IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

AMANDA ANDERSON, on behalf of herself and all others similarly situated, Plaintiff, v. WSE PROPERTY MANAGEMENT LLC, Defendant.	Civil Action File No.: 20EV005363

Plaintiff Amanda Anderson's Unopposed Motion For Attorney's Fees, Expenses and Class Representative Service Award

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Introduction

Plaintiff Amanda Anderson ("Plaintiff" or "Ms. Anderson") and Defendant WSE Property Management, LLC ("Defendant" or "WSE") reached a negotiated settlement (the "Class Settlement") to resolve their claims on a class-wide basis. The Class Settlement came after nearly three years of litigation, in which the parties briefed novel legal issues in motions to dismiss, engaged in extensive discovery that included the production of over 150,000 documents and out-of-state travel for deposition, expanded the class based on information gathered through discovery, litigated a motion to add a party-defendant to the case, engaged in extensive negotiations for settlement in which a compromise was reached based in part on the availability of insurance funds for an entity that is winding down its business, and spent substantial time and effort preparing a motion to certify the class and approve the class-action settlement. Even now, Class Counsel's work continues, engaging with the Claims Administrator to perform the necessary work to ensure that the potential class members are notified of their rights and fielding inquiries from potential class members. This work has resulted in the approval of a common fund of $800,000 to pay claims made by potential class members, to pay administrative costs associated with the settlement, and to pay Class Counsel's attorneys' fees and costs. These are substantial funds that would not otherwise be available to members of the class, especially considering that the Defendant is winding down its business and is basically an assetless company. These Class-wide benefits are the result of years of hard work performed, substantial expense incurred, and risk assumed by Class Counsel.

Therefore, and pursuant to the Comprehensive Settlement Agreement, Anderson now moves, unopposed [1] for this Court to award 45% of the total amount made available to the Class

[1] To be sure, WSE does not necessarily agree with everything stated in Anderson's motion. But, pursuant to the Comprehensive Settlement Agreement, WSE does not oppose Anderson's

(*i.e.*, $360,000.00 out of the $800,000) to compensate Class Counsel for their fees and expenses. To place this in contrast, the legal defense of the case eroded over half of a $2 million insurance policy, meaning that Plaintiff's attorneys fees will be roughly 1/3 of defense fees and costs. A proposed order is not being submitted at this time. However, a proposed Final Approval Order will be submitted prior to the Final Approval Hearing and will include language addressing Class Counsel's fees and expenses.

Factual and Procedural Background

This is a class action on behalf of WSE residential apartment tenants for alleged violations of the Georgia security deposit statute, O.C.G.A. § 44-7-35, as well as claims for breach of contract, fraud, and related claims arising from alleged violations by WSE of various terms of its lease agreements with its tenants. The named Plaintiff and proposed Class Representative is Amanda Anderson, a former tenant of the Windward Place apartment community, which was managed by WSE during Ms. Anderson's tenancy.

Defendant is WSE, which has historically operated as one of several separate businesses under The Worthing Companies. WSE's sole business was property management of multi-family housing. However, WSE's business was not profitable in the years leading up to, and including, this lawsuit, resulting in WSE entering into an arm's length transaction with an unrelated entity transferring all employees and assigning all management contracts for $0.0. WSE ended its ongoing business for reasons unrelated to this lawsuit and transferred all contracts in an attempt to continue employment for all WSE employees.

Plaintiff filed this initial complaint in this action on September 17, 2020. In the complaint, she alleged that she signed a 13-month rental agreement with WSE to rent an apartment at 3080

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request that Class Counsel be compensated for their fees and expenses at 45% of the total amount made available to the Class.

Market Place, Alpharetta, Georgia ("Unit 6304") at Windward Place on or about August 4, 2018. Her monthly rent for the lease was $1,355.00. As part of her rental agreement, she paid a refundable $99.00 security deposit.

Plaintiff alleges that the lease ended on or about October 4, 2019, at which point she vacated the property. According to the complaint, WSE then failed to take the necessary steps required by Georgia's security deposit statute before retaining her security deposit. She alleges that an agent of WSE Property Management entered Unit 6304 and conducted an inspection without providing her with prior notice. She alleges that WSE failed to provide her with a comprehensive list of any damages to the premises which is the basis for any charge against the security deposit. She alleges that WSE nonetheless retained her security deposit, rather than returning it 30 days after vacancy. Under the Security Deposit Statute, a landlord can only retain the security deposit if it provides the tenant with a written statement within thirty (30) days after vacancy identifying the exact reasons for doing so and including the comprehensive list of damages prepared as required by Code Section 44-7-33. She alleges that WSE has also sought to collect money from her for alleged damages to the apartment.

Based on these allegations, which WSE disputes, Plaintiff sought to certify a class pursuant to O.C.G.A. § 9-11-23 on behalf of herself and a Class defined as follows: (a) any citizen of Georgia; (b) who had an agreement for the rental of real property where WSE Property Management or any of its subsidiaries or affiliated entities or persons was the owner or managing agent of that property; (c) whose security deposit was not returned within one month of the termination of the lease due to alleged damage to the premises, or whom WSE Property Management has sought to collect money for alleged damages to the apartment; (d) for whom WSE Property Management had either a phone number, email address or mailing address but did

not provide, within thirty days of the termination of the lease, a comprehensive list of any damage done to the premises which is the basis for any charge against the security depositor the exact reason for keeping the security deposit; (e) since 20 years prior to the filing of this action; (f) excluded from the class are tenants which WSE Property Management mailed or gave a comprehensive list due to alleged damages to the apartment or the reason for retention of the security deposit within 30 days after the occupancy.

On November 6, 2020, Defendant answered, denying the substantive allegations in the complaint, and filed a counterclaim against Plaintiff. Defendant also filed a motion to dismiss. Defendant's principal argument in its motion to dismiss was that Plaintiff should not be able to obtain class-wide relief going twenty (20) years back as requested, but only six (6) years back under the statute of limitation for breach of contract. The dispositive issue was whether the applicable statute of limitation was created by O.C.G.A. § 9-3-22, which creates a default statute of limitation of twenty years for claims arising under statute where the statute itself does not set a limitations period; or whether it was created by O.C.G.A. § 9-3-24, which provides a six (6) year statute of limitation for claims arising under written contract.

