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Chatham County
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IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

DAMON L. AND SEBRELL E. SMITH,	)	
	)	
Plaintiffs,	)	
v.	)	Civil Action No. SPCV23-00211
	)	
CHATHAM COUNTY,	)	
	)	
Defendant.	)	

ORDER GRANTING CLASS CERTIFICATION

Currently pending before the Court is Named Plaintiffs' Second Amended Motion for Class Certification. Defendant does not oppose class certification based on the reasoning set forth in *Rice v. Fulton County*, 270 Ga. App. 353 (2024). A hearing on class certification was held on August 19, 2025. The facts relevant to class certification are not disputed by the parties and the parties agreed to submit deposition testimony for the Court's consideration on the issue of class certification. For the reasons set forth herein and based on the pleadings and evidence of record, Named Plaintiffs' Second Amended Motion for Class Certification is **GRANTED.**

INTRODUCTION AND FINDINGS OF FACT

This case is a refund action under O.C.G.A. § 48-5-380 (the "Refund Statute") arising from Defendant Chatham County, Georgia's ("Defendant" or the "County") levy and collection of Fire Fees under Chatham County Ordinance, Chapter 21, Article XII, Fire Protection Service Fee (the "Fire Fee Ordinance").[1]

Southside Communities Fire protection, Inc. d/b/a Chatham Emergency Services, Inc. ("CES"), historically provided fire protection service in certain areas of the unincorporated area of

[1] The Fire Fee Ordinance was amended on June 24, 2022 (the "June 2022 Amendment"), June 23, 2023 (the "June 2023 Amendment"), and again on September 22, 2023 (the "September 2023 Amendment"). The term "Fire Fee Ordinance" as used herein collectively refers to the original Fire Fee Ordinance, the June 2022 Amendment, the June 2023 Amendment, and the September 2023 Amendment.

Chatham County through a voluntary subscription program for those individuals and entities owning property serviced by CES. In or around 2020, CES expressed concerns about its continued ability to fund its fire service operations. In response, the County contracted with CES for its continued provision of fire protection services to much of the unincorporated areas of Chatham County and to fund such services, the County initially adopted a Fire Service Protection Tax on December 29, 2021. Shortly thereafter, however, the County repealed the tax on May 13, 2022, and instead adopted the Fire Protection Service Fee or Fire Fee Ordinance. The County then amended the Fire Fee Ordinance the very next month on June 24, 2022.

By and through the Fire Fee Ordinance and pursuant to Article IX, § II, ¶ VI of the Georgia Constitution, the County created the "Fire Service Area", a special service district consisting of those portions of the unincorporated areas of Chatham County, Georgia serviced by CES,[2] and agreed, through its contract with CES, to provide fire protection services within the Fire Service Area. To fund such services, the County implemented a charge known as the Fire Protection Service Fee (the "Fire Fee") and annually assessed such charge, between 2022 and 2024[3], against all parcels of real property in the Fire Service Area.[4] The Fire Fee was initially structured as a "combination of a flat fee for the land and a variable rate for the square footage of all structures" located thereon, "including mobile homes and ancillary structures outlined in §21-1213." *See* Plaintiffs' Motion for Class Cert., Ex. B at §§21-1205(5), 21-1213. Specifically, the Fire Fee included a flat fee of $100.00 on the land generally, no matter the size, nature, or characteristics of the property assessed, as well as an additional fee for all structures located thereon, the amount

[2] The "Fire Service Area" was originally defined as the special service district within unincorporated Chatham County where fire protection services are provided by Southside Communities Fire Protection Inc., d/b/a Chatham Emergency Services Inc. or "CES," as defined in the Service Delivery Strategy.

[3] The County has not assessed or collected the Fire Fee since its 2024 fiscal year.

