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IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

VTAL REAL ESTATE, LLC	)	
	)	
	)	
Plaintiff,	)	**CIVIL ACTION NO. SPCV21-00789-CO**
	)	
v.	)	
	)	
MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH	)	
	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO CERTIFY SUIT AS CLASS ACTION

Plaintiff VTAL Real Estate, LLC. ("Named Plaintiff") files this Memorandum of Law in Support of Motion to Certify Suit as Class Action (the "Motion"). In support of their Motion, the Named Plaintiff shows the Court as follows:

I. Statement of Facts

This case involves class action claims based on Defendant Mayor and Alderman of the City of Savannah ("Defendant" or "the City of Savannah") assessing and collecting fees under the City of Savannah 2021 Revenue Ordinance (the "Revenue Ordinance"), Article U. §12 (the "Utility Fees Ordinance") and for tax refund and prejudgment interest pursuant to O.C.G.A. § 48-5-380 (the "Refund Statute") to recover illegal taxes levied and collected. This is a refund class action under the Refund Statute.

Four (4) separate fees were assessed to Named Plaintiff based on its proposed renovation of its commercial building. These fees were not authorized by the plain language of the Utility Service Fees Ordinance. Additionally, upon information and belief, three (3) additional fees were

assessed against certain prospective class members based on the prospective class members' renovation of commercial buildings. To the extent that these fees are deemed "impact fees," assessing these fees amounts to levying an invalid tax on Named Plaintiff and the prospective class members in violation of Georgia law.

Named Plaintiff operates von Trapp Animal Lodge which offers daycare, boarding and rehabilitation services for dogs and cats. Named Plaintiff desired to expand the von Trapp Animal Lodge by approximately 1,500 square feet to add eleven (11) kennels for boarding small animals, twenty-two (22) kennels for day care of small animals, a break room, and restroom for staff (the "Renovation and Expansion Work").

On or about March 9, 2021 Named Plaintiff submitted a Water & Sewer Approval Form for Commercial Building Renovations to the City of Savannah Water & Sewer Planning & Engineering Department for the Renovation and Expansion Work. A true and correct copy of the Water & Sewer Approval Form For Commercial Building Renovations (the "Approval Form") is attached hereto as Exhibit ("Ex.") "A". As stated on page 1 of the Approval Form, a copy of the signed Approval Form had to be included with Named Plaintiff's Commercial Building Permit Submittal to Development Services for the Renovation and Expansion Work. Named Plaintiff answered on the Approval Form that the building where Renovation and Expansion Work was taking place had an existing water meter and that the renovated building will not require a new water meter.

The Approval Form provides that "Water & Wastewater fees, if required for the project, are determined using Exhibit 7. Fee payments are made at the office of the Water & Sewer Planning & Engineering Dept. (702 Stiles Ave.) by check payable to 'The City of Savannah'". Ex.

A, p. 1. The Approval Form provides that the fees "**must be paid prior to receiving Certificate of Occupancy/Certificate of Completion.**" Id. (Emphasis in original).

"Exhibit 7" entitled "Equivalent Residential Unit (ERU) Calculation" lists four (4) fees that were assessed to Named Plaintiff in order to receive approval for the Renovation and Expansion Work and which had to be paid before Named Plaintiff received a Certificate of Occupancy/Certificate of Completion:

(a) Water Tap-in Fees in the amount of $354.00

(b) Sewer Tap-in Fees in the amount of $236.00

(c) Reclaimed Water Fees in the amount of $354.00

(d) Treatment Plant Fees in the amount of $1,347.50

See Exhibit 7, "Equivalent Residential Unit (ERU) Calculation" to Ex. "A". The total for these fees assessed by the City of Savannah to Named Plaintiff was $2,271.50. Id.

On or about March 15, 2021 Daslin M. Garçon, P.E., City of Savannah Senior Civil Engineer for Water & Sewer Planning and Engineering provided concurrence to the Renovation and Expansion Work described on the Approval Form subject to payment of the Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees and the Treatment Plant Fees. See Ex. A, p. 2. On or about June 2, 2021 Named Plaintiff paid $2,271.50 for the fees assessed for the Renovation and Expansion Work. A true and correct copy of a check made payable to the City of Savannah for the fees is attached as Exhibit "B".

"Exhibit 7" entitled "Equivalent Residential Unit (ERU) Calculation" also lists three (3) additional fees which if assessed have to be paid in order to receive approval for any proposed renovation and expansion and which must be paid before a Certificate of Occupancy/Certificate of Completion will be issued:

(a) Water Additional Fees

(b) Sewer Area Additional Fees

(c) Sewer Site Additional Fees

See Ex. A, Exhibit 7. Upon information and belief, Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees were assessed against certain prospective class members despite the fact that the prospective class members had existing water meters and that the proposed renovation and expansion work by the prospective class members did not require connecting to the City of Savannah's water and sewer system.

Utility Service Fees Ordinance: Water Tap-in Fees

The Utility Service Fees Ordinance provides for a Water Tap-in Fee to "be paid to the Revenue Department *prior to the connection of any service line to the City's water system* according to the following schedule (a) Inside City: $600.00 per residential unit, or equivalent resident unit or any fraction thereof …". Revenue Ordinance Article U. §4(D)(1) (emphasis supplied). Regarding applicability of the Water Tap-in Fee, the Utility Service Fees Ordinance provides that the Water Tap-in Fee "shall be charged for *any water meter service application submitted to the City* on or after July 1, 1995." Revenue Ordinance Article U. §4(D)(3) (emphasis supplied).

Named Plaintiff's Renovation and Expansion Work did not include "the connection of any service line to the City's water system" as set forth in Revenue Ordinance Article U. §4(D)(1). Stated differently, Named Plaintiff did not "tap-in" to the City of Savannah's water system. Furthermore, Named Plaintiff did not, nor was it required to, submit a water meter service application as set forth in Revenue Ordinance Article U. §4(D)(3) in order to complete its Renovation and Expansion Work. Nevertheless, Named Plaintiff was assessed and paid to the

City of Savannah a Water Tap-in Fee in the amount of $354.00 for Named Plaintiff's Renovation and Expansion Work. See Ex. A and Ex. B.

Utility Service Fees Ordinance: Sewer Tap-in Fees

The Utility Service Fees Ordinance provides for a Sewer Tap-in Fee to "be paid to the Revenue Department *prior to the issuance of a permit to connect to a sanitary sewer line*. The tap-in fee shall be based on residential unit or equivalent residential unit, or any fraction thereof." The sewer tap-in rate for inside the City of Savannah shall be "$400.00 per residential unit, or equivalent residential unit, or any fraction thereof." Revenue Ordinance Article U. §4(E)(1), (2)(a) (emphasis supplied).

