IN THE SUPERIOR COURT OF MCINTOSH COUNTY
STATE OF GEORGIA

MARY A. BAILEY	)	
	)	
Plaintiff,	)	**CIVIL ACTION NO. SUV2021000009**
	)	
v.	)	
	)	
MCINTOSH COUNTY, GEORGIA	)	
	)	
	)	
Defendant.	)	

NAMED PLAINTIFF'S SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF FIRST AMENDED MOTION TO CERTIFY SUIT AS CLASS ACTION AND REPLY TO DEFENDANT'S OPPOSITION TO MOTION TO CERTIFY SUIT AS CLASS ACTION

Plaintiff Mary A. Bailey (hereinafter "Named Plaintiff") files this Supplemental Memorandum of Law in Support of First Amended Motion to Certify Suit as Class Action (the "First Amended Motion") and Reply to Defendant's Opposition to Motion to Certify Suit and Class Action (collectively the "Supplemental Memorandum"). In support of her First Amended Motion and in reply to Defendant's Opposition, the Named Plaintiff shows the Court as follows:

I. Background

This case is a refund action under O.C.G.A. § 48-5-380 (the "Refund Statute"). It involves class action claims based on Defendant McIntosh County ("Defendant" or the "County") assessing and collecting ad valorem taxes based on the incorrect application of the McIntosh homestead exemption for county and school taxes found in House Bill 382 ("HB 382") and House Bill 450 ("HB 450") (collectively referred to as the "Homestead Exemption").

In the County's Response in Opposition to Plaintiff's Motion to Certify Suit as Class Action ("County's Opposition"), the County argues that it "should not be penalized and subjected

to a class action lawsuit … when [it] has already started the process of correcting any errors that may have been made in the assessment." County's Opposition, at p. 2. That is not a legally valid reason to deny class certification, but more importantly the process that the County initiated to refund taxpayers the monies it illegally assessed and collected is contrary to the law.

First, the County's process only permits a taxpayer to seek refunds for three (3) years when the Refund Statute plainly states, and the Georgia Court of Appeals confirmed, taxpayers can seek refunds for five (5) years. Second, the County's process requires taxpayers to submit an application prior to receiving a refund. This too is contrary to the law. The Refund Statute mandates that a county ***shall*** refund erroneously or illegally assessed and collected and does not require a taxpayer such as Named Plaintiff to submit an application or claim for the refund of taxes when a county independently discovers an error it made in the assessment and collection of taxes. Therefore, contrary to the County's statements that "this lawsuit is nothing more than an attempt to interfere with the [refund] process already started by the" County, this lawsuit was filed to require the County to comply with the law when refunding monies for the illegally assessed taxes. County's Opposition, at p. 2.

Contemporaneously with the filing of this Supplemental Memorandum, Named Plaintiff filed a First Amended Class Action Complaint (the "First Amended Complaint"), revising the definition of the Class and removing tax year 2015. Also, contemporaneously with the filing of this Supplemental Memorandum, Named Plaintiff filed a First Amended Motion revising the class definition and removing tax year 2015.[1]

[1] The County is correct that Named Plaintiff's Complaint sought refunds beyond the five (5) year limitation period contained in the Refund Statute. Named Plaintiff's First Amended Complaint makes clear that Named Plaintiff is seeking refunds for tax years 2016 through 2020.

A. Classes Defined as Set forth in the First Amended Complaint

Named Plaintiff seeks certification of one (1) class. The class consists of taxpayers similarly situated who, like Named Plaintiff, own property in McIntosh County, Georgia, who received the Homestead Exemption in the calculation of their tax bill in 2016, 2017, 2018, 2019 or 2020 for whom McIntosh County used the year in which the Homestead Exemption was first granted as the Base Year (the "Incorrect Base Year") rather than the immediately preceding year (the "Correct Base Year") in calculating the exemption amount under the Homestead Exemption for property tax bills in 2016, 2017, 2018, 2019 or 2020 and for whom the value frozen in the year in which the Homestead Exemption was first granted is greater than the value in the immediately preceding year (hereinafter the "Class").

