STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

NICHON ROBERSON, on behalf of herself and all others similarly situated, Plaintiff, v. ECI GROUP, INC.; ECI MANAGEMENT, LLC; and DEKALB-LAKE RIDGE, LLC, Defendants.	Civil Action File No. 17-A-64506-4 CLASS ACTION JURY TRIAL

Plaintiff Nichon Roberson's Unopposed Motion For Class Counsel Attorney Fees And Expenses

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Introduction

After more than three years since this class action was filed—during which time the parties have briefed a motion to dismiss, briefed a motion to strike a Rule 68 offer, stayed the case once to participate in mediation, resumed litigation and briefed a motion to compel class discovery, stayed the case a second time to resume negotiations, which continued for nearly four months, and while simultaneously litigating a declaratory judgment action—this case has finally settled. The Class Action Settlement—which is currently being administered and for which Class Counsel continues to advocate on behalf of the Class—makes a total of $2,400,000.00 available to Class members to, among other things, pay them monetary damages for their claims and to pay for Class administration costs. Even for those Class members who do not submit a claim, the Settlement provides for a mutual release, in which ECI relinquishes claims against Class members for alleged damage to the apartment premises. 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, Roberson now moves, unopposed [1] for this Court to award 25% of the total amount made available to the Class (*i.e.*, $600,000.00 out of the $2,400,000.00) to compensate Class Counsel for their fees and expenses. 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.

Factual and Procedural Background[2]

[1] To be sure, ECI does not necessarily agree with everything stated in Roberson's motion. But, pursuant to the Comprehensive Settlement Agreement, ECI does not oppose Roberson's request that Class Counsel be compensated for their fees and expenses at 25% of the total amount made available to the Class.

[2] This factual and procedural background is the same background set forth in Roberson's motion for class representative service award.

This is a class action on behalf of ECI residential-apartment tenants for alleged violations of the Georgia security deposit statute. *See* O.C.G.A. § 44-7-35.[3]

The named Plaintiff and proposed Class Representative is Nichon Roberson. Nichon Roberson and her mother, Rosie Roberson, rented an apartment at The Columns at Lake Ridge complex in Dunwoody, Georgia for a one-year lease to begin on May 27, 2014 and end on May 26, 2015. At the time, Nichon was a physician applying for residency, and she is now currently a resident physician in the Atlanta area. Nichon's mother suffered from Alzheimer's disease and was under Nichon's care and supervision during their time at Lake Ridge. Nichon renewed her lease for another one-year period to begin on May 27, 2015 and end on April 26, 2016. After April 26, 2016, Nichon continued to rent at Lake Ridge, on a month-to-month basis.

Defendants are ECI Group, Inc., ECI Management LLC, and DeKalb-Lake Ridge, LLC. The Columns at Lake Ridge is one of around twenty-five apartment complexes owned, operated, and managed by the ECI Defendants during the last twenty years in Georgia. Today, ECI owns, operates, and manages around 4,000 to 5,000 individual apartment units across Georgia.

When Roberson agreed to rent at Lake Ridge, she alleges that she was required to pay a $437.50 refundable security deposit, which was in addition to her monthly rent of $875.00 (her monthly rent was later increased to $945.00). And when Roberson's occupancy ended on August 11, 2016, she alleges that ECI was required to take four steps before retaining any part of her security deposit. *First*, within three business days, ECI was required to inspect the apartment and create a list of any alleged damage to the premises. *See* O.C.G.A. § 44-7-33 (b) *Second*, within the

[3] The Georgia General Assembly made certain amendments to the Georgia security deposit statute, and such amendments are effective as of July 1, 2018. Unless otherwise specified, any references or citations to the Georgia security deposit statute are to the statute before such amendments, and the amendments do not apply to the Class, given that the Class does not include claims arising after June 30, 2018.

same three business days, ECI was required to provide the damages list to Roberson. *See* O.C.G.A. § 44-7-33 (c). *Third*, within five business days, Roberson had the right to inspect the apartment to determine whether ECI's list was accurate. *See* O.C.G.A. § 44-7-33 (b). *Fourth*, within one month, ECI was required to either provide Roberson "the full security deposit" or a written statement listing the exact reasons for retaining her deposit. *See* O.C.G.A. § 44-7-34 (a).

Roberson alleges that ECI, however, did not take the required steps before retaining her deposit. Roberson alleges that, on August 15, 2016, ECI unilaterally conducted an inspection of her apartment and completed the list of damages without her presence or signature. Roberson further alleges that ECI did not provide this list of damages to her within three business days. Indeed, Roberson alleges that she did not even know that ECI had withheld her security deposit until Roberson received a collection notice on September 16, 2016.

Based on these allegations, which ECI disputes, on May 19, 2017, Roberson filed her complaint with this Court. *See* May 19, 2017 Class Action Compl. The Summons and Complaint were served on ECI on May 24, 2017, and the case was initially assigned to Judge Mike Jacobs, but was later re-assigned by Clerk of the Court to your Honor. *See* May 31, 2017 Reassignment Of Related Action. The case was re-assigned because your Honor has been hearing another action, *Wexler v. Post Properties, Inc.*, Civil Action File No. 16A-60559E-4, which is a previously filed and related action. Although the parties in this action and *Wexler* are different, the same types of legal claims have been made in both cases, and the parties in both cases have all expressly recognized that there is some, but not complete, overlap between the cases. *See, e.g.*, July 24, 2017 Defs.' Br. in Supp. of Mot. to Dismiss at 7 ("Defendants acknowledge that the Court has recently ruled otherwise in the matter of *Wexler v. Post Properties, Inc. et al*, No. 16A: 60559E-4 ….").

In any event, in her complaint, Roberson asserts a single claim under the Georgia security

deposit statute against ECI Group, Inc., ECI Management, LLC, and DeKalb-Lake Ridge, LLC. Roberson also seeks to recover damages on behalf of herself and on behalf of a class of all other Georgia citizens who had their security deposits improperly withheld.

Roberson and the Class request the express remedies provided by the Georgia security deposit statute: (1) "[t]he failure of a landlord to provide each of the written statements with the time periods specified … shall work a forfeiture of all his rights to withhold any portion of the security deposit or to bring an action against the tenant for damages to the premises" and (2) "[a]ny landlord who fails to return any part of a security deposit which is required to be returned to a tenant pursuant to this article shall be liable to the tenant in the amount of three times the sum improperly withheld plus reasonable attorney's fees." O.C.G.A. § 44-7-35 (b)-(c).

