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Clerk of Superior Court
Chatham County
Date: 11/1/2023 5:09 PM
Reviewer: AB

IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

ROBERT E. ANDERSON,	)	
	)	
	)	
	)	
Plaintiff,	)	**CIVIL ACTION NO. SPCV21-01165-CO**
	)	
v.	)	
	)	
	)	
CHATHAM COUNTY	)	
	)	
Defendant.	)	

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

Plaintiff Robert E. Anderson ("Named Plaintiff") files this Memorandum of Law in Support of First Amended Motion to Certify Suit as Class Action (the "Motion"). In support of its Motion, Named Plaintiff shows the Court as follows:

I. Statement of Facts

A. Valuing Agricultural Parcels for Ad Valorem Tax Purposes

Named Plaintiff filed a Verified Class Action Complaint (the "Complaint") on November 5, 2021 and an Amended Complaint on October 17, 2023. This case involves class action claims based on Defendant Chatham County (the "Defendant" or the "County") assessing and collecting illegal taxes based on the County's failure to comply with Title 48 of the Official Code of Georgia and the Georgia Appraisal Procedures Manual (the "GAPM") and, for agricultural parcels enrolled in the Forest Land Protection Act ("FLPA") or the Conservation Use Valuation Assessment program ("CUVA"), for failure to comply with O.C.G.A §48-5-7.7 (the "FLPA Statute") and O.C.G.A. §48-5-7.4 (the "CUVA Statute") and the regulations promulgated thereunder.

As of January 1, of each year from 2016 through 2020, Named Plaintiff owned the real property in Chatham County, Georgia designated by Chatham County Tax Parcel No. 5101102038 (the "Subject Parcel"). The Subject Parcel is classified as an agricultural tract.

Parcels, such as the Subject Parcel, that are classified as agricultural tract must be valued for ad valorem purposes as large tract agricultural land under the statutes and rules set forth in Title 48 of the Official Code of Georgia and the Rules and Regulations of the Georgia Department of Revenue (the "DOR") as provided in the GAPM. See O.C.G.A. § 48-5-297; Ga. Comp. R. & Regs. 560-11-10-.09(3).

The GAPM provides rules that the County Board of Assessors (the "BOA") must follow for valuing large agricultural tracts such as the Subject Parcel. See O.C.G.A. § 48-5-269.1; Ga. Comp. R. & Regs. 560-11-10-.01; Ga. Comp. R. & Regs. 560-11-10-.09. Under the GAPM the valuation process is a multi-step process.

The County BOA is required under the GAPM to prepare and use base land schedules for the valuation of the Subject Parcel and those similarly situated. The GAPM provides "[t]he appraisal staff shall determine the small acreage break point to differentiate between small acreage tracts and large acreage tracts and develop or acquire schedules for the valuation of each. … The base land schedules should be applicable to all land types in a country. The documentation prepared by the appraisal staff should clearly demonstrate how the land schedule is applied and explain its limitations." Ga. Comp. R. & Regs. 560-11-10-.09(3)(b).

In preparing the large tract valuation schedule, the County's appraisal staff "shall … analyze the sales to establish a representative benchmark price per acre, and adjustment values for reflecting incremental value associated with different productivity levels, sizes, and locations, as discovered in the site analysis. Using such benchmark values and adjustment values, the appraisal

staff shall develop the large acreage schedule for all acreage levels above the small break point." Ga. Comp. R. & Regs. 560-11-10-.09(3)(b)(2).

Fundamental in the valuation process is the proper analysis and verification of the sales to be utilized in valuing large acreage parcels. See Ga. Comp. R. & Regs. 560-11-10-.09(3)(a)(2). Information to be gathered by the County BOA in connection with sales used in the valuation process specifically includes "the motivations of the buyer and seller, as obtained from actual interviews of the parties to the sales." Ga. Comp. R. & Regs. 560-11-10-.09(3)(a)(2). Determining the motivations of the buyer and seller must be sought, in part, to determine the use intended for the property by the purchaser. For example, property purchased for an intended future use other than agricultural land should be used in valuing agricultural land. Similarly, property purchased for an intended future use other than timberland land should be used in valuing timberland land.