Class members are readily identifiable from the County's records. In fact, the County has already published a list of potential class members in The Darien News. See Exhibit "E" to Named Plaintiff's Motion to Certify Suit as Class Action filed on January 29, 2021 ("Motion to Certify"). From the records maintained by the County, the class members can be identified and the data necessary to compute the refund owed to each prospective class member can be determined.

B. Relief Sought as Set Forth in the First Amended Complaint

Named Plaintiff on behalf of itself and prospective class members seek a refund of all erroneously and illegally levied taxes or voluntarily or involuntarily over paid taxes pursuant to the Refund Statute, based on the incorrect application of the term "Base Year" in the Homestead Exemption, plus prejudgment interest. Succinctly stated, this litigation seeks resolution as to whether Named Plaintiff and the prospective class members are entitled to the return of all taxes assessed and voluntarily or involuntarily paid for 2016 through 2020 because the County used the year in which the Homestead Exemption was first granted as the Base Year rather than the

immediately preceding year in calculating the exemption amount under the Homestead Exemption. Named Plaintiff and the Class are entitled to refunds for five (5) years not three (3) years as claimed by the County in The Darien News. However, just considering three (3) of the five (5) years for which refunds are due (2017, 2018 and 2019), the County claims that the refund amount is approximately $800,000.

II. Argument and Citation of Authority

No argument raised in the County's Opposition changes the fact that the claims asserted by Named Plaintiff on behalf of herself and potential class members satisfy the requirements for class certification and represent precisely the type of claims class treatment is intended to address. Accordingly, the Court should certify the class action under O.C.G.A. §9-11-23.

The County has not asserted any legitimate deficiency of Named Plaintiff's pleadings or evidence in support of class certification with regard to numerosity, commonality, typicality or adequacy of representation under O.C.G.A. §9-11-23(a) or with regard to O.C.G.A. §9-11-23(b)(1) or (b)(3). The County's Opposition to class certification focuses on (1) arguments that go to the merit of Named Plaintiff's claims (Section III of the County's Opposition); (2) arguments that a class action is inappropriate because resolution of the issues will require proof that is unique to individual prospective class members (Section II of the County's Opposition); and (3) arguments that a class action is inappropriate because commonality and numerosity have not been met (Section II of the County's Opposition). As discussed below, these arguments are wholly without merit. Class certification in this matter is proper and Named Plaintiff requests that her First Amended Motion be granted.

A. Class Actions are Appropriate Where Tax Refund Litigation is Brought Under the Refund Statute.

To begin, under controlling authority from the Supreme Court of Georgia class actions are appropriate under the Refund Statute. See Barnes v. City of Atlanta, 281 Ga. 256, 637 S.E.2d 4 (2006). In the case of Glynn County v. Coleman, 334 Ga. App. 559, 779 S.E.2d 753 (2015) cert denied (Feb. 22, 2016) in which the County's counsel was lead counsel for Glynn County,[2] the Court of Appeals "conclude[d] that a class action for a tax refund can be maintained under" the Refund Statute. 334 Ga. App. at 564.

B. Merit-Based Disputes are Not Ripe for Resolution at the Class Certification Stage

The County raises merit-based arguments regarding the statute of limitation for tax refunds under the Refund Statute. See County's Opposition, Section III. Merit-based disputes are not ripe for resolution at the class certification stage and it is disingenuous for the County's counsel to argue otherwise. As pointed out above, Attorney Carter was lead counsel for Glynn County in Coleman. In an attempt to avoid certification under O.C.G.A. §9-11-23 in Coleman, Attorney Carter raised merit-based arguments. The trial court rejected the arguments, finding that the motion was premature. A true and correct copy of the trial court's order dated January 8, 2015 is attached as Exhibit ("Ex".) "A" to the First Amended Motion. The Court of Appeals affirmed. See Coleman, 334 Ga. App. 559.