Named Plaintiff's Renovation and Expansion Work did not require "the issuance of a permit to connect to a sanitary sewer line" as set forth in Revenue Ordinance Article U. §4(E)(1). Furthermore, as part of Named Plaintiff's Renovation and Expansion Work, Named Plaintiff did not connect or "tap-in" to the City of Savannah's sanitary sewer line. Nevertheless, Named Plaintiff was assessed and paid to the City of Savannah a Sewer Tap-in Fee in the amount of $236.00 for Named Plaintiff's Renovation and Expansion Work. See Ex. A and Ex. B.

Utility Service Fees Ordinance: Reclaimed Water Fees

The Utility Service Fees Ordinance provides for a Reclaimed Water Project Connection Fee "for funding reclaimed water projects …[to] be paid to the Revenue Department *prior to the connection of any new service line to the City's water and/or sewer system*. The fee shall be computed at the rate of $600.00 per residential unit, or equivalent residential unit, or any fraction thereof." Revenue Ordinance Article U. §4(F)(1) (emphasis supplied). Regarding applicability of the Reclaimed Water Project Connection Fee, the Utility Service Fees Ordinance provides that "[t]he Reclaimed Water Project Connection Fee shall be charged for any *water meter service*

application submitted to the City on or after January 1, 2010." Revenue Ordinance Article U. §4(F)(3) (emphasis supplied).

Named Plaintiff's Renovation and Expansion Work did not include connection of any new service line to the City of Savannah's water system as set forth in Revenue Ordinance Article U. §4(F)(1). Named Plaintiff's Renovation and Expansion Work did not include connection of any new service line to the City of Savannah's sewer system as set forth in Revenue Ordinance Article U. §4(F)(1). Named Plaintiff did not, nor was it required to, submit a water meter service application in order to complete its Renovation and Expansion Work as set forth in Revenue Ordinance Article U. §4(F)(1). Nevertheless, Named Plaintiff was assessed and paid to the City of Savannah Reclaimed Water Fees in the amount of $354.00 for Named Plaintiff's Renovation and Expansion Work. See Ex. A and Ex. B.

Utility Service Fees Ordinance: Treatment Plant Fees

The Utility Service Fees Ordinance does not provide for assessing a utility fee called a "Treatment Plant Fee". Under the Utility Service Fees Ordinance, the City of Savannah is authorized to charge Water Service Fees (Article U. §2), Sewer Service Fees (Article U. §3), Sale and Installation of Small Meters (Article U. §4(A)), Sale of Large Water Meters (Article U. §4(B)), Fee of Water Line Tap by the City (Article U. §4(B[1])), Water Tap-in Fee (Article U. §4(D)), Sewer Tap-in Fee (Article U. §4(E)), Reclaimed Water Project Connection Fee (Article U. §4(F)) and Water and Sewer Additional Connection Fees (Article U. §5). None of the fees authorized by Utility Service Fees Ordinance references a "Treatment Plant Fee".

"Exhibit 7" entitled "Equivalent Residential Unit (ERU) Calculation" to the Approval

[1] This appears to be typographical error in the Utility Service Fees Ordinance and should be subsection "C" not "B".

Form lists "Water Additional Fees", "Sewer Area Additional Fees" and "Sewer Site Additional Fees" presumably referencing Water and Sewer Additional Connection Fees set forth in Section 5 of the Utility Service Fees Ordinance. See Ex. A, Exhibit 7.

The City of Savannah did not assess Named Plaintiff any fees for "Water Additional Fees", "Sewer Area Additional Fees" or "Sewer Site Additional Fees". Id. Upon information and belief, the City of Savannah improperly assessed Named Plaintiff the Treatment Plant Fee under Section 5 of the Utility Service Fees Ordinance which provides for additional connection fees but does not reference a "Treatment Plant Fee". Section 5 of the Utility Service Fees Ordinance provides that "[a]ll *new customers connecting to the City's water or sewer system* within a service area for which an additional connection fee has been established shall pay such fee *prior to connecting to the water or sewer system*. The additional connection fee shall be based on a residential unit, or equivalent residential unit, or any fraction thereof." Revenue Ordinance Article U. §5(A) (emphasis supplied).

Revenue Ordinance Article U §5(A) sets forth water and sewer fees based on service areas that are to be assessed as Water and Sewer Additional Connection Fees. Upon information and belief, the City of Savannah used the President Street Plant with a sewer fee of $2,250 under Section 5 Water and Sewer Additional Connection Fees to calculate a "Treatment Plant Fee" for Named Plaintiff. See Revenue Ordinance Article U. §5(A) and Ex. A, Exhibit 7. Named Plaintiff is not a new customer of the City of Savannah's water system or sewer system as set forth in Revenue Ordinance Article U §5(A). Additionally, Named Plaintiff's Renovation and Expansion Work does not require it to connect to the City of Savannah's water system or to the City of Savannah's sewer system as set forth in Revenue Ordinance Article U §5(A). Nevertheless, Named Plaintiff was assessed and paid to the City of Savannah a "Treatment Plant Fee" in the

amount of $1,347.50 for Named Plaintiff's Renovation and Expansion Work.

Utility Service Fees Ordinance: Water and Sewer Additional Connection Fees

The Utility Service Fees Ordinance provides for Water and Sewer Additional Connection Fees and states that "[a]ll *new customers connecting to the City's water and sewer system* within a service area for which an additional connection fee has been established *shall pay such fee prior to connecting to the water or sewer system*. Revenue Ordinance Article U. §5(A) (emphasis supplied). Under Section 5 of the Utility Service Fees Ordinance [t]he additional connection fee shall be based on a residential unit, or equivalent residential unit, or any fraction thereof. The amount of the fee shall be determined by the terms of the water and sewer agreement if the location to be served is covered by a current agreement. If the location is not covered by a current water and sewer agreement, the additional connection fee per residential unit, or equivalent residential unit shall be as follows[]…" The Utility Service Fees Ordinance provides a list of various service areas with associated costs for water and sewer. Upon information and belief, the Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees listed on "Exhibit 7" entitled "Equivalent Residential Unit (ERU) Calculation" are the Water and Sewer Additional Fees set forth in Section 5 of the Utility Service Fees Ordinance.[2]

Certain prospective class members, upon information and belief, were assessed Water Additional Fees even though their renovation and expansion work did not include connection of any new service line to the City of Savannah's water system as set forth in Section 5 of the Utility Service Fees Ordinance. Certain prospective class members, upon information and belief, were assessed Sewer Area Additional Fees and/or Sewer Site Additional Fees even though their

[2] It is unclear from the Utility Service Fees Ordinance what the difference is between the "Sewer Area Additional Fees" and "Sewer Site Additional Fees".

renovation and expansion work did not include connection of any new service line to the City of Savannah's sewer system as set forth in Section 5 of the Utility Service Fees Ordinance. Nevertheless, upon information and belief, certain prospective class members paid Water Additional Fees and/or Sewer Area Additional Fees and/or Sewer Site Additional Fees to the City of Savannah for their renovation and expansion work.

