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Tammie Mosley
Clerk of Superior Court
Chatham County
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Reviewer: MS

IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

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

AMENDED FINAL APPROVAL ORDER AND JUDGMENT

WHEREAS, the instant action pending before the Court is a class action (the "Lawsuit") brought by Plaintiff Old Town Trolley Tours of Savannah, Inc. ("Named Plaintiff"), individually and on behalf of all persons similarly situated (the "Class Members") against Defendant The Mayor and Aldermen of the City of Savannah (the "City of Savannah");

WHEREAS, this matter came before the Court on the Joint Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification of Settlement Class, Approval of Notice Program and Scheduling Final Approval Hearing (the "Joint Motion for Preliminary Approval");

WHEREAS, the Court GRANTED the Joint Motion for Preliminary Approval and entered an Order on December 29, 2020 (the "Preliminary Approval Order");

WHEREAS, this matter is currently before the Court on the Joint Motion for Final Approval of Class Action Settlement pursuant to O.C.G.A. § 9-11-23(e) in which the Court has been asked to give final approval to the [Proposed] Consent Judgment on Aggregate Refund and Order (hereinafter the "Consent Judgment") entered into by Named Plaintiff and the City of

Savannah, through counsel, which, together with the exhibits and amendment thereto, sets forth the terms and conditions of the proposed resolution of this Lawsuit;

WHEREAS, a Final Approval Hearing was held on February 23, 2021 as set forth in the Preliminary Approval Order and as made known to the Class Members through the notice procedures (the "Notice Program") approved by the Court in the Preliminary Approval Order;

WHEREAS, only a single objection was filed to the [Proposed] Consent Judgment, which the Court overrules as set forth herein, and the Court having considered the entire record of this Lawsuit, including the filings in support of preliminary approval and final approval, the Consent Judgment and the exhibits and amendment thereto, and the arguments and representations of counsel, the Court finds that the requirements for final approval have been met and that the proposed resolution of this Lawsuit as set forth in the Consent Judgment is fair, reasonable and adequate compromise of the claims and defenses asserted in this Lawsuit and should therefore be approved pursuant to O.C.G.A. § 9-11-23.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. This Order of Final Approval and Judgment incorporates herein and makes a part hereof the Consent Judgment, including all exhibits and amendment thereto.[1] Unless otherwise provided herein, the terms defined in the Consent Judgment shall have the same meanings for purposes of this Final Order and Judgment.

2. This Court has jurisdiction over the subject matter of this Lawsuit and over all Parties to this Lawsuit including Named Plaintiff, all Class Members and Defendant. Venue is proper.

[1] The term "Consent Judgment" as used herein incorporates all amendments and exhibits to the Consent Judgment.

3. The record shows that notice has been given to the Class Members via the Notice Program approved by the Court in the Preliminary Approval Order. The Court finds the Notice Program consisted of individual notice mailed to Class Members (the "Full Notice"), a notice in The Savannah Morning News (the "Publication Notice"), a webpage on the City of Savannah's website (the "Webpage") and a notice on the Visit Savannah website directing Class Members to the Webpage on the City of Savannah's website. The record shows that The Full Notice was mailed to Class Members identified in Exhibit A of the Consent Judgment to their last known addresses as appearing on the records maintained by the City of Savannah on January 12, 2021; one hundred and fifty-eight (158) Full Notices were mailed. The record further shows that the webpage was added to the City of Savannah's website providing information about the Lawsuit. See https://www.savannahga.gov/3076/Preservation-Fee-Settlement-Webpage. A webpage was also added to the Visit Savannah website where a notice about the Settlement was posted. The notice directed members of the Class to the Webpage on the City of Savannah's website for additional information. The Publication Notice, the record shows, was placed in The Savannah Morning News on January 11, 2021, January 18, 2021 and January 25, 2021.

The Court finds that the Notice Program (a) constitutes notice that was reasonably calculated under the circumstances to apprise the Class Members of the terms of the Consent Judgment and the Settlement, the Class Members' right to object and the date and time of the Final Approval Hearing; (b) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) meets the requirements of O.C.G.A. § 9-11-23 and the due process requirements of the Constitution of the United States and the Constitution of the State of Georgia and all other applicable law. See Juris v. Inamed Corp., 685 F.3d 1294, 1318 (11th Cir.