In rejecting Attorney Carter's arguments, the Court of Appeals held that "the first issue to be resolved is not whether the plaintiffs have stated a cause of action or may ultimately prevail on the merits, but whether the requirements of O.C.G.A. §9-11-23(a) have been met." Id. at 561(internal citations omitted). The Coleman Court continued that "[w]hile a defendant can

[2] Counsel for Named Plaintiff was also counsel for Named Plaintiffs in Coleman.

certainly seek a ruling on a dispositive motion before certification of a class, it cannot use a dispositive motion as a vehicle to deny class certification." Id.

Therefore, the County's merits-based arguments concerning the statute of limitation are premature. Stated differently, the merits-based arguments are inappropriate for consideration in determining whether class certification should be granted. See Gay v. B.H. Transfer Co., 287 Ga. App. 610, 652 S.E.2d 200 (2007) (reversing trial court's denial of class certification based on the merits of the case).

Even though the County's arguments are premature and cannot be a basis for denying class certification, Plaintiff addresses the arguments below. As discussed in Sections 1 and 2 below, the County's arguments are wholly without merit and must be rejected.

1. The Court of Appeals Ruled That There is a Five (5) Year Statute of Limitation Under the Refund Statute.

Despite a recent ruling from the Court of Appeals – which the County acknowledges – the County continues to misstate the law regarding the statute of limitation under the Refund Statute. The County argues that "[b]ecause [the Refund Statute] limits taxpayer recovery to payments made within three years of a refund demand, the County's sovereign immunity is only waived with respect to such payments." County's Opposition, at p. 7. The is an incorrect statement of the law.

A recent Georgia Court of Appeals case makes it clear that Subsection (g) of the Refund Statute allows for the filing of a suit against a county for a tax refund within five (5) years of the date the disputed taxes were paid. 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). The Hojeij Court stated that "[b]ecause O.C.G.A. § 48-5-380 allows for the filing of a suit against a county or municipality for a tax refund within five years of the date the disputed taxes were paid, the Georgia

Legislature has expressly waived the application of sovereign immunity for that duration of time." Id. at 907.

On December 7, 2020 the Georgia Supreme Court denied a petition for certiorari in Hojeij. Therefore, the Court of Appeals' ruling that there is a five (5) year statute of limitation under the Refund Statute is the law in Georgia. The fact that the County "disagrees with the Court of Appeals' decision" does not change the law. County's Opposition, at p. 7. Accordingly, the County's claims that refund prior to January 29, 2018 violates the County's sovereign immunity are wholly without legal basis.

2. The Ruling in the *Coleman* Lawsuits on the Statute of Limitation is Irrelevant to this Case.

The County states "[t]he applicability of sovereign immunity to the facts of this case was recently made clear in the case of *Coleman v. Glynn Co.*". County's Opposition, at p. 6. This statement is intentionally misleading. And what makes the statements even more disturbing is the fact that the County's counsel in this matter was lead counsel for Glynn County in Coleman.

The Coleman case involved three (3) separate actions and different tax years. See Coleman v. Glynn County, 344 Ga. App. 545, 545, 809 S.E.2d 383, 383 (2018). The first lawsuit (Court of Appeals Docket A17A1843) involved tax years 2001-2010 and was filed on November 20, 2012. Id. at 546. The second lawsuit (Court of Appeals Docket A17A1844) involved tax years 2011-2012 and was filed on November 27, 2013. Id. at 547. The third lawsuit (Court of Appeals Docket A17A1845) involved tax years 2013-2016 and was filed on July 14, 2014. Id. Collectively the Coleman cases are referred to as the "Coleman Lawsuits."

While the Coleman Lawsuits were pending the Refund Statute was amended. The first and second Coleman lawsuits were filed under the prior version of the Refund Statute (Laws 2010, Act 670, §7-1, eff. Jan. 1, 2011). The current version of the Refund Statute – which is at issue in this

case – was in effect when the third Coleman lawsuit was filed but as discussed below the statute of limitation was not at issue in that lawsuit. The statute of limitation issue in Coleman involved taxes paid in 2008 and before and thus only involved the first Coleman lawsuit (Court of Appeals Docket A17A1843) filed on November 20, 2012 under the prior version of the Refund Statute.