From the properly verified sales, "benchmark" or "base" values for each subclass of large acreage tracts, *i.e.*, open land, transitional/development land, orchard land, and timberland (woodlands), and adjustment values as calculated by the County's BOA are to be used in valuing large acreage in the County. See Ga. Comp. R. & Regs. 560-11-10-.09(3)(b)(2).

It is imperative that the BOA properly establish the base values because these values will be used as the foundation for the valuation of all large acreage tracts. The base values developed must be based on accurate bare land sales prices. See Ga. Comp. R. & Regs. 560-11-10-.09(3)(b)(2)(i). Therefore, before using the sales identified to develop the base values and adjustment values, the County BOA must extract the value of all improvements and standing timber from the sales to derive the bare land value. See Ga. Const. Art. VII, Sec. I, Par. III(e)(2) (prohibiting standing timber from assessment more than once and requiring that such assessment be made after sale or harvest); Ga. Comp. R. & Regs. 560-11-10-.09(3)(b)(2)(i) and (v). The value

of all merchantable timber, both pine and hardwood and planted and natural, and all pre-merchantable planted and natural pine timber five (5) years or older must be determined and subtracted from the sales price. See Ga. Comp. R. & Regs. 560-11-10-.09(3)(b)(2)(v).

The base land values are to be "further stratified into up to nine productivity grades for each category of land, with grade one being the best, using the productivity classification of the United States Department of Agriculture National Resources Conservation Service, where available." Ga. Comp. R. & Regs. 560-11-10-.09(3)(b)(2)(i). Then the County's BOA is to "analyze sales within the strata and determine benchmark values for as many productivity grades as possible. The missing strata values are then determined by extrapolating between grades." Id.

Individualized location adjustments called accessibility and desirability factors which may have affected the sales price are also to be developed based on analysis of sales being used in the valuation. See Ga. Comp. R. & Regs. 560-11-10-.09(3)(b)(2).

The sales used in the valuation are also analyzed and size adjustment factors developed to reflect the relationship between the value per acre and the number of acres. See Ga. Comp. R. & Regs. 560-11-10-.09(3)(b)(2)(iii). Sales used in the valuation are also to be analyzed and adjustment factors developed to reflect the relationship between the value per acre and the number of acres. Id.

Additionally, for agricultural tracts enrolled in FLPA or CUVA, the County is required to value such properties in accordance with the requirements of the FLPA and CUVA Statutes and the regulations promulgated thereunder. Ga. Comp. R. & Regs. 560-11-11-.12(1)(i) addresses the valuation of parcels enrolled in FLPA and dictates that "[f]or the purpose of prescribing the … current use values for conservation use land, the state shall be divided into the following nine Forest Land Protection Act Valuation Areas (FLPAVA 1 through FLPAVA9) and … [a] table of

per acre land values shall be applied to each acre of qualified land within the FLPAAVA for each soil productivity classification for timber land (W1 through W9) …".

Ga. Comp. R. & Regs. 560-11-6-.09(1)(i) addresses the valuation of parcels enrolled in CUVA and dictates that "[f]or the purpose of prescribing the … current use values for conservation use land, the state shall be divided into the following nine Conservation Use Valuation Areas (CUVA 1 through CUVA 9) and … [a] table of per acre land values shall be applied to each acre of qualified land within the CUVA for each soil productivity classification for timber land (W1 through W9) …".

Soil maps and information indicating the nine (9) soil classifications identified in the GAPM were available for the Subject Parcel and for the parcels of the prospective class members for 2016 through 2020. Despite the existence of these soil maps and other information indicating nine (9) soil classes for the Subject Parcel and for the parcels of the prospective class members, tax bills were issued for 2016 through 2020 based on values using the incorrect soil classification and productivity classes. Property tax bills must be based on values that satisfy the constitutional and statutory requirements of uniformity and equalization.