2012) (the Constitution of the United States does not require that each individual member receive actual notice of a proposed settlement).

4. For any Full Notice that was returned as undeliverable, the Administrators are directed for any Class Member who is entitled to a refund to cross reference the Class Member's name with the City of Savannah records to determine if there is a new address. Generally, the Administrators are directed to use reasonable efforts to confirm the address of any Class Member who is entitled to a refund.

Single Objection to Proposed Settlement

5. The record shows that there was a single objection from Ardis Wood (the "Wood Objection") received by Roberts Tate LLC to the proposed settlement.

6. The record show that the Wood Objection was procedurally defective in that Ms. Wood did not follow the specific instructions provided for objecting set forth in the Preliminary Approval Order and in the Full Notice. Specifically, the Wood Objection was not mailed to the three (3) addresses provided in the Preliminary Approval Order and Ms. Wood did not advise if she would attend the Final Hearing.

7. The Court has considered the Wood Objection even though it was procedurally invalid and finds it to be without merit. First, the Wood Objection raises issues that are irrelevant to the legal analysis of whether the collection of fees under Revenue Ordinance Article T, §3 (the "Preservation Fees") was a violation of the First Amendment (i.e., objection that the Preservation Fees were "freely given" and were for the "preservation" of the Historic District). Furthermore, Named Plaintiff argued that there was a violation of the Special District Clause of the Constitution of the State of Georgia since revenue generated from the Preservation Fees were used on projects outside of the Historic District. Second, the Wood Objection argued that the money should be

refunded to the tour participants. This objection demonstrates a fundamental misunderstanding of the Settlement. The Settlement provides for a procedure by which a tour participant can make a claim for a refund. See Consent Judgment, Section G. Finally. Ms. Wood believes that the Court should not approve the Settlement because she believes the City of Savannah does not have the funds for the Settlement. Such a request is not the function of the Court in approving a class action settlement. Under the law in approving a class action settlement, the Court is only charged with the task of determining whether the Settlement is fair, reasonable and adequate. See Lipuma v. American Express Co., 406 F. Supp. 2d 1298, 1323 (S.D. Fla. 2005); In re Checking Account Overdraft Litigation, 2020 WL 4586398, at *7 (S.D. Fla. 2020) (Courts do not substitute their business judgment for that of the parties.). Moreover, "[t]he court's responsibility to approve or disapprove does *not* give [the] court the power to force the parties to agree to terms they oppose." Howard v. McLucas, 597 F. Supp. 1504, 1506 (M.D. Ga. 1984) (emphasis in original), rev'd in part on other grounds, 782 F.2d 956 (11th Cir. 1986).

Final Approval of Proposed Settlement

8. The Court finds that the Settlement set forth in the Consent Judgment was the result of extensive and intensive arm's length negotiations taken place in good faith among highly experienced counsel, with the benefit of sufficient facts and with full knowledge of the risks inherent in litigation. The record shows the Consent Judgment was negotiated at arm's length and without collusion. The record further shows that the Parties engaged in extensive arm's length settlement negotiations with discussions concerning the terms of the Settlement conducted by senior attorneys from both sides. The record also shows that all participants in the settlement discussions were experienced in prosecuting and negotiating multimillion-dollar complex class

action cases such as this Lawsuit. Each side, the record shows, had a thorough understanding of the aggregate damages owed, the facts in support of the amount owed and the defenses thereto.

The record shows that on September 30, 2020 the Parties held an in-person settlement meeting. The record also shows that while the Parties were unable to reach a settlement at that meeting, the Parties continued their negotiations and were ultimately able to reach a Settlement.

9. The Court finds that the Settlement set forth in the Consent Judgment is not the product of fraud or collusion. The Court further finds that based on the record the Consent Judgment is the result of hard-fought, arms-length negotiations. The Court finds that there is no evidence of collusion as counsel for both Parties zealously represented the best interests of their clients.

10. The Court hereby approves the Settlement set forth in the Consent Judgment and finds that the Settlement is, in all respects, fair, reasonable, adequate, meets the requirements of due process, and is in the best interest of the Class. This is especially so in view of the complexity, expense and probable duration of further litigation; the discovery conducted to date; and the reasonableness of the recovery obtained and the meaningful benefits provided to the Class, considering the range of possible recovery and the attendant risks of litigation.