[4] Only linear rights-of-way were completely exempted from the Fire Fee. Those properties including structures classified as a church or school did, however, receive a fifty percent (50%) discount.

of which increased in bracketed increments with the square footage of such structures. For instance, a property including a structure containing between 0.0001 and 499.99 square feet was assessed a flat fee of $100.00 and an additional $75.00 fee, and a property including a larger structure, such as one containing between 500 and 999.99 square feet, was assessed a flat fee of $100.00 and an additional $100.00 fee.[5] Pursuant to such formula, the County assessed its first Fire Fee and issued corresponding bills to the relevant property owners in November 2022 (the "2023 Fire Fee").

After assessing and collecting the 2023 Fire Fee, the County again revised the Fire Fee Ordinance on June 23, 2023. Most relevantly, the June 2023 Amendment changed the method by which the Fire Fee was calculated, removed the $100.00 flat fee assessed against the land generally, and steered away from the bracketed approach to calculating the Fire Fee charged on structures. Instead, the County opted to assess a flat fee of $100.00 on the unimproved/vacant parcels located in the Fire Service Area and a flat fee of $0.14 per square foot (with the minimum fee being $100.00) for all properties containing a "burnable structure", including the main structure and any ancillary structure listed in §21-12-13.[6] In accordance with such revised formula, the County assessed Fire Fees in 2023 and issued corresponding bills to the relevant property owners in September 2023 (the "2024 Fire Fee").

The Fire Fee and its flat, yet increasing rate, is intended "to allocate the cost of maintaining a constant state of availability, readiness and preparedness to provide fire protection services among the owners of property in the Fire Service Area in proportion to the demands of the

[5] Altogether, the Fire Fee Ordinance included eleven (11) square footage billing brackets ranging from 0.0001 square foot to 50,000+ square feet and placed a cap of $10,000 for structures containing 50,000 or more square feet or more. Accordingly, under the Fire Fee Ordinance, a large commercial warehouse, store, or residential apartment building consisting of more than, for example, 100,000 square feet was charged the same variable rate based on square footage as a building spanning 50,000 square feet.

[6] The June 2023 Amendment removed the cap of $10,000 for Fire Fees previously found in Section 21-1205(5)(b).

properties." *See* Plaintiffs' Motion for Class Cert., Ex. A-D at §21-1201(1)(g). Should a property owner fail to pay the Fire Fee when due, the Fire Fee Ordinance authorizes the County to assess the property owner "[a] late charge penalty of the greater of $25 or ten percent (10%) of the amount due", as well as all costs of collection, including attorney's fees and court costs; "collect[] [the Fire Fee] by any means allowed under law, including but not limited to filing suit to collect on an unpaid account and by using all methods allowed by Georgia law to collect on any judgment obtained thereby, including enforcement of any lien resulting from any such judgment"; and punish nonpayment through fines and community service.[7] *See* Plaintiffs' Motion for Class Cert., Ex. A-D at §§ 21-1208(2)(a)-(c), 21-1212(3).

The Fire Fee therefore has all the markings of an illegally assessed tax given its mandatory and flat rate nature, application against real property and the owners thereof based on their ownership of property, purpose of raising general revenue for fire protection services, and lack of any direct or special benefit that may inure to the payer or property taxed or the payer's contribution to the burden on the County. Named Plaintiffs, owners of real property located in the Fire Service Area and subject to the Fire Fee,[8] filed a Verified Class Action Complaint on or about February 21, 2023 and subsequent amendments, alleging that the Fire Fee is an illegal tax and asserting seeking tax refunds under the Refund Statute and attorney's fees for bad faith and

[7] Notably, the Fire Fee Ordinance initially stated that "[u]nless reduced to a judgment and a writ of fieri facias issued, the unpaid user fee charge shall not constitute a direct lien against the owner or the property." *See* Plaintiffs' Motion for Class Cert., Ex. A, Original Ordinance, at §21-1208(2)(a). Thus, the County could obtain a lien against a non-payer's property by filing a lawsuit, obtaining a judgment, and recording a writ of fieri facias. The County, however, amended the Fire Fee Ordinance in June 2023 to provide the County the alternative option of directly "plac[ing] a lien on the property with the Superior Court of Chatham County for the unpaid fee balance plus court costs and late charges." *See* Plaintiffs' Motion for Class Cert., Ex. C, June 2023 Amendment, at §21-1208(2)(a). The County again revised the Fire Fee Ordinance in September 2023 to remove the direct lien option but retained the ability to file a writ of fieri facias to enforce a judgment. *See* Plaintiffs' Motion for Class Cert., September 2023 Amendment, at §21-1208(2)(a).

