

**IN THE SUPERIOR COURT OF CHATHAM COUNTY  
 STATE OF GEORGIA**

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

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**NAMED PLAINTIFF’S FOURTH AMENDED VERIFIED CLASS ACTION  
 COMPLAINT**

COMES NOW Plaintiff VTAL Real Estate, LLC. (“Named Plaintiff”) and makes and files this Verified Fourth Amended Complaint on behalf of itself and prospective class members for refund under the City of Savannah 2021 Revenue Ordinance, Article U. §12 for fees illegally assessed and collected and for a tax refund and prejudgment interest pursuant to O.C.G.A. § 48-5-380 (the “Refund Statute”) to recover illegal taxes levied and collected and for attorneys’ fees and costs under O.C.G.A. § 13-6-11, and other relief and representing to the Court as follows:

**INTRODUCTION**

1.

This is a refund class action for fees collected under the City of Savannah 2021 Revenue Ordinance, Article U (the “Utility Service Fees Ordinance”) and for refund under the Refund Statute for illegal taxes levied and collected under the Utility Service Fees Ordinance.<sup>1</sup> Four (4) separate fees were assessed to Named Plaintiff based on its proposed work on its commercial

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<sup>1</sup> All sections of the Utility Service Fees Ordinance quoted herein are taken from the City of Savannah 2021 Revenue Ordinance. However, the sections quoted contain the same language in the City of Savannah 2022 Revenue Ordinance.

building. These fees were not authorized by the plain language of the Utility Service Fees Ordinance. Additionally, upon information and belief, these same four (4) fees as well as three (3) additional fees were assessed against certain prospective class members. To the extent that these fees are deemed taxes or license fees, assessing these fees amounts to levying an invalid tax or amounts to assessing an invalid license fee on Named Plaintiff and the prospective class members in violation of Georgia law.

**IDENTIFICATION OF THE PARTIES, JURISDICTION and VENUE**

2.

Named Plaintiff VTAL Real Estate, LLC is a limited liability company organized and operating under the laws of the State of Georgia, whose principal office is located at 6500 Waters Avenue, Savannah, Georgia 31406.

3.

Defendant Mayor and Aldermen of the City of Savannah is a municipal entity organized under the Constitution and laws of the State of Georgia (“Defendant” or “the City of Savannah”). The City of Savannah may be served by delivering a copy of the Summons and Complaint to the City Council.

4.

Jurisdiction and venue are proper in this Court.

**FACTUAL BACKGROUND**

**Overview**

5.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-4 as if set forth herein verbatim.

6.

Named Plaintiff operates von Trapp Animal Lodge at 6500 Waters Avenue, Savannah, Georgia.

7.

The von Trapp Animal Lodge offers daycare, boarding and rehabilitation services for dogs and cats.

8.

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 and a break room and rest room for staff (the “Proposed Work”).

9.

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 Proposed 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”.

10.

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 Proposed Work.

11.

Named Plaintiff answered on the Approval Form that the building where the Proposed Work was taking place had an existing water meter and that the building will not require a new water meter.

12.

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.

13.

The Approval Form provides that the fees “**must be paid prior to receiving Certificate of Occupancy/Certificate of Completion.**” Id. (Emphasis in original).

14.

There are two (2) exhibits attached to the Approval Form – an “Exhibit 5” entitled “Fire System and Backflow Prevention Devices Owner/Client Declaration” and an “Exhibit 7” entitled “Equivalent Residential Unit (ERU) Calculation”.

15.

“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 Proposed 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”.

16.

The total for these fees assessed by the City of Savannah to Named Plaintiff was \$2,271.50.

Id.

17.

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 Proposed 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.

18.

On or about June 2, 2021 Named Plaintiff paid \$2,271.50 for the fees assessed for the Proposed Work. A true and correct copy of a check made payable to the City of Savannah for the fees is attached as Exhibit “B”.

19.

“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 work of either a commercial or residential building 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.

20.

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 were not new customers, had existing water meters and that the proposed 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**

21.

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).

22.

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).

23.

Named Plaintiff's Proposed 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).

24.

