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Tammie Mosley
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Chatham County
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Reviewer: AB

IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

OLD TOWN TROLLEY TOURS OF SAVANNAH, INC.	)	
Plaintiff,	)	**CIVIL ACTION NO. ~~SPCV20-007667-MO~~** SPCV20-00767-MO
v.	)	
THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH	)	
Defendants.	)	

APPLICATION FOR ATTORNEY'S FEES AND REIMBURSEMENT OF EXPENSES AND SERVICE AWARD TO CLASS REPRESENTATIVES
WITH MEMORANDUM OF LAW IN SUPPORT

Lead counsel, James L. Roberts, IV of Roberts Tate, LLC along with co-counsel, John Manly, Esquire and James E. Shipley, Jr., Esquire, of Manly Shipley, LLP, who represent Plaintiff Old Town Trolley Tours of Savannah, Inc. ("Named Plaintiff"), individually and on behalf of all persons similarly situated, respectfully submit this Application for Attorney's Fees and Reimbursement of Expenses and Service Award to Class Representatives (the "Application" or the "Motion") with Memorandum of Law in Support representing to the Court as follows:

I. INTRODUCTION

The present Motion seeks compensation for Class Counsel for the time and expense invested by Class Counsel in this class action lawsuit (the "Lawsuit"). Class Counsel has invested a substantial number of hours and all expenses necessary for the prosecution of the case on behalf of the Class Members and at the expense of other paying legal work without receiving any payment in return. After conducting early, informal discovery into the facts and legal basis for this Lawsuit, filing the Complaint and a motion for class certification with memorandum in support, Class

Counsel and counsel for Defendant The Mayor and Aldermen of the City of Savannah (the "City of Savannah") began settlement negotiations. See Affidavit of James L. Roberts, IV (the "Roberts Aff.") attached hereto as Exhibit ("Ex.") "A" at ¶12. While the Parties were unable to reach a settlement on September 30, 2020, the Parties continued their negotiations. Ultimately the Parties were able to reach a settlement and the City of Savannah approved the settlement at its October 22, 2020 City Council meeting (the "Settlement"). Id. at ¶13. The Settlement is memorialized in the [Proposed] Consent Judgment on Aggregate Refund and Order (the "[Proposed] Consent Judgment").[1] Id.

The Parties filed a Joint Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval") on November 25, 2020. This Court granted preliminary approval of the Settlement on December 10, 2020 and ultimately entered a Second Amended Preliminary Approval Order on December 28, 2020 which was filed on December 29, 2020. As a result of the commitment by Class Counsel and the Class Representative, the Class Members stand to receive a lump sum payment in the amount of $2,750,000.00 (the "Aggregate Refund Fund"), which represents a good faith estimate of 73.89% of the amounts potentially due to the Class Members if Plaintiffs prevailed in the Lawsuit. Id. at ¶¶16-17.

The City of Savannah defended this Lawsuit and denied any liability whatsoever. Id. at ¶38. The dedication, persistence and experience of Class Counsel caused the City of Savannah to enter into the Settlement to refund the Class Members for the illegal fess collected under the City of Savannah 2020 Revenue Ordinance Article T.§3 (the "Preservation Fee" and the "Preservation Fee Ordinance").

[1] The Parties entered into a First Amendment to the [Proposed] Consent Judgment on November 25, 2020 to correct a typographical error in the [Proposed] Consent Judgment.

Class Counsel has not received any compensation or payment for their work on behalf of the Class Members or reimbursement for the expenses advanced on their behalf. Id. at ¶25. As its fee in this litigation, Class Counsel requests the payment of one million one hundred thousand dollars ($1,100,000.00) (the "Proposed Class Counsel Fee"), which represents 40% of the Aggregate Refund Fund. Id. at ¶40. Importantly, this is the same percentage awarded by the Superior Court of Glynn County in 2019 in a similar tax refund class action styled Coleman v. Glynn County, CE12-01785-063, CE13-01480-063 and CE14-00750-063, Superior Court of Glynn County, Order on Attorney's Fees and Costs and Service Award (Nov. 8, 2019). And even more recently, it is the same percentage awarded in 2020 in two (2) similar tax refund cases – one in the Superior Court of Wayne County and one in the Superior Court of Charlton County. See Altamaha Bluff, LLC, et al. v. Thomas, et al., 14CV0376, Superior Court of Wayne County, Order on Attorney's Fees and Costs and Service Award (Oct. 19, 2020); Toledo Manufacturing Co., et al. v. Charlton County, SUCV201900232, Superior Court of Charlton County, Order on Attorney's Fees and Costs and Service Award (Dec. 10, 2020). In addition to the Proposed Class Counsel Fee, Class Counsel requests reimbursement for its actual costs and expenses in the amount of $1,454.74. See Ex. A, Roberts Aff. at ¶51.[2] The Class Representative requests a total service payment of fifty five thousand dollars ($55,000.00) for its work in this litigation, including instituting and diligently pursuing this litigation on behalf of the Class Members.

II. OVERVIEW OF THE LAWSUIT AND PROPOSED CONSENT JUDGMENT

Named Plaintiff filed this Lawsuit on behalf of itself and all taxpayers similarly situated

[2] The City of Savannah takes no particular position in favor or against the Proposed Class Counsel Fee and defers such decision to the judgment and discretion of the Court. See [Proposed] Consent Judgment at Section E.

seeking refunds Preservation Fees collected by the City of Savannah from 2015 to 2020. This Lawsuit is a refund class action under O.C.G.A. § 48-5-380 (the "Refund Statute").

