IN THE SUPERIOR COURT OF MCINTOSH COUNTY
STATE OF GEORGIA

TROY and TARYN NIXON	)	
	)	
Plaintiff,	)	**CIVIL ACTION NO.**
	)	**SUV2023000081**
v.	)	
	)	
CITY OF DARIEN, GEORGIA	)	
	)	
	)	
Defendant.	)	

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

Plaintiffs Troy and Taryn Nixon (hereinafter "Named Plaintiffs") file this Memorandum of Law in Support of Motion to Certify Suit as Class Action (the "Motion"). In support of their Motion, the Named Plaintiffs show the Court as follows:

I. Statement of Facts

This case involves class action claims based on Defendant City of Darien ("Defendant" or the "City") assessing and collecting ad valorem taxes based on the incorrect application of the City's homestead exemption for taxes for municipal found in House Bill 1197 ("HB 1197") (referred to as the "Homestead Exemption"). A copy of HB 1197 is attached to the Motion as Exhibit ("Ex.") "A". This is a refund class action under O.C.G.A. § 48-5-380 (the "Refund Statute"). Upon information and belief, McIntosh County set the Homestead Exemption amount for the City for each year from 2016 through 2022.

The Homestead Exemption provides that "[e]ach resident of the City of Darien is granted an exemption on that person's homestead from City of Darien ad valorem taxes for municipal purposes in an amount equal to the amount by which the current year assessed value of that

homestead exceeds the base year assessed value of the homestead." See Ex. A. The Homestead Exemption Section 1(a)(2) states that "Base Year" is "the taxable year immediately preceding the taxable year in which the exemption under [the Homestead Exemption] is first granted to the most recent owner of such homestead." Id. at Section 1(a)(2). In short, the Homestead Exemption provides for exemption from ad valorem taxes for municipal purposes on the increase in value of property over the Base Year Value.

Named Plaintiffs are residents of the City of Darien, McIntosh County, Georgia and the owners of City of Darien Tax Parcel Number D011A0024 located at 102 Haven Court, Darien, Georgia 31305 (the "Subject Parcel"). Named Plaintiffs applied for and were granted the Homestead Exemption. Despite the plain language of the Homestead Exemption stating that the "Base Year" should be the tax year "immediately preceding" the tax year that the Homestead Exemption was granted to the most recent owner, the City treated the year the exemption was granted as the Base Year rather than the immediately preceding year.

The language of the Homestead Exemption is the exact same language as the Glynn County, Georgia homestead exemption for county and school taxes known as the "Scarlett Williams Exemption" enacted May 1, 2000 pursuant to House Bill 1690 ("HB 1690") and House Bill 1691 ("HB 1691"). A copy of HB 1690 attached as Exhibit "B" to the Motion and a copy of HB 1691 is attached to the Motion as Exhibit "C". Compare HB 1197 Section 1(a)(2) and (b) with HB 1690 Section 1(a)(2) and (b). The Georgia Court of Appeals interpreted the term "Base Year" in the Scarlett Williams Exemption (which is defined exactly the same way as it is defined in HB 1197) and held that "[b]ased on the plain language of the Act, the base year is merely the taxable year immediately preceding the taxable year in which the applicant was the owner of the property on January 1 – in other words, the year prior to the year in which the homestead exemption was

granted." Coleman, et al. v. Glynn County, Georgia, et al., 344 Ga. App. 545, 549, 809 S.E.2d 383, 387 (2018).

The language of the Homestead Exemption is also the exact language as the McIntosh County, Georgia homestead exemption for county taxes found in House Bill 382 ("H.B. 382") and House Bill 450 ("H.B. 450") (the "McIntosh County Homestead Exemption"). A true and correct copy of HB 382 is attached hereto as Exhibit "D" and a true and correct copy of HB 450 is attached hereto as Exhibit "E". Upon information and belief, based at least in part on the Georgia Court of Appeals' decision in Coleman, the Board of Commissioners of McIntosh County approved a policy to refund taxpayers for the illegal and erroneous assessment of taxes based on the incorrect application of the Base Year by using the year in which the Homestead Exemption was first granted rather than the immediately preceding year. The policy approved for refund by the Board of Commissioners of McIntosh County did not comply with Georgia law, resulting in McIntosh County being sued in a class action lawsuit in 2021 based on McIntosh County's incorrect application of the term Base Year. See Mary A. Bailey v. McIntosh County, Georgia, Superior Court of McIntosh County, Civil Action No. SUV2021000009. Ultimately, McIntosh County settled the class action lawsuit in 2022 acknowledging the improper application of the McIntosh County Homestead Exemption and agreeing to refund illegally and erroneously assessed taxes from 2016 through 2020 with the Court granting final approval to the settlement on May 5, 2022. See http://mcintoshcountyga.com/214/Tax-Refund-Case.

