

As of January 1, of each year 2018 through 2024 Named Plaintiff owned real estate located at 249 Jamar Lane, Quitman, Georgia (“249 Jamar Lane”). As of January 1, of each year 2018

through 2024 Named Plaintiff owned real estate located at 73 Augusta Road, Quitman, Georgia (“73 Augusta Road”). As of January 1, of each year 2018 through 2024 Named Plaintiff owned real estate located at 29 Kelly Drive, Quitman, Georgia (“29 Kelly Drive”). As of January 1, of each year 2018 through 2019 Named Plaintiff owned real estate located at 748 Blaine, Quitman, Georgia (“748 Blaine Circle”). As of January 1, for year 2020 Named Plaintiff owned real estate located at 600 Augusta Road, Quitman, Georgia (“600 Augusta Road”). 249 Jamar Lane, 73 Augusta Road, 29 Kelly Drive, 748 Blaine Circle and 600 Augusta Road are herein referred to as the “Subject Parcels”.

3.

As of January 1, of each year 2018 through 2024 Named Plaintiff owned a mobile home located at 251 Jamar Trail, Quitman, Georgia (“251 Jamar Trail Mobile Home”). As of January 1, of each year 2018 through 2024 Named Plaintiff owned a mobile home located at 752 Blaine Circle, Quitman, Georgia (“752 Blaine Circle Mobile Home”). 251 Jamar Trail Mobile Home and 752 Blaine Circle Mobile Home are herein referred to as the “Subject Mobile Homes”.

4.

Defendant Brooks County, Georgia (the “County” or the “Defendant”) is a political subdivision of the State of Georgia and the entity to which Named Plaintiff and all others similarly situated paid illegally and erroneously assessed taxes and from whom refunds of such taxes are sought. Defendant may be served by delivering a copy of the Summons and Complaint to the County Commissioners of Brooks County.

5.

Jurisdiction and venue are proper in this Court.

FACTUAL BACKGROUND

Overview

6.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-5 as if set forth herein verbatim.

7.

Each year from 2018 through 2024 Named Plaintiff paid a fire protection fee (the “Fire Fee”) for 249 Jamar Lane. True and correct copies of Named Plaintiff’s Property Tax Statements for 249 Jamar Lane are attached hereto as Exhibit (“Ex.”) “A”.

8.

Named Plaintiff paid the following Fire Fees for 249 Jamar Lane:

2018	\$20.00
2019	\$20.00
2020	\$20.00
2021	\$30.00
2022	\$40.00
2023	\$40.00
2024	\$40.00

Id.

9.

Each year from 2018 through 2024 Named Plaintiff paid Fire Fees for 73 Augusta Road. True and correct copies of Named Plaintiff's Property Tax Statements for 73 Augusta Road are attached hereto as Exhibit "B".

10.

Named Plaintiff paid the following Fire Fees for 73 Augusta Road:

2018	\$20.00
2019	\$20.00
2020	\$20.00
2021	\$30.00
2022	\$40.00
2023	\$40.00
2024	\$40.00

Id.

11.

Each year from 2018 through 2024 Named Plaintiff paid Fire Fees for 29 Kelly Drive. True and correct copies of Named Plaintiff's Property Tax Statements for 29 Kelly Drive are attached hereto as Exhibit "C".

12.

Named Plaintiff paid the following Fire Fees for 29 Kelly Drive:

2018	\$85.00
2019	\$85.00
2020	\$85.00
2021	\$127.50
2022	\$170.00
2023	\$170.00
2024	\$170.00

Id.

13.

Each year from 2018 through 2019 Named Plaintiff paid Fire Fees for 748 Blaine Circle. True and correct copies of Named Plaintiff's Property Tax Statements for 748 Blaine Circle are attached hereto as Exhibit "D".¹

14.

Named Plaintiff paid the following Fire Fees for 748 Blaine Circle:

2018	\$65.00
2019	\$85.00
2020	\$20.00

¹ It appears that in 2020 the address of 748 Blaine Circle was changed by the County on the Property Tax Statements to 752 Blaine Circle.

2021	\$30.00
2020	\$40.00

Id.

15.

For 2020 Named Plaintiff paid a Fire Fee for 600 Augusta Road. A true and correct copy of Named Plaintiff's Property Tax Statement for 600 Augusta Road is attached hereto as Exhibit "E".

16.

Named Plaintiff paid the following Fire Fees for 600 Augusta Road:

2020	\$20.00
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Id.

17.

The Subject Parcels are located in the unincorporated areas of Brooks County.

18.