Stated differently, Named Plaintiff did not “tap-in” to the City of Savannah's water system as Named Plaintiff already had a water meter.

25.

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 Proposed Work.

26.

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 Proposed Work. See Ex. A and Ex. B.

**Utility Service Fees Ordinance: Sewer Tap-in Fees**

27.

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).

28.

Named Plaintiff's Proposed 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) as a permit to connect to the sanitary sewer line already existed.

29.

Furthermore, as part of Named Plaintiff's Proposed Work, Named Plaintiff did not connect or “tap-in” to the City of Savannah's sanitary sewer line.

30.

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 Proposed Work. See Ex. A and Ex. B.

**Utility Service Fees Ordinance: Reclaimed Water Fees**

31.

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).

32.

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).

33.

Named Plaintiff's Proposed 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) as a service line to the City of Savannah's water system already existed.

34.

Named Plaintiff's Proposed 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) as a service line to the City of Savannah's sewer system already existed.



35.

Named Plaintiff did not, nor was it required to, submit a water meter service application in order to complete its Proposed Work as set forth in Revenue Ordinance Article U. §4(F)(1).

36.

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 Proposed Work. See Ex. A and Ex. B.

**Utility Service Fees Ordinance: Treatment Plant Fees**

37.

The Utility Service Fees Ordinance does not provide for assessing a utility fee called a "Treatment Plant Fee".

38.

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<sup>2</sup>)), 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).

39.

None of the fees authorized by Utility Service Fees Ordinance references a "Treatment Plant Fee".

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<sup>2</sup> This appears to be typographical error in the Utility Service Fees Ordinance and should be subsection "C" not "B".

40.

“Exhibit 7” entitled “Equivalent Residential Unit (ERU) Calculation” to the Approval 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.

41.

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.

42.

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”.

43.

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)

44.

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.

45.

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.

46.

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).

47.

Additionally, Named Plaintiff’s Proposed Work did 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).

48.

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 Proposed Work.

**Utility Service Fees Ordinance: Water and Sewer Additional Connection Fees**

49.

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).

50.

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.

51.

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.<sup>3</sup>

52.

Certain prospective class members, upon information and belief, were assessed Water Additional Fees even though they were not new customers and/or their proposed work of either a commercial or residential building 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.

53.

Certain prospective class members, upon information and belief, were assessed Sewer Area Additional Fees and/or Sewer Site Additional Fees even though they were not new customers and/or their proposed work of either a commercial or residential building 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.

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<sup>3</sup> It is unclear from the Utility Service Fees Ordinance what the difference is between the “Sewer Area Additional Fees” and “Sewer Site Additional Fees”.

54.

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 proposed work.

**Refunds For Illegally Assessed and Collected Fees**

55.

There is no provision in the Utility Service Fees Ordinance that allows the City of Savannah to assess and collect Water Tap-in Fees when work is performed that does not require a connection be made to the City of Savannah's water system. That is, a water meter already existed and/or a water service meter application was not required.

56.

There is no provision in the Utility Service Fees Ordinance that allows the City of Savannah to assess and collect Sewer Tap-in Fees when work is performed that does not require a connection be made to the City of Savannah's sewer system. That is, a sewer line already existed and/or a permit to connect to the sewer line was not issued.

57.

There is no provision in the Utility Service Fees Ordinance that allows the City of Savannah to assess and collect Reclaimed Water Fees when commercial or residential building work is performed that does not require a connection be made to the City of Savannah's water or sewer system. That is, a service line to the City of Savannah's water system and/or sewer system already existed and/or a water meter application was not submitted.

58.

There is no provision in the Utility Service Fees Ordinance that allows the City of Savannah

to assess and collect Treatment Fees when commercial or residential building work is performed that does not require a connection be made to the City of Savannah's water or sewer system.

59.

The City of Savannah therefore assessed and collected Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees and Treatment Plant Fees from Named Plaintiff and the prospective class members in violation of the Utility Service Fee Ordinance.

60.

The City of Savannah also assessed a fee called "Treatment Plant Fees" that is not provided for in the Utility Service Fee Ordinance.

61.

The City of Savannah therefore assessed and collected "Treatment Plant Fees" from Named Plaintiff and the prospective class members in violation of the Utility Service Fee Ordinance.