The record shows the direct benefits to the Class Members include the creation of an Aggregate Refund Fund in the amount of $2,750,000.00 to 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. The Court finds that this Settlement provides immediate cash refunds for the Class Members up to 73.89% of the total calculated refund due less fees and expenses for tax years 2015 to 2020. Therefore, this Court finds that the possibility of a trial producing a more favorable recovery is uncertain at best and the Class would risk the many hazards of litigation,

such as trial errors and appeals. Further, the Court finds that Settlement will avoid complex, expensive and continued lengthy litigation, saving resources of the Parties and the Court.

The record shows that the facts of this Lawsuit have been thoroughly researched as Class Counsel spent a substantial number of hours investigating the hundreds of potential refund claims for each tax year at issue. The record shows that Class Counsel conducted early, informal discovery. Class Counsel reviewed the discovery, pleadings and court orders in the civil rights lawsuit that was initiated against the City of Savannah in 2014 by several tour guides who operated in the City of Savannah 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"). The record also shows that from the documents of the Federal Lawsuit, Class Counsel was able to thoroughly research the facts of this Lawsuit. Moreover, through public records of the City of Savannah, the total amount of Preservation Fees at issue, and therefore the maximum recovery for the class, was known.

The record further shows that the legal issues have been thoroughly researched and that Class Counsel has briefed and argued the same issues in other tax refund and tax appeal matters and is very familiar with the statutory requirements for refund matters under O.C.G.A. § 48-5-380.

The Court finds that Class Counsel was well informed of the merits of the Lawsuit and had sufficient information to weigh the benefits of settlement against further litigation.

11. Based on the foregoing, the Court finds that Class Counsel and Named Plaintiffs have adequately represented the Class.

12. The Court further finds that the Settlement treats Class Members equitably. The record shows that each Qualified Class Member (as defined in the Consent Judgment) will receive

payment from the Aggregate Refund Fund pursuant to a formula that ensures they will be fairly compensated. That is, each Qualified Class Member 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 Consent Judgment). This is called the "Pro-Rata Tax Refund". "Pro-rata" means the proportion each Qualified Class Member's Pro-Rata Refund bears to the total Aggregate Refund Fund. The record shows that this percentage shall be used to calculate each Qualified Class Member's pro rata share of the Fees and Expenses.

13. The Court finds that the proposed method of distribution of refunds to the Class Members to be the best method of distribution possible. The record shows that if the Class Member is a Qualified Class Member of the Tour Operator Subclass as defined in the Consent Judgment and still has the same address as found in the City of Savannah's records, the Class Member needs to take no further action in order to receive his or her refund. As provided in the Consent Judgment, a member of the Tour Participant Subclass may make a claim to any Preservation Fee charged to the Tour Participant Class Member by a Tour Operator. In order to be entitled to a refund, a Tour Participant Class Member is required to submit a receipt or other documentation reflecting the Tour Operator to whom the Preservation Fee was tendered. The Tour Participant Claim Form will be available to download on the City of Savannah's website.

14. The Court hereby establishes the Old Town Trolley Qualified Settlement Fund (the "Old Town Trolley Qualified QSF") pursuant to Court Order as a "Qualified Settlement Fund" as that term is described in Internal Revenue Code §468B (26 U.S.C. §468B) and the Treasury Regulations thereto, established by Order of this Court, to hold, invest, administer, and distribute the Old Town Trolley Qualified QSF assets, which shall consist of a proposed service award to the Named Plaintiff and Class Counsel attorney fees and expenses.

The Settlement monies held by the Old Town Trolley Qualified QSF's bank account shall be held and managed, as required by Treasury Regulations §468B-1(c)(3). Such Old Town Trolley Qualified QSF settlement amounts are to be held, managed, invested, and re-invested, as directed by the Fund Administrator appointed by the Court, in a manner to preserve any accrued income and principal in the Old Town Trolley Qualified QSF until it can be fully distributed. Terry D. Turner, Jr. of Gentle Turner Sexton & Harbison, LLC, 501 Riverchase Parkway East, Suite 100, Hoover, Alabama 35244 is appointed as the Old Town Trolley Qualified QSF administrator (the "Old Town Trolley Qualified QSF Administrator").

The Old Town Trolley Qualified QSF Administrator shall charge a flat fee of $20,000.00 for his services plus expenses which shall be paid from the Aggregate Refund Fund as set forth in the Consent Judgment.