The Refund Statute provides that "each county … *shall* refund to taxpayers any and all taxes …. [w]hich are determined to have been erroneously or illegally assessed and collected from the taxpayers … or [w]hich are determined to have been voluntarily or involuntarily overpaid by the taxpayers." O.C.G.A. § 48-5-380(a) (emphasis supplied). The Georgia Court of Appeals ruled

that the statute of limitation under the Refund Statute is five (5) years. The Court ruled that under O.C.G.A. § 48-5-380(g) the Refund Statute "allows for the filing of a suit against a county … for a tax refund within five years of the date the disputed taxes were paid." Hojeij Branded Foods, LLC v. Clayton County, Georgia, et al., 355 Ga. App. 222, 228, 843 S.E.2d 902, 907 (2020) (cert denied Dec. 7, 2020).

A. Class Defined

Named Plaintiffs seek certification of one (1) class. The class is comprised of taxpayers similarly situated, who like Named Plaintiffs, own property in the City of Darien, Georgia who received the Homestead Exemption in the calculation of their tax bill in 2016, 2017, 2018, 2019, 2020, 2021 or 2022 for whom the City of Darien used the year in which the Homestead Exemption was first granted as the Base Year (the "Incorrect Base Year") rather than the immediately preceding year (the "Correct Base Year") in calculating the exemption amount under the Homestead Exemption for property tax bills in 2016, 2017, 2018, 2019, 2020, 2021 or 2022 and for whom the value frozen in the year in which the Homestead Exemption was first granted is greater than the value in the immediately preceding year (hereinafter the "Class").

Class members are readily identifiable from the City's records. From the records maintained by the City, 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 Plaintiffs on behalf of themselves and prospective class members seek a refund of all erroneously and illegally levied taxes or voluntarily or involuntarily over paid taxes pursuant to O.C.G.A. § 48-5-380, based on the incorrect application of the term "Base Year" in the Homestead Exemption, plus prejudgment interest. Succinctly stated, this litigation seeks

resolution as to whether Named Plaintiffs and the prospective class members are entitled to the return of all taxes assessed and voluntarily or involuntarily paid for 2016 through 2022 because the City used the year in which the Homestead Exemption was first granted as the Base Year rather than the immediately preceding year in calculating the exemption amount under the Homestead Exemption.

II. Argument and Citation of Authority

The claims asserted by Named Plaintiffs on behalf of themselves 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, 830, 833 S.E.2d 537, 541 (2019) (cert denied May 4, 2020); 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 Plaintiffs are typical of the claims of the prospective class members; and (4) **adequacy of representation**—that the Named Plaintiffs 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 Plaintiffs need only to establish that joinder is impracticable through some evidence or reasonable estimate of the number of purported prospective class members. 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).[1] The "impracticability of joinder is generally presumed if the class

[1]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.").

includes more than 40 members." American Debt Foundation, Inc. v. Hodzic, 312 Ga. App. 806, 809, 720 S.E.2d 283 (2011).

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, there are over 170 class members. And upon further information and belief, because many, if not most, of the taxpayers are entitled to refunds for multiple years, the total number of prospective class members is even higher.

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." Brenntag, 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. Id. at 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 Plaintiffs, where illegally and erroneously assessed ad valorem taxes (or voluntarily or involuntarily overpaid ad valorem taxes) based on the incorrect application of the Base Year and the members of the class can be readily identified from the City's records. Thus, the numerosity requirement is satisfied.

2. Commonality

Questions of law and fact common to the Named Plaintiffs 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 Plaintiffs and to all prospective class members – whether the City's use of the incorrect application of the Base Year as defined in the Homestead Exemption by using the year in which the Homestead Exemption was first granted rather than the immediately preceding year resulted in the illegal and erroneous assessment of taxes or the voluntary or involuntarily overpayment of taxes. Moreover, the City utilized the year in which the Homestead Exemption was first granted rather than the immediately preceding year as the Base Year for the calculation of the ad valorem taxes for all purported class members. Therefore, the resolution of that common legal issue will result in a determination of whether class members are entitled to refunds. The uniform treatment of the Base Year for class members and the determinative nature of the question of whether the Base Year has been applied correctly or incorrectly on the substantive claims of the class members indicate that common issues of fact as to Named Plaintiffs and the class members are substantial and predominate over any individual claims.

3. Typicality

The Named Plaintiffs' claims are identical to the claims of the prospective class members, satisfying the typicality requirement. The outcome of this litigation for Named Plaintiffs 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 Plaintiffs 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. See also In re Checking Account Overdraft Litigation, 275 F.R.D. at 674 (claims need not be identical).