62.

There is also no provision in the in the Utility Service Fees Ordinance that allows the City of Savannah to assess and collect Water Additional Fees, Sewer Area Additional Fees or Sewer Site Additional Fees where the prospective class member is not a new customer.

63.

Upon information and belief, the City of Savannah therefore assessed and collected Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees from certain prospective class members who were already existing customers at the time such fees were collected in violation of the Utility Service Fees Ordinance.

64.

Section 12 of the Utility Service Fee Ordinance provides for the refund of fees assessed and collected.

65.

Section 12 of the Utility Service Fee Ordinance provides that “[i]f 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: ... 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.” Revenue Ordinance Article U §12.

66.

Therefore, under Section 12 of the Utility Service Fee Ordinance, Named Plaintiff and the prospective class members are entitled to refunds of illegally assessed and collected 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 from July 30, 2018 to the present.

67.

The refund due to Named Plaintiff under Section 12 of the Utility Service Fee Ordinance is \$2,271.50.

**Refunds For Illegally Assessed and Collected Taxes or License Fees**

68.

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 assessed to

Named Plaintiff and/or prospective class members constitute taxes or license fees within the meaning of O.C.G.A. § 48-5-380.

69.

Taxes assessed by the City of Savannah cannot violate the Constitution of the State of Georgia or Georgia state laws and must satisfy the constitutional requirements of uniformity and equalization.

70.

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 constitute taxes, the City of Savannah, through the extraction of fees from Named Plaintiff and the prospective class members, levied and collected illegal taxes in violation of the constitutional and statutory requirements of uniformity and equalization, resulting in the overpayment of taxes by Named Plaintiff and the prospective class members and the collection by the City of Savannah of illegal taxes.

71.

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 constitute license fees, the City of Savannah assessed and collected illegal license fees in violation of the Utility Service Fees Ordinance.

72.

As a result of the above, Named Plaintiff and the prospective class members are entitled to refunds of the illegal taxes assessed and collected and/or illegal license fees assessed and collected from July 30, 2016 to the present, plus prejudgment interest. See Hojeij Branded Foods, LLC v.



Clayton County, Georgia, et al., 355 Ga. App. 222, 843 S.E.2d 902 (2020) (cert denied Dec. 07, 2020) (Subsection (g) of the Refund Statute allows for the filing of a suit for a tax [or license fee] refund within five (5) years of the date the disputed taxes [or license fees] were paid).

73.

The refund due to Named Plaintiff under the Refund Statute is \$2,271.50 plus prejudgment interest.

### **CLASS ACTION ALLEGATIONS**

74.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-73 as if set forth herein verbatim.

75.

This action is brought by Named Plaintiff as a class action, on its own behalf and on behalf of all prospective class members, under the provisions of O.C.G.A. § 9-11-23 for damages, and relief incident and subordinate thereto, including attorney's fees and costs.

76.

Named Plaintiff seeks certification of five (5) classes.

(1) The first class consists of all Commercial or Residential Building Permit Applicants similarly situated who, like Named Plaintiff, were assessed and paid Water Tap-in Fees where no water meter service application was submitted (hereinafter "Class 1").

(2) The second class consists of all Commercial or Residential Building Permit Applicants similarly situated who, like Named Plaintiff, were assessed and paid Sewer Tap-in Fees where no request for a permit to connect to a sanitary sewer line was submitted (hereinafter "Class 2").

(3) The third class consists of all Commercial or Residential Building Permit Applicants similarly situated who, like Named Plaintiff, were assessed and paid Reclaimed Water Fees where no new service line to the City of Savannah’s water system and/or a service line to the City of Savannah’s sewer system was installed and/or a water meter application was not submitted (hereinafter “Class 3”).

(4) The fourth class consists of all Commercial or Residential Building Permit Applicants who were assessed and paid Water Additional Fees, Sewer Area Additional Fees or Sewer Site Additional Fees but were not a new customer (hereinafter “Class 4”).