[8] Named Plaintiffs' own that certain real estate located at 9104 Ferguson Avenue, Savannah, Georgia 31406, and were assessed and paid the 2023 Fire Fee in the amount of $400.00 and the 2024 Fire Fee in the amount of $527.24.

stubborn litigiousness.[9]

DISCUSSION

As set forth hereinafter the Court finds that certification of two (2) classes under O.C.G.A. § 9-11-23(b)(1) is proper. The classes certified are:

(1). All property owners in the Fire Service Area who were assessed and paid the 2023 Fire Fee to the County (the "2023 Class"); and

(2). All property owners in the Fire Service Area who were assessed and paid the 2024 Fire Fee to the County (the "2024 Class").

The 2023 Class and the 2024 Class are collectively referred to herein as the "Refund Classes".

"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). Thus, in order to certify a class, Named Plaintiffs must show that the putative class satisfies the four prongs of O.C.G.A. § 9-11-23 (a), which are: (1) numerosity, (2) commonality, (3) typicality, and (4) adequate representation. After meeting these factors, Named Plaintiffs must then "satisfy at least one of the three requirements of O.C.G.A. § 9-11-23(b) in order to show that class certification is appropriate." *Bowden v. Med. Center Inc.*, 309 Ga. 188, 193-194(1)(b), 845 S.E.2d 555 (2020). All such prerequisites and requirements are met in this case, rendering certification of the proposed classes proper.

The instant action is the prototypical case for class certification. The United States Supreme

[9] Since the filing of this lawsuit, the County elected to forgo the collection of any Fire Fees for its fiscal year 2025, terminated its service contract with CES, purchased certain fire apparatus and equipment from CES, and as it originally did in December 2021, adopted an ordinance providing for the collection of a Fire Protection Service Tax. Based on the County's change in policy and practice, Named Plaintiffs have abandoned their claims for injunctive and declaratory relief.

Court has noted that cases involving the governments' imposition of a tax are uniquely suited to class certification. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 614(1997). In fact, an exhaustive search of available reported decisions and unreported published decisions indicates the absence of any case seeking class certification regarding a taxing statute imposed by a city or county where the grant of class certification by a trial court was not upheld or denial of class certification by a trial court was not reversed by the appellate courts. *See Rice v. Fulton County,* 270 Ga. App. 353 (2024) (reversing trial court's denial of class certification as plain error in tax refund case alleging sales chasing); *Glynn County v. Coleman*, 334 Ga. App. 559 (2015) (affirming class certification in class action seeking refund for misapplication of local homestead exemption); *Barnes v. City of Atlanta*, 281 Ga. 256 (2006) (recognizing appropriateness of class certification of claims under Refund Statute); *Fulton County Bd. of Tax Ass'rs v. Marani*, 299 Ga. App. 489 (upholding class cert of class seeking equitable relief).

The present action satisfies the four prerequisites under O.C.G.A. § 9-11-23(a) for class certification. Again, such prerequisites are (1) **numerosity**—that the classes are 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 Named Plaintiffs are typical of the claims of the prospective class members; and (4) **adequacy of representation**—that Named Plaintiffs and class counsel will adequately represent the interests of the class. *See* O.C.G.A. § 9-11-23(a)(1)-(4) [10]; *Endochoice Holdings*, 351 Ga. App. at 215; *Liberty Lending Servs. v. Canada*,

[10] Since its enactment in 1966, Georgia courts have read O.C.G.A. § 9-11-23 to track 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."); *Georgia-Pacific Consumer Products, LP v. Ratner*, 295 Ga. 524, 525 n.3, 762 S.E.2d 419, 421 n.3 (2014) ("...when Georgia courts interpret and apply O.C.G.A. §9-11-23, they commonly look to decisions of the federal courts interpreting and applying [Federal] Rule 23.").

