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Tammie Mosley
Clerk of Superior Court
Chatham County
Date: 8/8/2022 3:14 PM
Reviewer: KN

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,	)	
	)	
	)	
Defendant.	)	

DEFENDANT'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

Comes now Defendant The Mayor and Aldermen of the City of Savannah (the "City"), and files this Answer to Named Plaintiff's Second Amended Verified Class Action Complaint (the "Complaint.")

FIRST DEFENSE

The Complaint, in whole or in part, fails to state a claim upon which relief may be granted and should be dismissed.

SECOND DEFENSE

The original Complaint was filed on July 30, 2021. The City's Revenue Ordinance of 2021, at Art. U, § 12, provides for a three year refund period from the date of discovery of an alleged error of overbilling and overpayment: "If evidence provided by a customer or appearing in City records shows that a utility account has been billed and paid incorrectly as a result of error by either the customer or the City, the following corrective actions are authorized: . . . Over-billed and over-paid. Refund shall be limited to the actual amount of overpayment for a period of three years prior to the date of discovery and correction of the error. Any additional billing and any refund under such circumstances shall be without interest."

THIRD DEFENSE

To the extent that Plaintiff seeks certification of a class, a motion for certification of a class should be denied since Plaintiff cannot meet its burden of showing the City's waiver of sovereign immunity with regard to litigation as a class in this case.

FOURTH DEFENSE

The case does not involve impact fees or taxes. Per O.C.G.A. § 36-71-13(c), "Nothing in this chapter [the Development Impact Fees chapter] shall limit a municipality, county, or other governmental entity which provides water or sewer service from collecting a proportionate share of the capital cost of water or sewer facilities by way of hook-up or connection fees as a condition of water or sewer service to new or existing users, . . ." In *City of Griffin v. McDaniel*, 270 Ga. App. 349, 606 S.E.2d 607 (2005), a case involving sewer connection fees, the Georgia Court of Appeals construed O.C.G.A. § 36-71-13(c) and found, "As a municipality providing sewer service, the city is entitled to collect a proportionate share of the capital cost of its sewer facilities as a condition of sewer service to new or existing users, without adopting an impact fee ordinance." *Id.* at 354.

FIFTH DEFENSE

Plaintiff cannot bear the burden of proving that each of the requirements for class certification contained in O.C.G.A. § 9-11-23(a) is met. Class certification should be denied.

SIXTH DEFENSE

Assuming *arguendo* (which is denied) that Plaintiff could show each of the statutory requirements of O.C.G.A. § 9-11-23(a) was met, Plaintiff could not bear the burden of proving that one of the additional requirements of O.C.G.A. § 9-11-23(b) was also met for class certification.

SEVENTH DEFENSE

As to an action for recovery of fees paid on or before July 30, 2018, the City asserts the affirmative defenses of statute of limitations and laches. In addition, the affirmative defenses of waiver and/or estoppel may apply to claims regardless of date of proposed class members.

EIGHTH DEFENSE

The claims as amended of the named Plaintiff, any to-be named plaintiff, and any other potential plaintiff are barred in whole or in part by the failure to provide proper *ante litem* notice per O.C.G.A. § 36-33-5, and the claims should be dismissed for the failure to comply and to allege compliance with this condition precedent to suit.

NINTH DEFENSE

Subject to the foregoing defenses, the City responds to the numbered allegations of the Complaint as follows:

1. To the extent that the unnumbered initial paragraph of the Complaint makes allegations of fact, the allegations are denied. Answering numbered Paragraph 1, discovery is continuing. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding whether fees paid by the Plaintiff to the City were not authorized, and the allegations are therefore denied. The remaining allegations contained in Paragraph 1 are denied.

2. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2, and the allegations are therefore denied.

3. Answering Paragraph 3, the City is a Georgia municipal corporation. The City received service of the Summons and Complaint, as amended. Any remaining allegations contained in Paragraph 3 are denied.

4. The allegations contained in Paragraph 4 are admitted at this time.

5. Answering Paragraph 5, the City reasserts the answers to Paragraph 1 through 4 by express reference as if set out herein in their entirety.

6. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6, and the allegations are therefore denied.

7. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7, and the allegations are therefore denied.

8. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8, and the allegations are therefore denied.

9. Answering Paragraph 9, Ex. A to the Complaint appears is a copy of a Water & Sewer Approval Form For Commercial Building Renovations regarding Von Trapp Animal Lodge (the "Form") dated March 2, 2021. Though close, it does not appear identical in every particular to the Form likely as originally submitted on or about March 2, 2021. Any remaining allegations contained in Paragraph 9 are denied.

10. Answering Paragraph 10, near the top of the Form is a sentence, "A copy of this signed approved form must be included with your Commercial Building Renovation Building Permit Submittal to Development Services." Any remaining allegations contained in Paragraph 10 are denied.

11. Answering Paragraph 11, the Form had the box check-marked "Yes" after the question, "Does the building have an existing water meter?", and the box check-marked "No" after

the question, "Will the new use require a new water meter?" Any remaining allegations contained in Paragraph 11 are denied.

12. Answering Paragraph 12, the Form stated on p. 1, under 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".. . ." Any remaining allegations contained in Paragraph 12 are denied.

13. Answering Paragraph 13, the Form stated on p. 1, under Water & Wastewater Fees: ". . . Fees must be paid prior to receiving Certificate of Occupancy/Certificate of Completion." Any remaining allegations contained in Paragraph 13 are denied.

14. Answering Paragraph 14, Plaintiff's submission contained one "Exhibit 5 Fire System and Backflow Prevention Devices Owner/Client Declaration" and two "Exhibit 7 Equivalent Residential Unit (ERU) Calculation". Any remaining allegations contained in Paragraph 14 are denied.

15. Answering Paragraph 15, the initial Exhibit 7 to the Form, stating: "Calculated By: Kayton Smith Jr., Smith and Vandenbulck[,]" dated Feb. 24, 2021, had fees calculated totalling $48,005.50. An Exhibit 7 which is hand-marked in the City's file titled "(Revised)", dated 3/09/21, containing "Calculated By: Charles F. VandenBulck, P.E.", had the following amounts: Water Tap-In Fees in the amount of $354.00, Sewer Tap-In Fees in the amount of $236.00, Reclaimed Water Fees in the amount of $354.00, and Treatment Plant Fees in the amount of $1,347.50. (These total $2,291.50 rather than the "Grand Total $2,271.50[.]") Any remaining allegations contained in Paragraph 15 are denied.

16. Answering Paragraph 16, the Exhibit 7 dated March 9, 2021 had fees totaling $2,291.50, but $2,271.50 was paid. Any remaining allegations contained in Paragraph 16 are denied.

17. Answering Paragraph 17, the Form indicated "Concurrence" on "3-15-21" by Daslin Garcon, PE, then-City Senior Civil Engineer, Water and Sewer Planning and Engineering. Any remaining allegations contained in Paragraph 17 are denied.

18. Answering Paragraph 18, the City collected $2,271.50 in fees, recorded as $354 + $236 + 354 + $1,327.50, from named Plaintiff regarding a commercial building renovation, Permit #21-01795 WAS, on or about June 10, 2021. Exhibit B to the Complaint appears to be a check dated 6-2-21 from Von Trapp Animal Lodge Inc. made payable to the City in the amount of $2,271.50. The City lacks knowledge or information sufficient to form a belief whether the copy of a check attached as Exhibit B is a true and correct copy, and such allegations are therefore denied. Any remaining allegations contained in Paragraph 18 are denied.

19. Answering Paragraph 19, Exhibit 7 leaves blank spaces after Water Additional Fees, Sewer Area Additional Fees, and Sewer Site Additional Fees. Whether or not water and sewer fees have to be paid to the City with regard to a renovation or expansion of a commercial or residential building is determinable by law. Any remaining allegations contained in Paragraph 19 are denied.

20. Answering Paragraph 20, the City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 that all of the fees listed therein were assessed as additional fees to certain prospective class members despite that the prospective class members had existing water meters and the proposed renovation and expansion

work did not require connecting to the City's water and sewer system, and the allegations are therefore denied. Any remaining allegations contained in Paragraph 20 are denied.

