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August 22, 2008

VIA ELECTRONIC CASE FILING

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

Re: Lucker et al v. Bayside Cemetery et ano. 07 civ. 3823 (RJD)(JMA)

Dear Chief Judge Dearie:

I write in response to Mr. Buchman's letter dated August 20, 2008 to the Court. I would make just two points.

FIRST: As the Court noted in the March 28, 2008 transcript, if plaintiffs are unwilling to continue to suspend this action, it cannot be imposed on them and by a simple letter to the Court, it will be reopened. (Tr. P.11-12). Thus, if, in fact, that is his desire, no amount of progress, logic or reason can overcome Mr. Buchman's intention to re-open proceedings in this Court.

SECOND: That said, defendants have accomplished something quite remarkable during this period of time and largely because of the suspension of the action. Everyone recognizes (or should recognize) that the condition of the Bayside Cemetery is beyond the ability or responsibility of Congregation Shaare Zedek to restore on its own. When we contacted the cemetery operator who had, prior to commencement of this lawsuit, indicated his willingness to provide Bayside with workers and equipment to conduct a one-time cleanup, he made it clear that he was unwilling to commit his efforts so long as this lawsuit was pending and that he felt it would be futile to engage in a cleanup operation until a mechanism was found to finance long-term maintenance and upkeep so that the areas he cleared would not be overgrown six months or a year later. His position has not changed.

Nevertheless, since the suspension of the action, Shaare Zedek has now been able to gain the active commitment and support of UJA-Federation of New York, as described below, one of the largest Jewish philanthropies in the world, as well as the Hebrew Free Burial Association and the Jewish Community Relations Council to lend support and assistance to bring about a funding of the Community

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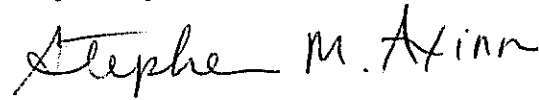
Association for Jewish At-Risk Cemeteries ("CAJAC"), the corporation that has been created with the knowledge of the New York Attorney General to assume title to and control of Bayside once it is adequately funded by charitable donations. Mr. Buchman had previously subpoenaed UJA-Federation in this action to produce documents and records, and as a result, UJA was understandably reluctant to become further involved with our efforts to find a permanent solution to the Bayside issues while the litigation was pending. However, since the action was suspended, UJA-Federation has now, at its own expense, hired a consultant to undertake a study to determine how many other cemeteries are owned by synagogues who are no longer able to care for them so that it can better engage in a program to solve this problem comprehensively for the long-term. UJA-Federation has also offered support to CAJAC by assisting it in finding a fund raiser, who, hopefully, will bring it to its goal of becoming able to operate Bayside, and possibly other similarly situated cemeteries, on a permanent basis. In addition, UJA-Federation has reiterated its commitment to pay \$40,000 towards the salary of the CAJAC fundraiser for two years and to stand behind its prior pledge to pay \$145,000 towards the cost of the cemetery cleanup. I cannot predict whether UJA-Federation will continue to commit resources and lend assistance to Bayside if it is again threatened with discovery in this litigation.

In the meantime, Shaare Zedek has enlisted the support of a group of volunteers who are planning a clean-up effort at Bayside in October to do what they can to improve the condition of the cemetery. Simply put, there is nothing more that we could do

Sadly, Mr. Buchman appears more interested in whether the lawn was mowed at Bayside than in facilitating a permanent solution to its condition. As I noted above, restoring the case to the calendar is Mr. Buchman's option; however, all that he will accomplish is further delay in funding and bringing about the restoration of the cemetery.

As the Court will recall, defendants had previously requested permission, in our letter to the Court, to file their motion to dismiss the complaint. We are prepared to move forward with the filing of this motion on the schedule fixed by further Order of the Court.

Respectfully submitted,



Stephen M. Axinn

cc: Hon. Joan M. Azrack  
Michael Buchman, Esq.