293 Ga. App. 731, 735-36, 668 S.E.2d 3 (2008).

1. Numerosity

The number of potential members comprising the proposed classes exceeds thirty-six thousand (36,000) for each year, satisfying the numerosity requirement. "In order to satisfy [the numerosity] requirement, the plaintiff 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 Mid South, Inc. v. Smart*, 710 S.E.2d 569, 574 (Ga. Ct. App. 2011) (citation omitted); *Cagle v. Portfolio Recovery Assocs.*, 2023 Ga. App. LEXIS 261 at *6 (June 7, 2023). "Additionally, the class simply must meet a minimum standard of definiteness which will allow the trial court to determine membership in the proposed class. *Id.* (citation and punctuation omitted). And while there is no minimum number of class members required to meet the requirements of O.C.G.A. §9-11-23(a)(1), the "impracticability of joinder is generally presumed if the class includes more than 40 members." *American Debt Foundation, Inc. v. Hodzic*, 312 Ga. App. 806, 809, 720 S.E.2d 283 (2011).

Indeed, if the number of members of a 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.

Here it is undisputed that the total number of prospective class members for the proposed classes exceeds thirty-six thousand (36,000) members.[11] Moreover, the proposed classes meet the

[11] The County's representatives, testifying at the County's 30(b)(6) deposition, confirmed that more than thirty-six thousand (36,000) persons and entities were billed and paid the Fire Fee in fiscal year 2023 and 2024. The County's representatives then went on to confirm that the identify of those billed and the amount paid can be readily determined from the County's records.

definite requirement as the potential class members are all those who paid the Fire Fee during 2023 and 2024 and can be readily identified from the records of Chatham County and, in fact, the potential class members have been identified in the exhibits to Named Plaintiff's Motion for Class Certification. Accordingly, the proposed classes meet the minimum standard of definiteness necessary to allow the trial court to determine membership in the proposed class, and 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 otherwise exist if these actions were brought separately. The numerosity requirement is therefore satisfied.

2. Commonality

Here, there are questions of law and fact common to Named Plaintiffs and the prospective class members. The issue in this case affecting Named Plaintiffs and all class members is whether the Fire Fee is a fee or tax. If it is a tax, it is illegal as it is a tax on real property that is non-ad valorem thus entitling Named Plaintiffs and prospective class members to tax refunds. It is well settled that commonality is "a relatively low bar" of proof and "even a single common question will do." *Doe v. Vest Monroe, LLC*, 368 Ga. App. 572, 576(2)(a), 890 S.E.2d 439 (2023) (citations and punctuation omitted). Still, it is the plaintiff's burden to show that "[t]here are questions of law or fact common to the class." O.C.G.A. § 9-11-23 (a) (2). To do so, a plaintiff cannot merely allege that all purported class members have suffered a violation of the same provision of law. Instead, the plaintiff must point to a "common contention" that each member of the class has suffered the same instance or course of wrongful conduct, the nature of which is "capable of class wide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Bowden*, 309 Ga. at 194-195, 845

S.E.2d 555 (citations and punctuation omitted). In truth, "[w]hat matters to class certification...[is] the capacity of a class wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 131 S. Ct. 2541 (2011) (citation and punctuation omitted; emphasis in original). Generally, this "requires the plaintiff to demonstrate that the class members have suffered the same injury." (Citation and punctuation omitted.) Bowden, 309 Ga. at 194 (1) (c), 845 S.E.2d 555.