21. Answering Paragraph 21, Sav. Code Ord. (2021), Art. U, § 4(D)(1) provided, in part, "Fee Schedule. A Water Tap-in Fee shall 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 residential unit, or any fraction thereof (b) Outside City: $900.00 per residential unit, or equivalent residential unit, or any fraction thereof[.]" Any remaining allegations contained in Paragraph 21 are denied.

22. Answering Paragraph 22, Sav. Code Ord. (2021), Art. U, § 4(D)(3), provided in part: "Applicability of Fee. The Water Tap-in Fee shall be charged for any water meter service application submitted to the City on or after July 1, 1995.. . ." Any remaining allegations contained in Paragraph 22 are denied.

23. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23, and the allegations are therefore denied.

24. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24, and the allegations are therefore denied.

25. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25, and the allegations are therefore denied.

26. Answering Paragraph 26, Exhibit 7 dated March 9, 2021 to the Form provided for Water Tap-In Fees in the amount of $354, and the City recorded payment of a $354 fee. Any remaining allegations contained in Paragraph 26 are denied.

27. Answering Paragraph 27, Sav. Code Ord. (2021), Art. U., Secs. 4(E)(1) and 4(E)(2), under Sewer Tap-in Fee, provided in part: "(1) Fee Established. A sewer tap-in fee shall be paid

to the Revenue Department prior to 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. (2) Sewer Tap-in Rates. The sewer tap-in fee per residential unit or equivalent residential unit, whether single or multiple tap-ins, which is made to the sanitary sewer line shall be as follows: (a) Inside City: $400.00 per residential unit, or equivalent residential unit, or any fraction thereof (b) Outside City: $500.00 per residential unit, or equivalent residential unit, or any fraction thereof[.] . . ." Any remaining allegations contained in Paragraph 27 are denied.

28. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28, and the allegations are therefore denied.

29. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29, and the allegations are therefore denied.

30. Answering Paragraph 30, Exhibit 7 dated March 9, 2021 to the Form provided for Sewer Tap-In Fees in the amount of $236, and a payment of $236 to the City was recorded. Any remaining allegations contained in Paragraph 30 are denied.

31. Answering Paragraph 31, Sav. Code Ord. (2021), Art. U., Secs. 4(F)(1) Reclaimed Water Project Connection Fee, provided: "Fee Schedule. A connection fee for funding reclaimed water projects shall 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." Any remaining allegations contained in Paragraph 31 are denied.

32. Answering Paragraph 32, Sav. Code Ord. (2021), Art. U., Secs. 4(F)(3) provided: "Applicability of Fee. The Reclaimed Water Project Connection Fee shall be charged for any

water meter service application submitted to the City on or after January 1, 2010." Any remaining allegations contained in Paragraph 32 are denied.

33. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33, and the allegations are therefore denied.

34. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34, and the allegations are therefore denied.

35. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35, and the allegations are therefore denied.

36. Answering Paragraph 36, Exhibit 7 dated March 9, 2021 to the Form provided for Reclaimed Water Fees in the amount of $354, and the City recorded payment of $354. Any remaining allegations contained in Paragraph 36 are denied.

37. The allegations contained in Paragraph 37 are denied.

38. Answering Paragraph 38, the fees named are contained within Sav. Code Ord. (2021), Art. U., Utility Service Fees. Any remaining allegations contained in Paragraph 38 are denied.

39. The allegations contained in Paragraph 39 are denied.

40. Answering Paragraph 40, Exhibit 7 dated March 9, 2021 to the Form provided for Treatment Plant Fees under Sav. Code Ord. (2021), Art. U., Sec. 5(A). By way of further answer, that Revenue Ordinance Section is titled, "Water and Sewer Additional Connection Fees[,] Additional Connection Fees." Any remaining allegations contained in Paragraph 40 are denied.

41. Answering Paragraph 41, Exhibit 7 dated March 9, 2021 to the Form provided for Treatment Plant Fees under Sav. Code Ord. (2021), Art. U., Sec. 5(A). Any remaining allegatios contained in Paragraph 41 are denied.