Each year from 2018 through 2024 Named Plaintiff paid Fire Fees for 251 Jamar Trail Mobile Home. True and correct copies of Named Plaintiff's Mobile Home Statements for 251 Jamar Trail Mobile Home are attached hereto as Exhibit "F".

19.

Named Plaintiff paid the following Fire Fees for 251 Jamar Trail Mobile Home:

2018	\$65.00
2019	\$65.00

2020	\$65.00
2021	\$65.00
2022	\$97.50
2023	\$130.00
2024	\$130.00

Id.

20.

Each year from 2018 through 2024 Named Plaintiff paid Fire Fees for 752 Blaine Circle Mobile Home. True and correct copies of Named Plaintiff's Mobile Home Statements for 752 Blaine Circle Mobile Home are attached hereto as Exhibit "G".

21.

Named Plaintiff paid the following Fire Fees for 752 Blaine Circle Mobile Home:

2018	\$65.00
2019	\$65.00
2020	\$65.00
2021	\$65.00
2022	\$97.50
2023	\$130.00

2024	\$130.00
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Id.

22.

The Subject Mobile Homes are located in the unincorporated areas of Brooks County.

The Fire Fee Ordinance

23.

On or about July 10, 2014 the Fire Fee Ordinance became effective in the County. A true and certified copy of the Fire Fee Ordinance is attached as Exhibit “H”.

24.

According to the Fire Fee Ordinance the County enacted it to, among other things, “provide fire protection services to the citizens of Brooks County; to provide funds that will allow for the hiring of personnel, purchase of fire suppression equipment, the distribution of the water and the provision of hydrants in Brooks County (hereinafter referred to as the “Fire Protection System”); to provide fund necessary for the maintenance of the Fire Protection System; to provide funds for the enforcement of” the Fire Fee Ordinance. Id. at Preamble.

25.

The Fire Fee Ordinance “include[s] all parcels within the corporate limits of the city of Morven, Barwick and Pavo together with all of the parcels within unincorporated areas of Brooks County.” Id. at ¶3.

26.

The Fire Fee is invoiced to all property owners “simultaneously with real and personal property taxes by the Brooks County Tax Commissioner and shall be due and payable on the same day that the real and personal property taxes are due...”. Id. at ¶4(a).

27.

In 2014 when the Fire Fee Ordinance became effective, the Fire Fee was \$20 per parcel, plus \$45 for each homestead exempt residential structure on said parcel, plus \$65 for each non-homestead exempt residential structure on said parcel, plus \$100 for each commercial structure on said parcel. Id. at ¶4(b).

28.

The Fire Fee, therefore, is assessed based on property ownership (including the type of property) rather than on the extent to which the payer of the Fire Fee summons fire protection services.

29.

Accordingly, a parcel consisting of hundreds or thousands of acres is charged the same base fee – which in 2014 was \$20 – as a parcel containing one acre.

30.

Additionally, a homestead exempt residential structure is charged the same flat fee – which in 2014 was \$45 – regardless of whether it is a 1,000 square foot structure or a 3,000 square foot structure. This is also true of the flat fee charged to non-homestead exempt residential structures which was \$65 in 2014.

31.

Similarly, a commercial structure is charged the same flat fee – which in 2014 was \$100 – regardless of whether it is 1,000 square feet or 10,000 square feet.

32.

Upon information and belief and as demonstrated by the Fire Fees paid by Named Plaintiff, the Fire Fee has increased from 2014 to present. See Ex. A to G.

33.

If the Fire Fee is not paid by the property owner within sixty (60) days of its due date, the County charges the property owner a \$20 late fee. Id. at ¶4(c).

34.

The Fire Fee Ordinance provides that “[a]ny account that has not been paid in full after sixty (60) days may be turned over to an agency or attorney for purposes of collection through any lawful means.” Id. at ¶4(d).

The Fire Fee is a Tax Not a Fee

35.

It is the substance of the Fire Fee that is controlling, not the nomenclature selected by the County for the charge that determines when the charge is a fee or a tax. See McLeod, et al. v. Columbia County, 278 Ga. 242, 244, 599 S.E.2d 152, 154 (2004).

36.

The Fire Fee is mandatory for all property owners “within the corporate limits of the city of Morven, Barwick and Pavo together with all the parcels within the unincorporated areas of Brooks County ...”. Ex. H, ¶4(b).

37.

The Fire Fee is based on the payer’s ability to pay. That is, the payer’s ownership of property.

38.