A. <u>Classes Defined</u>

Named Plaintiff seeks certification of two (2) classes.

(1) The first class consists of all Commercial Building Renovation Building Permit Applicants similarly situated who, like Named Plaintiff, were assessed and paid Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees and/or Treatment Plant Fees and/or were assessed and paid Water Additional Fees, Sewer Area Additional Fees or Sewer Site Additional Fees but did not connect to the City of Savannah's Water System or Sewer System as part of the renovation (hereinafter "Class 1").

(2) The second class consists of all Commercial Building Permit Applicants similarly situated who, like Named Plaintiff, were assessed and paid Treatment Plant Fees (hereinafter the "Class 2").

Class 1 and Class 2 are collectively referred to herein as the "Refund Classes".

Class members are readily identifiable from the City of Savannah's records as each taxpayer (class member) was required to submit an Approval Form and pay the required fees before receiving a Certificate of Occupancy/Certificate of Completion from the City of Savannah. From these records and other records maintained by the City of Savannah, the class members can be identified and the data necessary to compute the refund owed to each prospective class member can be determined.

B. Relief Sought

Named Plaintiff on behalf of itself and prospective class members seek a refund of all Fees illegally assessed and collected under the Utility Service Fee Ordinance from July 30, 2018 to present and all erroneously and illegally levied taxes or voluntarily or involuntarily over paid taxes pursuant to the Refund Statute from July 30, 2016 to present, plus prejudgment interest.

II. Argument and Citation of Authority

The claims asserted by Named Plaintiff on behalf of itself and potential class members satisfy the requirements for class certification and represent precisely the types of claims class treatment is intended to address. Accordingly, the Court should certify the class action under O.C.G.A. §9-11-23(b)(1) and (3).

In determining the propriety of a class action, the Court must determine whether the requirements of O.C.G.A. §9-11-23(a) and one of the requirements under O.C.G.A. §9-11-23(b) have been met. See Ansley Walk Condominium Association, Inc., et al. v. The Atlanta Development Authority d/b/a/ Invest Atlanta et al., 362 Ga. App. 191, ___, 867 S.E.2d 600, 603 (2021); City of Roswell v. Bible, et al., 351 Ga. App. 828, 829, 833 S.E.2d 537, 541 (Ga. Ct. App. 2019); Diallo v. American InterContinental Univ., 301 Ga. App. 299, 300, 687 S.E.2d 278 (2009). "In determining the priority of a class action, the first issue to be resolved is not whether the plaintiffs have stated a cause of action or may ultimately prevail on the merits[,] but whether the requirements of O.C.G.A. §9-11-23(a) have been met." Endochoice Holdings, Inc. et al v. Raczewski, et al., 351 Ga. App. 212, 215, 830 S.E.2d 597, 601 (2019) (internal citation omitted).

A. This action satisfies the requirements of O.C.G.A. §9-11-23(a).

The present action satisfies the four prerequisites under O.C.G.A. §9-11-23(a) for class certification. Those prerequisites are (1**) numerosity**—that the class is so numerous as to make it

impracticable to bring all of the members before the court; (2) **commonality**—that there are questions of law and fact common to the prospective class members which predominate over any individual questions; (3) **typicality**—that the claims of the Named Plaintiff are typical of the claims of the prospective class members; and (4) **adequacy of representation**—that the Named Plaintiff and class counsel will adequately represent the interests of the class. See O.C.G.A. §9-11-23(a)(1)-(4). See also Endochoice Holdings, 351 Ga. App. at 215; Liberty Lending Servs. v. Canada, 293 Ga. App. 731, 735-36, 668 S.E.2d 3 (2008).

1. Numerosity

Under Georgia law, there is no minimum number of class members required to meet the requirements of O.C.G.A. §9-11-23(a)(1). See Bible, 833 S.E.2d at 543. Named Plaintiff needs only to establish that joinder is impracticable through some evidence or reasonable estimate of the number of purported prospective class members. See Brenntag Mid South, Inc., v. Smart, 308 Ga. App. 899, 710 S.E.2d 569 (2011). The focus of the numerosity requirement generally concerns "whether joinder of proposed class members is impractical" and not "whether the number of proposed class members is too few." In re Checking Account Overdraft Litigation, 275 F.R.D. 666, 672 (S.D. Fla. 2011).[3] The "impracticability of joinder is generally presumed if the class includes more than 40 members." American Debt Foundation, Inc. v. Hodzic, 312 Ga. App. 806, 809, 720 S.E.2d 283 (2011).

[3]Since its enactment in 1966 Georgia courts have read O.C.G.A. §9-11-23 to track the federal Rule 23 and in 2003 O.C.G.A. §9-11-23 was modified to actually 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.").

The Georgia Court of Appeals has specifically acknowledged that courts have found that the numerosity requirement has been met with as few as twenty-five (25), thirty-five (35) or forty (40) members. See Sta-Power Industries, Inc., 134 Ga. App. at 955-56 (finding that 253 potential class members satisfied the numerosity requirement) (citing Philadelphia Elec. Co. v. Anaconda Am. Brass Co., 43 F.R.D. 452 (E.D.Pa.1968), Fidelis Corp. v. Litton Ind., Inc., 293 F. Supp. 164 (S.D.N.Y.1968), and Swanson v. American Consumer Industries, Inc., 415 F.2d 1326 (7th Cir. 1969).

One of the purposes of class litigation is to prevent burdening the judicial system or the prospective class members with a multiplicity of individual suits. See Life Ins. Co. of Ga. v. Meeks, 274 Ga. App. 212, 218, 617 S.E.2d 179 (2005). If the number of the purported class is so large that each member cannot practically represent himself, either in the same or in separate lawsuits, then the court may allow a representative to act on behalf of the other prospective class members. See Ford Motor Credit Co. v. London, 175 Ga. App. 33, 36, 332 S.E.2d 345, 347 (1985). Thus, there is no hard-and-fast threshold number; the determination is made on a case-by-case basis.

Upon information and belief, the total number of prospective class members for the proposed classes exceeds 1,000 members. Courts in the Eleventh Circuit generally find that less than twenty-one (21) members is inadequate but more than forty (40) members is adequate to meet the numerosity requirement. See In re Checking Account Overdraft Litigation, 275 F.R.D. at 651. Significantly, "[p]arties seeking class certification do not need to know the precise number of class members but they must make reasonable estimates with support as to the size of the proposed class." Id. The Georgia Court of Appeals explained that plaintiffs "need not allege the exact number and identity of the class members, but must only establish that joinder is impracticable

through some evidence or reasonable estimate of the number of purported class members." Smart, 308 Ga. App. at 903 (internal citation and punctuation omitted).