On December 7, 2020, Plaintiff responded to Defendant's motion to dismiss, arguing that the twenty-year statute of limitations should apply. On December 18, 2020, Defendant filed a reply in further support of its motion to dismiss. On January 4, 2021, at the suggestion of the Court, the parties submitted an outline of their arguments for the upcoming scheduled oral argument. On January 7, 2021, the Court heard oral argument on the Defendant's motion. On January 28, 2021, the Court denied Defendant's motion to dismiss. On January 30, 2021, the Court entered a certificate of immediate review.

On February 9, 2021, Defendant filed its application for an interlocutory appeal with the

Court of Appeals. On February 10, 2021, the case was docketed with the Georgia Court of Appeals having a case number of A21I0135. On February 16, 2021, the parties filed a consent motion to stay discovery while the application for interlocutory appeal was pending. On February 19, 2021, Plaintiff opposed Defendant's application for an interlocutory appeal. On February 27, 2021, the Court stayed discovery pending a ruling from the Georgia Court of Appeals. On March 5, 2021, the Georgia Court of Appeals denied the application for interlocutory appeal. This sent the case into discovery.

The parties exchanged written discovery requests. On March 18, 2021, the parties filed a status report with the court, noting that they were having discovery disputes. The primary dispute arose over Defendant not producing full records of all tenancies within the 20-year period preceding the complaint. On April 14, 2021, the Court held a status hearing on the parties' discovery disputes. On April 20, 2021, the Court entered an order stating that Plaintiff was entitled to the discovery it sought, with reasonable limits, and directed the parties to confer and devise a plan to narrow the scope of discovery. From that point forward, each party served significant document production on the other. On August 25, 2021, Defendant's corporate representative was deposed.

On September 20, 2021, Plaintiff filed an amended complaint based in large part on WSE's company representative's testimony. Based on evidence developed in discovery, and the testimony of WSE's corporate representative, Plaintiff amended her complaint to create a total of ten (10) claims, which fell into four broad categories:

(1) Utility Meter Claims. These claims related to evidence developed in discovery that Ms. Anderson and other members of the putative class were charged for utilities based on estimated usage; whereas their lease stated they would be charged for actual usage based

on a sub-metered reading. The Utility Meter Claims encompassed Count I (Breach of Contract), Count II (Negligent Misrepresentation), Count III (Fraud), and Count IV (Money Had and Received).

(2) Utility Fees Claims. These claims related to evidence developed in discovery that Ms. Anderson and other members of the putative class were charged fees in connection with the provision of utility service, over and above the actual cost of the utilities, including "admin fees" and "service fees"; whereas their lease stated they would not be charged for any such fees. The Utility Fees Claims encompassed Count V (Breach of Contract) and Count VI (Money Had and Received).

(3) Holdover Rent Claims. These claims related to evidence developed in discovery that WSE incorrectly calculated the rent due from tenants like Ms. Anderson and other members of the putative class who converted to a month-to-month lease by merit of not renewing an annual (or greater) lease. The Holdover Rent claims encompassed Count VII (Breach of Contract).

(4) Security Deposit Claims. These claims related to separate alleged violations of the Security Deposit Statute based on evidence developed in discovery. Count VIII alleged that WSE violated by the Statute by charging excessive amounts for alleged damages to the property. Count IX alleged that WSE failed to provide required notice of the exact reason for retaining any security deposit due to damage to the premises, as required by the Statute. And Count X alleged generally that WSE violated the Security Deposit Statute by failing to return the deposit to Ms. Anderson and those who, like her, were entitled to such return.

On October 19, 2021, the parties filed a joint motion to extend the discovery period. On November 2, 2021, the Court extended the discovery period until April 20, 2022. On February

1, 2022, WSE took Plaintiff's deposition, for which Class Counsel and defense counsel travelled to and lodged in California. On April 12, 2022, the parties filed a joint motion to extend the discovery period until October 20, 2022, which the Court granted.

On June 16, 2022, Plaintiff filed a motion to amend the complaint to add an additional party as a defendant under OCGA 9-11-21. On July 18, 2022, Defendant opposed Plaintiff's motion to amend the complaint to add the additional defendant. On August 22, 2022, Plaintiff filed a reply in further support of her motion to amend the complaint to add an additional defendant.

On September 7, 2022, the parties informed this Court that they had been discussing settlement and requested the Court to suspend its consideration of the motion to amend the complaint to add an additional party. Class Counsel engaged in extensive negotiations with defense counsel after this point. Counsel have met, had phone calls, and exchanged numerous correspondence regarding the potential for settlement. Fashioning a settlement was challenging. This case involves numerous complicated claims brought against an entity that is basically out of business, but that has an "eroding" insurance policy from which the cost of defense and the cost of any settlement or judgment must come. In order to attain meaningful relief for the class, Class Counsel had to take on the lion's share of work in drafting the Settlement Agreement and the motions surrounding same, as well as the interaction with the Claims Administrator, to avoid the available funds further diminishing due to the need to pay defense counsel.

On May 31, 2023, this Court granted preliminary approval of the class settlement. On June 19, 2023, this Court issued an amended order, which related back to the May 31, 2023, order, to correct a scrivener's error by counsel. Since May 31, 2023, the Class Administrator has provided Notice to the Class pursuant to the Court's preliminary approval order, and consistent with the Comprehensive Settlement Agreement. *See, e.g.*, *Anderson v. WSE* Class Website, *available at*

http://www.wsepropertysettlement.com/. Class Counsel and WSE's counsel have been receiving regular updates from the Class Administrator and conferring regularly regarding the claims process.

This Court's preliminary approval order sets forth many deadlines, culminating in the Final Approval Hearing currently set for November 30, 2023. One of those deadlines is that "Class Counsel shall file their Motion for an Award of Attorneys' Fees, Expenses, and Costs and Motion for Case-Contribution Awards to the Class Plaintiffs no longer than 90 days after the entry of [the May 31, 2023 Order]." See May 31, 2023and June 19, 2023 Orders at ¶ 27.

Anderson now so moves, unopposed.