B. <u>The County Failed to Comply with the Law in Valuing Agricultural Parcels</u>

The County failed to comply with Title 48 of the Official Code of Georgia and the GAPM in the following ways.[1] The County failed to develop and utilize the required large acreage tract

[1] Named Plaintiff is including a discussion regarding its allegations of why the County failed to comply with Title 48 of the Official Code of Georgia, the GAPM and/or the FLPA and CUVA Statutes solely for the purpose of fully understanding the claims raised by Named Plaintiff. However, for purposes of deciding Named Plaintiff's instant Motion and the propriety of class certification, the first issue to be resolved is <u>not</u> whether Named Plaintiff has stated a cause of action or whether Named Plaintiff will ultimately prevail on the merits, but instead the Court must determine if the requirements for class certification under O.C.G.A. §9-11-23(a) have been met. <u>See</u> <u>Glynn County v. Coleman, et al</u>, 334 Ga. App. 559, 561, 779 S.E.2d 753, 755, <u>cert. denied</u>, 2016 Ga. LEXIS 189 (Feb. 22, 2016) ("the first issue to be resolved is not whether the plaintiffs

valuation schedule. See Ga. Comp. R. & Regs. 560-11-10-.09(3)(b)(2). The County failed to develop and utilize base values as required by the GAPM. Id. The County failed to develop and utilize accessibility and desirability schedules as required by the GAPM. See Ga. Comp. R. & Regs. 560-11-10-.09(3)(b)(2)(iv). The County failed to develop and utilize size adjustments as required by the GAPM. See Ga. Comp. R. & Regs. 560-11-10-.09(3)(b)(2)(iii). The County failed to remove all timber and improvement values in order to determine the true bare land value for all sales used to determine base values. See Ga. Const. Art. VII, Sec. I, Par. III(e)(2); Ga. Comp. R. & Regs. 560-11-10-.09(3)(b)(2)(i) and (v). The County failed to verify sales that were used to value the Subject Parcel and those similarly situated in order to determine the intended property use. See Ga. Comp. R. & Regs. 560-11-10-.09(3)(a)(2). That is, the County failed to value the Subject Parcel and those similarly situated based on existing use. See O.C.G.A. § 48-5-2(3). The County failed to develop and utilize productivity grades for valuation of the Subject Parcel and those similarly situated. See Ga. Comp. R. & Regs. 560-11-10-.09(3)(b)(2)(i).

The County issued tax bills properties enrolled in FLPA and CUVA based on incorrect soil classifications and productivity mandated by the FLPA and CUVA Statutes. Property tax bills must be based on values that satisfy the constitutional and statutory requirements of uniformity and equalization.

The issuance of tax bills for the Subject Parcel based on values derived using incorrect soil delineation and soil productivity classes results in a lack of uniformity and equalization resulting in the illegal taxation and violates the plain language of the FLPA and CUVA Statutes and the

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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." (Citations and punctuation omitted)). Simply put, merit-based disputes are not ripe for resolution at the class certification stage. See Village Auto Ins. Co. v. Rush, 286 Ga. App. 688, 649 S.E.2d 862 (2007), cert. denied, 2008 Ga. LEXIS 72 (Jan. 7, 2008).

regulations promulgated thereunder, all of which result in the erroneous, illegal and unconstitutional taxation of property. The County's issuance of tax bills for 2016 through 2020 based on values which were not derived in compliance with the FLPA and CUVA Statutes has resulted in the overpayment of ad valorem taxes by prospective class members and the collection by the County of illegal and erroneous taxes.

These fatal flaws in the County's valuation process have rendered the valuation of the Subject Parcel and those similarly situated invalid. See Rayonier Forest Resources, LP v. Wayne County Board of Tax Assessors, Wayne County Superior Court, Civil Action No. 09CV0876-09CV0921, Order filed March 22, 2012 (fatal flaws in valuation process rendered valuation of parcels invalid); Rayonier Forest Resources, LP v. Wayne County Board of Tax Assessors, Court of Appeals of Georgia, Docket Numbers A12A2561 and A12A2562, Order filed March 7, 2013 (same); Altamaha Bluff, LLC, et al v. Thomas, et al., Wayne County Superior Court, Civil Action No. 14CV0376, Order filed June 29, 2018 (same); Thomas, et al. v. Altamaha Bluff, LLC, et al., Court of Appeals of Georgia, Docket Number A19A0481, Order filed July 2, 2019 (same); and Toledo Manufacturing Co., et al v. Everett et al., Superior Court of Chatham County, Civil Action No. SUCV201900232, Order filed on November 12, 2020 (same).