Class Counsel Fees Awarded and Service Fees shall be paid by the Tax Commissioner as directed by the Old Town Trolley Qualified QSF Administrator. The Old Town Trolley Qualified QSF shall hold such settlement amount, with any earnings thereon, and the Old Town Trolley Qualified QSF Administrator shall make payments on behalf of the Named Plaintiff and Class Counsel from the Old Town Trolley Qualified QSF, whether directly, structured settlement payments, or otherwise, and fund administration fees of the Old Town Trolley Qualified QSF. The Court shall retain jurisdiction of the Old Town Trolley Qualified QSF, the Old Town Trolley Qualified QSF Administrator, and all related matters. The Old Town Trolley Qualified QSF is hereby authorized to effect qualified assignments on behalf of the Named Plaintiff or Class Counsel of any resulting structured settlement liability within the meaning of Section 130(c) of the Internal Revenue Code to the qualified assignee.

15. The Parties are hereby directed to implement and consummate the Settlement according to the terms and provisions of the Consent Judgment.

16. The Parties are Ordered to cooperate fully with each other regarding the implementation of the terms of the Consent Judgment as approved in this Final Order and Judgment.

Certification of Settlement Class

17. Even where certifying a class under O.C.G.A. §9-11-23 for settlement purposes only, all O.C.G.A. §9-11-23(a) factors and at least one of the requirements under O.C.G.A. §9-11-23(b) must be satisfied – except that the court need not consider the manageability of a potential trial, since the settlement if approved, would obviate the need for a trial. See Amchem Products, Inc. v. Windsor, 521 U.S. 591, 620 (1997).

18. The Court previously concluded in its Preliminary Approval Order that it was likely to certify the following Settlement Class:

> (1) 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; and
>
> (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

For the reasons set forth below, the Court finally certifies, for settlement purposes only, this Settlement Class pursuant to O.C.G.A. §9-11-23.

19. The Court specifically determines that, for settlement purposes, the proposed Settlement Class met all the requirements of O.C.G.A. §9-11-23(a) and O.C.G.A. §9-11-23(b)(1), namely that the Settlement Class is so numerous that joinder of all members is impractical; that there are common issues of law and fact; that the claims of the class representative are typical of absent class members; that the class representative will fairly and adequately protect the interests of the Settlement Class, as they have no interests antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this Lawsuit; and that the prosecution of separate actions by or against individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members which would establish incompatible standards of conduct for the party opposing the class or adjudications with respect to individual class members which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.[2]

Overruling of Objection, Releases, Dismissal and Final Judgment

[2] Additionally, while the Court has elected to only certify the Class under 9-11-23(b)(1), the Court also finds that certification under 9-11-23(b)(3) would be appropriate as questions of law or fact common to the members of the class predominate over questions affecting only individual members, satisfying the requirements of O.C.G.A. § 9-11-23(b)(3) and a class action is superior to other methods available for the fair and efficient adjudication of this controversy satisfying the requirements of O.C.G.A. § 9-11-23(b)(3).

20. The Court has considered and hereby rejects the Wood Objection on its merits, whether or not the Wood Objection was procedurally valid. For the reasons stated herein, the Wood Objection is overruled.

21. All claims asserted in this Lawsuit are dismissed with prejudice on the merits and without costs to any party except as otherwise provided in this Court's Order on the Application for Attorney's Fees, Reimbursement of Expenses and Service Award to Class Representative or as otherwise provided in the Consent Judgment.

22. Upon entry of this Final Order and Judgment, Named Plaintiff and each Class Member, on behalf of themselves and any other legal or natural persons and entities who or which may claim by, through, or under them, release their claims as outlined in the Consent Judgment.

23. Without affecting the finality of this Order, the Court retains continuing and exclusive jurisdiction over all matters relating to the administration, consummation, enforcement and interpretation of the Consent Order, to protect and effectuate this Order, and for any other necessary purpose.

24. The Clerk shall promptly enter the [Proposed] Consent Judgment in the docket of this Lawsuit, which shall become a final Consent Judgment of this Court.

25. The Clerk shall promptly enter this Order as a Final Judgment in the docket of this Lawsuit.

SO ORDERED. This 23rd day of February, 2021.

John E. Morse, Jr. /s/
Judge John E. Morse, Jr.