

*September 15, 2023*  
*Francis Smith*  
Dep. Clerk S.C.C.C., GA

IN THE SUPERIOR COURT OF CHATHAM COUNTY  
STATE OF GEORGIA

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

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**ORDER ON ATTORNEY’S FEES AND COSTS AND SERVICE AWARD**

WHEREAS, the instant action pending before the Court is a class action (the “Lawsuit”) brought by Plaintiff VTAL Real Estate, LLC (“Named Plaintiff” or “Class Representative”), individually and on behalf of all persons similarly situated (“Class Members”), against Defendant Mayor and Aldermen of the City of Savannah (the “City”);

WHEREAS, the Lawsuit sought refunds for fees collected under the City of Savannah 2021 Revenue Ordinance, Article U (the “Utility Service Fees Ordinance”) and refund under O.C.G.A. § 48-5-380 (the “Refund Statute”) for illegal fees levied and collected under the Utility Service Fees Ordinance for itself and on behalf of all similarly situated commercial and residential building permit applicants;

WHEREAS, this matter is currently before the Court on Class Counsel’s Application for Attorney’s Fees, Reimbursement of Expenses and Service Award to Class Representative (the “Fee Application”);

WHEREAS, the Court held a Final Approval Hearing on September 15, 2023 as scheduled in the First Amended Preliminary Approval Order filed on July 11, 2023 (the “Preliminary Order”)

and as made known to the Class Members through the notice procedures (the "Notice Program") approved by the Court in the Preliminary Approval Order to consider among other things the Fee Application; and

WHEREAS, the Court having considered the entire records of this Lawsuit, including the Fee Application, the evidence presented, including but not limited to the Affidavit of James L. Roberts, IV dated August 18, 2023 (the "August Affidavit" or the "August Aff."), the Affidavit of John B. Manly dated August 2, 2023 (the "Manly Affidavit" or the Manly Aff.") and the Affidavit of James L. Roberts, IV dated September 8, 2023 (the "September Affidavit" or the "September Aff.")

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Fee Application requests an award of attorney's fees to Class Counsel in the amount of \$1,400,000.00, reimbursement of Class Counsel's actual costs and expenses in the amount of \$28,209.37 and a service award in the amount of \$87,500.00 all to be paid from the \$3,500,000.00 Aggregate Refund Fund established in the Settlement of this Lawsuit. As set forth below, the Court makes the following findings of fact and conclusions of law, and holds that (a) the requested attorney's fee is appropriate, fair and reasonable and is therefore approved; (b) the request for approval of reimbursement of litigation costs and expenses advanced by Class Counsel is reasonable and justified and is therefore approved; and (c) the requested service award is appropriate, fair and reasonable and is therefore approved.

**Class Counsel's Request for Attorney's Fees is Approved**

2. Tax refund actions under O.C.G.A. §48-5-380, such as this Lawsuit, are considered common fund cases. Under Georgia law where a common fund is generated in litigation for the benefit of persons other than the named plaintiff, reasonable attorney's fees are paid from the fund.

Barnes v. City of Atlanta, 281 Ga. 256, 260, 637 S.E.2d 4, 7 (2006). See also Coleman v. Glynn County, CE12-01785-063, CE13-01480-063 and CE14-00750-063, Superior Court of Glynn County, Order on Attorney's Fees and Costs and Service Award (Nov. 8, 2019); Altamaha Bluff, LLC, et al. v. Thomas, et al., 14CV0376, Superior Court of Wayne County, Order on Attorney's Fees and Costs and Service Award (Oct. 19, 2020); Toledo Manufacturing Co., et al. v. Charlton County, SUCV201900232, Superior Court of Charlton County, Order on Attorney's Fees and Costs and Service Award (Dec. 10, 2020); Old Town Trolley Tours of Savannah, Inc. v. The Mayor and Aldermen of The City of Savannah, Civil Action No. SPCV20-007667-MO, Superior Court of Chatham County, Amended Order on Attorney's Fees and Costs and Service Award (Feb. 23, 2021); and Bailey v. McIntosh County, Georgia, Civil Action No. SUV2021000009, Superior Court of McIntosh County, Order on Attorney's Fees and Costs and Service Award (May 5, 2022).