The County's failure to comply with Title 48 of the Official Code of Georgia, the GAPM and/or the FLPA and CUVA Statutes has resulted in valuations for the Subject Parcel and those similarly situated that lack fair market value and lack uniformity and equalization and result in the erroneous, illegal and unconstitutional taxation of Named Plaintiff's property and the properties of those similarly situated. Therefore, Named Plaintiff and the prospective class members are entitled to refunds for the illegally assessed and collected taxes under O.C.G.A. § 48-5-380 (the "Refund Statute").

II. Class Defined and Relief Sought

A. Class Defined

Named Plaintiff seeks certification of five (5) classes.

(1) The first class consists of taxpayers similarly situated who, like Named Plaintiff, own agricultural parcel(s) in Chatham County, Georgia as of January 1, 2016 and who were issued tax bills in 2016 by and paid taxes to Chatham County (hereinafter the "2016 Class");

(2) The second class consists of taxpayers similarly situated who, like Named Plaintiff, own agricultural parcel(s) in Chatham County, Georgia as of January 1, 2017 and who were issued tax bills in 2017 by and paid taxes to Chatham County (hereinafter the "2017 Class");

(3) The third class consists of taxpayers similarly situated who, like Named Plaintiff, own agricultural parcel(s) in Chatham County, Georgia as of January 1, 2018 and who were issued tax bills in 2018 by and paid taxes to Chatham County (hereinafter the "2018 Class");

(4) The fourth class consists of taxpayers similarly situated who, like Named Plaintiff, own agricultural parcel(s) in Chatham County, Georgia as of January 1, 2019 and who were issued tax bills in 2019 by and paid taxes to Chatham County (hereinafter the "2019 Class"); and

(5) The fifth class consists of taxpayers similarly situated who, like Named Plaintiff, own agricultural parcel(s) in Chatham County, Georgia as of January 1, 2020 and who were issued tax bills in 2020 by and paid taxes to Chatham County (hereinafter the "2020 Class"). The 2016 Class, the 2017 Class, the 2018 Class, the 2019 Class and the 2020 Class are collectively referred to herein as the "Refund Classes."

Class members are readily identifiable from the County's records, including but not limited to, the County Tax Assessor parcel GIS database information, the Tax Digest and other public records of the County. From these records and other records maintained by the County, the class

members can be identified and the data necessary to compute the refund owed to each prospective class member can be determined.

B. Relief Sought

Named Plaintiff on behalf of himself and prospective class members seek a refund of all erroneously and illegally levied taxes or voluntarily or involuntarily over paid taxes pursuant to the Refund Statute, plus prejudgment interest.

III. Argument and Citation of Authority

The claims asserted by Named Plaintiff on behalf of himself and potential class members satisfy the requirements for class certification and represent precisely the types of claims class treatment is intended to address. Accordingly, the Court should certify the class action under O.C.G.A. §9-11-23(b)(1), (2) and (3).

In determining the propriety of a class action, the Court must determine whether the requirements of O.C.G.A. §9-11-23(a) and one of the requirements under O.C.G.A. §9-11-23(b) have been met. See Atlanta Postal Credit Union v. Holiday, et al., 367 Ga. App. 168, 175-76, 885 S.E.2d 196, 205 (2023); Ansley Walk Condominium Association, Inc., et al. v. The Atlanta Development Authority d/b/a/ Invest Atlanta et al., 362 Ga. App. 191, ___, 867 S.E.2d 600, 603 (2021); City of Roswell v. Bible, et al., 351 Ga. App. 828, 829, 833 S.E.2d 537, 541 (2019); Diallo v. American InterContinental Univ., 301 Ga. App. 299, 300, 687 S.E.2d 278 (2009). "In determining the priority of a class action, the first issue to be resolved is not whether the plaintiffs have stated a cause of action or may ultimately prevail on the merits[,] but whether the requirements of O.C.G.A. §9-11-23(a) have been met." Endochoice Holdings, Inc. et al v. Raczewski, et al., 351 Ga. App. 212, 215, 830 S.E.2d 597, 601 (2019) (internal citation omitted).