Argument

1. Georgia Law Applies The Common-Fund Doctrine And Considers Various Factors In Selecting The Fee Percentage.

In a negative-value class action like this one, no individual Class member has damages sufficient to justify paying attorneys hourly or even an individual contingency fee. As such, the Georgia Supreme Court has made clear that the percentage-of-the-fund approach must be used for class actions like this one. "With respect to attorney's fees, Georgia adheres to the common-fund doctrine." *Barnes v. City of Atlanta*, 281 Ga. 256, 260 (2006).

Although the factors to be considered in selecting the fee percentage from the common fund "may vary from case to case," there are commonly used factors, commonly referred to as the *Johnson* factors. *Friedrich v. Fid. Nat'l Bank*, 247 Ga. App. 704, 707 (2001). These factors are discussed in numerous cases. *See, e.g.*, *Johnson v. Ga. Hwy. Express Inc.*, 488 F.2d 714, 717-20 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989); *Camden I Condo. Ass'n v. Dunkel*, 946 F.2d 768, 774 (11th Cir. 1991); *Friedrich*, 247 Ga. App. at 707 ("'[T]he *Johnson* factors continue to be appropriately used in evaluating, setting, and

reviewing percentage fee awards in common fund cases.'") (quoting *Camden I*, 946 F.2d at 775).

The Eleventh Circuit in *Camden I* held that "an upper limit of 50% of the fund may be [. . .] stated as a general rule, although even larger percentages have been awarded. *Camden I*, 946 F.2d at 774–75. Under this doctrine, and employing the *Johnson* factors, courts have found an award of 45% of the common fund to be reasonable. *See, e.g. Roll v. Enhanced Recovery Co., LLC*, No. 6:20-CV-212-RBD-EJK, 2023 WL 2919839, at *3 (M.D. Fla. Jan. 5, 2023), *report and recommendation adopted sub nom*, 2023 WL 2535081 (M.D. Fla. Mar. 16, 2023) ("the undersigned finds an attorneys' fee award of 45% to be reasonable. The record demonstrates that the prosecution and settlement of the case required a considerable expenditure of time and labor, including time spent propounding discovery, preparing and attending mediation, and drafting a motion for final approval. [. . .] The case, being a class action, presented novel questions that required analysis of various legal theories, given the inherent complexity of class actions and the fact that there are relatively few COBRA class actions.")

The twelve *Johnson* factors are as follows:

First, this Court should consider "[*t*]*he time and labor required*." *Johnson*, 488 F.2d at 717. The Court should consider its "own knowledge, experience, and expertise of the time required to complete similar activities." *Id.*

Second, this Court should consider "[*t*]*he novelty and difficulty of the questions*." *Id.* at 718. "Cases of first impression generally require more time and effort on the attorney's part." *Id.* "Although this greater expenditure of time in research and preparation is an investment by counsel in obtaining knowledge which can be used in similar later cases, [they] should not be penalized for undertaking a case which may 'make new law.'" *Id.* "Instead, [they] should be appropriately compensated for accepting the challenge." *Id.*

Third, this Court should consider "[*t*]*he skill requisite to perform the legal service properly*." *Id.* at 718. "The trial judge should closely observe the attorney's work product, [their] preparation, and general ability before the court." *Id.*

Fourth, this Court should consider "[*t*]*he preclusion of other employment by the attorney due to acceptance of the case*." *Id.* "This guideline involves the dual consideration of otherwise available business which is foreclosed because of conflicts of interest which occur from the representation, and the fact that one the employment is undertaken the attorney is not free to use the time spent on the client's behalf for other purposes." *Id.*

Fifth, this Court should consider "[*t*]*he customary fee.*" *Id.*

Sixth, this Court should consider "[*w*]*hether the fee is fixed or contingent*." *Johnson*, 488 F.2d at 718. "The fee quoted to the client or the percentage of the recovery agreed to is helpful in demonstrating the attorney's fee expectations when [they] accepted the case." *Id.*

Seventh, this Court should consider "[*t*]*ime limitations imposed by the client or the circumstances*." *Id.* "Priority work that delays the lawyer's other legal work is entitled to some premium." *Id.* "This factor is particularly important when a new counsel is called in to prosecute the appeal or handle other matters at a late stage in the proceedings." *Id.*

Eighth, this Court should consider "[*t*]*he amount involved and the results obtained*." *Id.* This includes both "the amount of damages" *and* non-monetary effects. "If the [settlement] corrects across-the-board [practices] affecting a large class ... the attorney's fee award should reflect the relief granted." *Id.*

Ninth, this Court should consider "[*t*]*he experience, reputation, and ability of the attorneys*." *Id.* at 718-19. "Most fee scales reflect an experience differential with the more experienced attorneys receiving larger compensation." *Id.* "An attorney specializing [for example]

in [class action] cases may enjoy a higher rate for [their] expertise than others, providing [their] ability corresponds with [their] experience." *Id.* at 719.

Tenth, this Court should consider "[*t*]*he 'undesirability' of the case*." *Id.* For example, "[c]ivil rights attorneys face hardships in their communities because of their desire to help the civil rights litigant." *Id.* "This can have an economic impact ... which can be considered ...." *Id.*

Eleventh, this Court should consider "[*t*]*he nature and length of the professional relationship with the client*." *Id.* "A lawyer in private practice may vary [their] fee for similar work in light of the professional relationship of the client with [their] office." *Id.* "The Court may appropriately consider this factor in determining the amount that would be reasonable." *Id.*

Twelfth, this Court should consider "[*a*]*wards in similar cases*." *Id.* "The reasonableness of a fee may also be considered in light of awards made in similar litigation within and without the court's circuit." *Id.*

Finally, "[o]ther pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action." *Friedrich*, 247 Ga. App. at 707.

2. This Court Should Award 45% Of The Total Amount Made Available To The Class To Compensate Class Counsel For Their Fees And Expenses.

In this case, the vast majority of the *Johnson* factors and other relevant factors strongly support Anderson's request, and this Court should grant such request based on these factors, as well as any others that the Court finds relevant.