Named Plaintiff alleges that the Preservation Fee was a speech tax that was levied by the City of Savannah until its repeal in 2020 exclusively on sightseeing tour companies, including Named Plaintiff, which conducted narrated tours within the Historic District of Savannah. Named Plaintiff alleges, that the Preservation Fee violated Named Plaintiff's First Amendment rights, violated the Special District Clause of the Constitution of the State of Georgia and violated the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution and Article I, Section I, Paragraph I of the Constitution of the State of Georgia. See Named Plaintiff's Verified Class Action Complaint filed on August 28, 2020 (the "Complaint").

In 2014 a civil rights lawsuit was initiated against the City of Savannah by several tour guides who operated in the City of Savannah and a non-tour guide in an action styled *Freenor, et al. v. Mayor and Aldermen of the City of Savannah,* Civil Action No. 4:14-cv-00247-WTM-GRS, in the United States District Court for the Southern District of Georgia, Savannah Division (the "Federal Lawsuit"). See Complaint at ¶6; Ex. A, Roberts Aff. at ¶¶27, 29. The Federal Lawsuit alleged that Savannah Code of Ordinances § 6-1508 which made it unlawful to "act or offer to act as a tour guide within the city" or to "play a role during a tour" without first obtaining a "tour guide permit" from the City of Savannah which required the passing of a written history test, a physical exam, and a background check among other things to obtain a license (the "Tour Guide Licensing Ordinance") violated the right to free speech as guaranteed by the First Amendment to the United States Constitution. Id. at ¶7. The Federal Lawsuit also claimed that the Preservation Fee violated the right to free speech as guaranteed by the First Amendment to the United States Constitution. See Complaint at ¶8.

On May 20, 2019 the District Court for the Southern District of Georgia found that the challenged portions of the Tour Guide Licensing Ordinance were not narrowly tailored to serve a significant governmental interest and therefore violated the First Amendment to the United States Constitution. Id. at ¶9. In the same Order the District Court for the Southern District of Georgia found that the Preservation Fee was a "tax" within the scope of the Tax Injunction Act (the "TIA"), 28 U.S.C. § 1341. Id. at ¶10.

The District Court for the Southern District of Georgia held that the TIA provided a jurisdictional bar from its consideration of the constitutionality of the Preservation Fee. Id. at ¶11. Accordingly, the District Court for the Southern District of Georgia dismissed the claims regarding the constitutionality of the Preservation Fee without prejudice for lack of subject matter jurisdiction. Id. at ¶13.

The Preservation Fee that the City of Savannah charged from 2015 to June 11, 2020 was $1.00 per adult audience member on any "[s]ightseeing tours conducted within the Historic District of Savannah." Revenue Ordinance Article T.§3(A)-(B). A fifty cent ($0.50) Preservation Fee was charged for children "12 years and under, provided that the tour fee [was] no more than 60% of the adult fare." Id. at §3(B). No Preservation Fee was charged for children "three years of age and under, provided that no tour fee [was] charged." Id.

The City of Savannah's Preservation Fee applied to "local motor vehicle tours, horse drawn carriage tours, walking tours, boat tours, and any other commercial tours…". Id. The Preservation Fee, however, did not apply to "persons boarding a tour boat for dining and on-board entertainment purposes where a sightseeing tour is not the focus or emphasis of the event and *where no tour narration is provided*." Id. at (b) (emphasis provided). Named Plaintiff alleges that on its face, the City of Savannah's Preservation Fee was targeted to speech. Named Plaintiff alleges that whether

a tour business was required to pay the tax depended on whether its services included a "tour narration." Id.

The City of Savannah's Revenue Ordinance provided that "[a]ny sightseeing tour services business operating within the Historic District of Savannah as defined above, whether on a regular or transient basis, shall be liable for payment of the [P]reservation [F]ee." Revenue Ordinance Article T.§3(C). Payment of the Preservation Fee was a condition of doing business within the City as a sightseeing tour business from 2015 until its repeal in 2020. The City of Savannah's Revenue Ordinance provided that "[p]ayment of preservation fees as provided by this ordinance is a condition for doing business within the City as a sightseeing tour business, and failure to pay the fee shall be grounds for suspension from the Visitors Center Parking lot and other sanctions as may be provided by ordinance or contract." Revenue Ordinance Article T.§3(G).

Each tour service business which conducted tours within the City of Savannah that was liable for payment of the Preservation Fee was required "on or before the twentieth day of each month transmit to the Revenue Department a return showing the following information for the previous calendar month" which included:

> a) Total number of tours conducted within the Historic District;
>
> b) Total number of tours originating but not conducted within the Historic District;
>
> c) Number of adult-fare tour passengers on Historic District tours during the month;
>
> d) Number of child tour passengers (12 years and under) provided at 60%-fare or less;
>
> e) Number of child tour passengers (3 years and under) provided at no-fare;
>
> f) Number of youth field-trip tours and number of youth tour passengers/adult companions;

g) Preservation fees due by category and in total; and

h) Such other information as the Revenue Department may reasonably require to administer and collect preservation fees.

Revenue Ordinance Article T.§3(D)(1). The City of Savannah's Revenue Ordinance provided that "[e]ach tour company shall report monthly totals, shall keep accurate records of the above information on a daily basis, and shall retain such records for a minimum of three years. Daily records shall be made available to City staff…". Id.

Transient tour operators (motor coaches) were also liable for the Preservation Fee. The City of Savannah's Revenue Ordinance provided that "[t]he operator of each transient tour vehicle (motor coach) entering the [C]ity for the purpose of conducting a tour shall pay a preservation fee according to the rate established herein as part of the permitting process *prior* to beginning a tour within the [C]ity." Revenue Ordinance Article T.§3(D)(2) (emphasis in original).

On or about June 11, 2020 the City of Savannah repealed the Preservation Fee Ordinance as a result of the District Court for the Southern District of Georgia in the Federal Lawsuit finding the Tour Guide Licensing Ordinance unconstitutional. See Complaint at ¶58.