Commonality is met in this case as the one and only determination sought in this lawsuit, *i.e.*, whether the Fire Fee is actually an illegal tax, is common to both Named Plaintiffs and the putative class members and may be answered on a class wide basis. *See* O.C.G.A. § 48-5-380 (providing that each county and municipality shall refund taxes "[w]hich are determined to have been erroneously or illegally assessed and collected from the taxpayers under the laws of this state or under the resolutions or ordinances of any county or municipality"). The answer to this question will not vary with each class member because it is binary – either the County's assessment and collection of the Fire Fee violated the law or it did not.[12] There are no differences in the facts to determine whether the Fire Fee is a tax or fee between Named Plaintiffs and class members.[13]

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[12] The County is in agreement, its agents having confirmed at the County's 30(b)(6) deposition that "if the fire fee is deemed to be a tax as to the named plaintiffs in this case, it would be deemed to be a tax as to everyone who paid"; that "the same questions to determine whether the fire fee is a fee or a tax for the named plaintiffs would be the same questions to determine whether it's a fee or a tax for everyone else who paid"; and that "[w]hether it's a fee or a tax comes down to the same exact issues for everyone". *See* Plaintiffs' Mtn. for Class Cert., Ex. N at p. 12-13.

[13] The County testified that:

Q: You would agree with me that, if the fire fee is deemed to be a tax as to named plaintiffs in this case, it would be deemed to be a tax as to everyone who paid?...

A: I suppose, yes.

Q: You would agree that the same questions to determine whether the fire fee is a fee or a tax for named plaintiffs would be the same questions to determine whether it's a fee or a tax for everyone else who paid?

A: Yes

Q: Whether it's a fee or a tax comes down the exact same issues for everyone?

A: Yes.

Id. at 12-13.

"Thus, a classwide proceeding in this case has the capacity to generate common answers that will drive the resolution of this litigation and renders a class action superior to other available methods for the fair and efficient adjudication of the controversy." *SunTrust Bank v. Bickerstaff*, 349 Ga. App. 794, 802, 824 S.E.2d 717 (2019). *See also Dukes*, 564 U.S. at 350.

Simply put, Named Plaintiffs allege that they and each member of the prospective classes suffered the same injury (erroneous or illegal taxation in violation of the Georgia Constitution) based upon the same instance of the County's injurious conduct (the assessment of a non-ad valorem, and therefore illegal, tax on real property disguised as a fee). Moreover, the amount of damages is already known if the Court determines that the Fire Fee is an invalid tax. If it is a tax, the damages are the Fire Fees paid. Additionally, there is no individualized issue of damages present in some class actions. *Doe*, 368 Ga. App. at 578, 890 S.E.2d 439 ("[T]he legal requirement that class members have all suffered the same injury can be satisfied by an instance of the defendant's injurious conduct, even when the resulting injurious effects — the damages — are diverse.") (citation and punctuation omitted). *See also Bickerstaff*, 349 Ga. App. at 802, 824 S.E.2d 717 ("[I]t is well established that the need for individual damage calculations does not defeat class certification, so long as the liability inquiry presented common legal issues.") (citation and punctuation omitted). Accordingly, Named Plaintiffs have met the bar of proving commonality under O.C.G.A. § 9-11-23(a)(2).

3. Typicality

Named Plaintiffs' claims are identical to the claims of the prospective class members, satisfying the typicality requirement. The typicality requirement of O.C.G.A. § 9-11-23(a) is satisfied upon a showing that the defendant "committed the same unlawful acts in the same method against an entire class." *Liberty Lending Servs. v. Canada*, 668 S.E.2d 3, 10 (Ga. Ct. App. 2008).