First, Class Counsel has spent substantial time and effort in litigating this case on behalf of the Class. As the Factual and Procedural Background sets forth, Class Counsel has been litigating this case for nearly three years. During those three years, they undertook pre-suit

investigation of the facts and the law in order to file the Class Complaint; successfully briefed and defeated WSE's motion to partially dismiss the Class Complaint, which included the novel issue of the statute of limitations applicable to the Security Deposit claim; corresponded and met with WSE's counsel regarding the merits of the Class's claims; prepare class-wide discovery, conferred with WSE regarding its objections to such discovery, and reviewed tens of thousands of documents related to WSE's tenants over an extended period of time; prepared extensively for and took the deposition of WSE's corporate representative; travelled to California to defend Plaintiff's deposition; amended the complaint to include additional claims developed through the discovery process; filed and litigated a motion to add a party defendant; engaged in extensive direct negotiations with WSE regarding settlement; took the lead role in preparing the Settlement Agreement and the motions surrounding same; and interacted extensively with the Class Administrator to ensure a reasonable notice and claims process is carried out. *See* Aff. of James Radford, attached to this Mot. as Ex. 1, ¶ 6; Aff. of Shimshon Wexler, attached to this Mot. as Ex. 2, ¶¶ 4-29.

To put this into perspective, the legal defense of the case eroded roughly half of a $2 million insurance policy. The fee Plaintiff seeks is roughly 1/3 of defendant's attorneys' fees. Comparing the more than one million dollars of fees and expenses Defendant's counsel has sought and received from the insurance policy is indicative of the reasonableness of Plaintiff's counsel's request for less than half that amount ($360,000 or less than 36% of that amount). Courts have found the amount of a defendant's attorney's fees to be relevant in assessing the reasonableness of a plaintiff's claim for attorney's fees because the number of hours worked by defense counsel is indicative of the number of hours plaintiff's counsel reasonably should have spent litigating the case. See *Henson v. Columbus Bank & Trust Co*., 770 F.2d 1566, 1571–72 (11th Cir.1985) (trial court abused its

discretion by refusing discovery of hours spent preparing a defense where litigation continued for ten years and the judge expressed doubt as to the reasonableness of the hours claimed in plaintiff's petition for fees); *Chicago Professional Sports v. National Basketball Assoc.*, 1996 U.S. District LEXIS 1525, 1526, (N.D.Ill.1996) (defendant's fees may provide the best available comparable standard to measure the reasonableness of plaintiffs' expenditures in litigating the issues of the case); *Blowers v. Lawyers Cooperative Publ'g, Inc*., 526 F.Supp. 1324, 1327 (W.D.N.Y.1981) (amount of time spent by defendants' attorneys on a particular matter may have significant bearing on whether plaintiff's counsel expended a reasonable time on the same matter; amount of costs and disbursements incurred by defendants also has some bearing on the reasonableness of plaintiff's own costs and disbursement).

Class Counsel performed the necessary tasks all while working closely with Anderson to keep her informed about the case. Aff. of Shimshon Wexler, attached to this Mot. as Ex. 2, ¶¶ 6-13.

Second, Class Counsel litigated and prevailed on a novel and difficult question—the statute of limitations applicable to the Georgia Security Deposit Statute. This was and is a question of first impression, which has still yet to be decided by Georgia appellate courts. For taking on a case to "'make new law,'" Class Counsel "should be appropriately compensated for accepting the challenge." *Johnson*, 488 F.2d at 718; *see also In re Checking Account Overdraft Litig.*, No. 1:09-MD-02036, 2013 WL 11319392, at *15 (S.D. Fla. Aug. 5, 2013) ("[The] relevant risks must be evaluated from the standpoint of plaintiffs' counsel as of the time they commenced the suit, not retroactively, with the benefit of hindsight.").

Third, Class Counsel used substantial skill and expertise to litigate this class action. Again, the statute of limitation for the Georgia Security Deposit Statute is a question of first impression,

which necessarily required innovative legal argument. *See, e.g.*, Ex. 1 (Radford Aff.) ¶ 6. Moreover, by reviewing the many documents produced, analyzing them under the law, and skillfully conducting the deposition of WSE's corporate representative, Class Counsel developed evidence of additional claims that are addressed by the Settlement Agreement. *Id.* Furthermore, because WSE was winding down its business as this litigation was taking shape, counsel was required to think creatively and negotiate with WSE's counsel in order to fashion a resolution that would result in *any* relief to the class by pausing the litigation to focus on attaining the remaining insurance proceeds; less skilled counsel could easily have bungled this operation, leading to no recovery from an insolvent defendant. *Id.* at ¶ 7.

Fourth, Class Counsel was precluded from taking on other certain work because of their responsibilities to the Class in this case. A major part of the business of Class Counsel Radford is employment law, including defending companies in employment-related matters. Taking on a class action against a large apartment company for residential security deposits means that Class Counsel likely has lost any apartment company business. Moreover, the time and years spent litigating this case meant that Class Counsel did not have the time and opportunity to take on other matters, which could be profitable. *See id.* ¶ 8.

Fifth, Class Counsel's request for 45% of the total amount available is consistent with custom, *See Roll v. Enhanced Recovery Co., LLC*, No. 6:20-CV-212-RBD-EJK, 2023 WL 2919839, at *3, and below the 50% upper level suggested by the Eleventh Circuit. *Camden I*, 946 F.2d at 774–75. Radford Aff. At ¶ 9; Wexler Aff. At ¶ 30.

Sixth, Class Counsel's fee agreement with Anderson is entirely contingent, and it specifically calls for a fee of 45% of the total recovery. Wexler Aff. at ¶ 2. If there is no recovery, Class Counsel would receive no fees and no reimbursement for the substantial expenses advanced.

Class Counsel bore substantial risk in the event that this case was not successfully resolved.

Class Counsel's contingency fee reflects the fact that "it is not practical to find any individual that will pay attorneys on an hourly basis to prosecute the claims of numerous strangers and taken on the significant additional expenses of fighting with the defendant over class certification." *Columbus Drywall*, 2012 WL 12540344, at *4. "If this 'bonus' methodology did not exist, very few lawyers could take on the representation of a class given the significant investment of substantial time, effort, and money, especially in light of the risks of recovering nothing." *Id.* at *4 (citation omitted).

Seventh, Class Counsel's litigation on behalf of the Class imposed limits on their ability to work on other matters. Each discovery request, each motion, and so on requires considerable attention and detail because it has the ability to affect thousands and thousands of class members. For example, the question of whether a six-year or twenty-year statute of limitation applies is not one that affects just Anderson. If the twenty-year statute of limitations applies, the Class is likely more than tripled in size. As a consequence of the importance of each decision in this case, Class Counsel's attention must be focused on this case and with substantial limitations on their ability to focus on other cases.