On July 24, 2017, ECI moved to dismiss the Complaint, arguing first that there can be no recovery from ECI Group or ECI Management because neither is a party to the lease, and second that there is no requirement that ECI provide the damages list to tenants within three business days of termination of the occupancy. *See* July 24, 2017 Defs.' Br. in Supp. of Mot. to Dismiss at 3, 6-7. And because ECI moved to dismiss, discovery was automatically stayed for a ninety-day period. *See* O.C.G.A. § 9-11-12 (j). On August 28, 2017, Roberson filed a written opposition to ECI's motion to dismiss. *See* Aug. 28, 2017 Pl.'s Opp'n to Defs.' Mot. to Dismiss.

While ECI's motion to dismiss was pending, on October 24, 2017, ECI's counsel wrote to Roberson's counsel about the case and pending motion. In the letter, ECI's counsel asserted that "your client does not have a valid claim" and "[s]he therefore will not ultimately be able to sustain a claim in this case." Oct. 24, 2017 Ltr. from D. Diffley to N. Ramachandrappa at 1.

On November 7, 2017, Roberson's counsel sent a letter in response to ECI's letter. In their response, Roberson's counsel stated that, although they "appreciate the opportunity to hear [ECI's]

side of the case," they "believe [ECI's] letter contains several misstatements about the facts (which are disputed) and the law (which has been inaccurately stated)." Nov. 7, 2017 Ltr. from N. Ramachandrappa to D. Diffley at 1.

On December 8, 2017, this Court denied ECI's motion to dismiss. The Court held that, "[i]n attempting to discern the meaning of the security deposit statutes in the *Wexler* matter," and "[h]aving revisited that decision in light of the arguments raised in the instant case, construing the statutes *in pari materia* and applying the rules of statutory [construction]," "the Court must reach the same conclusion: the final damage list compiled pursuant to Section 33 (b) must be provided to the tenant within the stated three-day period." Dec. 8, 2017 Order Denying Defs.' Mot. to Dismiss at 5. The Court also held that "[t]he complaint sufficiently states that [all] Defendants have liability, either directly as landlords or via veil-piercing or through a joint venture theory." *Id.* at 6; *see also id.* at 5-6 ("Plaintiff argues that ECI Group and ECI Management have liability to Plaintiff both directly as landlords and through vicarious or joint liability theories.").

Coincidentally, the day before this Court denied ECI's motion to dismiss, on December 7, 2017, ECI served Roberson with an Offer of Settlement under Rule 68 of the Georgia Civil Practice Act. *See* Dec. 7, 2017 Defs.' Offer of Settlement to Pl. Under O.C.G.A. § 9-11-68. The Offer stated that, among other things, if Roberson rejected the Offer, "ECI will seek all relief to which it is entitled under [Rule 68], including but not limited to payment of its attorney's fees and expenses of litigation" incurred through the date the offer was rejected through judgment. *Id.* at 1.

Roberson did not accept ECI's Offer of Settlement. On January 8, 2018, Roberson moved to strike ECI's offer. *See* Jan. 8, 2018 Pl.'s Mot. for an Order Striking, or Otherwise Finding, The ECI Defs.' Offer to Settle as not Subject to Rule 68. As Roberson explained, "the ECI Defendants' offer to pay off Roberson while providing no compensation for the Class is manifestly improper"

and "the ECI Defendants ask ... Roberson, as the proposed class representative ... to abandon [her] special role[] in favor of individual interests." *Id.* at 5 (emphasis altered).

With ECI's motion to dismiss denied, discovery began. On January 17, 2018, Roberson served a first set of requests for production and interrogatories. Meanwhile, on March 1, 2018, this Court granted Roberson's motion to strike, albeit on grounds different from those requested by Roberson, and struck ECI's Offer. *See* Mar. 1, 2018 Order. Discovery, therefore, continued.

The parties disagreed over Roberson's discovery requests, particularly as it relates to the proper scope of class discovery and the alleged burden imposed by these requests. ECI took the position that no discovery should be had, except as it relates to Roberson's claims and any ECI policies or procedures that applied to Roberson's security deposit. By contrast, Roberson took the position that, because this is a class action, she is entitled to and must be able to take discovery regarding Roberson's claims, claims of any other tenants residing at Lake Ridge, and claims of tenants residing at any ECI apartment complex in Georgia.

However, as part of the parties' conferral over these discovery disputes, the parties recognized that, before either side invested time and money into motions practice, the parties should explore settlement. Therefore, on July 13, 2018, the parties jointly moved for this Court to amend the Consent Scheduling Order and to enter a six-month stay of all proceedings and deadlines to allow for mediation. On July 18, 2018, the Court granted the motion. *See* Jul. 18, 2018 Order Amending May 17, 2018 Scheduling Order & Staying All Proceedings.

On September 20, 2018, counsel for the parties participated in an in-person mediation with Ralph Levy of JAMS serving as the independent, non-party mediator. Although the parties made important and substantial progress towards a class settlement, the mediation did not end with a successful settlement agreement and the parties agreed to continue negotiations directly.

Those direct negotiations continued for some time, until it became necessary for the parties to resume litigation. On February 4, 2019, Roberson filed an unopposed motion to amend the scheduling order. On February 7, 2019, this Court granted the motion.

Roberson then proceeded, on June 26, 2019, to file a first amended complaint, which restated her claims and requested relief. *See* Jun. 26, 2019 1st Am. Compl. Then on July 1, 2019, Roberson filed a comprehensive motion to compel class discovery, seeking to resolve by order from this Court the significant dispute over class discovery between the parties.

Recognizing that the class discovery motion and other pre-trial litigation again presented substantial risks to both sides, the parties sought to resume settlement negotiations. Therefore, beginning on July 30, 2019 and continuing through November 22, 2019, the parties stipulated to staying various deadlines to allow the parties to maintain the status quo while they negotiated. Finally, on November 27, 2019, the parties reached agreement on the material terms for the Class Action Settlement, with additional non-material terms and details to be supplied later, and the parties notified this Court of this agreement. *See* Nov. 27, 2019 Not. Of Settlement at 1.

The parties had intended for the motion for preliminary approval to be submitted in early 2020; however, the parties needed additional time to finalize the non-material terms and details, in particular the class notice and claim forms. And then, when the parties were ready to submit these materials to this Court, the COVID-19 pandemic began bearing down on Georgia, and the Supreme Court issued a judicial emergency declaration and a series of extensions, which precluded this Court from setting any deadlines for class opt-outs, claims, *etc.* As a result, the parties' ability to submit this motion for preliminary approval was substantially delayed for most of 2020.