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

The present action satisfies the four prerequisites under O.C.G.A. §9-11-23(a) for class certification. Those prerequisites are (1**) numerosity**—that the 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 the Named Plaintiff is typical of the claims of the prospective class members; and (4) **adequacy of representation**—that the Named Plaintiff and class counsel will adequately represent the interests of the Refund Classes. See O.C.G.A. §9-11-23(a)(1)-(4). See also Endochoice Holdings, 351 Ga. App. at 215; Liberty Lending Servs. v. Canada, 293 Ga. App. 731, 735-36, 668 S.E.2d 3 (2008).

1. Numerosity

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

[2]Since its enactment in 1966 Georgia courts have read O.C.G.A. §9-11-23 to track the federal Rule 23 and in 2003 O.C.G.A. §9-11-23 was modified to actually conform to the federal rule. Thus, Georgia courts rely on federal cases interpreting Federal Rule 23 when interpreting O.C.G.A. §9-11-23. See Sta-Power Indus., Inc., v. Avant, 134 Ga. App. 952-953 (1975) ("Since there are only a few definitive holdings in Georgia on [O.C.G.A. §9-11-23], we also look to federal law to aid us."). See also Georgia-Pacific Consumer Products, LP v. Ratner, 295 Ga. 524, 525 n.3, 762

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

The Georgia Court of Appeals has specifically acknowledged that courts have found that the numerosity requirement has been met with as few as twenty-five (25), thirty-five (35) or forty (40) members. See Stevens v. Thomas, 257 Ga. 645, 649, 361 S.E.2d 800, 803 (1987) (noting that "[a] class consisting of as few as 25 persons has been found to be sufficiently numerous to maintain a class action."); Sta-Power Industries, Inc., 134 Ga. App. at 955-56 (finding that 253 potential class members satisfied the numerosity requirement) (citing Philadelphia Elec. Co. v. Anaconda Am. Brass Co., 43 F.R.D. 452 (E.D.Pa.1968), Fidelis Corp. v. Litton Ind., Inc., 293 F. Supp. 164 (S.D.N.Y.1968), and Swanson v. American Consumer Industries, Inc., 415 F.2d 1326 (7th Cir. 1969).

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

Upon information and belief, the total number of prospective class members for the proposed classes exceed 200 members. And upon information and belief, because many, if not

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.").

most, of the prospective class members are entitled to refunds for multiple years, the total number of prospective class members is even higher.

Courts in the Eleventh Circuit generally find that less than twenty-one (21) members is inadequate but more than forty (40) members is adequate to meet the numerosity requirement. See In re Checking Account Overdraft Litigation, 275 F.R.D. at 651. See also Atlanta Postal Credit Union, 376 Ga. App. at 176 (and cases cited therein). Significantly, "[p]arties seeking class certification do not need to know the precise number of class members but they must make reasonable estimates with support as to the size of the proposed class." Id. The Georgia Court of Appeals explained that plaintiffs "need not allege the exact number and identity of the class members, but must only establish that joinder is impracticable through some evidence or reasonable estimate of the number of purported class members." Smart, 308 Ga. App. at 903 (internal citation and punctuation omitted).