Eighth, Class Counsel has obtained substantial monetary and non-monetary relief for the Class. Through Class Counsel's efforts, WSE has agreed to make a total of $800,000 available to the Class. That amount includes payment for Class Administration, which are substantial. Because WSE is essentially assetless at this time, this is an excellent and unlikely result. Without Class Counsel's work and creative thinking, members of the class would not likely receive any relief.

Ninth, Class Counsel have substantial experience and expertise in litigating complex issues, including class actions. *See* Radford Aff. at ¶ 5; Wexler Aff. ¶¶ 32-29. Indeed, in granting

preliminary approval of the Class Settlement, this Court expressly found that Class Counsel "are experienced and adequate for purposes of these settlement approval proceedings." See May 31, 2023 and June 19, 2023 Orders at ¶ 8.

Tenth, Class Counsel have represented thousands of renters, which in today's American society are among some of the most vulnerable members of society. Renters in America face rising housing costs, without a corresponding increase in earning power. They have no ability to finance litigation by paying attorneys hourly. "If the plaintiffs' bar is not adequately compensated for its risk, responsibility, and effort when it is successful, then effective representation for plaintiffs in these cases will disappear." *Muehler v. Land O'Lakes, Inc.*, 617 F. Supp. 1370, 1376 (D. Minn. 1985).

Eleventh, Class Counsel has no prior professional relationship with Anderson or the Class, and so they have, in no sense, been compensated through prior business for the work that has been performed in this case.

Twelfth, Class Counsel's request for 45% of the total amount available is consistent with the awards issued in similar cases and *less* than the 50% upper limit suggested by the Eleventh Circuit in *Camden I*, as set for *supra*.

Finally, pursuant to the Comprehensive Settlement Agreement, WSE does not oppose Anderson's request for a total of $360,000 to compensate Class Counsel for their fees and expenses. The notice provided to the class informs them of the $360,000 that Class Counsel will seek and class members have the opportunity to object to this part of the settlement.

3. Anderson should receive a Class Representative Service Award of $15,000.

"For class actions to be effectively litigated, it is necessary that at least one plaintiff be willing to take on the role of class representative, according to ... state procedural rules." 60 A.L.R.

295 (originally published in 2010). As such, "[c]ourts **frequently** make incentive awards to named plaintiffs at the conclusion of class action litigation." *Id.*; *see also* 176 Am. Jur. Proof of Facts 3d 463 (originally published in 2019) ("Courts **regularly** give incentive or service awards ... to named plaintiffs in class actions ....") (emphasis added in both).

The reason that courts frequently and regularly give service awards to class representatives is to "compensate them for the time and effort that they have invested in the case on behalf of the class," "as well as recognize the financial and personal risks undertaken," "the willingness of the representative to act as a 'private attorney general' by bringing the suit on behalf of others," and "to incentive the individual to take on the role of class representative." *Id.* "No award is guaranteed, but rather is intended to be proportional to the contribution of the plaintiff in acting as the lead plaintiff, including monitoring the litigation," "working with class counsel," and "investing the time, energy, and risking or contributing personal funds to keep the litigation alive." *Id.*

Furthermore, "[e]mpirical evidence shows that incentive awards are now paid in most class suits and average between $10-15,000 per class representative." 5 Newberg on Class Actions § 17:1 (5th ed.); *see also Harlow v. Sprint Nextel Corp.*, No. 08-CV-2222-KHV, 2018 WL 2568044, at *7 (D. Kan. 2018) (citing Newberg on Class Actions and noting that "average incentive awards [are] between $10,000 through $15,000"); 5 Newberg on Class Actions § 17:8 (5th ed.) (referring to "two [other] studies" which "show that the average award per plaintiff ranged from $9,355 (in 2002 dollars) in one study to $15,992 (in 2002 dollars) in the other").

The Eleventh Circuit did recently hold, in a two-to-one opinion, that an "incentive award" for a class representative's work is not allowed, for now, under its precedent. *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244, 1260 (11th Cir. 2020); *but see id.* at 1264 (Martin, J., dissenting) ("In reversing this incentive award, the majority takes a step that **no other court** has taken to do away

with the incentive for people to bring class actions.") (emphasis added).

But Eleventh Circuit opinions are not binding in Georgia on a question of state law, like whether the *Georgia* Civil Practice Act and other Georgia authority allow for class representative service awards. That is especially true for an opinion like *Johnson*, which was issued over Judge Martin's dissent;; and which is widely recognized as controversial and inconsistent with how Georgia courts have addressed this same issue.

Indeed, on the very same day that the Eleventh Circuit issued its opinion in *Johnson*, Judge Gregory Adams of the DeKalb County Superior Court issued a final judgment in *Gold v. DeKalb County School District*, Civil Action File No. 11-CV-3657-5, finding that "$25,000 shall be paid to each of the Lead Plaintiffs as an incentive award for their efforts in prosecuting this case." Sept. 17, 2020 Final Judgment & Order of Dismissal at 5. And just two days before that, Judge Johnny Panos of the DeKalb County State Court issued a final judgment in *Wexler v. Post Properties, Inc.*, Civil Action File No. 16A60559, another security-deposit class action under Georgia law, finding that "[t]he Court finds that payment of this service award is warranted and approved in this case in light of the class representative's work on behalf of the class and the risk she took." Sept. 15, 2020 Final Order & Judgment at 7-8.

The fact that Georgia courts have consistently given service awards to class representatives is significant. "[S]tatutes[] are properly to be expounded in light of conditions existing at the time of their adoption." *Ga. Motor Trucking Ass'n v. Ga. Dep't of Revenue*, 301 Ga. 354, 357 (2017). Rule 23 of the Georgia Civil Practice Act was specifically amended by the General Assembly in 2003 and then again in 2005. The General Assembly could have prohibited the practice of awarding service awards, which was as prevalent then as it is now, but the General Assembly chose not to do so. It chose to amend other parts of Rule 23, but not to prohibit service awards.