"The typicality test 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." *City of Roswell v. Bible*, 351 Ga. App. 828, 834, 833 S.E.2d 537, 544 (2019) (citation omitted). "This test is not demanding and is satisfied 'if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory.'" *Id.* (citing *Ault v. Walt Disney World Co.*, 692 F.3d 1212, 1216 (11th Cir. 2012)). Typicality therefore essentially measures whether a sufficient nexus exists between the claims of the named representatives and those of the class at large, and the class representative's claims are typical of the claims of the class if his claims and those of the class (1) arise out of the same event, pattern, or practice and (2) are based on the same legal theory. *See Buford v. H&R Block, Inc.*, 168 F.R.D. 340, 350 (S.D. Ga. 1996).

In the instant action, Named Plaintiffs' claims are typical of those of the prospective class members. Indeed, the class representatives' and the putative class members' claims, are based on the same legal theory—the alleged illegality of the Fire Fee as a non-ad valorem tax on real property—that arises from the same course of conduct that caused a similar injury—the County uniformly billing and collecting the Fire Fees from the class representatives and the putative class members—and the class representatives seek the same relief for themselves and the proposed class members—the invalidation of the Fire Fee and a refund of all taxes illegally assessed and collected as allowed by the Refund Statute.[14] There are no material differences between the types of relief sought or the liability theories upon which Named Plaintiffs are proceeding from those of the prospective class members. Moreover, the County agrees that there are no facts that would lead to a different outcome for Named Plaintiffs than the prospective class members. *See* Section 1

[14] Again, the County agrees. *See* FN 12, 13, *supra.*

hereinabove. If the Fire Fee is a tax, it is a non-ad valorem tax, the collection of which from Named Plaintiffs or the proposed class members would violate Georgia law entitling all payers thereof to a refund under the Refund Statute.[15] The typicality requirement is accordingly satisfied.

4. Adequacy of Representation

Named Plaintiffs and class counsel will adequately represent the interests of prospective class members. O.C.G.A. § 9-11-23(a) requires that Named Plaintiffs be able to adequately represent the class, and it applies to both Named Plaintiffs and class counsel. *See Amchem Products, Inc. v.Windsor*, 521 U.S. 591, 626 n.20, 117 S. Ct. 2231 (1997).[16] To satisfy this requirement, Named Plaintiffs must show (1) that their interests align with those of the class and that those interests are not antagonistic to or in conflict with the class, and (2) that they will vigorously protect the interests of the class. *See Liberty Lending Servs. v. Canada*, 293 Ga. App. 731, 739 (2008). Named Plaintiffs have confirmed their willingness and ability to vigorously protect the interests of the class and to take only actions in the best interests of the class as a whole. When determining whether a conflict exists between a named plaintiff and potential class members, "[c]onflicts that are merely speculative or hypothetical will not affect the adequacy inquiry."[17]. Moreover, any purported conflict that is not "manifest at the time of certification" but

[15] Acknowledging as much, the County Manager, Linda Cramer, testified at the County's 30(b)(6) deposition that if the Fire Fee Structure is illegal, it is illegal irrespective of any subjective desires of the individual class members. *See* Plaintiffs' Mtn. for Class Cert., Ex. N at p. 73.

[16] This requirement is intended to protect the legal rights of absent class members. *See Lewis v. Knology, Inc.*, 341 Ga. App. 86, 90–91, 799 S.E.2d 247, 250 (2017) (citing *London v. Wal-Mart Stores, Inc.*, 340 F.3d 1246, 1253 (IV) (C) (11th Cir. 2003)) ("Because all members of the class are bound by the res judicata effect of the judgment, a principal factor in determining the appropriateness of class certification is the forthrightness and vigor with which the representative party can be expected to assert and defend the interests of the members of the class."). Thus, where a plaintiff's "participation is so minimal that they virtually have abdicated to their attorneys the conduct of the case," the plaintiff is inadequate. *Lewis*, 341 Ga. App. at 90–91, 799 S.E.2d at 250 (citing *London*, 340 F.3d at 1254 (IV) (C)). *See also Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718, 727 (11th Cir. 1987) (trial court may properly deny class certification "where the class representatives had so little knowledge of and involvement in the class action that they would be unable or unwilling to protect the interests of the class against the possibly competing interests of the attorneys").