Due to the evidence indicating the large number of prospective class members, trying the instant matter as a single class action serves the purpose of judicial economy and avoids placing an undue and needless burden on the Court and the parties which would exist if these actions were brought separately. Additionally, the class meets the minimum standard of definiteness which will allow the trial court to determine membership in the proposed class. See Brenntag Mid South, 308 Ga. App. 899, (quoting In re Tri-State Crematory Litigation, 215 F.R.D. 660, 669 (N.D. Ga. 2003)). Here, a group of taxpayers exists who, like Named Plaintiff, paid the fees under the Utility Service Fees Ordinance and the members of the class can be readily identified from the City of Savannah's records. Thus, the numerosity requirement is satisfied.

2. Commonality

Questions of law and fact common to the Named Plaintiff and prospective class members predominate over any individual questions thus satisfying the commonality requirement. A class action is authorized if the members of the class share a common right and common questions of law or fact predominate over individual questions of law or fact. See Fortis Ins. Co. v. Kahn, 299 Ga. App. 319, 322, 683 S.E.2d 4 (2009). "The commonality requirement does not require that all questions of law and fact be common to every member of the class. Rather, the rule requires only that a single question of law and fact be common to every member of the class. Brenntag, 308 Ga. App. at 903-904. Moreover, minor variations in amount of damages . . . do not destroy the class where legal issues are common." Kahn, 299 Ga. App. at 325 (citations omitted).

Here, the outcome of the litigation turns on one common legal issue applying to the Named Plaintiff and to all prospective class members – whether the City of Savannah's assessing fees not

authorized by the plain language of the Utility Service Fees Ordinance violated the law. Moreover, the City of Savannah assessed fees on all purported class members, therefore the resolution of that common legal issue will result in a determination of whether the class members are also entitled to refunds. The uniform application of the Utility Service Fees Ordinance in collecting fees not authorized by the Utility Service Fees Ordinance indicates that common issues of fact as to the Named Plaintiff and the prospective class members are substantial and predominate over any individual claims.

3. Typicality

The Named Plaintiff's claims are identical to the claims of the prospective class members, satisfying the typicality requirement. The outcome of this litigation for Named Plaintiff and calculation of any refund or application of any remedy would also uniformly apply to all prospective class members.

The typicality requirement under O.C.G.A. §9-11-23(a) is satisfied upon a showing that the claims of the Named Plaintiff are typical of the claims of the members of the class. The Georgia Court of Appeals recently stated that the typicality test is not demanding and "centers on whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named class plaintiffs, and whether other class members have been injured by the same course of conduct." Bible, 833 S.E.2d at 544 (internal citations omitted).

Typicality measures whether a sufficient nexus exists between the claims of the named representatives and those of the class at large. See Brenntag, 308 Ga. App. at 904. The Southern District of Georgia found that a strong similarity of legal theories will satisfy the typicality requirement despite substantial factual differences. See Buford v. H&R Block, Inc., 168 F.R.D. 340, 350 (S.D. Ga. 1996) (citing Fed. R. Civ. P. 23(a)(3) which mirrors O.C.G.A. § 9-11-23(a)(3)).

Essentially, the class representative's claim is typical of the claims of the class if his claim and those of the class (1) arise out of the same event, pattern, or practice and (2) are based on the same legal theory. Id.

In Buford, all of the prospective class members asserted the same legal claims. Buford, 168 F.R.D. at 345. The court held that the typicality requirement was satisfied because all of the plaintiffs had to establish the same basic elements to prevail and there were no differences as to the type of relief sought or the liability theories upon which they were proceeding. Id. at 351.

In this case, like in Buford, the Named Plaintiff's claims and those of the prospective class members involve the same basic elements and are based on the same legal theories. The Named Plaintiff and all prospective class members were assessed and paid fees under the Utility Serviced Fees Ordinances that were not authorized by that ordinance.

The underlying facts and legal claims giving rise to prospective class members' claims are identical to the claims of the Named Plaintiff. And as in Buford, the facts and elements necessary for Named Plaintiff to prevail are identical to the facts and elements necessary for the prospective class members to prevail. There are no material differences as to the types of relief sought or the liability theories upon which Named Plaintiff is proceeding and those of the prospective class members. Thus, the typicality requirement is satisfied.

4. Adequacy of Representation

Named Plaintiff will adequately represent the interests of prospective class members and has no interests divergent from those of prospective class members. Moreover, Named Plaintiff is represented by experienced and competent class counsel. Consequently, the adequate representation requirement is satisfied.

The important aspects of adequate representation are: (1) whether the Named Plaintiff's counsel is experienced and competent and (2) whether the class representatives' interests are antagonistic to those of the class. See Endochoice Holdings, 351 Ga. App. at 215.

The facts of this case satisfy the adequacy of representation requirement. First, James L. Roberts, IV, lead counsel for Named Plaintiff and the purported class has extensive experience in tax law and property tax law and litigation and has served as class counsel in numerous class and collective actions. See Affidavit of James L. Roberts, IV, at ¶¶5-6 attached to the Motion as Exhibit as Exhibit "C". Lead counsel specializes in property tax law and appeals having handled tax appeals and refund matters for thousands of parcels in over 60 counties in the State of Georgia as Florida, Virginia, Alabama and North Carolina at the administrative, trial court, and appellate court levels. Id. at ¶6. For this lawsuit lead counsel is associating with John Manly, Esquire and James E. Shipley, Jr., Esquire of Manly Shipley, LLP. Id. at ¶8.

Second, Named Plaintiff's interest in this action is the same as the prospective class members. Named Plaintiff does not stand to benefit under any circumstances where the prospective class members it represents would not also benefit for the same reasons. Thus, the interests of Named Plaintiff in this case are aligned with the prospective class members and Named Plaintiff is a suitable representative and will adequately represent the class.

B. Class certification is proper under O.C.G.A. §9-11-23(b)(1) and (3).

Once the prerequisites for class certification have been satisfied, the Court must determine whether the proposed action satisfies one of the three categories set forth under 9-11-23(b). Here, certification is proper under O.C.G.A. § 9-11-23(b)(1) and (3).

1. Certification is appropriate under O.C.G.A. §9-11-23(b)(1).

Certification is proper under O.C.G.A. § 9-11-23(b)(1). Certification is proper if:

> [t]he prosecution of separate actions by or against individual members of the class would create a risk of [i]nconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class or [a]djudications with respect to individual members of the class 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.