Meanwhile, in the months since the Eleventh Circuit issued *Johnson*, no court outside of the Eleventh Circuit has followed *Johnson*. It appears that courts in other circuits have consistently declined to follow *Johnson*. *See, e.g.*, *Hart v. BHH, LLC*, No. 15-CV-4804-WHP, 2020 WL 5645984, at *5 & n.2 (S.D.N.Y. Sept. 22, 2020) (recognizing "*Johnson*," but finding that "the incentive award is fair and reasonable"); *Somogyi v. Freedom Mortg. Corp.*, No. 17-CV-6546-RMB, 2020 WL 6146875, at *9 (D.N.J. Oct. 20, 2020) ("In *Johnson* the court ruled that an incentive payment to the class representative was improper. As to this holding, the Court respectfully declines to follow *Johnson*."); *In re Lithium Ion Batteries Antirust Litig.*, No. 13-MD-02420-YGR, 2020 WL 7264559, at *24 (N.D. Cal. Dec. 10, 2020) ("The Court declines to follow the recent holding of the Eleventh Circuit suggesting such awards are unlawful.").

In short, well-established and long-standing decisions in Georgia and around the rest of the country overwhelmingly support giving a service award to a class representative to compensate them for their indispensable work on the class's behalf.

Several factors support Anderson's request for a $15,000.00 service award, and this Court should grant such request based on these factors, as well as any others the Court finds relevant.

First, like all other Class members, Anderson's individual damages are minimal. If the Court were to deny her request for a service award and leave her only able to recover her security deposit and the fees associated with her utilities, etc., it will become extremely difficult, if not impossible, to find individuals willing to serve as a class representative in negative-value suits like this one. The damage to public policy would be substantial. In cases where individual damages are small, but aggregate damages are substantial, no suits will be brought and substantial violations of Georgia law will go unremedied.

Second, Anderson provided work on the Class's behalf for nearly three years, far exceeding

what any individual Class member must do to obtain relief. Every Class member is eligible for relief, and for those Class members who submit claims for damages, they need only spend thirty minutes (if that) reading the notice, reviewing their documentation, and submitting their claims online to receive monetary payment.

In stark contrast to the thirty minutes or less that other Class members will spend to obtain relief, Anderson spent over three years working on behalf of the Class. Among other things, she took a day off from work to attend her deposition, worked with Class Counsel in gathering her documents; provided Class Counsel summaries and answered questions about her facts and claim; reviewed the pleadings; stayed informed of Class Counsel's discovery requests, motion-to-dismiss briefing, and motion-to-amend briefing; consulted with Class Counsel regarding extended negotiations to settle this class action. Wexler Aff. At ¶¶ 6-13.

Third, pursuant to the Comprehensive Settlement Agreement, WSE does not oppose Anderson's request for a service award of $15,000.00. And WSE's non-opposition is consistent with the average amounts courts approve nationally. *See, e.g.*, 5 Newberg on Class Actions § 17:1 (5th ed.) ("Empirical evidence shows that incentive awards are now paid in most class suits and average between $10-15,000 per class representative.").

Conclusion

For these reasons, this Court should grant Anderson's unopposed motion and award 45% of the total amount made available to the Class (*i.e.*, $360,000.00 out of $800,000) to compensate Class Counsel for their fees and expenses. Furthermore, this Court should approve a Service Award to Anderson of $15,000.

A proposed order is not being submitted at this time. However, a proposed Final Approval Order will be submitted prior to the Final Approval Hearing, and the Final Approval order will include proposed language addressing Class Counsel's fees and expenses.

Respectfully submitted, this August 29, 2023.

/s/ James Radford
Ga. Bar No. 108007
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Decatur, Georgia 30030
Tel: 678-271-0302
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/s/ Shimshon Wexler
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Attorneys for Plaintiff

Exhibit 1

—

Affidavit of James Radford

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

AMANDA ANDERSON, on behalf of herself and all others similarly situated, Plaintiff, v. WSE PROPERTY MANAGEMENT LLC, Defendant.	Civil Action File No.: 20EV005363

AFFIDAVIT OF JAMES RADFORD

COMES NOW James Radford and states the following based upon his own personal knowledge.

1.

My name is James Radford. I have served as class counsel for the Plaintiff and the class in the above-captioned matter throughout this litigation.

2.

I graduated *cum laude* from University of Georgia School of Law in 2006. I served both on the Board of Editors for the *Georgia Law Review* and as a member of Georgia's Moot Court team. Following the completion of my law degree, I worked for two years as a Staff Attorney with the Eleventh Circuit U.S. Court of Appeals, where I reviewed hundreds of federal appeals, many of which related to the federal civil rights statutes, including Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and 42 U.S.C. § 1983. I joined the law firm of Parks, Chesin & Walbert ("PCW") as an Associate in August of 2008. There, I became actively involved

in the litigation of civil rights matters, under the guidance of Lee Parks, David Walbert, Andrew Coffman, and Larry Chesin.

3.

I left PCW in January 2012, to begin my own law practice, James Radford LLC, where I served as the principal attorney. I was joined by a law partner, Regan Keebaugh, in July of 2014, and we formed the firm of Radford & Keebaugh, LLC. We are currently in the course of merging our firm with Scott Employment Law, P.C., to become Radford Scott LLP, at which point we expect to become a nine-attorney firm. Radford & Keebaugh currently employs two full-time Associate Attorneys, a full-time experienced paralegal, and an administrative assistant. We have two experienced lawyers who work with our firm on an "of counsel" basis as well. We have an active practice, with over two hundred (200) client matters pending at any given time, focusing on civil rights, employment, and class and collective action litigation.

4.

I am admitted to practice before all state trial and appellate courts in Georgia, the United States District Courts for the Northern, Middle, and Southern Districts of Georgia, the United States Court of Appeals for the Eleventh Circuit, and the U.S. Supreme Court, to which I have authored two (2) petitions for writ of *certiorari.*

5.