On August 3, 2020, Roberson was finally able to present the unopposed motion for preliminary approval of the class settlement. *See* Aug. 3, 2020 Pl.'s Unopposed Mot. for

Preliminary Approval of Class Settlement & Notice. On September 29, 2020, this Court granted preliminary approval of the class settlement. *See* Sept. 29, 2020 Order Granting Preliminary Approval. Since that time, 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.*, *Roberson v. ECI Group, Inc.*, Class Website, *available at* http://georgiaapartmentclassaction.com. Class Counsel and ECI's counsel have been conferring every week regarding the claims made.

This Court's preliminary approval order sets forth many deadlines, culminating in the Final Approval Hearing currently set for May 20, 2021. One of those deadlines is that, "within 90 calendar days of the Court's preliminary approval order, Roberson and Class Counsel shall file motions for Class Representative Service Award and Class Counsel fees and expenses." Sept. 29, 2020 Order Granting Preliminary Approval at 6.

Roberson now moves, unopposed, for a Class Counsel fees and expenses.

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 under Georgia law. "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 certainly commonly used 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).

Georgia courts consider, among other things, the twelve *Johnson* factors.

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.* "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 once 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.* In negative-value class actions, a "one-third recovery [33.33%] ... is a customary fee." *Diakos v. HSS Sys., LLC*, No. 14-CV-61784, 2016 WL 3702698, at *6 (S.D. Fla. Feb. 4, 2016). It is a typical contingency fee.

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 the 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 the light of awards made in similar litigation within and without the court's circuit." *Id.* In Georgia, a one-third or 33.33% contingency fee is common and routine.

For example, in *Barnes*, "the trial court awarded plaintiffs' counsel attorney fees of **33 1/3 percent** of the common fund." *Barnes v. City of Atlanta*, 275 Ga. App. 385, 386 (2005) (emphasis added); *see also Barnes*, 281 Ga. at 260 (leaving the 33.33% fee award intact). Also, "in *Friedrich v. Fidelity Nat. Bank*, the trial court awarded plaintiffs' counsel attorney fees of **33 1/3 percent** of the common fund." *Barnes*, 275 Ga. App. at 392 (emphasis added).

Similarly, federal courts in Georgia and Florida have reached the same conclusion. "[E]mpirical studies show that ... fee awards in class actions average around **one-third of the recovery**," and "[t]he average percentage award[ed] in the Eleventh Circuit mirrors that of awards nationwide – **roughly one third**." *Wolff v. Cash 4 Titles*, No. 03-CV-22778, 2012 WL 5290155, at *5 (S.D. Fla. Sept. 26, 2012) (collecting cases) (emphasis added); *see also George v. Academy Mortg. Corp.*, 369 F. Supp. 3d 1356, 1382 (N.D. Ga. 2019) (collecting cases in which fees were awarded in the amount of one-third of the recovery); *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1294-95 (11th Cir. 1999) (affirming a fee award of one-third of a $40 million settlement plus expenses); *In re Clarus Corp. Sec. Litig.*, No. 1:00-CV-02841 (N.D. Ga. Jan. 6, 2005) (33.33%); *In re Pediatrics Servs. of Am., Inc. Sec. Litig.*, 1:99-CV-0670 (N.D. Ga. Mar. 15, 2002) (33.33%); *In re Profit Recovery Group Int'l, Inc. Sec. Litig.*, No. 1:00-CV-1416-CC (N.D. Ga. May 26, 2005) (33.33%); *In re Theragenics Corp. Sec. Litig.*, No. 1:99-CV-0141 (N.D. Ga. Sept.

29, 2004) (33.33%); *In re Harbinger Corp. Sec. Litig.*, No. 1:99-CV-2353 (N.D. Ga. Oct. 18, 2001) (33.33%); *In re The Maxim Group, Inc. Sec. Litig.*, No. 1:99-CV-1280-CAP (N.D. Ga. July 20, 2004) (33.33%); *In re Medirisk, Inc. Sec. Litig.*, No. 1:98-CV-1922-CAP (N.D. Ga. Mar. 22, 2004) (33.33%); *Meyer v. Citizens & S. Nat'l Bank*, 117 F.R.D. 180 (M.D. Ga. 1987) (33.33%); *In re Terazosin Hydrochloride Antitrust Litig.*, 1:99-MD-01317 (S.D. Fla. April 19, 2005) (33.33%); *In re Managed Care Litig.*, MDL No. 1334, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003) (35.5%); *Gutter v. E.I. Dupont De Nemours & Co.*, 1:95-CV-02152 [Dkt. 626] (S.D. Fla. May 30, 2003) (33.33%); *Morgan v. Public Storage*, No. 1:14-CV-21559 (S.D. Fla. Mar. 10, 2016) (33%).

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 25% 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 Roberson'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 over three years. *Supra* at 2-8. 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 ECI's motion to dismiss the Class Complaint; corresponded with ECI's counsel regarding the merits of the Class's claims; successfully briefed and won a motion to strike ECI's Rule 68 offer to individually settle the case without Class relief; prepare class-wide discovery and

conferred with ECI regarding its objections to such discovery; prepared for, participated in, and paid for a mediation with Ralph Levy, an independent, neutral third-party mediator at JAMS; after that mediation made substantial progress, but ended unsuccessfully, continued direct negotiations with ECI; after those direct negotiations ended unsuccessfully, prepared and filed a motion to compel class-wide discovery; and resumed direct negotiations, which culminated in settlement. *See* Aff. of Naveen Ramachandrappa, attached to this Mot. as Ex. 1, ¶ 3; Aff. of Bryant T. Lamer, attached to this Mot. as Ex. 2, ¶ 3; Aff. of Shimshon Wexler, attached to this Mot. as Ex. 3, ¶ 3.

Class Counsel performed these tasks, all while working closely with Roberson to keep her informed about the case, as well as representing Roberson in a declaratory judgment action that arose between ECI and its insurer. *See, e.g.*, Ex. 1 (Ramachandrappa Aff.) ¶ 4.

Second, Class Counsel has litigated a novel and difficult question—the meaning of the Georgia Security Deposit Statute and whether it requires landlords to give the list of alleged damages to the premises within three business days of the termination of occupancy. This was and is a question of first impression, which has still yet to be decided by Georgia appellate courts. In fact, the issue was novel and difficult enough that it prompted the General Assembly to amend the statute moving forward. 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 meaning of the Georgia Security Deposit Statute is a question of first impression, which necessarily required innovative legal argument. *See, e.g.*, Ex. 1 (Ramachandrappa Aff.) ¶ 5.