3. The United States Supreme Court and the Eleventh Circuit have also recognized that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to reasonable attorney's fees from the fund as a whole. See Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980) ("[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."). See also Camden I Condominium Association, Inc., et al v. Dunkle, 946 F.2d 768, 771 (11<sup>th</sup> Cir. 1991) ("Attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund, but the amount is subject to court approval.").

4. The controlling authority for awarding attorney's fees in common fund cases in the Eleventh Circuit is Camden I. Georgia courts rely on Camden I when awarding fees in a common fund case. See Friedrich v. Fidelity Nat'l Bank, 247 Ga. App. 704, 545 S.E.2d 107 (2001).

5. When deciding awards of attorney's fees in common fund cases, Georgia Courts follow the Eleventh Circuit which "made clear in *Camden I* that percentage of the fund is the exclusive method for awarding fees in common fund class actions." In re Checking Account Overdraft Litig., 830 F. Supp. 2d 1330, 1362 (S.D. Fla. 2011).

6. Georgia and the Eleventh Circuit evaluate the reasonableness of attorney fee awards in common fund cases by applying the following factors:

- (1) the time and labor required;
- (2) the novelty and difficulty of the relevant questions;
- (3) the skill required to properly carry out the legal services;
- (4) the preclusion of other employment by the attorney as a result of his acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the clients or the circumstances;
- (8) the results obtained, including the amount recovered for the clients;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the "undesirability" of the case;
- (11) the nature and the length of the professional relationship with the clients; and
- (12) fee awards in similar cases.

Camden I, 946 F.2d at 772, n.3 (citing factors originally set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5<sup>th</sup> Cir. 1974)). These factors are hereinafter referred to as the "Camden I Factors".

7. In support of their request for attorney's fees equal to 40% of the common fund, Class Counsel presented Class Counsel's August Affidavit and the Manly Affidavit. The Class

Counsel's August Affidavit analyzes each of the Camden I Factors and concludes that every applicable factor supports the reasonableness of the instant fee request. The Court independently analyzed the Camden I Factors against the unique facts of this Lawsuit and concludes that every applicable factor supports the reasonableness of the instant fee request.

8. The eighth Camden I Factor looks to the amount involved in the litigation with particular emphasis on the monetary results achieved in the case by class counsel. See Allapattah Servs., Inc. v. Exxon Corp., 454 F. Supp. 2d 1185 (S.D. Fla. 2006). The Court finds that Class Counsel achieved an excellent result for the Class and that the eighth Camden I Factor supports Class Counsel's fee request.

9. The direct benefits to the Class Members include immediate cash payments from the \$3,500,000.00 Aggregate Refund Fund. See August Aff. at ¶30. Each Qualified Class Member (as defined in the [Proposed] Consent Judgment) will receive his or her pro-rata share of his or her calculated tax refund up to 100% of the total calculated refund due from the Aggregate Refund Fund less Fees and Expenses (as defined in the [Proposed] Consent Judgment). Id. at ¶32. It is anticipated that the Aggregate Refund Fund is sufficient to pay each Class Member 50% to 100% of the total calculated refund. Id. at ¶33.

10. The Court finds that the first, fourth and seventh Camden I Factors – the time labor, preclusion of other employment, and the time limitations imposed – support Class Counsel's fee request. See August Aff. at ¶¶10-24, 42-55; Manly Aff. at ¶11.

11. Class Counsel's August Affidavit confirms that Class Counsel expended significant resources researching and developing the legal theories and claims presented in the Complaint and six (6) amendments thereto in this Lawsuit. Class Counsel filed a Motion to Certify Suit as Class Action with Memorandum of Law in Support thereof, Second Amended Motion to Certify Suit as

Class Action with Supplemental Memorandum in Support thereof and Third Amended Motion to Certify Suit as Class Action with Supplemental Memorandum of Law in Support thereof. See August Aff. at ¶¶10-20.