O.C.G.A. § 9-11-23(b)(1).

Particularly significant to this litigation, the United States Supreme Court in Amchem Products, Inc. v. Windsor held that Federal Rule of Civil Procedure 23(b)(1)(B) "takes in cases where the party is obliged by law to treat the members of the class alike" such as "a government imposing a tax." 521 U.S. 591, 614 (1997). Because O.C.G.A. § 9-11-23 is based on Rule 23, Georgia courts have repeatedly looked to federal cases interpreting the Rule 23 when interpreting O.C.G.A. § 9-11-23. See Fuller v. Heartwood 11, 301 Ga. App. 309, 312, S.E.2d (2009) (it is appropriate to look to Rule 23 when interpreting O.C.G.A. § 9-11-23).

Here, prosecution or the lack of prosecution of separate actions by prospective class members would create the risk of inconsistent or varying treatment and adjudication among the class as a whole. To begin, in the absence of class certification and ruling on the unlawful assessment of fees under the Utility Service Fees Ordinance, the City of Savannah would not be required to refund prospective class members for illegally and erroneously assessed and collected fees.

Moreover, because of the relatively small amount of refund owed compared to the cost of litigation, it is unlikely that other prospective class members would pursue refunds of illegally and erroneously levied fees. Such a practical impediment would result in the refund of fees to Named Plaintiff and some prospective class members pursuing their own actions while other prospective class members who present the same factual and legal issues would not. Even if Named Plaintiff

prevails, in the absence of class certification there is no mechanism requiring the City of Savannah to refund fees to other potential class members.

On the contrary, an adverse outcome would, without question, be applied and heralded by the City of Savannah in an effort to defeat claims by other prospective class members. As a practical matter, the determination of the illegality of the fees assessed under the Utility Service Fees Ordinance and the refunds owed to Named Plaintiff would be determinative of the remedies available to all prospective class members.[4]

It is for these reasons that the United States Supreme Court has held that cases involving the application of a taxing statute to a group of taxpayers is uniquely suited for treatment under 23(b)(1). Amchem Products, 521 U.S. at 614. Because the instant action involves a tax uniformly applied to all prospective class members, certification is proper under O.C.G.A. §9-11-23(b)(1).

2. Class Certification is appropriate under O.C.G.A. §9-11-23(b)(3).

Class certification is proper under O.C.G.A. 9-11-23(b)(3) as questions of law and fact common to the prospective class members predominate over individual issues and a class action is superior to other methods of adjudication. O.C.G.A. § 9-11-23(b)(3).

i. Questions of law and fact common to the class predominate over any questions affecting only individual members.

A plaintiff may satisfy the predominance requirement by showing that "issues subject to class-wide proof predominate over issues requiring proof that is unique to the individual prospective class members." Brenntag Mid South, Inc., 308 Ga. App. at 906 citing In re Tri-State Crematory Litigation, 215 F.R.D. 660 (N.D. Ga. 2003). "Where the Defendant's liability can be

[4] To the extent that the Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees Treatment Plant Fees, Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees are "impact fees", the fees constituted illegal taxes.

determined on a class-wide basis because . . . of a single course of conduct which is identical for each of the plaintiffs, a class action may be the best suited vehicle to resolve such a controversy." Id. (quoting Sterling v. Velsicol Chemical Corp., 855 F.2d 1188, 1197 (6th Cir. 1988)). See also Bible, 833 S.E.2d at 542.

Even if there are individual questions, common issues can still be found to predominate. For example,

> even where a defense may arise and may affect different class members differently, this occurrence does not compel a finding that individual issues predominate over common ones. So long as a sufficient constellation of common issues binds class members together, variations in the sources and application of a defense will not automatically foreclose class certification.

Bible, 833 S.E.2d at 543 (internal citations omitted). Additionally, individual damage determinations will not defeat class certification as long as there are common legal issues. EarthLink, Inc. v. Eaves, 293 Ga. App. 75, S.E.2d (2008). Common issues are said to predominate if "they have a direct impact on every class member's effort to establish liability." Rollins, Inc. v. Warren, 288 Ga. App. 184, 186-187, S.E.2d (2007). In the instant action, liability can be determined on a class wide basis. If the fees under the Utility Service Fees Ordinance were illegally assessed to Named Plaintiff then the same is true for prospective class members.

The Georgia Supreme Court has held that class actions can be brought for tax refunds and for refunds under O.C.G.A. § 48-5-380 in particular. City of Atlanta v. Barnes, 276 Ga. 449, 451-452, 578 S.E.2d 110 (2003) ("Barnes I") (superseded by statute on other grounds in Sawnee Electrical Membership Corp. v. Georgia Dept. of Revenue, 279 Ga. 22, 603 S.E.2d 611 (2005)). In Barnes, Named Plaintiff sought a refund of taxes based on an allegedly unlawful occupation tax which was certified as to all taxpayers who had been subjected to the tax within the period allowed

by O.C.G.A. § 48-5-380. Barnes v. City of Atlanta, 281 Ga. 256, 260, 637 S.E.2d 4 (2006) ("Barnes II). The Barnes II court writes:

> [i]n our prior opinion, however, we held that OCGA § 48-5-380 does not 'provide for the form of action to be utilized. By participating as a plaintiff in a class action that includes a claim for a tax refund, a taxpayer is unquestionably bringing an action for a refund, which is what the statute permits.' Barnes I, supra at 452(3), 578 S.E.2d 110. Compare Sawnee Elec. Membership Corp. v. Ga. Dept. of Revenue, 279 Ga. 22, 25(3) fn. 1, 608 S.E.2d 611 (2005) (former OCGA § 48-2-35(b)(5), now designated subsection (c)(5), **superseded Barnes I only as to refund claims against the State**).

Id. at 257 (emphasis added).

After Barnes II the Georgia Court of Appeals had the opportunity to analyze the ability to maintain a class action for refund under O.C.G.A. §48-5-380 in Glynn County v. Coleman, et al, 334 Ga. App. 559, 779 S.E.2d 753 (2015). The Coleman court held that "[b]ased upon Barnes II and the General Assembly's failure to preclude class actions under O.C.G.A. §48-5-380 following the Supreme Court's decision in Barnes I, we conclude that a class action for a tax refund can be maintained under O.C.G.A. §48-5-380." Coleman, 334 Ga. App. at 564.

Similar to Barnes I and Coleman, here, Named Plaintiff seeks certification of a class who has been uniformly subjected to fees levied under the Utility Service Fees Ordinance in violation of the plain language of the ordinance. Similarly, to the extent that the fees levied under the Utility Service Fees Ordinance were "impact fees", the fees constituted illegal taxes in violation of the Utility Service Fees Ordinance. Accordingly, common issues predominate.

ii. A class action is the superior method for resolving the claims of prospective class members.