Similarly, whether a Rule 68 offer can be made and accepted, where it offers only relief to the individual named representative, and the consequences of rejecting the offer is also a question of first impression in Georgia. While there is federal authority that addresses a similar question, Georgia Rule 68 is much different and imposes a *substantially heavier* penalty. Whereas Federal Rule 68 only imposes costs, Georgia Rule 68 threatens to impose *attorney fees*. To properly assure Roberson that she would not have to pay for ECI's fees—an issue so substantial that ECI and its insurer are litigating over payment of those fees—was a substantial task. *See, e.g.*, *id.* ¶ 6.

Class Counsel then had to research the question of whether the 2018 amendments to the Georgia Security Deposit Statute would support a renewed motion to dismiss by ECI—which ECI had indicated that it would pursue if the case did not settle. *See, e.g.*, *id.* ¶ 7.

Finally, Class Counsel had to research the unique question of whether a six-year statute of limitations (typically applied for contract cases) or whether a twenty-year statute of limitations (applied when the claim is purely statutory) would apply. *See, e.g.*, *id.* ¶ 8.

Fourth, Class Counsel was precluded from taking on other certain work because of their responsibilities to the Class in this case. Among other things, taking on a class action against a large apartment company for residential security deposits means that Class Counsel could not represent apartment companies on any security deposit issues, and as a business matter, likely meant losing 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. And even with respect to litigation against Georgia apartment companies, Class Counsel's time and resources are finite. Representation of this Class meant that another potential class of tenants could not be represented. *See, e.g.*, *id.* ¶ 9.

Fifth, Class Counsel's request for 25% of the total amount available is much *less* than the

customary fee. "[I]n highly complex, multi-year cases like this one," "a fee award equal to one-third of the ... settlement fund" would be justified. *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-CV-3066, 2012 WL 12540344, at *1 (N.D Ga. Oct. 26, 2012). Class Counsel's request for 25% is 8.33% less than the customary fee and, therefore, is an even stronger case for a reasonable fee than other similar cases. *See, e.g.*, Ramachandrappa Aff. ¶ 10.

Sixth, Class Counsel's fee agreement with Roberson is entirely contingent. 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. Moreover, the contingency fee percentage quoted to Roberson was 40%, and so in requesting only 25% of the total amount available, Class Counsel seeks compensation that provides a substantial discount to the Class and ECI. *See, e.g.*, *id.* ¶ 11.

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 take 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.* (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 Roberson. 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. *See, e.g.*, Ramachandrappa Aff. ¶ 12.

Eighth, Class Counsel has obtained substantial monetary and non-monetary relief for the Class. Through Class Counsel's efforts, ECI has agreed to make a total of $2.4 million available to the Class, which is on par and similar to another settlement class this Court approved in *Wexler v. Post Properties, Inc.* That amount includes payment for Class Administration, which are substantial. Class Counsel also obtained a mutual release for apartment damage claims, which will provide relief to all Class members, even if they do nothing. *See, e.g.*, *id.* ¶ 13.

Ninth, Class Counsel have substantial experience and expertise in litigating class actions, including before this Court, throughout Georgia, and in federal courts around the country. *See id.* ¶ 2; Lamer Aff. ¶ 2; Wexler Aff. ¶ 2. Indeed, in granting preliminary approval of the Class Settlement, this Court expressly found that "Class Counsel has extensive experience litigating class actions, including specifically litigating other Georgia security deposit class actions before this Court." Sept. 29, 2020 Order Granting Preliminary Approval at 4.

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. Meanwhile, apartment companies have seen a surge in outside capital, incentivized by historically low interest rates, and thus, they have a far superior bargaining power and position of strength when compared to their tenants. *See, e.g.*, Ramachandrappa Aff. ¶ 14. "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 Roberson 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. *See, e.g.*, Ramachandrappa Aff. ¶ 15.

Twelfth, Class Counsel's request for 25% of the total amount available is much *less* than usual awards in similar cases. As set forth in more detail *supra* at 11-12, "empirical studies show that ... fee awards in class actions average around **one-third of the recovery**," and "[t]he average percentage awarded in the Eleventh Circuit mirrors that of awards nationwide – **roughly one third**." *Wolff*, 2012 WL 5290155, at *5 (emphasis added). As such, Class Counsel's request for 25% is 8.33% less than the usual award in similar cases and, therefore, is an even stronger case for a reasonable fee than other similar cases. *See, e.g.*, Ramachandrappa Aff. ¶ 16.

Finally, pursuant to the Comprehensive Settlement Agreement, ECI does not oppose Roberson's request for 25% of the total amount made available to the Class to compensate Class Counsel for their fees and expenses. And such negotiated settlement took over three years of litigation, a mediation, and later many months of direct negotiations. It was not rubber-stamped.

Conclusion

For those reasons, this Court should grant Roberson's unopposed motion and award 25% of the total amount made available to the Class (*i.e.*, $600,000.00 out of $2,400,000.00) to compensate Class Counsel for their fees and expenses. 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. Signature and certificate pages follow.

Roberson submits this motion on December 29, 2020.

/s/ Naveen Ramachandrappa

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Attorneys for Plaintiff Nichon Roberson on behalf of herself and the Class

Certificate of Service

I certify that, on December 29, 2020, I served a copy of **Plaintiff Nichon Roberson's Unopposed Motion For Class Counsel Attorney Fees And Expenses** by email on the following counsel of record for the ECI Defendants:

Daniel Diffley
David B. Carpenter
Kristi Ramsay
ALSTON & BIRD LLP
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Atlanta, GA 30309
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/s/ Naveen Ramachandrappa

Exhibit 1

STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

NICHON ROBERSON, on behalf of herself and all others similarly situated, Plaintiff, v. ECI GROUP, INC., ECI MANAGEMENT LLC, and DEKALB-LAKE RIDGE, LLC, Defendants.	Civil Action File No. 17-A-64506-4 CLASS ACTION JURY TRIAL

Affidavit of Naveen Ramachandrappa

1. My name is Naveen Ramachandrappa. I am an attorney admitted to practice in the State of Georgia, the Georgia Supreme Court, the Georgia Court of Appeals, the United States Supreme Court, as well as numerous United States District Courts and Circuit Courts of Appeals. A more complete statement of my professional background, credentials, education, and work experience is available at https://www.bmelaw.com/lawyers-Naveen_Ramachandrappa.html.