During my time practicing law, I have developed a reputation for my skills and expertise in civil rights litigation and class action work. To highlight some of my work: I was the originating attorney, and was appointed class counsel, in *Githieya v. Global Tel*Link,* (1:15-cv-00986, N.D. Ga.) a nationwide class action against the largest provider of Inmate Calling Services, arising out of the company's wrongful conversion of customer deposits. After eight (8) years of litigation,

Githieya resulted in a $67 million nationwide settlement that includes injunctive relief and ongoing monitoring. I have been appointed class counsel in the matter of *Lawson v. City of Atlanta* (Civil Action No. 1:18-CV-02484, N.D. Ga.), a class action brought under the Americans with Disabilities Act (ADA) against the City of Atlanta regarding the City's systemwide noncompliance with the ADA in its sidewalk infrastructure. A Consent Order has been submitted in that matter which will involve ongoing monitoring by class counsel to ensure mobility-impaired residents have equal access to public rights of way. I played a lead role in the litigation of the class action suit in *Belton v. State of Georgia, et al.*, (Civil Action No. 1:10-CV-0583-RWS, N.D. Ga.), an ADA case on behalf of deaf Georgians in need of public mental health services; the Court in *Belton* granted class certification and summary judgment to the plaintiffs based on depositions I took and briefs authored primarily be me. In *Williams v. Allen* (1:19-cv-02200, N.D. Ga.), I served as trial counsel in an employment discrimination case under the ADA and Rehabilitation Act against the Clayton County Sheriff's Office, which resulted in a jury verdict just over $200,000.00 on May 19, 2023. In *R.W. v. Georgia Board of Regents*, (1:13-CV-2115-LMM, N.D. Ga.), I served as lead and trial counsel in an ADA case in which we obtained a jury verdict and complete injunctive relief for a disabled student who was denied access to student housing. I was a served as lead counsel, presented oral argument, and obtained a 9-0 reversal of the lower court's decision before the Georgia Supreme Court in the case of *Williams v. City of Greenville, et al.*, (290 Ga. 557), which focused on the liability of public officials for acts taken without authority of law under state law. In the case of *Karas v. New NGC, Inc.* (Civil Action No. 1:10-CV-2280, N.D.Ga.), I obtained a jury verdict and received a judgment of $226,658 in federal court in favor of a woman who was terminated from her job based on her sex, in violation of Title VII of the Civil Rights Act of 1964, against a major manufacturing corporation represented by a large Atlanta law firm. In the case of

Abdulahi v. Wal-Mart (Civil Action No. 1:12-cv-04330, N.D.Ga.), I obtained an order imposing sanctions upon Wal-Mart for spoliation of evidence in an employment discrimination matter, which resulted in a published decision that is regularly cited by attorneys seeking spoliation sanctions in discrimination cases; we ultimately reached a confidential settlement in this matter. I attained what was, at the time, the largest reported settlement against a municipality under the Georgia Whistleblower Protection Act in the case of *Grantham v. City of Lakeland, et al.* (Civil Action No. CE-11-718, Lanier County Superior Court). I have served as lead counsel in a number of high profile cases throughout the past five years, including *Shelbayah v. Georgia State University* (regarding a Muslim student who was harassed by a university professor), *Lack v. Kersey* (regarding claims under the First Amendment by a high school student who was removed from his position as Student Body President); *Armstrong v. City of Rome* (malicious prosecution claims against Director of Rome-Floyd Parks and Recreation Department, in which court recently denied an exhaustive motion to dismiss by defendants); and *Grantham v. City of Lakeland* (regarding two Chiefs of Police who were terminated after opposing Mayor's demand to target political opponents for prosecution).

6.

My colleague and co-counsel Shimshon Wexler, who himself has substantial experience litigating consumer class action cases, including several cases against residential landlords, recruited me in the Fall of 2020 to become involved in the instant case due to my professional background and experience. I spent significant time reviewing the matter and conducting legal research, and formally filed my notice of appearance on January 6, 2021. Since then, we successfully briefed and defeated WSE's motion to partially dismiss the Class Complaint, which included the novel issue of the statute of limitations applicable to the Security Deposit claim; we

corresponded and met with WSE's counsel regarding the merits of the Class's claims; we prepared class-wide discovery, conferred with WSE regarding its objections to such discovery, and reviewed tens of thousands of documents related to WSE's tenants over an extended period of time; we prepared extensively for and took the deposition of WSE's corporate representative; my co-counsel traveled to California to defend Plaintiff's deposition; we amended the complaint to include additional claims developed through the discovery process; we filed and litigated a motion to add a party defendant; we engaged in extensive direct negotiations with WSE regarding settlement; we took the lead role in preparing the Settlement Agreement and the motions surrounding same; and we have interacted extensively with the Class Administrator to ensure a reasonable notice and claims process is carried out.

7.

Settling the matter was particularly difficult due to the fact that the defendant was winding down its business and essentially had no assets, which we learned in the course of the discovery process. We spent considerable time requesting and reviewing information related to insurance coverage available to defendant, conferring with opposing counsel, and discussing resolutions that would allow the class to obtain relief despite the financial condition of the company. This required cooperation, compromise, and creative thinking. Through this process, we ultimately obtained an agreement that would allow the class to recover based on the remainder of insurance coverage available under defendant's "eroding" insurance policy. In order to do this, we have been required to take on the lion's share of work in drafting the materials associated with the settlement in order to prevent the available funds from eroding further due to defense costs.

8.

My firm does a mix of contingency based work and fee-paying work. I take extraordinary risk taking a case of this nature on a contingency basis. Operating a growing law firm involves significant overhead. Time spent on contingent fee cases is time that we cannot spend on cases that generate guaranteed revenue. If the case does not yield a fee, or yields a fee that is disproportionately low to the amount of work involved, it threatens our ability to pay the cost of operating the business. Moreover, much of our work derives from employment litigation. Pursuing a class action against a major residential landlord makes it very difficult for us to market our services to companies that own or manage residential leases. This case was particularly risky, given the amount of work required, the numerous complicated legal and factual issues presented, and the size and resources of the defendant.

9.

I am personally familiar with the Atlanta legal market. For a matter of this nature, involving a well-resourced defendant, complex legal issues, substantial devotion of time and expense, and high risk, a contingent fee of 45% is well-within the customary range of fees.

I, THE UNDERSIGNED, DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT AND BASED ON MY OWN PERSONAL KNOWLEDGE.

This August 29, 2023.

JAMES RADFORD

EDNA M. TRUTT
NOTARY PUBLIC
My Commission Expires
06-15-2025
HENRY COUNTY, GEORGIA

Edna M Trutt

Exhibit 2

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Affidavit of Shimshon Wexler

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

AMANDA ANDERSON, on behalf of herself and all others similarly situated, Plaintiff, v. WSE PROPERTY MANAGEMENT LLC, Defendant.	Civil Action File No.: 20EV005363

AFFIDAVIT OF SHIMSHON WEXLER
IN SUPPORT OF MOTION FOR ATTORNEY'S FEES

COMES NOW the undersigned, Shimshon Wexler, and declares under penalty of perjury that the following statements are true and correct:

1. My name is Shimshon Wexler. I am majority age and under no disability that would render me unable to give truthful testimony.