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

2. Commonality

Questions of law and fact common to the Named Plaintiff and prospective class members predominate over any individual questions thus satisfying the commonality requirement. A class action is authorized if the members of the class share a common right and common questions of law or fact predominate over individual questions of law or fact. See Fortis Ins. Co. v. Kahn, 299 Ga. App. 319, 322, 683 S.E.2d 4 (2009). "The commonality requirement does not require that all questions of law and fact be common to every member of the class. Rather, the rule requires only that a single question of law and fact be common to every member of the class. Brenntag, 308 Ga. App. at 903-904. See also Schultz v. Emory University, 2023 WL 4030184 (N.D. Ga. Jun. 15, 2023) appeal filed (11th Cir. Sept. 7, 2023) (Commonality "requires the plaintiff to demonstrate that the class members have suffered the same injury.") (Internal citations omitted). Moreover, minor variations in amount of damages . . . do not destroy the class where legal issues are common." Kahn, 299 Ga. App. at 325 (citations omitted).

Here, the outcome of the litigation turns on one common legal issue applying to Named Plaintiff and to all prospective class members – whether the County failed to comply with Title 48 of the Official Code of Georgia and the GAPM and/or the FLPA and CUVA Statutes in valuing agricultural tracts for ad valorem tax purposes. Moreover, because the County valued all agricultural tracts of the Refund Classes in the same manner for ad valorem tax purposes, the resolution of that common legal issue will result in a determination of whether the class members are also entitled to refunds. The uniform failure to comply with Title 48 of the Official Code of Georgia, the GAPM and/or FLPA and CUVA Statutes in valuing agricultural tracts indicates that common issues of fact as to Named Plaintiff and the prospective class members are substantial and predominate over any individual claims.

3. Typicality

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

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

Typicality measures whether a sufficient nexus exists between the claims of the named representatives and those of the class at large. See Brenntag, 308 Ga. App. at 904. The Southern District of Georgia found that a strong similarity of legal theories will satisfy the typicality requirement despite substantial factual differences. See Buford v. H&R Block, Inc., 168 F.R.D. 340, 350 (S.D. Ga. 1996) (citing Fed. R. Civ. P. 23(a)(3) which mirrors O.C.G.A. § 9-11-23(a)(3)). Essentially, the class representative's claim is typical of the claims of the class if his claim and those of the class (1) arise out of the same event, pattern, or practice and (2) are based on the same legal theory. Id.

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

involve the same basic elements and are based on the same legal theories. The Named Plaintiff and all prospective class members were illegally assessed and paid taxes on their agricultural tracts that were not authorized by the Georgia Constitution or by Georgia law.

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

4. Adequacy of Representation

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

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

The facts of this case satisfy the adequacy of representation requirement. First, James L. Roberts, IV, lead counsel for Named Plaintiffs and the purported class has extensive experience in tax law and property tax law and litigation and has served as class counsel in numerous class and collective actions. See Affidavit of James L. Roberts, IV, at ¶¶5-6 attached to the Motion as Exhibit "A". Lead counsel specializes in property tax law and appeals having handled tax appeals and refund matters for thousands of parcels in over 60 counties in the State of Georgia as Florida,

Virginia, Alabama and North Carolina at the administrative, trial court, and appellate court levels. Id. at ¶6. Lead counsel also regularly provides advice and counsel to clients on matters related to taxation and to the valuation of property for taxation, exemption and special use valuation programs. Id. at ¶7. For this case, lead counsel is associating with the law firm of Manly Shipley, LLP. Id. at ¶8. John B. Manly, Esquire, of Manly Shpley, LLP has extensive experience in tax law and property tax law and litigation and has served as class counsel in other class actions. See Affidavit of John B. Manly attached to the Motion as Exhibit "B".

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

B. Class certification is proper under O.C.G.A. §9-11-23(b)(1), (b)(2) and (3).

Once the prerequisites for class certification have been satisfied, the Court must determine whether the proposed action satisfies one of the three categories set forth under 9-11-23(b). Here, certification is proper under O.C.G.A. § 9-11-23(b)(1), (2) and (3).

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

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

> [t]he prosecution of separate actions by or against individual members of the class would create a risk of [i]nconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class or [a]djudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

O.C.G.A. § 9-11-23(b)(1).

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

Here, prosecution or the lack of prosecution of separate actions by prospective class members would create the risk of inconsistent or varying treatment and adjudication among the class as a whole. To begin, in the absence of class certification and ruling on the unlawful assessment of taxes on agricultural tracts, the County would not be required to refund prospective class members for illegally and erroneously assessed and collected taxes.