Most significantly the plaintiffs in Coleman were never arguing for a five (5) year statute of limitation as provided for in the current Refund Statute. The plaintiffs in Coleman were arguing in the first lawsuit "that any refunds payments they and the class members made that fall outside the three-year window under O.C.G.A. § 48-5-380(b) may nevertheless be recoverable by way of mandamus, equity, injunction, or declaratory relief." Coleman, 344 Ga. App. at 551. The five (5) year statute of limitation under the current version of the Refund Statute was not at issue in the first Coleman lawsuit since the current Refund Statute was not at issue.

Clearly, the Court of Appeals in Coleman did not, nor did it have reason, to discuss – let alone interpret – the five (5) year statute of limitation contained in subsection (g) of the current Refund Statute. Accordingly, the entire discussion by the Coleman Court regarding the statute of limitation under the Refund Statute involved the prior version of the Refund Statute and is wholly inapplicable to this case which involves the current version of the Refund Statute. In any event, since the Coleman ruling the Hojeij Court has stated that there is a five (5) year statute of limitation under the current Refund Statute. See Section B1 supra.

C. Liability Can be Determined on a Class Wide Basis and Individualized Damage Calculations Do Not Prevent Certification

The County argues that "[i]t is clear that the issue of liability and damages in this case can be determined only by first ascertaining the status of each individual class members[']account and, if an overpayment is found, by then determining the amount of overpayment and the persons or entities to whom a refund is owing. … in such a situation, the resolution of individual questions

place such an integral part in the determination of liability that a class action suit is inappropriate." County's Opposition, at p. 5 (internal citations and punctuation omitted). This is simply incorrect.

To begin, the County's argument that the issue of liability cannot be determined on a class wide basis is wholly without merit. The liability issue in this case is whether the County's use of the incorrect application of Base Year as defined in the Homestead Exemption by using the tax year in which the Homestead Exemption was first granted rather than the immediately preceding tax year resulted in the illegal and erroneous assessment of taxes or the voluntary or involuntary overpayment of taxes. Once that issue is resolved the County's liability will have been determined on a class wide basis. That is, if the County's application of the definition of Base Year was incorrect, the County has liability where the use of the correct base year would have resulted in a lower tax.

This is similar to the Coleman case where the named plaintiffs filed three (3) companion class action lawsuits on behalf of themselves and all taxpayers similarly situated seeking refunds for taxes paid based on the incorrect application of the Glynn County local homestead exemption referred to as the Scarlett Williams Local Homestead Exemption Act (the "Scarlett Williams Exemption" and the "Scarlett Williams Act"). The Court of Appeals found that the exemption had been applied incorrectly. See Coleman, 344 Ga. App. at 549. Thus, liability was determined on a class wide basis. After the Coleman Court ruled on liability the only issue that remained was the calculation of damages.

The County's position that individualized refund calculations prevent certification in this matter is not supported by either Georgia or federal authorities.[3] "The fact that there may be

[3] Since its enactment in 1966 Georgia courts have read the statute to track the federal Rule 23 and in 2003 O.C.G.A. §9-11-23 was modified to actually conform to the federal rule. Thus, Georgia courts rely on federal cases interpreting Federal Rule 23(e) when interpreting O.C.G.A. §9-11-