[17] § 3:58. Adequacy of class representative—Conflicts of interest, 1 Newberg and Rubenstein on Class Actions § 3:58 (6th ed.); 5 Moore's Federal Practice - Civil § 23.25 (2024).

is instead "dependent on some future event or turn in the litigation that might never occur" is not a sufficient conflict.[18] Rather, "[o]nly conflicts that are fundamental to the suit and that go to the heart of the litigation prevent a proposed class representative from meeting the Rule 23(a)(4) adequacy requirement."[19] Conflict is not considered fundamental when "all class members share ...the same factual and legal positions and have the same interest in establishing the liability of defendants." *Owens v. Metro. Life Ins. Co.*, 323 F.R.D. 411, 418 (N.D. Ga. Sept. 29, 2017) (quoting *Ward v. Dixie Nat'l Life Ins. Co.*, 595 F.3d 164, 180 (4th Cir. 2010)).

As for the adequacy of class counsel, Named Plaintiffs must show that their counsel is experienced and competent. *Jones v. Douglas Cnty.*, 262 Ga. 317, 323, 418 S.E.2d 19, 24 (1992) (citation omitted). The important aspects of adequate representation are therefore: (1) whether the Named Plaintiff's counsel is experienced and competent and (2) whether the class representatives' interests are antagonistic to those of the class. *See Endochoice Holdings*, 351 Ga. App. at 215.

The adequacy of representation requirement is satisfied here. Starting with the adequacy of counsel, James L. Roberts, IV, lead counsel for Named Plaintiffs and the purported class has extensive experience in tax law, property tax law, and litigation and has served as class counsel in numerous class and collective actions. Lead counsel specializes in property tax law and appeal, having handled tax appeals and refund matters for thousands of parcels in over 60 counties in the State of Georgia, Florida, Virginia, Alabama and North Carolina at the administrative, trial court, and appellate court levels. Lead counsel also regularly provides advice and counsel to clients on matters related to taxation and the valuation of property for taxation, exemption and special use

[18] § 3:58. Adequacy of class representative—Conflicts of interest, 1 Newberg and Rubenstein on Class Actions § 3:58 (6th ed.).

[19] *Id.*

valuation programs.[20] Roberts has been approved as class counsel in numerous class actions in the State of Georgia and has successfully litigated such actions through settlement, judgment and full administration.

Moving next to the adequacy of Named Plaintiffs, Named Plaintiffs' interest in this action are the same as the prospective class members- to establish the illegality of the Fire Fee and obtain refunds of all Fire Fees paid for the years at issue. The class representatives' and the putative class members' claims are based on the same legal theory—the invalidity of the Fire Fee—that arose from the same course of conduct that caused a similar injury—the County illegally assessing, billing, and collecting non-ad valorem taxes on real property in the form of Fire Fees—and the class representatives seek the same relief for themselves and the proposed class members—the invalidation of the Fire Fee and a refund of all taxes illegally assessed and collected as allowed by the Refund Statute. The County concedes that:

(1) It has no basis to contend that Named Plaintiffs cannot adequately represent the class;

(2) if the fire fee is a tax for Named Plaintiffs, it is a tax for everyone;

(3) the same questions determine whether the fire fee is a tax for Named Plaintiffs as prospective class members;

(4) everyone who paid the fire fee has an interest in enforcement of Georgia law.; and

(5) if Fire Fee declared invalid, Named Plaintiffs and all class members would receive refund, and the County cannot go back and retroactively impose a charge for 2023 or 2024 against them in another manner.