Moreover, because of the relatively small amount of refund owed compared to the cost of litigation, it is unlikely that other prospective class members would pursue refunds of illegally and erroneously assessed taxes. Such a practical impediment would result in the refund of illegally assessed taxes to Named Plaintiff and some prospective class members pursuing their own actions while other prospective class members who present the same factual and legal issues would not. Even if Named Plaintiff prevails, in the absence of class certification there is no mechanism requiring the County to refund the illegally assessed taxes to other potential class members.

On the contrary, an adverse outcome would, without question, be applied and heralded by the County in an effort to defeat claims by other prospective class members. As a practical matter, the determination of the illegality of the taxes assessed and the refund owed to Named Plaintiff would be determinative of the remedies available to all prospective class members.

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

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

Certification is appropriate under O.C.G.A. §9-11-23(b)(2). A class should be certified under (b)(2) if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." O.C.G.A. § 9-11-23(b)(2).

The Georgia Court of Appeals has held that

> [i]n determining whether class certification under (b)(2) is appropriate, the court should not focus 'on the subjective intentions of the class representatives and their counsel in bringing suit'- i.e., it should not focus on whether the primary motive for the litigation was the recovery of money. Rather, the relevant questions are whether members of the proposed class would benefit from the injunctive relief sought and whether any monetary relief is incidental to the injunctive relief.

Resource Life Ins. Co. v. Buckner, 304 Ga. App. 719, 733, 698 S.E.2d 19 (2010), citing In re Monumental Life Ins. Co., 365 F. 3d 408, 415-416 (5th Cir. 2004). The Court continued that

> [t]he mere fact that putative (b)(2) prospective class members seek monetary damages in addition to equitable relief does not automatically mean that those damages are the predominate relief sought. Rather, monetary relief is incidental to injunctive and declaratory relief where damages are "capable of computation by means of objective standards and not dependent in any significant way on the intangible, subjective differences of each class member's circumstances.

Id. (Internal citations omitted).

Here the monetary damages are incidental to the equitable relief sought. In Resource Life, the Georgia Court of Appeals upheld the grant of class certification under (b)(2) where the

prospective class members in addition to declaratory and injunctive relief sought monetary damages in the form of excess premiums paid and interest owed thereon. Resource Life 304 Ga. App. at 733-734. The court stated that monetary relief is incidental to injunctive and declaratory relief where damages are capable of computation by means of objective standards and not dependent in any significant way on intangible, subjective differences of each class members' circumstances. In upholding the class under (b)(2), the court noted the calculation of damages is "merely a matter of plugging certain data into a predetermined, mathematical formula" making individual damages hearings were unnecessary. Id. at 734.

Similarly, in this matter once it is determined whether the City acted illegally in the assessment, billing and collection of the ad valorem taxes for agricultural tracts, calculating the refund owed for each class member will simply be a matter of determining the amount of the taxes paid using the County's records and computer programs, calculating the amount of taxes that should have been paid based on the schedules Gregg Reese completed for the County in 2021 (the "Resse Schedules") and refunding the difference to Named Plaintiff and prospective class members. Accordingly, certification is proper under O.C.G.A. §9-11-23(b)(2).

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

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

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

A plaintiff may satisfy the predominance requirement by showing that "issues subject to class-wide proof predominate over issues requiring proof that is unique to the individual prospective class members." Brenntag Mid South, Inc., 308 Ga. App. at 906 citing In re Tri-State

Crematory Litigation, 215 F.R.D. 660 (N.D. Ga. 2003). "Where the Defendant's liability can be determined on a class-wide basis because . . . of a single course of conduct which is identical for each of the plaintiffs, a class action may be the best suited vehicle to resolve such a controversy." Id. (quoting Sterling v. Velsicol Chemical Corp., 855 F.2d 1188, 1197 (6th Cir. 1988)). See also Bible, 833 S.E.2d at 542.