differences in the damages for the members of the class does not prevent certification because, when common issues predominate, individualized damages calculations do not defeat class certification." Resource Life Ins. Co. v. Buckner, 304 Ga. App. 719, 732, 698 S.E.2d 19, 31 (2010) (internal citations and punctuation omitted). Numerous federal courts have also recognized that determination of damages on an individual basis does not defeat certification. See e.g. Allapattah Services, Inc., et al. v. Exxon Corporation, 333 F.3d 1248 (11th Cir. 2003), *aff'd sub nom* Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546 (2005) (presence of individualized damages issues does not prevent a class certification); In re Tri-State Crematory Litig., 215 F.R.D. 660, 692 n. 20 (N.D. Ga. 2003) ("The requirement of determination of damages on an individual basis does not … defeat certification of the class."); Braxton v. Farmer's Ins. Group, 209 F.R.D. 654, 661 (N.D. Ala. 2002) (variations in the amount of damages will not defeat class certification); Sala v. Nat'al R.R. Passenger Corp., 120 F.R.D. 494, 499 (E.D. Pa. 1988) ("It has been commonly recognized that the necessity for calculation of damages on an individual basis should not preclude class determination when the common issues which determine liability predominate.") (Internal citations and punctuation omitted); and Blackie v. Barrack, 524 F.2d 891, 905 (9th Cir. 1975) ("The amount of damages is invariably an individual question and does not defeat class certification.").

The County relies on a 2013 United States Supreme Court case arguing that this matter cannot be certified because *inter alia* damages are not capable of measurement on a class wide basis. See Comcast Corp. v. Behrend, 569 U.S. 27, 133 S.Ct. 1426, 185 L.Ed.2d 515 (2013); County's Opposition, at pp. 3-4. Comcast is inapposite.

23(e). See Sta-Power Indus., Inc., v. Avant, 134 Ga. App. 952, 953, 216 S.E.2d 897, 900 (1975) ("Since there are only a few definitive holdings in Georgia on [O.C.G.A. §9-11-23], we also look to federal law to aid us.").

Comcast is a complex antitrust class action that does not purport to enumerate new rules for adjudication of class actions. It is but an application of established federal law to unique and complex facts. Subsequent cases belie the County's interpretation of Comcast. In 2016 the Eleventh Circuit held that Comcast "did not change the law about the effect of individual damages" and went on to reiterate that "the presence of individualized damages issues does not prevent a finding that the common issues in the case predominate" thus permitting class certification. Brown v. Electrolux Home Products, Inc., 817 F.3d 1225, 1238-1239 (11th Cir. 2016).

In another post-Comcast decision the Seventh Circuit held that:

> It would drive a stake through the heart of the class action device, in cases which damages were sought rather than an injunction or a declaratory judgment, to require that every member of the class have identical damages. If the issues of *liability* are genuinely common issues, and the damages of the class members can be readily determined in individual hearings, in settlement negotiations, or by the creation of subclasses, the fact that damages are not identical across all class members should not preclude class certification. Otherwise defendants would be able to escape liability for tortious harms of enormous aggregate magnitude but so widely distributed as not to be remediable in individual suits.

Butler v. Sears, Roebuck & Co., 727 F.3d 796, 801 (7th Cir. 2013). The case law is clear that Comcast – despite the County's argument to the contrary – did not change the law that a class action can be maintained notwithstanding the need to prove individual damages. See e.g. Roach v. T.L. Cannon Corp., 778 F.3d 401, 408 (2d Cir. 2015); Neale v. Volvo Cars of N. Am., LLC, 794 F.3d 353, 374, 375, n. 10 (3d Cir. 2015); In re Deepwater Horizon, 739 F.3d 790, 815 (5th Cir. 2014). See also *William B. Rubenstein, Newberg on Class Actions* §4:54 (5th ed.) (The "black letter rule" recognized in every circuit is that "individual damage calculations generally do not defeat a finding that common issues predominate" and thus do not defeat class certification).

In the post-Comcast case of Brown, the Eleventh Circuit explained why individual damages do not defeat class certification. "[R]elatively speaking," the Eleventh Circuit explained,

"individual damages are sometimes easy to resolve because the calculations are formulaic." Brown, 817 F.3d at 1239. Accord Fortis Insurance Company, et al. v. Kahn, 299 Ga. App. 319, 683 S.E.2d 4 (2009). See also Roper v. Consurve, Inc., 578 F.2d 1106, 1112 (5th Cir. 1978) ("While it may be necessary to make individual fact determinations with respect to charges, … these will depend on objective criteria that can be organized by a computer, perhaps with some clerical assistance. It will not be necessary to hear evidence on each claim.").