On August 28, 2020 Named Plaintiff commenced this Lawsuit. On that same day, Named Plaintiff filed a Motion and Memorandum in Support thereof to Certify Suit as Class Action. See Ex. A, Roberts Aff. at ¶11. On November 25, 2020 Named Plaintiff filed an Amended Complaint amending the definition of the class and seeking the certification of one (1) class and two (2) subclasses. Named Plaintiff also filed an Amended Motion and Memorandum to Certify Suit as Class Action. As set forth in the Amended Complaint and the Amended Motion to Certify Suit as Class and for the reasons set forth in Named Plaintiff's Memorandum to Certify Suit as Class Action filed on August 28, 2020, the Class and two (2) Subclasses are defined as:

Taxpayers similarly situated who, like Named Plaintiff, paid the Preservation Fee

under Revenue Ordinance Article T, §3 from August 28, 2015 through 2020 (hereinafter the "Class").

The Class is comprised of two (2) subclasses defined as follows:

1. Taxpayers who operated sightseeing tours within the Historic District of Savannah and paid the Preservation Fee under Revenue Ordinance Article T, §3 (the "Tour Operator Subclass") from August 28, 2015 through 2020

2. Participants in sightseeing tours within the Historic District of Savannah who were charged for the Preservation Fee under Revenue Ordinance Article T, §3 by tour operators and paid the Preservation Fee (the "Tour Participants Subclass") from August 28, 2015 through 2020.

The Parties stipulated to the certification of this Class, Tour Operator Subclass and the Tour Participants Subclass in the Settlement. See [Proposed] Consent Judgment, at Section A.

The Parties held a settlement meeting on September 30, 2020. See Ex. A, Roberts Aff. at ¶12. While the Parties were unable to reach a settlement on September 30, 2020, the Parties continued their negotiations. Id. at ¶13. Ultimately, the Parties were able to reach a settlement and the City of Savannah approved the Settlement at its October 22, 2020 City Council meeting. The Settlement is memorialized in the [Proposed] Consent Judgment on Aggregate Refund and Order (the "[Proposed] Consent Judgment"). Id. It was negotiated at arm's length without collusion. Id. at ¶14. The terms of the [Proposed] Consent Judgment (which still must be approved by the Court at a Final Approval Hearing as set forth in the Second Amended Preliminary Approval Order dated December 28, 2020) covers refunds for Preservation Fees collected from August 28, 2015 through 2020. Id. at ¶15.

The direct benefit to the Class Members, if finally approved by the Court at the Final Approval Hearing on February 23, 2021, includes the creation of a cash fund in the amount of $2,750,000.00 (the "Aggregate Refund Fund"). Id. at ¶16. The $2,750,000.00 will be paid as

follows: (a) $916,666.67 on or before April 1, 2021; (b) $916,666.67 on or before April 1, 2022; and (c) $916,666.66 on or before April 1, 2023. Id. ¶17.

Under the terms of the [Proposed] Consent Judgment each Qualified Class Member (as defined in the [Proposed] Consent Judgment) will receive his or her pro-rata share of his or her calculated tax refund up to 73.89% of the total calculated refund due from the Aggregate Refund Fund less Fees and Expenses (as defined in the [Proposed] Consent Judgment). This is called the "Pro-Rata Tax Refund". Id. at ¶18. "Pro-rata" means the proportion each Qualified Class Member's Pro-Rata Refund bears to the total Aggregate Refund Fund. Id. at ¶19. This percentage shall be used to calculate each Qualified Class Member's pro rata share of the Fees and Expenses. Upon identification of all Qualified Class Members and determination of the Pro-Rata Tax Refund for each and determination of all Fees and Expenses, the Aggregate Refund Fund shall be divided by the sum of the Pro-Rata Tax Refund for each Qualified Class Member. The resulting percentage shall be each Qualified Class Member's portion of the Fees and Expenses ("Pro-Rata Percentage of Fees and Expenses"). Id. at ¶20. The product of the Pro-Rata Percentage of Fees and Expenses times the Fees and Expenses shall be deducted from the sum of each Qualified Class Member's Pro-Rata Tax Refund and the remainder will be the amount distributed to each Qualified Class Member as set forth in the [Proposed] Consent Judgment. Id. at ¶21.

Under the [Proposed] Consent Judgment, within thirty (30) days of the later of the expiration of the period for objecting to individual refund amounts or a final ruling by the Special Master on any individual refund calculation, the Administrator shall identify to the Old Town Trolley QSF Administrator the amount of refund due each Qualified Class Member (as that term is defined in the [Proposed] Consent Judgment) and the address to which the refund is to be mailed (the "Administrator's Final Refund List"). The Old Town Trolley QSF Administrator shall issue

refund checks to each Qualified Class Member as follows: (a) 1/3 of the refund within fifteen (15) days of receipt of the Administrator's Refund List; (b) 1/3 of the refund on or before May 1, 2022; and (c) 1/3 of the refund on or before May 1, 2023. Id. at ¶22.

Class Counsel conducted early, informal discovery into the facts and the legal basis for this Lawsuit prior to filing the Complaint and before conducting settlement discussions with the City of Savannah on September 30, 2020. Id. at ¶12. Class Counsel spent a substantial number of hours investigating the refund claims. Id. at ¶26. Class Counsel reviewed the discovery, pleadings and court orders in the Federal Lawsuit. Id. at ¶27. From the documents of the Federal Lawsuit, Class Counsel thoroughly researched the facts and law applicable to this Lawsuit. Id. at ¶28. All told, Class Counsel invested no less than 400 hours, plus actual expenses of not less than $1,454.74. Id. at ¶¶49, 51.

