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September 24, 2009

VIA ELECTRONIC CASE FILING

The Honorable Raymond J. Dearie
Chief United States District Judge
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Lucker et al. v. Bayside Cemetery & Congregation Shaare Zedek*,
No. 07 Civ. 3823 (RJD) (JMA)
Cohen v. Bayside Cemetery & Congregation Shaare Zedek,
No. 08 Civ. 3555 (RJD) (JMA)
Goldstein v. Bayside Cemetery & Congregation Shaare Zedek,
No. 08 Civ. 3923 (RJD) (JMA)

Dear Chief Judge Dearie:

We write as counsel to Defendants in the above-referenced actions, in response to Plaintiffs' counsel's letter dated September 22, 2009.

It is unfortunate that we need to bother the Court with what was a relatively routine scheduling matter resolved by Magistrate Judge Azrack. Without rehashing here all of the arguments made in Defendants' submissions to the Magistrate Judge (see Lucker Docket Entries 57 and 59), Defendants made two principal arguments in support of a stay of class certification briefing:

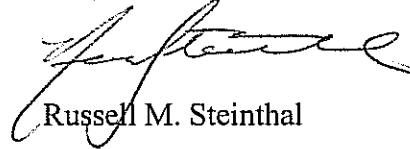
First, there are substantial unresolved questions as to the Court's subject matter jurisdiction over these actions, including the questions of injury-in-fact initially raised by the Defendants' motion papers and the additional questions on which Your Honor requested supplemental briefing. Under controlling Supreme Court precedent, those questions must be resolved before turning to either the merits or non-jurisdictional motion practice. See Steel Co. v. Citizens for Better Environment, 523 U.S. 83 (1998).

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Second, the arguments on standing and jurisdiction that were well briefed and argued to the Court on Defendants' motion to dismiss overlap with essential elements of the Plaintiffs' motion for class certification, such as the typicality and adequacy of the named Plaintiffs, who sue solely as the relatives of actual purchasers of perpetual care. Regardless of how the Court ultimately resolves the standing questions, it would be a waste of judicial and party resources to re-brief and argue the same issues prior to a ruling on the pending motion to dismiss.

Plaintiffs, meanwhile, have not demonstrated any prejudice from a temporary delay in class certification, nor have they shown that Magistrate Judge Azrack's order was in any way "clearly erroneous or . . . contrary to law" as required by Rule 72(b). Defendants remain willing to consent to a reasonable briefing schedule, should the Court deny their motion to dismiss. Until that time, however, we respectfully submit that Magistrate Judge Azrack's stay should remain in place.

Respectfully,



Russell M. Steinthal

cc: All Counsel (via ECF)