In order to determine whether a class action is the superior method, the court must balance the merits of a class action against alternative methods of adjudication. Brenntag, at 906. Factors to be considered include:

> (A) [t]he interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) [t]he extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) [t]he desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) [t]he difficulties likely to be encountered in the management of a class action.

O.C.G.A. § 9-11-23(b)(3).

These factors weigh in favor of class certification. Given the common set of facts and legal issues presented by the claims of Named Plaintiff and prospective class members, no legitimate interest exists for prospective class members to individually control separate actions. No other litigation concerning this controversy has been commenced by Named Plaintiff or prospective class members. As the fees at issue were levied in Chatham County and paid to the City of Savannah in Chatham County, Chatham County is the natural and only appropriate venue for the action. Finally, given the readily available records of the City of Savannah necessary to identify the class and the overarching legal issues requiring resolution by the Court, the instant action presents a straight forward and easily managed class action.

In addition to the enumerated factors in 23(b)(3), the United States Court of Appeals for the Eleventh Circuit has held that when common issues predominate over individual issues a class action is the more desirable vehicle. See Sacred Heart Health Systems, Inc. v. Humana Military Healthcare Services, Inc., 601 F.3d 1159, 1184 (11th Cir. 2010). In Morefield v. NoteWorld, LLC the United States District Court of the Southern District of Georgia found that a "coordinated proceeding is superior to thousands of discrete and disjointed suits addressing precisely the same legal issue." 2012 WL 1355573 (S.D. Ga. 2012). In Brenntag, the Georgia Court of Appeals upheld the superiority of a class action, stating:

> that the damages for each class member are likely to be relatively small making it unlikely that other prospective class members would have a strong interest in controlling the litigation themselves. And it is unlikely that counsel could be found

> to pursue such relatively minor claims on an individualized basis so that economic reality dictates that petitioner's suit proceed as a class or not at all. . . There is simply no need to burden either the court system or the individual prospective class members by requiring each member of the class to pursue his or her own action to recover a relatively small amount of damages.

308 Ga. App. at 907.

Here, the facts and claims presented are uniquely appropriate for class certification. Similar to Brenntag, the amount of the claims for the vast majority of prospective class members are far less than the cost of litigating the matter. Based on information and belief, the prospective class members' refund claims range from a few hundred dollars to thousands of dollars. Given the costs of litigation, few, if any, of these refund claims, would be economical to pursue outside of the class framework. Moreover, upon information and belief, the number of claims if pursued by all prospective class members would be in the hundreds – possibly more – burdening the Superior Court of Chatham County. As has been held by the Georgia Supreme Court in Barnes I and the Georgia Court of Appeals in Coleman, class actions for tax refunds based on a uniformly applied statute are appropriate. Barnes II, 276 Ga. at 451-452; Coleman, 334 Ga. App. at 564. Further, citing Barnes II with approval as an example of an appropriate representative action, the Georgia Supreme Court has stated that "the modern class action is designed to avoid, rather than encourage, unnecessary filing of repetitious papers and motion." Schorr v. Countrywide Home Loans, Inc., 287 Ga. 570, 572, 697 S.E.2d 827 (2010) (citations and punctuation omitted). As a result, class treatment is the vastly superior method for addressing the claims of prospective class members and the Classes should be certified under O.C.G.A. § 9-11-23(b)(3).

Conclusion

Named Plaintiff has demonstrated that the facts of this case satisfy the numerosity, commonality, typicality, and adequate representation requirements under O.C.G.A. § 9-11-23(a).

Furthermore, class certification should be granted under O.C.G.A. § 9-11-23(b)(1) and under 9-11-23(b)(3). Named Plaintiff has also demonstrated that she will fairly and adequately protect the interests of the Class and that the law firms of Roberts Tate, LLC and Manly Shipley, LLP will adequately represent the interests of the Class as Class Counsel. Therefore, Named Plaintiff respectfully requests that its motion for class certification be granted.

Respectfully submitted this, 26th day of April, 2022.

ROBERTS TATE, LLC

BY:/s/ James L. Roberts, IV

James L. Roberts IV

Georgia Bar No. 608580
jroberts@robertstate.com

Marsha Flora Schmitter
Georgia Bar No. 202453
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ATTORNEYS FOR NAMED PLAINTIFF

MANLY SHIPLEY, LLP

BY:/s/ John Manly

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jim@manlyshipley.com
Georgia Bar No. 116508

104 West State Street, Suite 220
P.O. Box 10840
Savannah, GA 31412

ATTORNEYS FOR NAMED PLAINTIFF

CERTIFICATE OF SERVICE

I, James L. Roberts, IV, of Roberts Tate, LLC attorneys for Plaintiff VTAL Real Estate, LLC., do hereby certify that, on this date, I served a copy of the foregoing PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO CERTIFY SUIT AS CLASS ACTION to counsel of record for all parties by mailing a copy of the same via U.S. Mail and 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 26th day of April, 2022.

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

Exhibit “A”

Permit #: ____-_____

SAVANNAH
Development Services Department

Water & Sewer Approval Form For Commercial Building Renovations

✧ This form must be submitted to the Water & Sewer Planning & Engineering Dept. and approved prior to submitting for a Building Permit. ✧
✧ Submit your Water & Sewer Approval Form via fax (912) 650-7839, via email to behret@savannahga.gov or in person at 702 Stiles Ave. ✧
✧ Contact Water & Sewer Planning & Engineering at (912) 651-6573 for assistance. ✧

- A copy of this signed approved form must be included with your Commercial Building Renovation Building Permit Submittal to Development Services.
- Exhibit 3 – Sizing and Selection of Water Meters and Exhibit 7 – Equivalent Residential Unit (ERU) Calculation (and supporting information) are required if the project proposes a change in building use or an increase in water use (including a proposed landscape irrigation system).
- Exhibit 5 – Fire System and Back Flow Prevention Devices is required for all submittals.

Proposed Project

Project Name: Von Trapp Animal Lodge Date: February 24, 2021
Project Address: 6502 Waters Avenue, Savannah, GA 31405 PIN: _____
Applicant: Betsy Von Trapp
Telephone: 912-225-3130 Email Address: betsy@vontrappanimallodge.com

Description of Work

Complete Description of Work: Addition of 11 kennels for boarding small animals and 22 kennels for small animals daycare, only.

Current / Prior Use and Proposed Use of Existing Building

Current and/or Prior Use of the Building: Animal lodging and daycare
Proposed Use of the Building: Expanded quantity of animal lodging and daycare

Water & Wastewater Fees

Water & Wastewater fees, if required for the project, are determined using Exhibit 7. Fee payments are made at the offices of the Water & Sewer Planning & Engineering Dept. (702 Stiles Ave.) by check or money order payable to "The City of Savannah". **Fees must be paid prior to receiving Certificate of Occupancy/Certificate of Completion**.