III. APPROVAL OF ATTORNEY'S FEES AND EXPENSES AND SERVICE PAYMENT

A. The Court Should Approve the Attorney's Fees and Costs Requested

The Proposed Class Counsel Fee should be approved by the Court. Fee requests for common fund class actions such as this are analyzed under the factors set forth in Camden I Condominium Association, Inc., et al v. Dunkle, 946 F.2d 768 (11th Cir. 1991) (the "Camden I Factors"). As set forth below, in consideration of the Camden I Factors, including the extraordinary relief obtained for the Class Members, the Court should conclude that the Proposed Class Counsel Fee is appropriate, fair, and reasonable and should be approved. See In re Cardizem CD Antitrust Litigation, 218 F.R.D. 508, 534 (E.D. Mich. 2003) ("Society's stake in rewarding attorneys who can produce such benefits in complex litigation such as in the case at bar counsels in favor of a generous fee.") (Ellipsis and quotation marks omitted)).

1. The Law Provides That Class Counsel Fees Are to be Awarded from the Common Fund Created Through Their Efforts.

Under Georgia law, tax refund actions under the Refund Statute, such as this case, are considered common fund cases. See Barnes v. City of Atlanta, 281 Ga. 256, 260, 637 S.E.2d 4, 7 (2006). See also Coleman v. Glynn County, CE12-01785-063, CE13-01480-063 and CE14-00750-063, Superior Court of Glynn County, Order on Attorney's Fees and Costs and Service Award (Nov. 8, 2019) at ¶2; Altamaha Bluff, LLC, et al. v. Thomas, et al., 14CV0376, Superior Court of Wayne County, Order on Attorney's Fees and Costs and Service Award (Oct. 19. 2020) at ¶2; and Toledo Manufacturing Co., et al. v. Charlton County, SUCV201900232, Superior Court of Charlton County, Order on Attorney's Fees and Costs and Service Award at ¶2 (Dec. 10, 2020). Where a common fund is generated in litigation for the benefit of persons other than the named plaintiff, reasonable attorney's fees are paid from the fund. Similar to this Lawsuit, the Barnes case was a class action under the Refund Statute that sought a refund of occupation taxes imposed by the City of Atlanta on attorneys. In that context, the Supreme Court of Georgia explained that:

> a person who at his own expense and for the benefit of persons in addition to himself, maintains a successful action for the preservation, protection or creation of a common fund in which others may share with him is entitled to reasonable attorney fees from the fund as a whole.

Id. at 260 (internal citations omitted). Accord Coleman supra; Altamaha Bluff, LLC supra; and Toledo Manufacturing Co., et al. supra.

The United States Supreme Court and the Eleventh Circuit have also recognized that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to reasonable attorney's fees from the fund as a whole. See Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980) ("[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a

whole."). See also Camden I, 946 F.2d at 771 ("Attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund, but the amount is subject to court approval."). As explained by the United States District Court for the Northern District of Georgia, adequate compensation promotes the availability of counsel for aggrieved persons. See Lunsford v. Woodforest Nat'l Bank, 2014 U.S. Dist. LEXIS 200716 (N.D. Ga. 2014).

The controlling authority for awarding attorney's fees in common fund cases in the Eleventh Circuit is Camden I.[3] See In re Equifax, Inc. Customer Data Security Breach Litigation, 2020 WL 256132, at *31 (N.D. Ga. Mar. 17, 2020). Georgia courts rely on Camden I when awarding fees in a common fund case. See Friedrich v. Fidelity Nat'l Bank, 247 Ga. App. 704, 545 S.E.2d 107 (2001). In Camden I, the Eleventh Circuit held that:

> the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this circuit, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.

Camden I, 949 F.2d at 774. See also McGaffin, et al. v. Argos USA, LLC, 2020 WL 3491609, at *8 (S.D. Ga. Jun. 26, 2020) ("In the Eleventh Circuit, the calculation of attorneys' fees in class actions is done under the percentage method."); In re Checking Account Overdraft Litig., 830 F. Supp. 2d 1330, 1362 (S.D. Fla. 2011) ([T]he Eleventh Circuit made clear in *Camden I* that percentage of the fund is the exclusive method for awarding fees in common fund class actions.");

[3] Since its enactment in 1966 Georgia courts have read the state class action statute (O.C.G.A. § 9-11-23) to track the Federal Rule 23, and in 2003 O.C.G.A. § 9-11-23 was in fact modified to conform to the federal rule. Thus, Georgia courts rely on federal cases interpreting Federal Rule 23 when interpreting O.C.G.A. § 9-11-23. See Sta-Power Indus., Inc., v. Avant, 134 Ga. App. 952-953 (1975) ("Since there are only a few definitive holdings in Georgia on [O.C.G.A. § 9-11-23], we also look to federal law to aid us."). Similarly, it is appropriate to look to federal law when considering an approval of attorney's fees and costs in a class action.

accord Barnes, 275 Ga. App. 385 (awarding a percentage of the common fund as attorneys' fees in a tax refund case under the Refund Statute). Thus, the only question before the Court is: what percentage constitutes a reasonable percentage of the fund established for the benefit of the class.

2. Application of the *Camden I* Factors Supports the Requested Fee

As a general rule, the Eleventh Circuit has provided a set of factors the Court should use to determine a reasonable percentage to award class action counsel:

> (1) the time and labor required;
>
> (2) the novelty and difficulty of the relevant questions;
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> (3) the skill required to properly carry out the legal services;
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> (4) the preclusion of other employment by the attorney as a result of his acceptance of the case;
>
> (5) the customary fee;
>
> (6) whether the fee is fixed or contingent;
>
> (7) time limitations imposed by the clients or the circumstances;
>
> (8) the results obtained, including the amount recovered for the clients;
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> (9) the experience, reputation, and ability of the attorneys;
>
> (10) the "undesirability" of the case;
>
> (11) the nature and the length of the professional relationship with the clients; and
>
> (12) fee awards in similar cases.