12. Class Counsel's August Affidavit also confirms that Class Counsel expended significant resources in analyzing over 1,000 potential refund claims for July 30, 2016 to present. Id. at ¶¶42, 49. The record shows that Class Counsel reviewed over 740 files for commercial and residential new builds and over 300 files for commercial and residential renovations. Id. at ¶¶43-45. The record shows Class Counsel collected information from these files for detailed review including project name, address, date of application, applicant name, applicant phone number, applicant email and the amount of the various fees charged. Id. at ¶46. The record further shows that Water and Sewer Approval Forms, including all exhibits thereto, were reviewed for each commercial building permit application for new builds, commercial building permit applications for renovations, residential building permit applications for new builds and residential building permit applications for renovations. Id. at ¶47. Class Counsel testified in the August Affidavit that based on the Water and Sewer Approval forms, each fee charge was identified including: Water Tap-in Fees; Sewer Tap-in Fees; Water Additional Fees; Reclaimed Water Fees; Treatment Plant Fees; Sewer Area Additional Fees; and Sewer Site Additional Fees. Id. at ¶48. The record shows that Class Counsel expended significant resources researching and developing the damage analysis that ultimate led to the proposed resolution. Id. at ¶36.

13. According to Class Counsel's August Affidavit, Roberts Tate LLC invested not less than 598.8 hours on this Lawsuit. Id. at ¶68. According to the Manly Affidavit Manly Shipley, LLP invested no less than 170 hours on this Lawsuit. See Manly Aff. at ¶11.

14. The Court does not doubt that this Lawsuit took a significant amount of Class Counsel's time and frequently required prioritizing this Lawsuit over other work and/or required the turning down of new work that would have interfered with the vigorous prosecution of this Lawsuit.

15. The Court finds that the second, sixth and tenth Camden I Factors – the novelty and difficulty of the issues, whether the fee is contingent, and the “undesirability” of the case – support Class Counsel's fee request.

16. The Court finds that in undertaking to prosecute this complex Lawsuit entirely on a contingent fee basis, Class Counsel assumed a significant risk of non-payment or underpayment. Courts have long recognized that “a contingency fee arrangement often justifies an increase in the award of attorney's fees.” Lunsford v. Woodforest Nat'l Bank, 2014 U.S. Dist. LEXIS 200716, at \*14 (N.D. Ga. 2014) (internal citations omitted). See also In re Equifax, Inc. Customer Data Security Breach Litigation, 2020 WL 256132, at \*33 (N.D. Ga. Mar. 17, 2020).

17. Class Counsel faced numerous risks throughout the pendency of this Lawsuit. There was the inherent risk of failing to obtain class certification or having the Lawsuit dismissed at the pleadings stage or upon a motion for summary judgment. Because the Lawsuit involved a municipality, there were also risks concerning sovereign immunity.

18. The Court finds that the fact that Class Counsel skillfully addressed these novel and difficult issues, achieving an excellent result for the Class Members, supports the requested fee.

19. The Court finds that the fifth and twelfth Camden I Factors – the customary fee and awards in similar cases – supports approval of Class Counsel's fee request.

20. The Eleventh Circuit explained that “[t]here is no hard and fast rule mandating a certain percentage of a common fund which may reasonably be awarded as a fee because the

amount of any fee must be determined upon the facts of the case.” Camden I, 946 F.2d at 774. However, the Camden I Court noted that “an upper limit of 50% of the fund may be stated as a general rule, although even larger percentages have been awarded.” Id. at 774-75 (internal citations omitted).

21. The Court finds that Class Counsel’s request for approval of a 40% fee of the Aggregate Refund Fund falls squarely within the permissible range indicated by Barnes, 281 Ga. 256 (33.33%) and Camden I, 946 F.2d at 774-75 (upper limit of 50%). The Court also finds that the fees sought in this Lawsuit is the exact percentage that was awarded in Coleman v. Glynn County, CE12-01785-063, CE13-01480-063 and CE14-00750-063, Superior Court of Glynn County, Order on Attorney’s Fees and Costs and Service Award (Nov. 8, 2019), in Altamaha Bluff, LLC, et al. v. Thomas, et al., 14CV0376, Superior Court of Wayne County, Order on Attorney’s Fees and Costs and Service Award (Oct. 19, 2020); in Toledo Manufacturing Co., et al. v. Charlton County, SUCV201900232, Superior Court of Charlton County, Order on Attorney’s Fees and Costs and Service Award (Dec. 10, 2020); in Old Town Trolley Tours of Savannah, Inc. v. Aldermen of The City of Savannah, Civil Action No. SPCV20-007667-MO, Superior Court of Chatham County, Amended Order on Attorney’s Fees and Costs and Service Award (Feb. 23, 2021); and in Bailey v. McIntosh County, Georgia, Civil Action No. SUV2021000009, Superior Court of McIntosh County, Order on Attorney’s Fees and Costs and Service Award (May 5, 2022). All five (5) of these cases were class action refund cases.