Water Meter

A City-approved water meter must be provided on every water service line (except fire). Water meters 8" or smaller must be purchased from the City. Existing water meters may need to be upgraded or replaced.

Does the building have an existing water meter? ☑ Yes ☐ No

Is this a master meter that will serve multiple units? ☐ Yes ☑ No ☐ No Existing Meter

Will the new use require a new water meter? ☐ Yes ☑ No

- If yes, provide the standard construction detail(s).

Meter fee payments are made at the offices of the Water & Sewer Planning & Engineering Dept. (702 Stiles Ave.). Payment shall be by check or money order payable to "The City of Savannah". Meters may be picked up at the Meter Shop (704 Stiles Ave) **after payment of meter fee**.

Fire Sprinkler System

Does the building have an existing fire sprinkler system? ☐ Yes ☑ No

Is a new or expanded fire sprinkler system proposed for the new use? ☐ Yes ☑ No

- If yes, provide plans, specifications, and hydraulic calculations for subject sprinkler system to include tie-in and approved backflow prevention device in accordance with the City of Savannah specifications. A Site Development Permit may be required.

Permit #: ____-_____

Landscape Irrigation System

Is a landscape irrigation system proposed for the new use? ☐ **Yes** ☑ **No**

- If yes, provide plans, specifications, and hydraulic calculations for subject irrigation system to include tie-in, approved backflow prevention device and water meter in accordance with the City of Savannah specifications. A Site Development Permit may be required.

Backflow Prevention Device (BFP)

Does the building have an existing Backflow Prevention Device? ☑ **Yes** ☐ **No**

- If yes, request a free inspection of the existing BFP by contacting the City of Savannah Water & Sewer Planning & Engineering Dept. If the use of the building has changed, the device may need to be upgraded or replaced.
- If no, a new backflow prevention device must be provided on every water service line. Contact the City of Savannah Water & Sewer Planning & Engineering Dept. for assistance with the selection of a new BFP. Provide the construction details for the installation of a new BFP on any unprotected line(s).

Has the existing BFP been tested in the past year by a Georgia certified BFP tester? ☑ **Yes** ☐ **No** ☐ **No BFP**

- If unsure, contact the City of Savannah Water & Sewer Planning & Engineering Dept. to verify that the City has an up-to-date (tested within one year) Backflow Certificate on file.
- If no, the BFP will need to be tested as part of the project by a Georgia Certified Backflow Tester with a copy of the certification provided to the City.
- If existing BFP is not operating properly, the owner shall hire a Georgia licensed utility contractor or licensed plumber to repair or replace the BFP, and have the BFP retested by a Georgia Certified Backflow Tester.

Pre-Treatment Devices (Grease Interceptor (Trap), Oil / Water Separator, or Sand Trap)

Grease Interceptors are required for food service establishments (e.g. restaurant and coffee shop). Oil / Water Separators are required for facilities discharging wastewater containing oil or any petroleum product (e.g. garages and manufacturing). Sand Interceptors (Traps) are required at facilities with sand or any heavy solid in the wastewater discharge (e.g. car wash).

Does the proposed use require any Pre-Treatment Device(s)? ☐ **Yes** ☑ **No**

Indicate type of required Pre-Treatment Device(s): ☐ **Grease Interceptor** ☐ **Oil/Water Separator** ☐ **Sand Trap**

Does the building have an existing Pre-Treatment Device? ☐ **Yes** ☑ **No**

- If Yes, is it: ☐ Inside ☐ Outside Volume: _____

If a new pre-treatment device is required, contact the Water & Sewer Planning & Engineering Dept. for sizing & location requirements. If the device is proposed to be located outside of the building, provide a scaled sketch plan showing the sewer lateral and the location, size, and details of the device. A Site Development Permit may be required.

Exhibits & Documents included with this Submittal

Check all the below items that are included in this Water & Sewer Approval submittal:

☐ Exhibit 3 – Sizing & Selection of Water Meters
☐ Exhibit 5 – Fire System & Backflow Prevention Devices
☑ Exhibit 7 – Equivalent Residential Unit (ERU) Calculation
☐ Fire Sprinkler System Hydraulic Calculations
☐ Site Plan showing Pre-Treatment Device(s)
☐ Irrigation System Plans, Specifications & Calcs

Applicant Certification

I hereby certify that I am the owner or authorized agent of the commercial building being proposed for renovation, and that I have answered all of the questions contained herein and know the same to be true and correct. I understand that any permit issued, based upon false information or misrepresentation provided by the applicant, will be null and void and subject to penalty as provided by law and ordinance.
I understand that based on the responses provided on this form, a site development permit could be required.

Betsy Von Trapp		3/2/21
Printed Name of Applicant *(Not Company Name)*	**Signature of Applicant**	**Date**

FOR OFFICE USE ONLY

X Concurrence ☐ Revisions Needed ☐ Site Development Permit Required ☐ WS Approval Form not Required

WSPE Reviewer: Daslin M. Garcon Signature: Daslin M. Garcon Digitally signed by Daslin M. Garcon DN: C=US, E=dgarcon@savannahga.gov, O=City of Savannah, OU=Water & Sewer Planning and Engineering, CN=Daslin M. Garcon Reason: I have reviewed this document Date: 2021.03.15 08:41:54-04'00' Date: 03-15-2021

CITY OF
Savannah
WATER RESOURCES BUREAU
Planning & Engineering

Exhibit 5
Fire System and Backflow Prevention Devices Owner/Client Declaration

1. The owner/client will be responsible for maintaining and operating the fire system from the tapping valve up to and including the backflow prevention device, along with the internal fire system.

2. The owner/client has the responsibility to operate and maintain the backflow prevention device at subject location and to test the device on an annual basis as required by the City of Savannah Water Operations Cross Connection Policy. The backflow devices are the property of the owner/client and the City will not be liable for any flooding that may occur from any backflow devices installed on the premises. If City-owned water meters are permitted for inside installation, it shall be the owner/client's liability for any flowing that may occur.

