendants have failed to abide by these contracts and have allowed the cemetery to fall into a state of shameful disrepair.

41. Plaintiffs and the Class seek actual damages for their injuries caused by these violations in an amount to be determined at trial. Without prejudice to their contention that Defendants' unlawful conduct was willful and knowing, Plaintiff and the Class do not seek in this action to have those damages trebled pursuant to N.Y. Gen. Bus. Law § 349 (h). Plaintiffs and the Class seek single damages with respect to this claim.

### **COUNT III**

#### **New York Gen. Bus. Law § 349-c**

42. Plaintiffs repeat and reallege each and every prior allegation contained in paragraphs 1 through 41 hereof with the same force and effect as if fully set forth herein.

43. N.Y. Gen. Bus. Law § 349 makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state."

44. N.Y. Gen. Bus. Law § 349 (h) provides that "any person who has been injured by reason of any violation of this section may bring . . . an action to recover his actual damages or fifty dollars, whichever is greater . . . ."

45. Defendants engaged in deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349 which resulted in injury and broad adverse impact on the public at large, and harmed the public interest of New York State in an honest marketplace in which economic

activity is conducted. Defendants' deceptive conduct caused highly vulnerable individuals who placed their trust in Defendants to pay monies for the perpetual or annual care for their own or family member's plots located at cemetery. Defendants have failed to abide by these contracts and have allowed the cemetery to fall into a state of shameful disrepair.

46. Defendants have knowingly directed and sold perpetual care or annual care contracts to individuals age sixty-five (65) years or older or otherwise engaged in conduct in willful disregard of the rights of individuals age sixty-five (65) years or older in violation of GBL 349-c.

47. Defendants' conduct caused individuals age sixty-five (65) years or older to lose monies for personal or family care in violation of GBL 349-c.

48. Plaintiffs and the Class seek actual damages for their injuries caused by these violations in an amount to be determined at trial. Without prejudice to their contention that Defendants' unlawful conduct was willful and knowing, Plaintiff and the Class do not seek in this action to have those damages trebled pursuant to N.Y. Gen. Bus. Law § 349(b). Plaintiffs and the Class seek single damages with respect to this claim.

#### **COUNT IV**

##### **Breach of Contract**

49. Plaintiffs repeat and reallege each and every prior allegation contained in paragraphs 1 through 48 hereof with the same force and effect as if fully set forth herein.

50. Using standard form contracts, Defendants offered perpetual or annual care contracts for sale for at Bayside Cemetery or assumed legal rights and responsibilities for existing perpetual or annual care contracts concerning Bayside Cemetery.

51. Defendants accepted monies from Plaintiffs or members of their family, Class members or persons in kinship with such individual(s) to provide perpetual care or annual care of certain plots at Bayside Cemetery.

52. Over the past few years, Defendants have intentionally removed perpetual care stickers from plots and refused to provide perpetual or annual care services in breach of their obligations under contracts entered into between Defendants and Plaintiffs' grandparents as well as other Class members.

53. Defendants' refusals to honor perpetual care or annual care contracts have caused injury by allowing plots subject to such contracts to fall into complete disrepair.

#### **COUNT V**

##### **Unjust Enrichment**

54. Plaintiffs repeat and reallege each and every prior allegation contained in paragraphs 1 through 53 hereof with the same force and effect as if fully set forth herein.

55. Defendants benefited from their unlawful acts through the payments for perpetual or annual care services which they have failed to provide. It would be inequitable for Defendants to be permitted to accept and retain the benefit of these payments designated for perpetual or annual care services, which were conferred by Plaintiffs and the Class members and retained by Defendants, when these Defendants refuse to provide such services.

56. Plaintiffs and the Class members are entitled to have returned to each of them the amount of such overpayments as damages or restitution.

#### **COUNT VI**

##### **Breach of Fiduciary Duty Against Defendants**

57. Plaintiffs repeat and reallege each and every prior allegation contained in paragraphs 1 through 56 hereof with the same force and effect as if fully set forth herein.