42. Answering Paragraph 42, Exhibit 7 dated March 9, 2021 to the Form provided for Treatment Plant Fees under Sav. Code Ord. (2021), Art. U., Sec. 5(A). The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding whether the fee was overbilled and overpaid by error, and the allegations are therefore denied. Any remaining allegations contained in Paragraph 42 are denied.

43. Answering Paragraph 43, Sav. Code Ord. (2021), Art. U., Secs. 5(A) provided in part: "(A) Additional Connection Fees. All 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. 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: . . ." Any remaining allegations contained in Paragraph 43 are denied.

44. Answering Paragraph 44, as was set out above, where the water and sewer additional connection fee is appropriate, 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, and therefore not by the "service area" section, including treatment plants, in Sav. Code Ord. (2021), Art. U., Secs. 5(A). Any remaining allegations contained in Paragraph 44 are denied.

45. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45, and the allegations are therefore denied.

46. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46, and the allegations are therefore denied.

47. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47, and the allegations are therefore denied.

48. The allegations contained in Paragraph 48 are denied.

49. Answering Paragraph 49, Sav. Code Ord. (2021), Art. U., Secs. 5(A) provided in part: "(A) Additional Connection Fees. All 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. 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: SERVICE AREA . . ." Any remaining allegations contained in Paragraph 49 are denied.

50. Answering Paragraph 50, Sav. Code Ord. (2021), Art. U., Secs. 5(A) provided in part: "(A) Additional Connection Fees. All 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. 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: SERVICE AREA . . ." Additional information regarding treatment plants

and other locations, and costs, follow. Any remaining allegations contained in Paragraph 50 are denied.

51. Answering Paragraph 51, in the Exhibit 7 dated March 9, 2021 attached to the Complaint, other than an amount for treatment plant fees ($1,347) which was more than was allegedly paid by Plaintiff, there were no other water or sewer additional connection fees noted on the Exhibit 7 as being charged or paid. Any remaining allegations contained in Paragraph 51 are denied.

52. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52, and the allegations are therefore denied.

53. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53, and the allegations are therefore denied.

54. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54, and the allegations are therefore denied.

55. Answering Paragraph 55, the provisions of the City Revenue Ordinance (2021) regarding the Water Tap-In Fee, Sewer Tap-In Fee, Reclaimed Water Project Connection Fee and Water and Sewer Additional Connection Fee, state whatever they state. Any remaining allegations contained in Paragraph 55 are denied.

56. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56, and the allegations are therefore denied.

57. The allegations contained in Paragraph 57 are denied.

58. The allegations contained in Paragraph 58 are denied.

59. Answering Paragraph 59, the provisions of the City Revenue Ordinance (2021) regarding the Water Tap-In Fee, Sewer Tap-In Fee, Reclaimed Water Project Connection Fee and

Water and Sewer Additional Connection Fee, state whatever they state. Any remaining allegations contained in Paragraph 59 are denied.

60. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60, and the allegations are therefore denied.

61. Answering Paragraph 61, The City Revenue Ordinance (2021), at Art. U, § 12, provided, in pertinent part: "If evidence provided by a customer or appearing in City records shows that a utility account has been billed and paid incorrectly as a result of error by either the customer or the City, the following corrective actions are authorized: . . . Over-billed and over-paid. Refund shall be limited to the actual amount of overpayment for a period of three years prior to the date of discovery and correction of the error. Any additional billing and any refund under such circumstances shall be without interest." Any remaining allegations contained in Paragraph 61 are denied.

62. Answering Paragraph 62, The City Revenue Ordinance (2021), at Art. U, § 12, provided, in pertinent part: "If evidence provided by a customer or appearing in City records shows that a utility account has been billed and paid incorrectly as a result of error by either the customer or the City, the following corrective actions are authorized: . . . Over-billed and over-paid. Refund shall be limited to the actual amount of overpayment for a period of three years prior to the date of discovery and correction of the error. Any additional billing and any refund under such circumstances shall be without interest." Any remaining allegations contained in Paragraph 62 are denied.

63. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63, and the allegations are therefore denied.

64. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 64, and the allegations are therefore denied.

65. Answering Paragraph 65, none of the fees described in Paragraph 65 are impact fees, and the allegations contained in Paragraph 65 are therefore denied.