Here, refunds for the class members can easily be calculated using the County's computer programs, databases, formulas, simple math and with limited use of clerical assistance. This is exactly what was done to calculate the refunds due in the Coleman Lawsuits. Larry Griggers, who was retained to calculate the refunds in the Coleman Lawsuits, has also been retained to complete the calculation in this case. See Affidavit of Larry Griggers ("Griggers Aff.") attached to the First Amended Motion as Exhibit "B" at ¶¶6, 9.

In the Coleman Lawsuits Mr. Griggers developed a systematic process for calculating refunds owed for class members for 2010 through 2018 on a class wide basis. Id. at ¶10. A copy of the Affidavit of Larry Griggers in the Coleman Lawsuits explaining the process of calculating the Coleman refunds is attached to the First Amended Motion as Exhibit "C". Mr. Griggers is utilizing the same systematic process for calculating refunds in this matter as he did in Coleman to calculate the refunds under the correct application of the McIntosh Homestead Exemption. See Griggers Aff. at ¶11.

The determination of tax amounts due from taxpayers has long been an automated process involving the manipulation of databases that are systemically compiled by counties. Id. at ¶12. It is not a difficult process to correct the errors made by a county when determining the base year and base amounts of the McIntosh Homestead Exemption with access to those databases. Id. As

in the Coleman Lawsuits, determination of the refunds owed to individual taxpayers can be done in a systematic fashion with a computer, formulas, limited clerical analysis and simple math. Id.

The Eleventh Circuit case of Allapattah Services and the Court of Appeals case of Resource Life are both instructive for the present case. In Allapattah Services the Eleventh Circuit affirmed certification of a class of 10,000 gasoline dealers even though "determination of the amount that each dealer was overcharged during the class period must take place on an individual basis" in individual damage hearings. Allapattah Services, 333 F.3d 1257. Similarly, in Resource Life the Court of Appeals affirmed certification even though computing damages required comparing the premiums paid by the class members with third party records showing the date on which each individual discharged its loan. Resource Life, 304 Ga. App. at 732. Here, the refund calculations using the County's own electronic databases, the property record cards, simple math and limited clerical analysis is far less daunting than the tasks to calculate damages in Allapattah Services and Resource Life.

Finally, the County primarily relies on two (2) additional cases for the proposition that certification is inappropriate since the County argues *inter alia* that damages will need to be individually calculated: Life Ins. Co. of Georgia v. Meeks, 274 Ga. App. 212, 617 S.E.2d 179 (2005) and Winfrey, et al v. Southwest Community Hospital, Inc., 184 Ga. App. 383, 361 S.E.2d 522 (1987). See County's Opposition, at pp. 4-5. Both are easily distinguishable. There is no evidence in either Meeks or Winfrey – unlike in the instant case – that there was a plausible method proposed to prove damages using an automated process in a systematic fashion with a computer, formulas, limited clerical analysis and simple math.

The case law is clear that where individual damages can be calculated by a systematic, mechanical method such as proposed here certification is appropriate. Most significantly, Named

Plaintiff introduced evidence that the same systematic process that was utilized in the Coleman Lawsuits to calculate the refunds will be used in this matter. The First Amended Motion should be granted and the class should be certified.

D. This Action Satisfies the Prerequisites of Commonality and Numerosity

The County argues that Named Plaintiff has failed to meet the prerequisites of commonality and numerosity under O.C.G.A. §9-11-23(a) for class certification. See County Opposition, at p. 5. Once again, the County is incorrect.