2. I am an attorney and have been admitted to practice law in the State of New York since January 2010 and in the state of Georgia since June 2015.

3. My license to practice law has never been suspended or revoked.

4. Plaintiff Amanda Anderson contacted me in late August 2020 concerning complaints that she had regarding her tenancy at Windward Place Apartments and their attempts to collect a debt the was not owed.

5. In early September 2020, Ms. Anderson signed a representation agreement in which she agreed to a fee of 45% of the gross amount recovered in addition to expenses being reimbursed if there is a recovery.

6. Ms. Anderson reviewed a copy of the Complaint prior to when it was filed and assisted in its preparation.

7. Ms. Anderson provided a large number of documents as well as a detailed factual account of her situation and asked questions and answered all of my questions both by email and phone.

8. Ms. Anderson's involvement and time dedicated to this lawsuit was substantial.

9. Ms. Anderson reviewed, verified, and helped compile the information necessary to respond to the discovery responses.

10. Ms. Anderson engaged in substantial preparation for her in person deposition in Palm Springs, California.

11. Ms. Anderson met with me the night prior to her deposition.

12. Ms. Anderson took the day off of work to attend her deposition.

13. I am personally and closely familiar with class action litigation in the state of Georgia. In my professional opinion, a $15,000 class representative service award is reasonable and customary for a person in Ms. Anderson's position in a case of this nature.

14. This case has been hard fought for close to three years against skillful and experienced defense lawyers at the prominent insurance defense law firm of Swift Currie.

15. I engaged in a pre-suit investigation of the facts and the law was undertaken.

16. I helped brief and defeat WSE's motion to partially dismiss the Class Complaint, which included the novel issue of the statute of limitations applicable to the Security Deposit claim.

17. I helped respond to and defeat an application for interlocutory appeal.

18. I helped successfully litigate a potentially dispositive discovery issue regarding the timing of class discovery prior to summary judgment practice.

19. I engaged in discussions with WSE's counsel regarding the merits of the Class's claims.

20. I helped prepare Class-wide discovery.

21. I carefully reviewed discovery responses and thousands of pages of documents, including tenant files related to the class action allegations.

22. I helped prepare for and attended the deposition of WSE's corporate representative.

23. I traveled to California to defend Plaintiff's deposition.

24. I helped prepare the amended the complaint to include additional claims developed through the discovery process.

25. I helped litigate a motion to add an additional party defendant to this lawsuit which motion was aggressively opposed.

26. I helped to negotiate a favorable settlement for the class.

27. I helped prepare the Settlement Agreement and the motions surrounding same.

28. I prepared and argued for the Court's approval of the motion to preliminarily approve the settlement.

29. After the settlement was approved, I responded to class member inquiries and worked with the Class Administrator.

30. I believe a total fee award to class counsel of 45% of the gross amount of the settlement or $360,000 with expenses being included in that amount is fair and reasonable for this case.

31. This amount represents less than $10,000 per month for the work of my solo-practice law firm and the law firm of Radford & Keebaugh.

32. I received my bachelor's degree from Touro College in 2003 and graduated from New York Law School in 2009.

33. Early in my career, I worked for the law firm of Herzfeld & Rubin, PC, a New York-based law firm serving clients internationally.

34. Since leaving that law firm in late 2010, I have been engaged as a solo practitioner representing consumers.

35. I bring individual claims as well as class actions.

36. Most of my cases that I bring are on a contingency basis as the clients that I represent are unable to afford hourly billing.

37. I was certified as co-counsel in the class action of *Roberson v ECI Group, Inc et al*, 17A64506, Dekalb County, Georgia State Court (settled for a $2.4 million common fund for violations of the security deposit statute).

38. I have been certified to act as sole lead class counsel in federal class action lawsuits. *See Gonzalez v Relin, Goldstein & Crane, LLP*, U.S. District Court, S.D.N.Y. Case No. 12-cv-783-ER (deceptive collection letter) and *Fried v. The Bank of Castile, U.S. District Court*, W.D.N.Y. Case No. 12-cv-624-WMS (charging fees without proper notice).

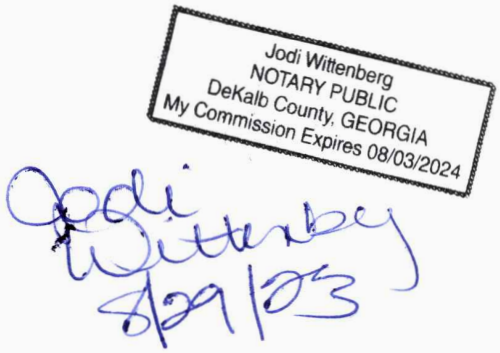
39. I have also been certified as class co-counsel in several class actions. *See Burton v. Nations Recovery Ctr., Inc.*, U.S. District Court, E.D.N.Y. Case No. 13-cv-1426-BMC(failure to provide debtor with statutorily required information); *Cohn v New Century*, U.S. District Court, E.D.N.Y. Case No. 14-cv-2855-RER (deceptive collection letter) and *Quatinetz v Eco Shield Pest Control*, U.S. District Court, S.D.N.Y. Case No. 7:19-cv-08576-CS (addition of

unlawful fee))*Katz v ABP Corp.*, U.S. District Court, E.D.N.Y. Case No. 12-cv-4173-ENV-RER (privacy violation); and *Schwartz v Intimacy*, U.S. District Court, S.D.N.Y. Case No. 13-cv-5735-PGG (privacy violation) and *Soto v. Six Flags Great America, et al*, Circuit Court of the 19th Judicial District, Lake County Illinois, Case No. 17 CH 1118 (privacy violation).

I submit the foregoing under the penalty of perjury, this August 29, 2023.

Shimshon Wexler

Notary Seal:



Certificate of Service

I certify that, on August 29, 2023, I served a copy of the foregoing pleading by statutory electronic service on all counsel of record for WSE.

/s/ James Radford
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