The Fire fee is a mechanism the Couty is using to raise general revenue for fire protection

rather than a charge for a particular service. See Gunby v. Yates, 214 Ga. 17, 19, 102 S.E.2d 548, 550 (1958) (“A tax is an enforced contribution exacted pursuant to legislative authority for the purpose of raising revenue to be used for public or governmental purposes, and not as payment for a special privilege or a service rendered.”).

39.

The Fire Fee Ordinance, for example, provides that the Fire Fee “will allow for the hiring of personnel, purchase of fire suppression equipment, the distribution of the water and the provision of hydrants ...; to provide funds necessary for the maintenance of the Fire Protection System; [and] to provide funds for the enforcement of” the Fire Fee Ordinance. Ex. H, Preamble.

40.

Therefore, the object and purpose of the Fire Fee is to provide general revenue rather than compensation for services rendered.

41.

The Fire Fee is assessed by the County without regard to direct benefits that may inure to the Subject Property or Named Plaintiff or to the prospective class members or the properties of the prospective class members.

42.

The Fire Fee is not assessed in a manner whereby the payment is based upon the Subject Property’s contribution or the contribution of the prospective class member’s property to the problem. That is, a property owner may pay the Fire Fee year after year and never utilize the fire protection services.

43.

The Fire Fee is not calculated in a manner whereby Named Plaintiff or the prospective

class members are reasonably paying for services rendered or to be rendered. For example, a large tract of timber containing hundreds of acres is assessed the same flat fee – which was \$20 in 2014 – as the half acre of land with no trees, without any consideration to the disproportionate costs in fighting fires on different parcels.

44.

The payer of the Fire Fee receives no particularized or enhanced service different from the nonpayer despite having paid the Fire Fee.

45.

The services funded through the payment of the Fire Fee benefit the general public in precisely the same manner that the services benefit the payer of the Fire Fee.

46.

The Fire Fee is not calculated in a manner whereby Named Plaintiff or the prospective class members are reasonably paying for services rendered or to be rendered.

47.

Payment of the Fire Fee by Named Plaintiff and the prospective class members does not result in a special benefit to the payer different from those to whom the Fire Fee does not apply, such as (a) a motorist who does not own property within the corporate limits of Morven, Barwick or Pavo or within the unincorporated areas of the County but nonetheless summons the fire protection services when their car catches on fire while driving through the corporate limits of Morven, Barwick or Pavo or within the unincorporated areas of the County; or (b) a tenant in the corporate limits of Morven, Barwick or Pavo or within the unincorporated areas of the County to their leased property to protect, among other things, their personal property.

48.

Moreover, payment of the Fire Fee does not result in a decrease in insurance premiums that results in a special benefit to the payer of the Fire Fee who owns property in the corporate limits of Morven, Barwick or Pavo or within the unincorporated areas of the County that is different from those to whom the Fire Fee does not apply. Upon information and belief, an ISO rating which reflects how prepared a community and an area are for a fire is used by insurance companies to calculate premiums and applies to property owners who pay the Fire Fee as well as to those who do not pay the Fire Fee such as a tenant who is renting property in the corporate limits of Morven, Barwick or Pavo or within the unincorporated areas of the County and who is required by the owner to insure the leased property or a tenant who insures their contents at the leased property in the corporate limits of Morven, Barwick or Pavo or within the unincorporated areas of the County.

49.

Furthermore, upon information and belief, certain insurance companies do not use ISO ratings which reflect how prepared a community and an area are for a fire in order to calculate insurance premiums and therefore payment of the Fire Fee does not result in a special benefit to the payer of the Fire Fee.

50.

The Fire Fee is an illegal tax, rather than a reasonable fee based upon the expected cost to provide fire protection services for the Subject Property and the properties of the prospective class members.

Refunds For Illegally Assessed and Collected Taxes

51.

“All taxes shall be levied and collected under general laws and for public purposes only...[A]ll taxation shall be uniform upon the same class of subjects within the territorial limits

of the authority levying the tax.” Ga. Const. Art. 7, § 1, ¶ III.

52.

The inherent power to tax belongs to the General Assembly – not to the County.

53.

The County “can only exercise the power of taxation as conferred upon it either directly by the Constitution or by the General Assembly when authorized by the Constitution...If there is any doubt as to the power of the [C]ounty to tax in a particular instance, it must be resolved in the negative.” DeKalb Co. v. Brown Builders, 227 Ga. 777, 778, 183 S.E.2d 367, 369 (1971) (internal citations omitted).

54.

The Fire Fee is assessed and collected from Named Plaintiff and the prospective class members based on the ownership of property. See Ex. H, Fire Fee Ordinance, ¶4(b) (The Fire Fee is assessed per parcel.).