(5) The fifth class consists of all Commercial or Residential Building Permit Applicants similarly situated who, like Named Plaintiff, were assessed and paid Treatment Plant Fees not authorized by the Utility Service Fees Ordinance (hereinafter the “Class 5”).

77.

The Class 1, Class 2, Class 3, Class 4 and Class 5 are hereinafter referred to as the “Refund Classes”.

78.

The Refund Classes so described are comprised of numerous members seeking the following relief for each year at issue: (a) refunds under Section 12 of the Utility Service Fee Ordinance for the Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees, Treatment Plant Fees, Water Additional Fees, Sewer Area Additional Fees and/or Sewer Site Additional Fees illegally assessed and collected from July 30, 2018 to the present; (b) refunds under O.C.G.A. § 48-5-380 for illegally extracted taxes and/or illegally assessed license fees under the Utility Service Fee Ordinance paid from July 30, 2016 to the present; and (c) prejudgment interest from July 30, 2016 to the present based on the levying and collecting an illegal tax in violation of the Constitution

of the State of Georgia and Georgia law and/or the assessing and collecting an illegal license fee in violation of Georgia Law.

79.

The members of the Refund Classes are so numerous that joinder of individual members herein is impracticable.

80.

There are common questions of law and fact in the action that relate to and affect the rights of members of the Refund Classes and the relief sought is common to the members of the Refund Classes.

81.

The claims of Named Plaintiff, as set forth herein, who is representative of class members, are typical of the claims of the members of the Refund Classes, in that the claims of all members of the Refund Classes, including Named Plaintiff, depend on the showing of the acts and/or omissions of the City of Savannah or its agents or instrumentalities giving rise to the right of Named Plaintiff to the relief sought herein. There is no conflict as between Named Plaintiff and class members with respect to this action, or with respect to the claims for relief herein set forth.

82.

This action is properly maintained as a class action pursuant to O.C.G.A. § 9-11-23(b)(1)(A) because the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members which would establish incompatible standards of conduct for any party opposing the classes.

83.

This action is properly maintained as a class action pursuant to O.C.G.A. § 9-11-23(b)(1)(B) in that prosecution of separate actions by individual class members would create a risk of adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interest of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

84.

This action is properly maintained as a class action pursuant to O.C.G.A. § 9-11-23(b)(3) inasmuch as the questions of law and fact common to the classes predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

85.

Named Plaintiff is the representative party for the Refund Classes, and is able to, and will, fairly and adequately protect the interests of class members. Roberts Tate, LLC, one of the firms representing Named Plaintiff, is experienced in class action litigation and has successfully represented claimants in other class litigation. Of the attorneys designated as counsel for Named Plaintiff, those undersigned attorneys will actively conduct and be responsible for Named Plaintiff's case herein as well as the case of all other class members.

**COUNT I – REFUND UNDER SECTION 12 OF  
THE UTILITY SERVICE FEE ORDINANCE**

86.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-85 as if set forth herein verbatim.

87.

From July 30, 2018 to the present the City of Savannah assessed and collected 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 when commercial or residential building work was performed in violation of the Utility Service Fee Ordinance.

88.

Under Section 12 of the Utility Service Fee Ordinance Named Plaintiff and the members of the Refund Class 1 are entitled to refunds of all Water Tap-in Fees, the members of Refund Class 2 are entitled to refunds for all Sewer Tap-in Fees, the members of Refund Class 3 are entitled to refunds for all Reclaimed Water Fees, the members of Refund Class 4 are entitled to refunds for all Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees and the members of Refund Class 5 are entitled to refunds for all Treatment Plant Fees assessed and collected from July 30, 2018 to present. Accordingly, all illegally assessed and collected Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees, Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees and Treatment Plant Fees must be refunded to Named Plaintiff and the members of the Refund Classes.

**COUNT II- REFUND UNDER O.C.G.A. § 48-5-380**

89.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-88 as if set forth herein verbatim.

90.

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 constitute illegal taxes or license fees.

91.

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 constituted taxes, from July 30, 2016 to the present the City of Savannah levied and collected illegal taxes in violation of Georgia state laws, and in violation of the due process and equal protection clauses of Article I Section I Paragraph I of the Constitution of the State of Georgia resulting in the voluntary or involuntary payment of illegally and erroneously levied taxes.