22. The Court finds that Class Counsel’s request for approval of a 40% fee of the Aggregate Refund Fund falls within the range of the private marketplace for standard contingency fee cases where 40% is the customary percentage. See August Aff. at ¶62.

23. The Court finds that Class Counsel's request for approval of a 40% fee of the Aggregate Refund Fund falls within the range of the private marketplace for tax refund cases where 50% is the customary percentage. Id. at ¶61.

24. The record leaves no doubt that Class Counsel's fee request is appropriate and comports with attorney fees awarded in similar cases.

25. The Court finds that the third, ninth and eleventh Camden I Factors – the skill, experience, reputation and ability and nature and length of professional relationship with the client – also supports approval of Class Counsel's fee request.

26. Class Counsel effectively pursued the Named Plaintiff's and Class Members' claims before this Court, conferring a significant benefit on the Class. The Court finds that the outcome of this Lawsuit was made possible by Class Counsel's extensive experience in tax law and tax refund matters as well as experience with complex litigation. See August Aff. at ¶¶4-8, 63-64.

27. Class Counsel achieved an excellent outcome in this Lawsuit against extremely capable counsel including counsel for the City including R. Bates Lovett, Esquire, City Attorney and Patrick T. O'Connor, Esquire and Patty T. Paul, Esquire of Oliver Maner LLP. The Court finds that the City attorneys were worthy, highly competent and professional adversaries.

28. In sum, the Court finds that all of the Camden I Factors favor approval of the requested fee award.

29. Additionally, the Court finds that the reaction of the Class Members to Class Counsel's fee request also supports approval of the fee award.

30. In the Preliminary Approval Order the Court directed that notice be mailed to the Class Members (the "Full Notice"), a notice be sent via electronic mail to the Class Members (the

“Email Notice”), a notice be published in The Savannah Morning News (the “Publication Notice”), the City was directed to add a webpage to its website (the “Main Settlement Webpage”) providing information about the Lawsuit and the proposed Settlement and the City was directed to post a notice on its webpage for applications and building permits (the “Permit Webpage Notice”) directing Class Members (collectively the “Notice Program”).

31. The Class Members were advised through the Notice Program approved by this Court that Class Counsel would seek approval for an award of attorney’s fees and expenses.

32. Named Plaintiffs were directed to post the Application for Attorney’s Fees, Reimbursement of Expenses and Service Award to Class Representative on the Main Settlement Webpage on the City’s website on the same day that it was filed with the Court. The record shows that the Application for Attorney’s Fees, Reimbursement of Expenses and Service Award to Class Representative was filed with the Court on August 18, 2023. Thereafter the Application for Attorney’s Fees, Reimbursement of Expenses and Service Award to the Class Representative was posted on the Main Settlement Webpage on the City’s website. See September Aff. at ¶17.

33. The Full Notice, the Email Notice and the Publication Notice approved by the Court advised the Class Members that at the Final Approval Hearing the Court would determine, among other things, Class Counsel’s request for an award of attorney’s fees and expenses.

34. Through the Notice Program the Class Members were advised that for an objection to be considered by the Court it had to be postmarked on or before August 28, 2023 and certain objection procedures outlined in the Preliminary Approval Order and repeated in the Full Notice had to be strictly followed.

35. The Court finds that each facet of the Notice Program was timely and properly accomplished. See September Aff. at ¶¶11-16. See also Affidavit of Terry D. Turner, Jr. and

Publisher's Affidavit attached as Exhibits "B" and "C" respectively to Supplemental Memorandum in Support of Application for Attorney's Fees, Reimbursement of Expenses and Service Award to Class Representative filed by Class Counsel (the "Supplemental Memorandum").

36. The period for filing timely objections ended on August 28, 2023. There were no objections filed within the Court ordered objection period. See Ingram, et al v. The Coca-Cola Co., 200 F.R.D. 685, 691 n.7 (N.D. Ga. 2001) (few or no objections can be taken as some indication that the Class Members did not think the request was unfair).