Camden I, 946 F.2d at 772, n.3 (citing factors originally set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974)).

a. Class Counsel Achieved an Excellent Result for the Class

The eighth Camden I Factor looks to the amount involved in the litigation with particular emphasis on the monetary results achieved in the case by class counsel. See Allapattah Servs.,

Inc. v. Exxon Corp., 454 F. Supp. 2d 1185 (S.D. Fla. 2006). As one court explained, in common fund cases "the monetary amount of the victory is often the true measure of [counsel's] success." Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1269 (D.C. Cir. 1993).

Here, the result obtained provides for the recovery of the illegal assessment of the Preservation Fee from August 28, 2015 through 2020 by the City of Savannah. See Ex. "A", Roberts Aff. ¶¶15-17. The direct benefits to the Class Members include immediate cash payments from the $2,750,000.00 Aggregate Refund Fund. Id. at ¶17. Each Qualified Class Member (as defined in the [Proposed] Consent Judgment) will receive his or her pro-rata share of his or her calculated tax refund up to 73.89% of the total calculated refund due from the Aggregate Refund Fund, less Fees and Expenses (as defined in the [Proposed] Consent Judgment). Id. at ¶¶18-21. See Creed v. Benco Dental Supply Co., No. 3:12-CV-01571, 2013 WL 5276109, at *4 (M.D. Pa. Sept. 27, 2013) ("Settling for close to the amount of full liability represents a respectable victory for the class members . . . ."); accord Barnes, 281 Ga. at 260 (upholding the use of the common fund doctrine as a matter of policy on the grounds that allowing class members to obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense). Courts regularly find settlements to be fair where "[p]laintiffs have not received the optimal relief." Warren v. City of Tampa, 693 F. Supp. 1051, 1059 (M.D. Fla.1988).

The outcome in the [Proposed] Consent Judgment is truly an extraordinary result for the Class Members and weighs strongly in favor of awarding the Proposed Class Counsel Fee. See Williams v. Naples Hotel Grp., LLC, No. 6:18-cv-422-Orl-37DCI, 2019 WL 3804930, at *4 (M.D. Fla. July 29, 2019) ("'The result achieved is a major factor in making a fee award.'").

b. The Time and Labor Required, Preclusion from Other Employment and the Time Limits Imposed

The first, fourth and seventh Camden I Factors – the time labor, preclusion of other employment, and the time limitations imposed – support Class Counsel's fee request. In short, Class Counsel engaged in this Lawsuit against worthy, highly competent adversaries representing the City of Savannah. See Ex. "A", Roberts Aff. at ¶37.

Class Counsel spent a substantial number of hours investigating the refund claims in this Lawsuit. Id. at ¶26. Class Counsel reviewed the discovery, pleadings and court orders in the Federal Lawsuit where it was alleged that the Preservation Fee violated the right to free speech guaranteed by the First Amendment to the United States Constitution. Id. at ¶¶27, 29. Class Counsel thoroughly researched the facts of this Lawsuit and the applicable law. Id. at ¶28. The documents from the Federal Lawsuit that were reviewed and analyzed included, but were not limited to, the following: Complaint; Amended Complaint; Plaintiffs' Motion for Summary Judgment and Memorandum of Law in Support Thereof; Statement of Material Facts; the City of Savannah's Opposition to Plaintiffs' Motion for Summary Judgment; Response to Statement of Material Facts; Plaintiffs' Reply to Response to Motion for Summary Judgment; the City of Savannah's Motion for Summary Judgment and Memorandum in Support Thereof; the City of Savannah's Supplemental Brief in Support of Motion for Summary Judgment; Plaintiffs' Response to the City of Savannah's Supplemental Brief; selected portions of the deposition of the City of Savannah's 30(b)(6) witness; selected portions of plaintiffs' depositions; declarations of plaintiffs; selected portions of the City of Savannah's Responses to First Set of Discovery; selected portions of the City of Savannah's Responses to Second Set of Discovery; selected portions of the City of Savannah's Responses to Third Set of Discovery; 2015 Service Program and Budget 2015-2019 Capital Improvement Program; 2016 Service Program and Budget 2016 Service Program

and Budget 2016-2020 Capital Improvement Program; 2017 Adopted Budget and Five-Year Capital Improvement Program; 2018 Adopted Budget & Strategic Plan; 2019 Adopted Budget; 2020 Adopted Budget & Capital Improvement Program; documentation from the City of Savannah repealing the Preservation Fee Ordinance; Order of Judge William T. Moore, Jr. of the United States District Court for the Southern District of Georgia on cross motions for summary judgment; and Judge Moore's Order on cross motions for summary judgment related to the Preservation Fee Ordinance. Id. at ¶30.

Class Counsel spent a substantial number of hours investigating and researching the First Amendment violations concerning the Preservation Fee Ordinance, the violation of the Special District Clause of the Constitution of the State of Georgia (Article IX, Section II, Paragraph VI) as well as violations of the uniformity requirement, and the due process and equal protection clauses of the United States Constitution and the Constitution of the State of Georgia. Id. at ¶31. Potential refund claims for 2015, 2016, 2017, 2018, 2019 and 2020 were analyzed. Id. at ¶32.

Legal issues have been thoroughly researched and lead counsel has briefed and argued the same refund issues in other tax refund and tax appeal matters and is very familiar with the statutory requirements for refund matters under the Refund Statute. Id. at ¶33. The pleadings Class Counsel filed in this Lawsuit include, but are not limited to: Class Action Complaint; Motion to Certify Suit as Class Action; Memorandum in Support of Motion to Certify Suit as Class Action; First Amended Class Action Complaint; First Amended Motion to Certify Suit as Class Action; Supplemental Memorandum of Law in Support of First Amended Motion to Certify Suit as Class Action; and Joint Motion and Supporting Memorandum of Law for Preliminary Approval of Class Action, Preliminary Certification of Settlement Class; Approval of Notice Program and to Schedule Final Approval Hearing. Id. at ¶35. Class Counsel also prepared for and attended a

settlement meeting with the City of Savannah and thereafter conducted extensive negotiations beyond the formal settlement meeting in order to reach the Settlement. Id. at ¶34.