92.

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 constituted license fees, from July 30, 2016 to the present the City of Savannah assessed and collected illegal license fees resulting in the voluntary or involuntary payment of illegally and erroneously assessed license fees.

93.

Under O.C.G.A. § 48-5-380, Named Plaintiff and the members of Refund Class 1 are entitled to refunds of all Water Tap-in Fees, the members of Refund Class 2 are entitled to refunds for all Sewer Tap-in Fees, the members of Refund Class 3 are entitled to refunds for all Reclaimed Water Fees Treatment Plant Fees, the members of Refund Class 4 are entitled to refunds for all Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees assessed and

collected from July 30, 2016 to present and the members of Refund Class 5 are entitled to a refund of all Treatment Plant Fees assessed and collected from July 30, 2016 to present. Accordingly, all illegal taxes levied and collected and/or all illegal license fees assessed and collected along with prejudgment interest must be refunded to Named Plaintiff and the members of the Refund Classes.

**COUNT III - VIOLATION OF UNIFORMITY REQUIREMENT, DUE PROCESS AND  
EQUAL PROTECTION**

94.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-93 as if set forth herein verbatim.

95.

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 constitute taxes, the City of Savannah levied and collected illegal taxes under the Utility Service Fee Ordinance from Named Plaintiff and members of the Refund Classes in violation of the constitutional and statutory requirements of uniformity and equalization.

96.

“All taxes shall be levied and collected under general laws and for public purposes only...[A]ll taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.” Ga. Const. Art. 7, § 1, ¶ III.

97.

The City of Savannah has violated the constitutional and statutory rights of Named Plaintiff and the members of the Refund Classes in violation of the due process and equal protection clauses of Article I, Section I, Paragraph I of the Constitution of the State of Georgia.

98.

Named Plaintiff and the members of the Refund Classes are entitled to a refund of all illegal taxes paid, whether voluntarily or involuntarily paid, and that were illegally and erroneously levied and collected in violation of the due process and equal protection clauses of the Constitution of the State of Georgia.

99.

Accordingly, all illegal taxes collected under the Utility Service Fees Ordinance must be refunded to Named Plaintiff and the members of the Refund Classes along with prejudgment interest.

**COUNT IV- ATTORNEY'S FEES FOR BAD FAITH AND STUBBORN  
LITIGIOUSNESS**

100.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-99 as if set forth herein verbatim.

101.

Defendant has acted in bad faith, been stubbornly litigious and has caused Named Plaintiff unnecessary trouble and expense, entitling Named Plaintiff to recover its costs of this litigation, including reasonable attorneys' fees and expenses pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, having filed this Verified Complaint Named Plaintiff prays that:

- a) That process issue and be served on Defendant in accordance with Georgia law;
- b) That Named Plaintiff and the Refund Classes recover all illegally assessed and collected 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 and Treatment Plant Fees from July 30, 2018 to present;



- c) That Named Plaintiff and the Refund Classes recover all illegally and erroneously levied taxes and/or recover all illegally and erroneously assessed license fees for July 30, 2016 to the present plus prejudgment interest as set forth above;
- d) That this Court enter an Order requiring Defendant to pay all of Named Plaintiff's attorney's fees and costs of litigation associated with this action; and
- e) That Named Plaintiff and prospective class members have all other and further relief deemed just and appropriate by this Court.

RESPECTFULLY SUBMITTED, this 30<sup>th</sup> day of August, 2022.

ROBERTS TATE, LLC

MANLY SHIPLEY, LLP

BY: /s/ James L. Roberts, IV

BY: /s/ John Manly

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ATTORNEYS FOR NAMED  
PLAINTIFF

ATTORNEYS FOR NAMED  
PLAINTIFF

**CERTIFICATE OF SERVICE**

I, James L. Roberts, IV, do hereby certify that, on this date, I served a copy of the within and foregoing NAMED PLAINTIFF'S FOURTH AMENDED VERIFIED CLASS ACTION COMPLAINT upon the following counsel of record by mailing a copy, postage prepaid to:

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This 30<sup>th</sup> day of August, 2022.

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