2. I am a partner at the law firm of Bondurant, Mixson & Elmore, LLP ("BME"). BME has substantial experience and expertise in litigating class actions. A list of class actions in which BME has represented plaintiffs and defendants is attached as Exhibit A to this declaration. Specifically, I have been appointed as class counsel by Georgia courts and federal courts in at least three different states, I regularly speak at the annual Georgia Class Action Seminar, and I am a member of the Class Action Section of the Georgia Bar. Most recently, I was appointed by the DeKalb Superior Court to serve as Class Counsel in *Gold v. DeKalb County School District*, and appointed by this Court to serve as Class Counsel in this class action.

3. Class Counsel has spent substantial time and effort in litigating this case on behalf

of the Class. Class Counsel has been litigating this case for over 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 ECI's motion to dismiss the Class Complaint; corresponded with ECI's counsel regarding the merits of the Class's claims; successfully briefed and won a motion to strike ECI's Rule 68 offer to individually settle the case without Class relief; prepare class-wide discovery and conferred with ECI regarding its objections to such discovery; prepared for, participated in, and paid for a mediation with Ralph Levy, an independent, neutral third-party mediator at JAMS; after that mediation made substantial progress, but ended unsuccessfully, continued direct negotiations with ECI; after those direct negotiations ended unsuccessfully, prepared and filed a motion to compel class-wide discovery; and resumed direct negotiations, which culminated in settlement.

4. Class Counsel performed these tasks, all while working closely with Roberson to keep her informed about the case, as well as representing Roberson in a declaratory judgment action that arose between ECI and its insurer.

5. Class Counsel used substantial skill and expertise to litigate this class action. The meaning of the Georgia Security Deposit Statute is a question of first impression, which necessarily required innovative legal argument.

6. Similarly, whether a Rule 68 offer can be made and accepted, where it offers only relief to the individual named representative, and the consequences of rejecting the offer is also a question of first impression in Georgia. While there is federal authority that addresses a similar question, Georgia Rule 68 is much different and imposes a *substantially heavier* penalty. Whereas Federal Rule 68 only imposes costs, Georgia Rule 68 threatens to impose *attorney fees*. To properly assure Roberson that she would not have to pay for ECI's fees—an issue so substantial

that ECI and its insurer are litigating over payment of those fees—was a substantial task.

7. Class Counsel then had to research the question of whether the 2018 amendments to the Georgia Security Deposit Statute would support a renewed motion to dismiss by ECI—which ECI had indicated that it would pursue if the case did not settle.

8. Class Counsel also had to research the unique question of whether a six-year statute of limitations (typically applied for contract cases) or whether a twenty-year statute of limitations (applied when the claim is purely statutory) would apply.

9. Class Counsel was precluded from taking on other certain work because of their responsibilities to the Class in this case. Among other things, taking on a class action against a large apartment company for residential security deposits means that Class Counsel could not represent apartment companies on any security deposit issues, and as a business matter, likely meant losing 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. And even with respect to litigation against Georgia apartment companies, Class Counsel's time and resources are finite. Representation of this Class meant that another potential class of tenants could not be represented.

10. Class Counsel's request for 25% is 8.33% less than the customary fee and, therefore, is an even stronger case for a reasonable fee than other similar cases.

11. Class Counsel's fee agreement with Roberson is entirely contingent. 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. Moreover, the contingency fee percentage quoted to Roberson was 40%, and so in requesting only 25% of the total amount available, Class Counsel seeks compensation that

provides a substantial discount to the Class and ECI.

12. 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 Roberson. 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.

13. Class Counsel has obtained substantial monetary and non-monetary relief for the Class. Through Class Counsel's efforts, ECI has agreed to make a total of $2.4 million available to the Class, which is on par and similar to another settlement class this Court approved in *Wexler v. Post Properties, Inc.* That amount includes payment for Class Administration, which are substantial. Class Counsel also obtained a mutual release for apartment damage claims, which will provide relief to all Class members, even if they do nothing.

14. 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. Meanwhile, apartment companies have seen a surge in outside capital, incentivized by historically low interest rates, and thus, they have a far superior bargaining power and position of strength when compared to their tenants.

15. Class Counsel has no prior professional relationship with Roberson 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.

16. Class Counsel's request for 25% is 8.33% less than the usual award in similar cases and, therefore, is an even stronger case for a reasonable fee than other similar cases.

17. My firm, BME, has incurred a total of $19,987.49 in internal and external expenses to litigate this class action (not including any expenses incurred after the date of this filing). Those expenses are broken down as follows:

Code	Description	Units	Our Cost	Client Cost
CA04	Outside Messenger Service	0	$43.24	$43.24
CA40	Filing Fees	0	$700.59	$700.59
CA42	Service of subpoena/process	0	$95.00	$95.00
CA54	Professional Services	0	$9,656.17	$9,656.17
CA58	Online Court Record Access	0	$90.80	$90.80
CA72	Arbitration/Mediation Service	0	$5,215.65	$5,215.65
CA81	Data Hosting Services	0	$799.00	$799.00
EX15	Westlaw Research	0	$977.98	$977.98
EX16	Lexis Research	0	$2,333.56	$2,333.56
EX18	Court Messenger to USDC	1	$30.00	$30.00
EXC10C	Internal Copying Charges	455	$45.50	$45.50

18. The Comprehensive Settlement Agreement provides for a single Fees and Expenses payment to Class Counsel of $600,000.00. Thus, in providing my firm's expenses number, I do so solely to further demonstrate the reasonability of the $600,000.00 request—not to request a separate payment of expenses.

My testimony is true and correct and made under penalty of perjury, and I have executed this affidavit on December 28, 2020.

Naveen Ramachandrappa

Naveen Ramachandrappa

This affidavit has been sworn to and subscribed before me on December 28, 2020.

Elisabeth W Richardson

Notary Public
My Commission Expires:

Exhibit A

Sample of Bondurant Mixson & Elmore, LLP Class Action Representations

This list is a non-exhaustive sample of class actions in which Bondurant Mixson & Elmore, LLP has represented one or more plaintiffs, defendants or amici.