55.

The Fire Fee is based on a flat fee for the land and a fee for each homestead exempt residential structure, a fee for each non-homestead exempt residential structure and a fee for each commercial structure. Id.

56.

Under the Georgia Constitution and Georgia law, taxation of property is required to be ad valorem. That is, property must be assessed based upon the value of the property not based upon a flat fee for the land and a variable rate for the square footage of all structures. See Hutchins, et al. v. Howard, et al., 211 Ga. 830, 89 S.E. 2d 183, 186 (1955) (“Taxation on all real and tangible personal property subject to be taxed is required to be ad valorem – that is, according to value, and

the requirement in the Constitution that the rule of taxation shall be uniform, means that all kinds of property of the same class not absolutely exempt must be taxed alike, by the same standard of valuation, equally with other taxable property of the same class, and coextensively with the territory to which it applies; meaning the territory from which the given tax, as a whole, is to be drawn.”).

57.

Therefore, the Fire Fee is an illegal tax not authorized by the Georgia Constitution or by Georgia law and Named Plaintiff and the prospective class members are entitled to refunds for the illegally assessed and collected taxes under the Refund Statute.

58.

As a result of the above, Named Plaintiff and the prospective class members are entitled to refunds of the illegal taxes assessed and collected from 2018 through 2024, plus prejudgment interest. See Hojeij Branded Foods, LLC v. Clayton County, Georgia, et al., 355 Ga. App. 222, 843 S.E.2d 902 (2020) (cert denied Dec. 07, 2020) (Subsection (g) of the Refund Statute allows for the filing of a suit for a tax refund within five (5) years of the date the disputed taxes were paid).

59.

Based on an Open Records Request (“ORR”) to the County for Fire Fees billed in 2018, the refund due to Named Plaintiff and the prospective class members is no less than \$457,405.00 plus prejudgment interest.

60.

Based on an ORR to the County for Fire Fees billed in 2019, the refund due to Named Plaintiff and the prospective class members is no less than \$457,400.00 plus prejudgment interest.

61.

Based on an ORR to the County for Fire Fees billed in 2020, the refund due to Named Plaintiff and the prospective class members is no less than \$458,945.00 plus prejudgment interest.

62.

Based on an ORR to the County for Fire Fees billed in 2021, the refund due to Named Plaintiff and the prospective class members is no less than \$642,677.50 plus prejudgment interest.

63.

Based on an ORR to the County for Fire Fees billed in 2022, the refund due to Named Plaintiff and the prospective class members is no less than \$873,977.50 plus prejudgment interest.

64.

Based on an ORR to the County for Fire Fees billed in 2023, the refund due to Named Plaintiff and the prospective class members is no less than \$930,280.00 plus prejudgment interest.

65.

Based on an ORR to the County for Fire Fees billed in 2024, the refund due to Named Plaintiff and the prospective class members is no less than \$924,600.00 plus prejudgment interest.

CLASS ACTION ALLEGATIONS

66.

Named Plaintiff reallege and incorporate the allegations set forth in paragraphs 1-65 as if set forth herein verbatim.

67.

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

68.

Named Plaintiff seeks certification of seven (7) classes:

- (1) The first class consists of all property owners similarly situated who, like Named Plaintiff, were assessed and paid the Fire Fee in 2018 (hereinafter the “2018 Class”).
- (2) The second class consists of all property owners similarly situated who, like Named Plaintiff, were assessed and paid the Fire Fee in 2019 (hereinafter the “2019 Class”).
- (3) The third class consists of all property owners similarly situated who, like Named Plaintiff, were assessed and paid the Fire Fee in 2020 (hereinafter the “2020 Class”).
- (4) The fourth class consists of all property owners similarly situated who, like Named Plaintiff, were assessed and paid the Fire Fee in 2021 (hereinafter the “2021 Class”).
- (5) The fifth class consists of all property owners similarly situated who, like Named Plaintiff, were assessed and paid the Fire Fee in 2022 (hereinafter the “2022 Class”);
- (6) The sixth class consists of all property owners similarly situated who, like Named Plaintiff, were assessed and paid the Fire Fee in 2023 (hereinafter the “2023 Class”):
and
- (7) The seventh class consists of all property owners similarly situated who, like Named Plaintiff, were assessed and paid the Fire Fee in 2024 (hereinafter the “2024 Class”).

69.

The 2018 Class, the 2019 Class, the 2020 Class, the 2021 Class, the 2022 Class, the 2023 Class and the 2024 Class are collectively referred to herein as the “Refund Classes.”

70.