58. The Class members have suffered damages due to the Defendants' conduct as detailed above. The claims asserted herein against the Defendants are asserted on behalf of the Plaintiffs and Class members to recover from Defendants the damages sustained and to be sustained by Plaintiffs and the Class due to the grossly negligent mismanagement of the funds entrusted to them for the perpetual or annual care of the cemetery plots and the improper or negligent handling of perpetual and annual care monies in violation of Defendants' fiduciary duties.

59. The conduct detailed above was not due to an honest error of judgment but to Defendants' conflicts of interest, gross, reckless, bad faith and/or willful disregard of their fiduciary duties and of the rights and interests of Plaintiffs and members of the Class. Defendants' conduct cannot be justified as valid acts of business judgment because they engaged in, caused, or permitted, gross mismanagement and violated their fiduciary duties and their duties of due care, diligence and candor.

60. By reason of defendants' breaches, Plaintiffs and Class members have sustained and will continue to sustain serious damage and irreparable injury, for which relief is sought herein.

## **COUNT VII**

### **Aiding and Abetting Breaches of Fiduciary Duties Against Defendants**

61. Plaintiffs repeat and reallege each and every prior allegation contained in paragraphs 1 through 60 hereof with the same force and effect as if fully set forth herein.

62. Each of the Defendants breached fiduciary duties owed to Plaintiffs and the Class in a willful manner as detailed above.

63. Each of the Defendants knowingly gave substantial assistance and encouragement to each other in committing the wrongful acts alleged above.

64. Each of the Defendants acted in concert with at least one other defendant to commit the breaches of fiduciary duties detailed above.

65. Plaintiffs and members of the Class were injured as a result of the Defendants' conduct.

## **COUNT VIII**

### **Conversion**

66. Plaintiffs repeat and reallege each and every prior allegation contained in paragraphs 1 through 65 hereof with the same force and effect as if fully set forth herein.

67. Plaintiffs and members of the class provided Defendants with monies for placement in a trust with the understanding that monies would only be removed for the purpose of maintaining or making improvements to certain plots at Bayside Cemetery.

68. Defendants accepted receipt of these monies under these conditions and placed them in a trust fund.

69. Plaintiffs and members of the Class had an ownership right or an immediate superior right of possession of these monies over Defendants.

70. By taking perpetual or annual care monies out of the fund without Plaintiffs' and members of the Class's express authorization or consent and by holding or using these monies in a manner entirely inconsistent with the purpose originally given to the exclusion of the Plaintiffs and members of the Class, Defendants have converted Plaintiffs' and members of the Class' property.

71. Plaintiffs and members of the Class have been denied right to their monies and have been injured.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs and the Class members pray for judgment against all Defendants, jointly and severally, as follows:

- (a) awarding Plaintiffs and the Class their actual damages from Defendants for Defendants' violation of N.Y. Gen. Bus. Law § 349 in an amount to be determined at trial;
- (b) granting Plaintiffs and the Class the costs of prosecuting this action, together with interest and costs, pursuant to N.Y. Gen. Bus. Law § § 350 and 349;
- (c) awarding Plaintiffs and the Class their actual damages from Defendants' breaches of contract;
- (d) declaring that the defendants have violated their fiduciary duties to the Class and/or aided and abetted each other in breaching those duties;
- (e) enjoining Defendants from using any perpetual care or annual care funds for any purpose other than perpetual or annual care of plots at Bayside Cemetery;
- (f) placing a constructive trust over any funds paid to Defendants for the perpetual or annual care of Bayside Cemetery plots;
- (h) requiring the Defendants to conduct a thorough and complete accounting of all perpetual and annual care monies held in their care, custody, possession or control for Bayside Cemetery at anytime since January 1, 1970; and



(i) granting such other and further relief as this Court deems just and proper.

Dated: September 12, 2007  
New York, New York

By: 

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# **EXHIBIT A**

















# EXHIBIT B