Plaintiff Representation
Adams, et al. v. Dorsey, et al.
Atherton v. Toshiba
Bickerstaff v. SunTrust Bank
Brown, et al. v. Fidelity Bank
Caldwell v. United States
Columbus Drywall, et al. v. Masco Corp., et al.
Conoco v. K-Mart
Cooper, et al. v. Southern Company, et al.
Desportes v. American Heritage Life Insurance Co.
Dorado v. Bank of America, N.A.
Felix v. SunTrust Mortgage, Inc.
Frederick Butler, et al. v. Matsushita Communication Industrial Corporation of U.S.A., et al.
Glynn County Opioid Class Action
Gold v. DeKalb County School District
Green, et al. v. Griffin Industries, et al.
Griner, et al. v. Synovus Bank, et al.
Hoak, et al. v. NCR, et al.
Interface v. Hutchins & Wheeler
J.M.I.C. Life Insurance Co. v. Ken Toole
James W. Brown v. The Equitable Life Assurance Society of the United States
Jones v. Bank of America
Kendall Jackson, et al. v. JDN Realty Corporation, et al.
Kenny A., et al. v. Sonny Perdue, et al.
Manjunath A. Gokare, P.C. v. Federal Express Corporation
Miller v. Wells Fargo Bank, N.A.
Motisola Malikha Abdallah, et al. v. The Coca-Cola Company
Owens v. Metropolitan Life
Roberson v. ECI Group, Inc.

Sanifill, Inc. v. Quail Hollow
Schorr v. Countrywide Bank
Smith v. U.S. Bank, N.A.
Taylor v. Mentor Corp.
Tucker v. Columbia Residential, LLC
TVPX ARS. Inc. Securities Class Action
Union Asset Management Holding AG/Equifax Class Action
Ware County Opioid Class Action
Whelan v. Avila
Defendant Representation
Aetna Cas. & Sur. Co. v. Cantwell
Alexander Theoharous v. Henry Fong, et al.
Almanza, et al. v. Delta Air Lines, et al.
Almanza, et al. v. Delta Airlines, et al.#2
Arcilio, et al. v. Cantor, et al.
Barbara Bradford, et al. v. Bed Bath & Beyond, Inc.
Blobner v. R.T.G. Furniture Corp.
Bonner v. Asset Acceptance & Mann Bracken, LLP
Brinson v. Providence Community Corrections
Bulgajewski v. R.T.G. Furniture Corp.
Campos, et al. v. ChoicePoint Services, Inc.
CE Design Ltd. v. Home Depot U.S.A., Inc.
Chambers, Inc. v. Sanifill, Inc.
Chase, et al. v. Delta Air Lines, et al.
Cisneros v. BKG Pets
Colon v. SE Independent Delivery Services Inc.
Commissioner of Insurance of the State of Michigan v. Albino, et al.
Cox v. Velsicol
Deborah L. Riley, et al. v. Peachstate Automotive Group, Inc., et al.
Designer Floor Covering, Inc., et al. v. Shaw Industries, Inc., et al.
Dinofer v. Trammell Crow Village Partners
Eugene R. Clement, et al. v. Payday Express, Inc., et al.
Ford Credit v. Capital Ford

FTI/FLSA Class Action
Gary R. Gibbens, et al. v. Cashback Catalog Sales, Inc., et al.
Glushakow v. Confederation Life Ins. Co., et al.
Hankinson v. R.T.G. Furniture Corp. d/b/a Rooms to Go
Heritage Packing Corp. v. The St. Joe Company
Holiday Wholesale Grocery Co., et al. v. Philip Morris Incorporated, et al.
Hoy, et al. v. American Family Publishers, et al.
Hugh Collins, et al. v. International Dairy Queen, Inc., et al.
In re Motorsports Merchandise Antitrust Litigation
In re Northwest Airlines Corp., et al. Antitrust Litigation
In re Polypropylene Carpet Antitrust Litigation
In re Commercial Explosives Antitrust Litigation
In re Immucor Inc. Securities Litigation
James W. Jeans, Sr., et al. v. Delta Air Lines, Inc.
Janie Gilchrist v. Direct American Marketers, Inc., et al.
Joel Gerber v. Delta Air Lines, Inc., et al.
Joseph Moultrie, et al. v. Park Atlanta, LLC Class Action
Kirksey v. Persels & Associates, LLC, et al.
Kogie Upshaw, et al. v. GA Catalog Sales, Inc., et al.
Lamar Andrews v. American Telephone & Telegraph Company, et al.
Leslie Schuette v. Henry Fong, et al.
Luster v. Duncan Solutions, Inc., et al.
Melody Bacon v. Life Insurance Company of Georgia, et al.
Metropolitan Life Insurance Co. v. Corner Cleaners
Mitchell & Shapiro LLP v. Marriott International, Inc., et al.
Mitchell v. Piedmont West Ambulatory Surgery Center, LLC, et al.
Nesbitt v. West
New Beginnings Healthcare for Women v. EVO Payments Solutions
O'Neill v. Webb
Ohunene O. Lawal Glinton, et al. v. And R, Inc., et al.
Olofsson v. Albino, et al.
Ownby v. Federated Mutual
Quinten E. Spivey v. Adaptive Marketing, LLC
Richard Carney, et al. v. West Teleservice Inc., et al.

Ritt, et al. v. West Corporation
Rochelle Butts, et al. v. Title Loans of America, Inc., et al.
Roscoe v. CIOX
Sam Nicholson, et al. v. Hooters of Augusta, Inc., et al.
Sams v. Windstream Communications, Inc., et al.
Samuel D. Moore, et al. v. American Federation of Television and Radio Artists, et al.
Sanford v. West Corporation
Spell, et al. v. Cagle's, Inc.
Triplett v. R.T.G. Furniture Corporation
UPS/Cervantes Class Action
Wetterer v. R.T.G. Furniture Corporation
Wilcher v. Healthport Technologies, et al.
Williams, et al. v. Mohawk
Wolfe v. Webb
Yeomans v. R.T.G. Furniture Corporation
Amicus Representation
Serena McDermitt, et al. v. Cracker Barrel Old Country Store, Inc.

Exhibit 2

STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

NICHON ROBERSON, on behalf of herself and all others similarly situated, Plaintiff, v. ECI GROUP, INC., ECI MANAGEMENT LLC, and DEKALB-LAKE RIDGE, LLC, Defendants.	Civil Action File No. 17-A-64506-4 CLASS ACTION JURY TRIAL

Affidavit of Bryant T. Lamer

1. My name is Bryant T. Lamer. I am an attorney admitted to practice in the State of Missouri, the State of Illinois, the State of Kansas, as well as numerous United States District Courts and Circuit Courts of Appeals. A more complete statement of my professional background, credentials, education, and work experience is available at – https://www.spencerfane.com/attorney/bryant-t-lamer/.