66. Answering Paragraph 66, none of the fees described regarding Paragraph 65 and 66 are impact fees, and the allegations pertaining to impact fees in Paragraph 66 are therefore denied. Any remaining allegations contained in Paragraph 66 are denied.

67. Answering Paragraph 67, none of the fees described regarding Paragraph 65 through 67 are impact fees, and the allegations pertaining to impact fees in Paragraph 67 are therefore denied. Any remaining allegations contained in Paragraph 67 are denied.

68. The allegations contained in Paragraph 68 are denied.

69. Answering Paragraph 69, the fees are not a tax, and the allegations contained in Paragraph 69 regarding taxes are denied. Any remaining allegations contained in Paragraph 69 are denied.

70. The allegations contained in Paragraph 70 are denied.

71. The allegations contained in Paragraph 71 are denied.

72. The allegations contained in Paragraph 72 are denied.

73. Answering Paragraph 73, the City reasserts the answers contained in Paragraph 1 through 72 by express reference as if set forth herein in their entirety.

74. The allegations contained in Paragraph 74 are denied.

75. The allegations contained in Paragraph 75, including subparts, are denied.

76. The allegations contained in Paragraph 76 are denied.

77. The allegations contained in Paragraph 77 are denied.

78. The allegations contained in Paragraph 78 are denied.

79. The allegations contained in Paragraph 79 are denied.

80. The allegations contained in Paragraph 80 are denied.

81. The allegations contained in Paragraph 81 are denied.

82. The allegations contained in Paragraph 82 are denied.

83. The allegations contained in Paragraph 83 are denied.

84. Answering Paragraph 84, the first sentence is denied. The second sentence is admitted. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third sentence of Paragraph 84, and the allegations are therefore denied.

85. Answering Paragraph 85, the City reasserts the answers contained in Paragraph 1 through 84 by express reference as if set forth herein in their entirety.

86. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 86, and the allegations are therefore denied.

87. The City denies that all treatment plant fees collected from July 30, 2018 are required to be refunded. The City denies that class action certification is appropriate, and the remaining allegations contained in Paragraph 87 are denied.

88. Answering Paragraph 88, the City reasserts the answers contained in Paragraph 1 through 87 by express reference as if set forth herein in their entirety.

89. The allegations contained in Paragraph 89 are denied.

90. The allegations contained in Paragraph 90 are denied.

91. The allegations contained in Paragraph 91 are denied.

92. Answering Paragraph 92, the City reasserts the answers contained in Paragraph 1 through 91 by express reference as if set forth herein in their entirety.

93. The allegations contained in Paragraph 93 are denied.

94. Answering Paragraph 94, the City denies that this case involves illegal taxes, and the Article of the Georgia Constitution cited is therefore inapplicable. Any remaining allegations contained in Paragraph 94 are denied.

95. The allegations contained in Paragraph 95 are denied.

96. The allegations contained in Paragraph 96 are denied.

97. The allegations contained in Paragraph 97 are denied.

98. Answering Paragraph 98, the City reasserts the answers contained in Paragraph 1 through 97 by express reference as if set forth herein in their entirety.

99. The allegations contained in Paragraph 99 are denied.

100. Any paragraphs or sentences of Plaintiff's Complaint not specifically admitted are herein denied.

WHEREFORE, The Mayor and Aldermen of the City of Savannah respectfully requests that Named Plaintiff's Second Amended Verified Class Action Complaint, as the original Complaint has been amended, be dismissed, with costs cast upon the Plaintiff.

This *8th* day of August, 2022.

/s/ R. Bates Lovett
R. BATES LOVETT
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/s/ Jennifer N. Herman
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CERTIFICATE OF SERVICE

This is to certify that I have this day served copy of the foregoing upon counsel for named Plaintiff, James L. Roberts, IV, Esq., jroberts@robertstate.com, John Manly, Esq., john@manlyshipley.com, and James E. Shipley, Jr., Esq., at jim@manlyshipley.com, per agreement of counsel and O.C.G.A. § 9-11-5(f)(1)(B).

This *8th* day of August, 2022.

OLIVER MANER LLP

/s/ Patricia T. Paul
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