Although Class Counsel was able to reach the Settlement in this Lawsuit more efficiently than in some other cases (e.g., Altamaha Bluff, LLC, et al. v. Thomas, et al., supra (case pending for six (6) years) and Coleman v. Glynn County, supra (case pending for seven (7) years)) this reflects Class Counsel's experience in handling tax refund matters. Class Counsel knew the work and investigation that was required in order to reach a fair, adequate and reasonable Settlement wherein Class Members would receive up to 73.89% of the total calculated refund due. Moreover, based on lead Class Counsel's experience with tax refund cases, Class Counsel knew the issues they faced at every stage in the Lawsuit, knew the potential refund recovery to be had and the chance of achieving it. Similarly, this experience enabled Class Counsel to convince the City of Savannah not only that Class Counsel were adequate to the task and willing to do what it took to achieve an excellent result, but that they genuinely understood – for both sides – what the case was worth given the law, facts and risks.

In sum, the total number of hours invested by Class Counsel and their staff on this Lawsuit is not less than 400. See Ex. "A", Roberts Aff. at ¶49. This Lawsuit took a significant amount of Class Counsel's time and frequently required prioritizing this Lawsuit over other work and/or required turning down new work that would have interfered with the vigorous prosecution of this Lawsuit. Id. at ¶50. See Yates v. Mobile Cnty. Pers. Bd., 719 F.2d 1530, 1535 (11th Cir. 1983) (finding that the expenditure of time necessarily had some adverse impact upon the ability of counsel for plaintiff to accept other work, and this factor should raise the amount of the award); see also Stalcup v. Schlage Lock Co., 505 F. Supp. 2d 704, 708 (D. Colo. 2007) (noting that priority of work that delays an attorney's other work is entitled to a premium). Significantly, Class Counsel

expended this time and effort without any assurance that they would ever be compensated for their hard work. The amount of time and labor invested by Class Counsel at the expense of other work (and without assurance of compensation) weighs heavily in favor of the Proposed Class Counsel Fee.

c. The Lawsuit Involved Difficult Issues and Presented Risk of Nonpayment

The second, sixth and tenth Camden I Factors – the novelty and difficulty of the issues, whether the fee is contingent, and the "undesirability" of the case – support Class Counsel's fee request. In undertaking to prosecute this complex Lawsuit entirely on a contingent fee basis, Class Counsel assumed a significant risk of non-payment or underpayment. See Ex. "A", Roberts Aff. ¶25. That risk warrants an appropriate Class Counsel fee. Indeed, as the District Court for the Northern District of Georgia recently explained, "[a] contingency fee arrangement often justifies an increase in the award of attorneys' fees. A large award is justified because if the case is lost a lawyer realizes no return for investing time and money in the case." Equifax, 2020 WL 256132, at *33 (internal quotations and citation omitted). See also Lunsford v. Woodforest Nat'l Bank, 2014 U.S. Dist. LEXIS 200716, at *14 ("a contingency fee arrangement often justifies an increase in the award of attorney's fees.") (Internal citations omitted)). See also In re Continental III. Sec. Litig., 962 F.2d 566 (7th Cir. 1992) (holding that when a common fund case has been prosecuted on a contingent fee basis, plaintiffs' counsel must be adequately compensated for risk of non-payment). "Lawyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result." Jones v. Diamond, 636 F.2d 1364, 1382 (5th Cir. 1981) overruled on other grounds by International Woodworkers of America, et al. v. Champion Intentional Corp. 790 F.2d 1174 (5th

Cir. 1986). This is so because of the risk that after investing a substantial number of hours class counsel may receive no compensation whatsoever.

Furthermore, the risks of contingent litigation are highlighted by cases that have been lost after thousands of hours have been invested in successfully opposing motions to dismiss and pursuing discovery. "Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig., 364 F. Supp. 2d 980, 994 (D. Minn. 2005).

Public policy concerns also support the requested fee. Class Counsel's prosecution of this Lawsuit not only vindicates the current Class Members' individual refund claims now but also ensures the continued availability of experienced and capable counsel to represent classes of plaintiffs who hold valid but small individual claims also supports the requested fee. See Ex. "A", Roberts Aff. ¶39. As the United States District Court for the Northern District of Georgia recently recognized:

> Generally, the contingency retainment must be promoted to assure representation when a person could not otherwise afford the services of a lawyer.... A contingency fee arrangement often justifies an increase in the award of attorney's fees. This rule helps assure that the contingency fee arrangement endures. If this "bonus" methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.

George v. Academy Mortg. Corp., 369 F. Supp. 3d 1356, 1373-74 (N.D. Ga. 2019). The District Court for the Southern District of Florida also explicitly recognized in a recent class action lawsuit that "[g]iven the positive societal benefits to be gained from attorneys' willingness to undertake this kind of difficult and risky, yet important, work, such decisions must be properly incentivized." In Re: Checking Account Overdraft Litigation, 2020 WL 4586398, at *20 (S.D. Fla. Aug. 10,

2020).

The history of this Lawsuit reveals the inherent risk faced by Class Counsel in accepting it on a contingency fee basis. For example, Class Counsel faced numerous risks throughout the pendency of this Lawsuit including the inherent risk of failing to obtain class certification or having the Lawsuit dismissed at the pleadings stage or upon a motion for summary judgment. Because the Lawsuit involved a municipality, there were also risks concerning sovereign immunity.