2. I am a partner at the law firm of Spencer Fane LLP ("Spencer Fane"). Spencer Fane is a nationally recognized law firm with 19 offices in the United States. The attorneys who worked on this matter are in Spencer Fane's litigation department, who regularly work on class-action lawsuits. A representative list of class actions in which I have, as lead counsel for Spencer Fane, represented Plaintiffs and Defendants in federal and state class actions throughout the United States is attached as Exhibit A to this affidavit. In particular, I have been approved by this Court to serve as Class Counsel in this Class Action.

3. Class Counsel has spent substantial time and effort in litigating this case on behalf of the Class. Class Counsel has been litigating this case for over 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 ECI's motion to dismiss the Class Complaint; corresponded with ECI's counsel regarding the merits of the Class's claims; successfully briefed and won a motion to strike ECI's Rule 68 offer to individually settle the case without Class relief; prepare class-wide discovery and conferred with ECI regarding its objections to such discovery; prepared for, participated in, and paid for a mediation with Ralph Levy, an independent, neutral third-party mediator at JAMS; after that mediation made substantial progress, but ended unsuccessfully, continued direct negotiations with ECI; after those direct negotiations ended unsuccessfully, prepared and filed a motion to compel class-wide discovery; and resumed direct negotiations, which culminated in settlement.

4. Class Counsel performed these tasks, all while working closely with Roberson to keep her informed about the case, as well as representing Roberson in a declaratory judgment action that arose between ECI and its insurer.

5. Class Counsel used substantial skill and expertise to litigate this class action. The meaning of the Georgia Security Deposit Statute is a question of first impression, which necessarily required innovative legal argument.

6. Similarly, whether a Rule 68 offer can be made and accepted, where it offers only relief to the individual named representative, and the consequences of rejecting the offer is also a question of first impression in Georgia. While there is federal authority that addresses a similar question, Georgia Rule 68 is much different and imposes a *substantially heavier* penalty. Whereas Federal Rule 68 only imposes costs, Georgia Rule 68 threatens to impose *attorney fees*. To properly assure Roberson that she would not have to pay for ECI's fees—an issue so substantial that ECI and its insurer are litigating over payment of those fees—was a substantial task.

7. Class Counsel then had to research the question of whether the 2018 amendments to the Georgia Security Deposit Statute would support a renewed motion to dismiss by ECI—which ECI had indicated that it would pursue if the case did not settle.

8. Class Counsel also had to research the unique question of whether a six-year statute of limitations (typically applied for contract cases) or whether a twenty-year statute of limitations (applied when the claim is purely statutory) would apply.

9. Class Counsel was precluded from taking on other certain work because of their responsibilities to the Class in this case. Among other things, taking on a class action against a large apartment company for residential security deposits means that Class Counsel could not represent apartment companies on any security deposit issues, and as a business matter, likely meant losing 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. And even with respect to litigation against Georgia apartment companies, Class Counsel's time and resources are finite. Representation of this Class meant that another potential class of tenants could not be represented.

10. Class Counsel's request for 25% is 8.33% less than the customary fee and, therefore, is an even stronger case for a reasonable fee than other similar cases.

11. Class Counsel's fee agreement with Roberson is entirely contingent. 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. Moreover, the contingency fee percentage quoted to Roberson was 40%, and so in requesting only 25% of the total amount available, Class Counsel seeks compensation that provides a substantial discount to the Class and ECI.

12. 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 Roberson. 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.

13. Class Counsel has obtained substantial monetary and non-monetary relief for the Class. Through Class Counsel's efforts, ECI has agreed to make a total of $2.4 million available to the Class, which is on par and similar to another settlement class this Court approved in *Wexler v. Post Properties, Inc.* That amount includes payment for Class Administration, which are substantial. Class Counsel also obtained a mutual release for apartment damage claims, which will provide relief to all Class members, even if they do nothing.

14. 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. Meanwhile, apartment companies have seen a surge in outside capital, incentivized by historically low interest rates, and thus, they have a far superior bargaining power and position of strength when compared to their tenants.

15. Class Counsel has no prior professional relationship with Roberson 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.

16. Class Counsel's request for 25% is 8.33% less than the usual award in similar cases and, therefore, is an even stronger case for a reasonable fee than other similar cases.

17. My firm, Spencer Fane, has incurred a total of $10,770.74 in external expenses to litigate this class action (not including any expenses incurred after the date of this filing). Those expenses are broken down as follows:

Expense	Total
Fed Ex	$13.70
Travel expenses	$856.54
Meals	$33.51
GA Bar/PHV fees	$1,216.67
Complete Legal	$1,303.29
Mediator fees	$2,347.03
IAG Forensics	$5,000,00
Total Expenses	**$10,770.74**

18. The Comprehensive Settlement Agreement provides for a single Fees and Expenses payment to Class Counsel of $600,000.00. Thus, in providing my firm's expenses number, I do so solely to further demonstrate the reasonability of the $600,000.00 request—not to request a separate payment of expenses.

This affidavit has been sworn to and subscribed before me on December 28th, 2020.

SARAH E. ESTLUND
Notary Public-Notary Seal
STATE OF MISSOURI
Commissioned for Clay County
My Commission Expires: December 10, 2023
ID. #15854530

Sarah E Estlund
Notary Public
My Commission Expires: 12.10.23

Exhibit A

EXHIBIT A

BIOGRAPHICAL AND PROFESSIONAL INFORMATION

Counsel for Plaintiff have substantial complex and class action litigation experience. The following includes representative case listings and an overview of Bryant T. Lamer's practice.

Bryant T. Lamer, Esq.

PRACTICE OVERVIEW

Mr. Lamer is a partner with Spencer Fane LLP's Litigation & Dispute Resolution Group. Mr. Lamer has served as lead counsel or a trial team member on business litigation matters, consumer class actions, international disputes, and white collar criminal defense. Bryant's practice is concentrated on commercial litigation, with a particular emphasis on consumer fraud claims, including the representation of individual actions and class actions brought under federal and state laws, and unfair business practices statutes.

PROFESSIONAL BACKGROUND

Mr. Lamer is admitted to practice in Illinois, Missouri, and Kansas. Mr. Lamer is also admitted to practice before the United States Court of Appeals for the Seventh Circuit, the United States Court of Appeals for the Tenth Circuit, the United States District Court for the Northern District of Illinois, the United States District Court for the Southern District of Illinois, the United States District Court for the Western District of Missouri, and the United States District Court for the District of Kansas. In 2001, the Federal Trial Bar of the Northern District of Illinois accepted Mr. Lamer as a member.

REPRESENTATIVE CASES

Mr. Lamer has been involved in numerous class actions including:

- *Galloway v. The Kansas City Landsmen, L.L.C. et al.* (U.S. District Court-Western District of Missouri, 4:11-cv-01020-DGK; 2011). Plaintiffs' counsel in FACTA class action lawsuit.