Mark where applicable:

☐ Fire system

☐ Fire system backflow device
Exact location of installation: _____

☒ Domestic system backflow device
Exact location of installation: Existing Back Flow Device Cornell Street, Savannah, Georgia 31405 North West Corner of Building on Cornell Street and Waters Avenue

☐ Irrigation system backflow device
Exact location of installation: _____

Site Address: 6500 Waters Avenue, Savannah, Georgia 31405

Owner/Client Name (Please Print): Betsy Von Trapp, Von Trapp Animal Lodge

Owner/Client Address: _____

Owner/Client Telephone: 912-225-3130 Owner/Client Facsimile: _____

Owner/Client Email Address: betsy@vontrappanimallodge.com

Signature of Acceptance: Elizabeth von Trapp Date: 3/9/21

CITY OF Savannah
WATER RESOURCES BUREAU
Planning & Engineering

Exhibit 7
Equivalent Residential Unit (ERU) Calculation

Project: Von Trapp Animal Lodge
Location: 6500 Waters Avenue, Savannah, Georgia 31405

Description of Use	Water Use Standard based on current City of Savannah Revenue Ordinance[1]	Quantities used in Flow Rate Calculation	Flow (gpd)
Animal Lodge	300 gpd/ 3000 Sq.Ft.	1763 SF X 300/3000	176.3

1. Refer to Article U, Section 4 (E) (4) of the City of Savannah's Revenue Ordinance for determining the applicable Water Use Standard.
2. One (1) ERU = 300 gallons per day
3. Contact the Water and Sewer Planning and Engineering office for assistance in determining the fee schedule for the project.

Total Flow (gpd) – Water 176.3 gpd
Total ERU's – Water[2] 0.59

Total Flow (gpd) – Reclaimed Water 176.3 gpd
Total ERU's – Reclaimed Water[2] 0.59

Total Flow (gpd) – Sanitary Sewer 176.3 gpd
Total ERU's – Sanitary Sewer[2] 0.59

(Treatment Plant Service Area)	# of ERU's	$/ERU[3]	Total ($)
Water Tap-In Fees	0.59 gpd	600	354.00
Sewer Tap-In Fees	0.59 gpd	400	236.00
Water Additional Fees			
Reclaimed Water Fees	0.59 gpd	600	354.00
Treatment Plant Fees	0.59 gpd	2,250	1,347.50
Sewer Area Additional Fees			
Sewer Site Additional Fees			

Grand Total $2,271.50

Calculated By: Charles F. VandenBulck, P.E. (Please Print Name, Firm)
Signature: C. F. VandenBulck Date: 03/09/21

P.O. BOX 1027, SAVANNAH, GA 31402
PHONE 912.651.6573 TDD 912.651.6702 FAX 912.650.7839 SAVANNAHGA.GOV

Exhibit “B”

SECURITY FEATURES INCLUDE TRUE WATERMARK PAPER HEAT SENSITIVE ICON AND FOIL HOLOGRAM

VON TRAPP ANIMAL LODGE INC
608 E 49TH ST
SAVANNAH, GA 31405-2453

1071

64-175/612

521000045121 - 45989

DATE 6/21/21

CHECK ARMOR

PAY TO THE ORDER OF City of Savannah $ 2271.50

Two thousand two hundred seventy one and 50/100 DOLLARS

Ameris Bank.

FOR Water & Sewer fees for 6502 waters Ave

Betsy Vontrapp
Animal lodge

⑈001071⑈ ⑆061201754⑆ 2048897405⑈

Details on Back. Security Features Included

Exhibit “C”

IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

VTAL REAL ESTATE, LLC	)	
	)	
	)	
Plaintiff,	)	**CIVIL ACTION NO. SPCV21-00789-CO**
	)	
v.	)	
	)	
MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH	)	
	)	
	)	
	)	
Defendants.	)	

AFFIDAVIT OF JAMES L. ROBERTS, IV

STATE OF GEORGIA)
)
COUNTY OF GLYNN)

PERSONALLY APPEARED before me, an officer duly authorized by law to administer oaths, JAMES L. ROBERTS, IV, who after first being duly sworn states:

1.

My name is JAMES L. ROBERTS, IV, and I am competent in all respects to testify regarding the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true. This Affidavit is given voluntarily.

2.

This Affidavit is given in support of the Memorandum of Law in Support of Motion to Certify Suit as Class Action in the above referenced matter.

3.

I am a founding member and partner in the law firm of Roberts Tate, LLC and I am an experienced litigator.

4.

I have been practicing law since 2001. Prior to forming Roberts Tate, LLC I was a partner with the law firm of Gilbert, Harrell, Sumerford & Martin, P.C. and prior to that I served as Law Clerk to the late Judge Anthony A. Alaimo.

5.

As part of my practice, I litigate large class action cases and in addition to serving as Class Counsel in this Lawsuit I have served as class counsel in numerous class and collective action cases including, but not limited to, the following: Vanover et al v. West Telemarketing, Southern District of Georgia, 2:06CV0098; Clairday v. Tire Kingdom, Inc., et al, Southern District of Georgia, 2:07cv0020; Kerce v. West Telemarketing Corp, et al, Southern District of Georgia 2:07cv0081; Hamilton v. Montgomery County, Superior Court of Montgomery County, Superior Court of Montgomery County, 13CV159; Altamaha Bluff, LLC, et al. v. Thomas, et al., Superior Court of Wayne County, 14-CV-0376; Coleman v. Glynn County, CE12-01785-063, CE13-01480-063; and CE14-00750-063, Superior Court of Glynn County; Toledo Manufacturing Co., et al. v. Charlton County, SUCV201900232, Superior Court of Charlton County; and Old Town Trolley Tours of Savannah, Inc. v. The Mayor and Aldermen of The City of Savannah, Superior Court of Chatham County, Civil Action No. SPCV20-007667-MO.

6.

I have extensive experience in tax law, including property tax law, and litigation having handled tax appeals and tax refund matters for thousands of parcels in over 60 counties in the State of Georgia as well as Florida, Virginia, Alabama and North Carolina at the administrative, trial

court, and appellate court levels. I serve on the Board of Governors of the State Bar of Georgia, am a past President of the Glynn County Bar Association and rated "Preeminent", the highest legal rating available from the leading legal rating service, Martindale Hubbell. I was named a Rising Star by in 2006, 2009-2011 and 2014-2016 and a Super Lawyer for 2017-2020 by Super Lawyers Magazine.

7.

I regularly provide advice and counsel to clients on matters related to taxation and to the valuation of property for taxation, exemption and special use valuation programs.

8.

I am lead counsel for Named Plaintiff. My Co-counsels in this action are John Manly, Esquire and James E. Shipley, Jr., Esquire of Manly Shipley, LLP.

9.

The attorneys representing Named Plaintiff and the purported classes have extensive experience in complex class and collective actions.

10.

Based on this experience, counsel will fairly and adequately represent Named Plaintiff and the purported classes as class counsel.

FURTHER AFFIANT SAITH NOT.

This 26th day of April, 2021.

James L. Roberts, IV

This 26th day of April, 2021:

Notary Public

Neisis Humphreys
Glynn County, Georgia
Notary Public
My Commission Expires 9/30/2022