The Refund Classes so described are comprised of numerous members seeking the following relief for each year at issue: (a) refunds of all Fire Fees paid to the County from 2018 to

2024 based on the levying and collecting an illegal tax in violation of the Constitution of the State of Georgia and Georgia law, (b) refunds for any penalties paid under ¶4(c) and (d) of the Fire Fee Ordinance and (c) prejudgment interest.

71.

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

72.

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

73.

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

74.

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

75.

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

76.

This action is properly maintained as a class action pursuant to O.C.G.A. § 9-11-23(b)(2) as Defendant acted or refused to act on grounds applicable to class members making declaratory relief appropriate.

77.

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

78.

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

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

79.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-78 as if set forth herein verbatim.

80.

The County issued tax bills to Named Plaintiff and the members of the Refund Classes which included illegal taxes for Fire Fees which constituted an illegal tax not authorized by the Georgia Constitution or by Georgia law resulting in the payment of illegally and erroneously assessed taxes and voluntary or involuntary overpayment of taxes.

81.

Under the Refund Statute (O.C.G.A. § 48-5-380), Named Plaintiff and the members of Refund Classes are entitled to refunds of all Fire Fees assessed and collected from 2018 to 2023. Accordingly, all illegal taxes levied and collected along with prejudgment interest must be refunded to Named Plaintiff and the members of the Refund Classes.

COUNT II- DECLARATORY JUDGMENT

82.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-81 as if set forth herein verbatim.

83.

Named Plaintiff asserts this action for declaratory judgment pursuant to O.C.G.A. §9-4-1 *et seq.*

84.

An actual controversy exists in this matter between Named Plaintiff and the County with respect to the County's assessment and collection of illegal taxes in the form of the Fire Fee.

85.

Named Plaintiff and the members of the Refund Classes are entitled to a declaration that the Fire Fee is an illegal tax and that all Fire Fees paid be refunded to Named Plaintiff and the Refund Classes.

COUNT III- INJUNCTION

86.

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

87.

The County only has the power to tax as authorized by the Georgia Constitution and the legislature.

88.

All taxation carried out by the County must be performed in compliance with the Georgia Constitution and the Georgia state laws.

89.

The County through the Fire Fee is illegally taxing property at a flat fee for the land, a flat fee for homestead exempt residential structures, a flat fee for non-homestead exempt residential

structures, and a flat fee for commercial structures rather than taxing at ad valorem as required by the Georgia Constitution and the Georgia state laws.

90.

Named Plaintiff and the members of the Refund Classes are entitled to an injunction enjoining the County from the continued assessment and collection of the Fire Fee which is an illegal tax.

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

91.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-90 as if set forth herein verbatim.

92.

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

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

- a) That process issue and be served on Defendant in accordance with Georgia law;
- b) That Named Plaintiff and the Refund Classes recover all illegally assessed and collected Fire Fees from 2018 to 2024 plus prejudgment interest as set forth above;
- c) That this Court grant Named Plaintiff's prayer for declaratory relief and enter an order declaring that the Fire Fee is an illegal tax and that all Fire Fees paid be refunded to Named Plaintiff and the Refund Classes;

- d) That this Court enter an Order enjoining Defendant from the continued assessment and collection of the Fire Fee;
- e) That this Court enter an Order requiring Defendant to pay all of Named Plaintiff's attorney's fees and costs of litigation associated with this action; and
- f) That Named Plaintiff and prospective class members have all other and further relief deemed just and appropriate by this Court.

RESPECTFULLY SUBMITTED, this 6th day of February, 2025.

ROBERTS TATE, LLC

BY: /s/ James L. Roberts, IV

James L. Roberts IV
Georgia Bar No. 608580
jroberts@robertstate.com

James Paul Fountain
Georgia Bar No. 689127
jfountain@robertstate.com

V. Aidan Farris
Georgia Bar No. 581756
afarris@robertstate.com

2487 Demere Road, Suite 400
P.O. Box 21828
St. Simons Island, GA 31522

ATTORNEYS FOR NAMED
PLAINTIFF

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 NAMED PLAINTIFF'S FOURTH AMENDED CLASS ACTION COMPLAINT to counsel of record for all parties by hand delivering a copy of the same and delivering via statutory electronic service to:

Bradley J. Watkins, Esquire
Amanda L. Szokoly, Esquire
BROWN, READDICK, BUMGARTNER,
CARTER, STRICKLAND & WATKINS, LLP
5 Glynn Avenue
Post Office Box 220
Brunswick, GA 31521

ATTORNEYS FOR DEFENDANT

This 6th day of February, 2025.

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