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

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

Bible, 833 S.E.2d at 543 (internal citations omitted). Additionally, individual damage determinations will not defeat class certification as long as there are common legal issues. EarthLink, Inc. v. Eaves, 293 Ga. App. 75, S.E.2d (2008). Common issues are said to predominate if "they have a direct impact on every class member's effort to establish liability." Rollins, Inc. v. Warren, 288 Ga. App. 184, 186-187, 666 S.E.2d 420 (2007). In the instant action, liability can be determined on a class wide basis. If the ad valorem taxes assessed on the agricultural tracts were illegally assessed to Named Plaintiff, then the same is true for prospective class members.

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

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

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

Id. at 257 (emphasis added).

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

Similar to Barnes I and Coleman, here, Named Plaintiff seeks certification of classes who have been uniformly subjected to illegal taxes in violation of the Georgia Constitution and Georgia law. Accordingly, common issues predominate.

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

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

> (A) [t]he interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) [t]he extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) [t]he desirability or undesirability of concentrating the litigation of the claims

> in the particular forum; and (D) [t]he difficulties likely to be encountered in the management of a class action.

O.C.G.A. § 9-11-23(b)(3).

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

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

> that the damages for each class member are likely to be relatively small making it unlikely that other prospective class members would have a strong interest in controlling the litigation themselves. And it is unlikely that counsel could be found to pursue such relatively minor claims on an individualized basis so that economic reality dictates that petitioner's suit proceed as a class or not at all. . . There is simply no need to burden either the court system or the individual prospective class

> members by requiring each member of the class to pursue his or her own action to recover a relatively small amount of damages.

308 Ga. App. at 907.

Here, the facts and claims presented are uniquely appropriate for class certification. Similar to Brenntag, the amount of the claims for the vast majority of prospective class members are far less than the cost of litigating the matter. Based on information and belief, the prospective class members' refund claims range from a few hundred dollars to thousands of dollars. Given the costs of litigation, few, if any, of these refund claims, would be economical to pursue outside of the class framework. Moreover, upon information and belief, the number of claims if pursued by all prospective class members would be in the hundreds, if not more, burdening the Superior Court of Chatham County. As has been held by the Georgia Supreme Court in Barnes I and the Georgia Court of Appeals in Coleman, class actions for tax refunds based on a uniformly applied statute are appropriate. Barnes II, 276 Ga. at 451-452; Coleman, 334 Ga. App. at 564. Further, citing Barnes II with approval as an example of an appropriate representative action, the Georgia Supreme Court has stated that "the modern class action is designed to avoid, rather than encourage, unnecessary filing of repetitious papers and motion." Schorr v. Countrywide Home Loans, Inc., 287 Ga. 570, 572, 697 S.E.2d 827 (2010) (citations and punctuation omitted). As a result, class treatment is the vastly superior method for addressing the claims of prospective class members and the Refund Classes should be certified under O.C.G.A. § 9-11-23(b)(3).

Conclusion

Named Plaintiff has demonstrated that the facts of this case satisfy the numerosity, commonality, typicality, and adequate representation requirements under O.C.G.A. § 9-11-23(a). Furthermore, class certification should be granted under O.C.G.A. § 9-11-23(b)(1), O.C.G.A. § 9-11-23(b)(2) and under 9-11-23(b)(3). Named Plaintiff has also demonstrated that it will fairly and

adequately protect the interests of the Refund Classes and that the law firms of Roberts Tate LLC and Manly Shipley, LLP will adequately represent the interests of the Refund Classes as Class Counsel. Therefore, Named Plaintiff respectfully requests that its motion for class certification be granted.

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

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CERTIFICATE OF SERVICE

I, James L. Roberts, IV, of Roberts Tate, LLC attorneys for Plaintiff Steven Schreck do hereby certify that, on this date, I served a copy of the foregoing PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF FIRST AMENDED MOTION TO CERTIFY SUIT AS CLASS ACTION to counsel of record for all parties by hand delivering a copy of the same and delivering via statutory electronic service to:

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This 1st day of November, 2023.

/s/ James L. Roberts, IV
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