As more fully set forth in Named Plaintiff's Memorandum of Law in Support of Motion to Certify Suit as Class Action filed on January 29, 2021, a class action is authorized if the members of the class share a common right and common questions of law or fact predominate over individual questions of law or fact. See Kahn, 299 Ga. App. 319. There is a common legal question in this lawsuit: whether the County's use of the incorrect application of the Base Year as defined in the Homestead Exemption by using the tax year in which the Homestead Exemption was first granted rather than the immediately preceding tax year resulted in the illegal and erroneous assessment of taxes or the voluntary or involuntarily overpayment of taxes.

The County overlooks this fundamental legal question that is common to all class members and attempts to focus on the relief – the amount of each refund – arguing that because the amount of the refunds will vary, there is no commonality. See County's Opposition, at p. 5. This is an incorrect statement of the law. Variations in the amount of damages does not destroy the class where legal issues are common. See Kahn, 299 Ga. App. at 325. See also Section C supra.

Next, the County argues that the prerequisite of numerosity has not been met since "[t]he number of taxpayers who received an exemption, whose base year value was set at the value during the year the exemption was granted, whose property value was lower the year prior to the year in

which the exemption was granted, and who have paid property taxes to the County based on that same assessment, is unknown." See County's Opposition, at p. 5. This argument is disingenuous as it was the County itself that published the names of over 850 prospective class members in the Darien News. See Exhibit "E" to Motion to Certify. Significantly, this was just for three (3) years of refunds not the required five (5) years under the Refund Statute.

As more fully set forth in Named Plaintiff's Memorandum of Law in Support of Motion to Certify Suit as Class Action filed on January 29, 2021, Named Plaintiff is not required to know the precise number of class members in order for certification to be granted. See In re Checking Account Overdraft Litigation, 275 F.R.D. 666, 651 (S.D. Fla. 2011). Named Plaintiff must only establish that joinder is impracticable. See Brenntag Mid South, Inc., v. Smart, 308 Ga. App. 899, 710 S.E.2d 569 (2011). Courts in the Eleventh Circuit generally find that less than twenty-one (21) members is inadequate but more than forty (40) members is adequate to meet the numerosity requirement. The County's own estimation of the number of taxpayers who may be entitled to receive refunds for just three (3) years more than satisfies the numerosity requirement under Georgia law.

III. Conclusion

Based on the reasons set forth herein, in Named Plaintiff's Memorandum of Law in Support of Motion to Certify Suit as a Class Action filed on January 29, 2021, Named Plaintiff's First Amended Motion, and the facts and documentary evidence of record, Named Plaintiff's First Amended Motion should be granted and the class certified under O.C.G.A. §§9-11-23(a) and 9-11-23(b)(1) and (3) of which Named Plaintiff is the class representatives.

Respectfully submitted this the 29th day of April, 2021.

ROBERTS TATE, LLC

BY:*/s/ James L. Roberts, IV*

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

Post Office Box 21828
St. Simons Island, Georgia 31522
(912) 638-5200
(912) 638-5300 – Fax

ATTORNEYS FOR PLAINTIFF

IN THE SUPERIOR COURT OF MCINTOSH COUNTY
STATE OF GEORGIA

MARY A. BAILEY	)	
	)	
Plaintiff,	)	**CIVIL ACTION NO. SUV2021000009**
	)	
v.	)	
	)	
MCINTOSH COUNTY, GEORGIA	)	
	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

I, James L. Roberts, IV, of Roberts Tate, LLC, attorneys for Plaintiff, do hereby certify that, on this date, I served a copy of the foregoing NAMED PLAINTIFF'S SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF FIRST AMENDED MOTION TO CERTIFY SUIT AS CLASS ACTION AND REPLY TO DEFENDANT'S OPPOSITION TO MOTION TO CERTIFY SUIT AS CLASS ACTION upon the following counsel of record for all parties by mailing a copy, postage prepaid, to:

G. Todd Carter, Esq.
Brown, Readdick, Bumgartner,
Carter, Strickland & Watkins, LLP
5 Glynn Avenue
Brunswick, Georgia 31520

This 29th day of April, 2021.

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