Despite Class Counsel's efforts in litigating this Lawsuit, Class Counsel remains uncompensated for the time invested and uncompensated for the expenses advanced on behalf of the Class. Id. at ¶25. There can be no doubt that this Lawsuit entailed a substantial risk of nonpayment for Class Counsel and involved difficult issues. The assumption of this risk and investment by Class Counsel without assurance of payment weighs heavily in favor of the Proposed Class Counsel Fee.

d. Requested Fee Comports with Fees Awarded in Similar Cases

The fifth and twelfth Camden I Factors – the customary fee and awards in similar cases – supports approval of Class Counsel's fee request. The Eleventh Circuit explained that "[t]here is no hard and fast rule mandating a certain percentage of a common fund which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of the case." Camden I, 946 F.2d at 774. See also Equifax, 2020 WL 256132, at *31 (confirming Camden I does not require any particular percentage). However, the Camden I noted that "an upper limit of 50% of the fund may be stated as a general rule, although even larger percentages have been awarded." Camden I, 946 F.2d at 774-75 (internal citations omitted). In other words, the Court could award as much as 50% of the Aggregate Refund Fund as fees. Class Counsel, however, is seeking an award of fees that is much less than this upper limit.

While the Eleventh Circuit set the upper limit at 50% for common fund cases, the Georgia Supreme Court established what should be considered a floor of 33.3% for class counsel fees in the particular context of a tax refund class action under the Refund Statute. See e.g., Barnes, et al v. City of Atlanta, 275 Ga. App. 385, 620 S.E.2d 846 (2005), rev'd on other grounds, Barnes, 281 Ga. 256 (2006) (awarding 33.3%). Notably, however, this fee was set in a case that started more than twenty years ago in 1999 when 33.3% was the customary contingency percentage. See e.g., Gaskill v. Gordon, 942 F. Supp. 382, 387-88 (N.D. Ill. 1996), aff'd, 160 F.3d 361 (7th Cir. 1998) (finding that 33% is the norm, but still awarding 38% of settlement fund). Today, 40% is the customary contingency percentage in standard contingency cases while 50% is the customary contingency fee for tax refund and tax appeal cases. See Ex. A, Roberts Aff. at ¶¶ 41-42.

Here, the Proposed Class Counsel Fee, which is 40% of the Aggregate Refund Fund, falls within the range of reasonable fee awards for both class actions and in the market generally. Significantly, courts ruling on class action fee petitions have held that "[t]he percentage method of awarding fees [i.e., fees in common fund cases] in class actions is consistent with, and is intended to mirror, practice in the private marketplace where attorneys typically negotiate percentage fee arrangements with their clients." Pinto v. Princess Cruise Lines, Ltd d/b/a Princess Cruises, 513 F. Supp. 2d 1334, 1340 (S.D. Fla. 2007).

In fact, the fees sought in this action is the exact percentage that was awarded in Coleman, supra, Altamaha Bluff, LLC, et al., supra and Toledo Manufacturing Co., et al. supra. All three (3) of these cases were class action refund cases. Finally, class counsel fees of 40% or more of a common fund are routinely approved by Courts across the Country. See, e.g. In re Ampicillin Antitrust Litig., 526 F. Supp. 494, 498 (D.D.C. 1981) (45% of the common fund); Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp., 480 F. Supp. 1195, 1199 (S.D.N.Y. 1979), aff'd, 622

F.2d 1106 (2d Cir. 1980) (approximately 53% of the common fund); Zinman v. Avemco Corp., 1978 WL 5686 (E.D. Pa. Jan. 18, 1978) (50%); Howes v. Atkins, 668 F. Supp. 1021 (E.D. Ky. 1987) (40% of the common fund). The record here leaves no doubt that the Proposed Class Counsel Fee is appropriate and comports with attorney's fees awarded in similar cases and, accordingly, this factor favors the proposed fee award.

e. The Lawsuit Required a High Level of Skill

The third, ninth and eleventh Camden I Factors – the skill, experience, reputation and ability and nature and length of professional relationship with the client – also support approval of Class Counsel's fee request. The Class Members were represented in this Lawsuit by competent, experience counsel with extensive experience. See Ex. "A", Roberts Aff. at ¶¶3-9, 44-48. Class Counsel have conferred a significant benefit on the Class. The outcome was made possible by Class Counsel's extensive experience in tax law and tax refund matters as well as experience with complex litigation. Id. See In Re: Checking Account Overdraft Litigation, 2020 WL 4586398, at *19 ("In the private market place, counsel of exceptional skill commands a significant premium. So too should it be [for class actions].").

In evaluating the quality of representation by Class Counsel, the Court should also consider the quality of opposing counsel. See Camden I, 946 F.2d 772 n.3. See also Equifax, 2020 WL 256132, at *33. In this Lawsuit the City of Savannah was well-represented by extremely capable counsel including R. Bates Lovett, Esquire, City Attorney, and counsel from Oliver Maner LLP, including Patrick T. O'Connor, Esquire. See Ex. "A", Roberts Aff. at ¶37. They were worthy, highly competent and professional adversaries. Id. The City of Savannah through its counsel asserted numerous defenses and the Settlement was only reached after extensive negotiations concerning the parameters and provisions of a fair, reasonable and adequate settlement. Id. at

¶38. See Warner Commc'ns. Secs. Litig., 618 F. Supp. 735, 749 (S.D.N.Y. 1985) ("The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work."); In re WorldCom, Inc. Secs. Litig., 388 F. Supp. 2d 319, 357-58 (S.D.N.Y. 2005) (finding counsel "obtained remarkable settlements for the Class while facing formidable opposing counsel"). The highly skilled defense counsel that Class Counsel faced also weighs in favor of approval of the fee request.

3. The Expense Request is Appropriate

Class Counsel requests approval of reimbursement from the Aggregate Refund Fund of $1,454.74 in litigation costs and expenses advanced by Class Counsel. See Ex. "A", Roberts Aff. ¶51. This sum corresponds to certain actual out-of-pocket costs and expenses that Class Counsel necessarily incurred and paid in connection with the prosecution and settlement of this Lawsuit. Id. Documentation supporting the fees incurred is attached as Exhibit "1" to the Roberts Affidavit.