37. Accordingly, an award of attorney's fees to Class Counsel in the amount of \$1,400,000.00 is approved.

**The Expense Request is Approved**

38. The Court finds that the request for approval of reimbursement from the Aggregate Refund Fund of \$28,209.37 in litigation costs and expenses advanced by Class Counsel is reasonable and justified. See George, et al v. Academy Mortgage Corp., 369 F. Supp. 3d 1356, 1386 ("Because Class Counsel has lost the use of this money for nearly three years, the expenses required are reasonable and necessary." Citing McLendon v. PSC Recovery Sys., 2009 WL 10668635, at \*3, 2009 U.S. Dist. LEXIS 136999, at \*4 (N.D. Ga. 2009)).

39. This sum corresponds to certain actual out of pocket costs and expenses that Class Counsel necessarily incurred and paid in connection with the prosecution and settlement of this Lawsuit. See August Aff. at ¶70; Manly Aff. at ¶13.

40. Accordingly, \$28,209.37 in litigation costs and expenses is approved.

**The Service Award Request is Approved**

41. Georgia courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become a class representative. For example, in Coleman v. Glynn County, CE12-01785-063, CE13-01480-063 and CE14-00750-063, Superior Court of Glynn County, Order on Attorney's Fees and Costs and Service Award (Nov. 8, 2019) the Glynn County Superior Court awarded the Class Representatives \$350,000.00 as a service award. More recently, in Altamaha Bluff, LLC, et al. v. Thomas, et al., 14CV0376, Superior Court of Wayne County, Order on Attorney's Fees and Costs and Service Award (Oct. 19, 2020) the Wayne County Superior Court awarded the Class Representatives a total class service award of \$40,000.00; in Toledo Manufacturing Co., et al. v. Charlton County, SUCV201900232, Superior Court of Charlton County, Order on Attorney's Fees and Costs and Service Award (Dec. 10, 2020) the Charlton County Superior Court awarded the Class Representatives a total class service award of \$40,000.00; in Old Town Trolley Tours of Savannah, Inc. v. Aldermen of The City of Savannah, Civil Action No. SPCV20-007667-MO, Superior Court of Chatham County, Amended Order on Attorney's Fees and Costs and Service Award (Feb. 23, 2021) the Superior Court of Chatham County awarded the Class Representative \$55,000; and in Bailey v. McIntosh County, Georgia, Civil Action No. SUV2021000009, Superior Court of McIntosh County, Order on Attorney's Fees and Costs and Service Award (May 5, 2022) the Superior Court of McIntosh County awarded the Class Representative \$25,000.

42. The evidence of record is that Class Representative was active in the Lawsuit and provided invaluable assistance to Class Counsel, by, among other things, locating relevant documents, participating in conferences with Class Counsel and remained ready to provide testimony in this Lawsuit on behalf of itself and the Class Members. See August Aff. at ¶39. The

record shows that in doing so, that the Class Representative was integral to forming the theory in this Lawsuit and reaching the Settlement. Id.

43. Accordingly, service award in the amount of \$87,500 is approved. See Ingram, 200 F.R.D. 685 (awarding class representatives \$300,000 each, explaining that the magnitude of the relief the class representatives obtained on behalf of the class warranted a substantial incentive award).

### Conclusion

44. Class Counsel's Application for Attorney's Fees, Reimbursement of Expenses and Service Award to Class Representative is GRANTED for the reasons set forth above.

45. Class Counsel are awarded attorney's fees in the amount of \$1,400,000.00 from the Aggregate Refund Fund to be paid in accordance with the provisions of the [Proposed] Consent Judgment.

46. Class Counsel are awarded \$28,209.37 in advanced litigation costs and expenses from the Aggregate Refund Fund to be paid in accordance with the provisions of the Consent Judgment.

47. The Court awards the Class Representative \$87,500.00 as a service award from the Aggregate Refund Fund to be paid in accordance with the provisions of the Consent Judgment.

48. Without affecting the finality of this Order, the Court retains continuing and exclusive jurisdiction over all matters relating to protect and effectuate this Order, and for any other necessary purpose.

49. The Clerk shall promptly enter this Order in the docket of this Lawsuit.

SO ORDERED. This 15<sup>th</sup> day of September, 2023.

*Lisa M Colbert*  

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Judge Lisa Goldwire Colbert