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 Plaintiffs' claims and those of the prospective class members involve the same basic elements and are based on the same legal theories. The Named Plaintiffs and all prospective class members owned property in the City of Darien and received the Homestead Exemption in the calculation of their tax bill for 2016, 2017, 2018, 2019, 2020, 2021 or 2022 and for whom the City used the year in which the Homestead Exemption was first granted as the Base Year rather than the immediately preceding year and for whom the value frozen in the

year in which the Homestead Exemption was first granted is greater than the value in the immediately preceding year.

The underlying facts and legal claims giving rise to prospective class members' claims are identical to the claims of the Named Plaintiffs. And as in Buford, the facts and elements necessary for Named Plaintiffs 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 Plaintiffs are proceeding and those of the prospective class members. Thus, the typicality requirement is satisfied.

4. Adequacy of Representation

Named Plaintiffs will adequately represent the interests of prospective class members and have no interests divergent from those of prospective class members. Moreover, Named Plaintiffs are 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 Plaintiffs' 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 Plaintiffs 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 "F". 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.

Second, Named Plaintiffs' interest in this action is the same as the prospective class members. Named Plaintiffs do 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 Plaintiffs in this case are aligned with the prospective class members and Named Plaintiffs are suitable representatives 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 proper application of the term "Base Year" in the Homestead Exemption, the City would not be required to refund prospective class members for illegally and erroneously assessed taxes based on the improper application of the term "Base Year".

Moreover, because of the relatively small amount of refund owed compared to the cost of litigation, it is unlikely that other property owners would pursue refunds of illegally and erroneously assessed taxes. Such a practical impediment would result in the refund of taxes to Named Plaintiffs 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 Plaintiffs prevail, in the absence of class certification there is no mechanism requiring the City to refund taxes to other potential class members.

On the contrary, an adverse outcome would, without question, be applied and heralded by the City in an effort to defeat claims by other prospective class members. As a practical matter, the determination of the proper application of the term "Base Year" in the Homestead Exemption and the refunds owed to Named Plaintiffs would be determinative of the remedies available to all prospective class members.

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). See also Glynn County v. Coleman, 334 Ga. App. 599, 779 S.E.2d 753 (2015) (certification granted under O.C.G.A. 9-11-23(b)(1)); Altamaha Bluff, LLC, et al. v. Thomas, et al., Superior Court of Wayne County, 14-CV-0376 (same); Toledo Manufacturing Co., et al. v. Charlton County, SUCV201900232, Superior Court of Charlton County (same); Old Town Trolley Tours of Savannah, Inc. v. The Mayor and Aldermen of the City of Savannah, SPCV20-00767-MO, Superior Court of Chatham County (same); and Mary A. Bailey v. McIntosh County, Georgia, Superior Court of McIntosh County, Civil Action No. SUV2021000009 (same).

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. See 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, 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 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. See 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 use of the year in which the Homestead Exemption was first granted rather than the immediately preceding year in calculating the exemption amount under the Homestead Exemption was incorrect as to Named Plaintiffs and the Subject Parcel then the same is true for prospective class members and their parcels.

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 Coleman, 334 Ga. App. 559. 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. See also Altamaha Bluff, LLC, et al. v. Thomas, et al., Superior Court of Wayne County, 14-CV-0376 (class action for tax refund); Toledo Manufacturing Co., et al. v. Charlton County, SUCV201900232, Superior Court of Charlton County (same); Old Town Trolley Tours of Savannah, Inc. v. The Mayor and Aldermen of the City of Savannah, SPCV20-00767-MO, Superior Court of Chatham County (same); and Mary A. Bailey v. McIntosh County, Georgia, Superior Court of McIntosh County, Civil Action No. SUV2021000009 (same).

Similar to Barnes I, Coleman and Bailey, here Named Plaintiffs seek certification of a class who has been uniformly subjected to tax bills and the voluntary or involuntary payment of taxes based on an improper application of the term "Base Year" where the City used the year in which the Homestead Exemption was first granted as the Base Year rather than the immediately preceding year in calculating the exemption amount under the Homestead Exemption and for whom the value frozen in the year in which the Homestead Exemption was first granted is greater than the value in the immediately preceding year. 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. See Brenntag, 308 Ga. App. 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 Plaintiffs 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 Plaintiffs or prospective class members. As the taxes at issue were assessed in the City of Darien and paid to the City in McIntosh County, McIntosh County is the natural and only appropriate venue for the action. Finally, given the readily available records of the City 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 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 – since, upon information and belief, many if not most of the taxpayers are entitled to refunds for multiple years – thus burdening the Superior Court of McIntosh 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 motions." 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 Class should be certified under O.C.G.A. § 9-11-23(b)(3).

Conclusion

Named Plaintiffs have 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). Therefore, Named Plaintiffs respectfully request that its motion for class certification be granted.

Respectfully submitted this the 1st day of June, 2023.

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