Under the common fund doctrine, class counsel is entitled to reimbursement of all reasonable out of pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement. "Expense awards are customary when litigants have created a common settlement fund for the benefit of a class." In re F & M Distributors, Inc. Sec. Litig., 1999 U.S. Dist. LEXIS 11090, at *20 (E.D. Mich. June 29, 1999) (approving reimbursement of $584,951.20 in expenses). Courts have found that when class counsel has advanced litigation expenses on behalf of the class and has necessarily lost the use of that money, the expenses are considered reasonable and necessary. See George, 369 F.Supp.3d at 1386 ("Because Class Counsel has lost the use of this money for nearly three years, the expenses required are reasonable and necessary" (citing McLendon v. PSC Recovery Sys., No. 1:06-CV-1770-CAP, 2009 WL 10668635, at *3 (N.D. Ga. June 2, 2009)). Here, Class Counsel has lost the use of the advanced litigation costs.

In order to determine if the expenses are compensable in a common fund case, the court considers whether the particular costs are the type routinely billed by attorneys to paying clients in similar cases. See Cardizem, 218 F.R.D. at 535. The litigation costs sought in this Lawsuit by Class Counsel are the type routinely charged by Roberts Tate, LLC and Manly Shipley, LLP to their hourly fee-paying clients. See Ex. "A", Roberts Aff. ¶51. Accordingly, the Court should award Class Counsel reimbursement of Class Counsel's costs and expenses in the amount of $1,454.74.

B. The Court Should Approve Payments to the Class Representatives

Georgia courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become a class representative. For example, in Coleman v. Glynn County, CE12-01785-063, CE13-01480-063 and CE14-00750-063, Superior Court of Glynn County, Order on Attorney's Fees and Costs and Service Award (Nov. 8, 2019) the Glynn County Superior Court awarded the Class Representatives $350,000.00 as a service award. More recently, in Altamaha Bluff, LLC, et al. v. Thomas, et al., 14CV0376, Superior Court of Wayne County, Order on Attorney's Fees and Costs and Service Award (Oct. 19. 2020), the Wayne County Superior Court awarded the Class Representatives a total class service award of $40,000.00. Similarly, in Toledo Manufacturing Col, et al. v. Charlton County, SUCV201900232, Superior Court of Charlton County, Order on Attorney's Fees and Costs and Service Award (Dec. 10, 2020), the Charlton County Superior Court awarded the Class Representatives a total class service award of $40,000.00.

Here, Class Representative was active in this Lawsuit and has provided invaluable assistance to counsel by, among other things, locating relevant documents, participating in conferences with Class Counsel and remained ready to provide testimony in this Lawsuit on behalf

of itself and the Class Members. In doing so, the Named Plaintiff was integral to forming the theory in this Lawsuit and reaching the [Proposed] Consent Judgment. See Ex. "A", Roberts Aff., at ¶24. It took the filing and prosecution of this Lawsuit for the County to refund Named Plaintiffs and Class Members the illegally collected Preservation Fees.

Class Representative requests a service payment in the total amount of $55,000.00 ("Service Payment"). The Service Payments represents approximately 2.0% of the Aggregate Refund Fund. Id. at ¶29. See Coleman v. Glynn County, CE12-01785-063, CE13-01480-063 and CE14-00750-063, Superior Court of Glynn County, Order on Attorney's Fees and Costs and Service Award (Nov. 8, 2019) (class representatives' fee approximately 2% of the aggregate refund fund); Altamaha Bluff, LLC, et al. v. Thomas, et al., 14CV0376, Superior Court of Wayne County, Order on Attorney's Fees and Costs and Service Award (Oct. 19. 2020) (class representatives' fee approximately 2.3% of the aggregate refund fund); Toledo Manufacturing Col, et al. v. Charlton County, SUCV201900232, Superior Court of Charlton County, Order on Attorney's Fees and Costs and Service Award (Dec. 10, 2020), awarding 3.07% of aggregate refund fund as service payment.

The Court should find that the Class Representative deserve to be compensated for their efforts on behalf of the Class Members. The magnitude of the relief that the Class Representative obtained on behalf of the Class alone justifies their requested service payment.

IV. CONCLUSION

For the reasons set forth herein, Class Counsel requests that the Court grant their Application for Attorney's Fees and Reimbursement of Expenses and Service Award to Class Representative as reasonable under all applicable circumstances and factors.

Respectfully submitted this the 3rd day of February, 2021.

ROBERTS TATE, LLC

/s/ James L. Roberts, IV
James L. Roberts, IV
State Bar No. 608580
jroberts@robertstate.com

Post Office Box 21828
St. Simons Island, Georgia 31522
(912) 638-5200
(912) 638-5300 – Fax

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, James L. Roberts, IV, of Roberts Tate, LLC attorneys for Plaintiff, Old Town Trolley Tours of Savannah, Inc., do hereby certify that, on this date, I served a copy of the foregoing APPLICATION FOR ATTORNEY'S FEES AND REIMBURSEMENT OF EXPENSES to counsel of record for all parties by hand delivering a copy of the same and delivering via statutory electronic service to:

R. Bates Lovett, Esquire
City Attorney
6 East Bay Street
Gamble Building, 3rd Floor
Savannah, GA 31401
BLovett@Savannahga.gov

Patrick T. O'Connor, Esquire
OLIVER MANER LLP
P. O. Box 10186
Savannah, GA 31412
pto@olivermaner.com

ATTORNEYS FOR DEFENDANT

This 3rd day of February, 2021.

/s/ James L. Roberts, IV
James L. Roberts, IV