The only issue in this case is the illegality of the Fire Fee imposed by the County, and there

[20] For this lawsuit lead counsel is associating with John Manly, Esquire and James E. Shipley, Jr., Esquire of Manly Shipley, LLP. When asked whether the County contends that Roberts Tate, LLC and Manly Shipley, LLP are unqualified to serve as class counsel, County Manager Linda Cramer unequivocally responded, "No." *See* Plaintiffs' Motion for Class Cert., Ex N at p. 16.

is no fundamental conflict among the class members as to that issue. If it is determined to be a tax, Named Plaintiffs and all class members will receive refunds of the amounts paid without any ability of the County to retroactively impose a charge for 2023 and 2024 in a different manner. Each of the class members paid fees the County should not have collected and in this fundamental respect their claims are identical, consistent, and compatible. Thus, "all class members share common objectives and the same factual and legal positions and have the same interest in establishing the liability of [the County]." *Owens v. Metro. Life Ins. Co.*, 323 F.R.D. 411, 418 (N.D. Ga. Sept. 29, 2017) (quoting *Ward v. Dixie Nat'l Life Ins. Co.*, 595 F.3d 164, 180 (4th Cir. 2010)). Furthermore, Named Plaintiffs do not stand to benefit under any circumstances where the prospective class members they represent would not also benefit for the same reasons. The interests of Named Plaintiffs in this case are consequently aligned with the prospective class members, and Named Plaintiffs are suitable representatives and will adequately represent the class.[21]

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 O.C.G.A. § 9-11-23(b).

5. 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 appropriate 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.

[21] The County is in agreement. Indeed, when asked whether the County "ha[s] any basis to contend that named plaintiffs are not suitable to be class representatives" or otherwise "contend[s] that named plaintiffs cannot adequately represent – the class of people who paid fire fees", County Manager Linda Cramer answered, "No." *See* Plaintiffs' Mtn. for Class Cert., Ex. N at p. 15-16.

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).

Here, prosecution or the lack of prosecution of separate actions by prospective class members would create the risk of inconsistent or varying treatment and adjudication among the class as a whole. To begin, in the absence of class certification and ruling on the unlawful assessment of the Fire Fee under the Fire Fee Ordinance, the County will not be required to refund prospective class members for illegally and erroneously assessed and collected Fire Fees. Moreover, because of the relatively small amount of refund owed to each individual class member compared to the cost of litigation, it is unlikely that other prospective class members will pursue refunds of illegally and erroneously levied Fire Fees.[22] Such a practical impediment would result in the refund of Fire Fees 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 County to refund the Fire Fees to other potential class members. And more troubling, should Named Plaintiffs' claims end in an unfavorable outcome, such adverse result would, without question, be applied and heralded by the County in an effort to defeat any claims pursued by other prospective class members. Indeed, as a practical matter, the determination of the illegality of the fees assessed under the Fire Fee Ordinance and the refund owed to Named Plaintiffs would be determinative of the remedies available to all prospective class

[22] The County Auditor, Allen Cantrell, testified at the County's 30(b)(6) deposition that the billed Fire Fees ranged from $100 to $10,000. *See* Plaintiffs' Motion for Class Cert., Ex. N at p. 18. "[T]he amount at stake for each payor of the fire fee", the County representatives agreed, "makes it cost inefficient for those claims to be pursued individually". *Id.*

members and the County agrees.

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 Federal Rule of Civil Procedure 23(b)(1). *Amchem Products*, 521 U.S. at 614. Because the instant action involves an illegal tax uniformly applied to all prospective class members, certification is proper under O.C.G.A. §9-11-23(b)(1).[23]

SO ORDERED this 2nd day of Oct, 2025.

JOHN R. TURNER, SENIOR JUDGE
Presiding by Appointment

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[23] At the class certification hearing, counsel for Plaintiffs advised the Court that they do not seek certification under 23(b)(2) based on the County's abandonment of its fire fee practice, making declaratory or injunctive relief unnecessary. The Court finds additionally that certification of the Refund Classes would also be proper under 23(b)(3) for the reasons set forth in Named Plaintiffs' Motion; however, in light of the certification under 23(b)(1), certification under 23(b)(3) is not necessary.