- *Batchelder, et al. v. Palmer's Holdings and Investments, Inc. d/b/a Palmer's Deli & Market* (U.S. District Court-Southern District of Iowa, 4:11-CV-00259; 2011). Plaintiffs' counsel in FACTA class action lawsuit.

- *Brady Keith, et al. vs. Back Yard Burgers of Nebraska, Inc., et al.* (U.S. District Court-Nebraska, 8:11-cv-00135; 2011). Plaintiffs' counsel in FACTA class action lawsuit.

- *Randall Curtis and Tina Beasley v. William Clark, et al.* (U.S. District Court-Western District of Arkansas, 5:06-BK-71391, 2006). Defendant's counsel in class action regarding mortgage interest charge settlement payments.

- *Gregory Joseph Perry v. Babin et al.* (U.S. District Court-Western District of Arkansas, 5:04-BK-70461, 2004). Defendant's counsel in class action regarding mortgage interest charge settlement payments.

- *Ann Muniz v. Rexnord Corp., et al.* (U.S. District Court-Northern District of Illinois, 04-C-2405, 2004). Defendant's counsel in class action alleging property contamination.

- *Mejdrech v. Met-Coil* (United States District Court-Northern District of Illinois, 01-C-6107, 2001). Defendant's counsel in class action alleging property contamination.

- *Teresa LeClerq v. The Lockformer Company* (United States District Court-Northern District of Illinois, 00-C-7164, 2000). Defendant's counsel in class action alleging property contamination.

- *Michael Jones et al v. Dickinson Theatres, Inc. et al,* (United States District Court – District of Kansas, 11-cv-02472-JTM-KGG, 2011). Plaintiffs' counsel in FACTA class action lawsuit.

- *Beson v. Park Nicollet Health Services, et al.* (U.S. District Court for the District of Minnesota, Case No. 12-cv-02171 ADM/JJK; 2012). Plaintiff's counsel in FACTA class action.

- *Katz v. ABP Corporation* (U.S. District Court for the Eastern District of New York, Case No. 1:12-cv-04173-ENV-RER; 2012). Plaintiff's counsel in FACTA class action.

- *Schwartz v. Intimacy in New York, L.L.C. et al.* (U.S. District Court for the Southern District of New York, Case No. 1 1:13-cv-05735-PGG; 2013). Plaintiff's counsel in FACTA class action.

- *Lee v. The Body Shop, et al.* (U.S. District Court for the Southern District of New York, Case No. 16-cv-01104-LTS; 2016). Plaintiff's counsel has been approved as class-counsel in FACTA class action in which a settlement has been preliminarily approved.

Exhibit 3

STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

NICHON ROBERSON, on behalf of herself and all others similarly situated, Plaintiff, v. ECI GROUP, INC., ECI MANAGEMENT LLC, and DEKALB-LAKE RIDGE, LLC, Defendants.	Civil Action File No. 17-A-64506-4 CLASS ACTION JURY TRIAL

Affidavit of Shimshon Wexler

1. My name is Shimshon Wexler. I am solo practitioner, operating as The Law Offices of Shimshon Wexler. PC., which is one of the law firms representing the proposed Class Representative Nichon Roberson and the Class. My practice is dedicated to representing consumers on claims under the Fair Debt Collection Practices Act, the Electronic Funds Transfer Act, the Fair Credit Reporting Act, and Landlord / Tenant law in actions brought as individual claims as well as class actions. I am an attorney admitted to practice in the State of Georgia, the State of New York, and the United States District Court for the Northern District of Georgia. A more complete statement of my professional background, credentials, education, and work experience is available at https://wexlerlawoffices.com/about/.

2. I have extensive experience representing plaintiffs in class action litigation both in New York and Georgia. A more complete statement of the cases in which I have experience litigating is available at https://wexlerlawoffices.com/decisions/. In particular, I have been approved by this Court to serve as Class Counsel in this Class Action.

3. Class Counsel has spent substantial time and effort in litigating this case on behalf

of the Class. Class Counsel has been litigating this case for over 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 ECI's motion to dismiss the Class Complaint; corresponded with ECI's counsel regarding the merits of the Class's claims; successfully briefed and won a motion to strike ECI's Rule 68 offer to individually settle the case without Class relief; prepare class-wide discovery and conferred with ECI regarding its objections to such discovery; prepared for, participated in, and paid for a mediation with Ralph Levy, an independent, neutral third-party mediator at JAMS; after that mediation made substantial progress, but ended unsuccessfully, continued direct negotiations with ECI; after those direct negotiations ended unsuccessfully, prepared and filed a motion to compel class-wide discovery; and resumed direct negotiations, which culminated in settlement.

4. Class Counsel performed these tasks, all while working closely with Roberson to keep her informed about the case, as well as representing Roberson in a declaratory judgment action that arose between ECI and its insurer.

5. Class Counsel used substantial skill and expertise to litigate this class action. The meaning of the Georgia Security Deposit Statute is a question of first impression, which necessarily required innovative legal argument.

6. Similarly, whether a Rule 68 offer can be made and accepted, where it offers only relief to the individual named representative, and the consequences of rejecting the offer is also a question of first impression in Georgia. While there is federal authority that addresses a similar question, Georgia Rule 68 is much different and imposes a *substantially heavier* penalty. Whereas Federal Rule 68 only imposes costs, Georgia Rule 68 threatens to impose *attorney fees*. To properly assure Roberson that she would not have to pay for ECI's fees—an issue so substantial

that ECI and its insurer are litigating over payment of those fees—was a substantial task.

7. Class Counsel then had to research the question of whether the 2018 amendments to the Georgia Security Deposit Statute would support a renewed motion to dismiss by ECI—which ECI had indicated that it would pursue if the case did not settle.

8. Class Counsel also had to research the unique question of whether a six-year statute of limitations (typically applied for contract cases) or whether a twenty-year statute of limitations (applied when the claim is purely statutory) would apply.

9. Class Counsel was precluded from taking on other certain work because of their responsibilities to the Class in this case. Among other things, taking on a class action against a large apartment company for residential security deposits means that Class Counsel could not represent apartment companies on any security deposit issues, and as a business matter, likely meant losing 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. And even with respect to litigation against Georgia apartment companies, Class Counsel's time and resources are finite. Representation of this Class meant that another potential class of tenants could not be represented.

10. Class Counsel's request for 25% is 8.33% less than the customary fee and, therefore, is an even stronger case for a reasonable fee than other similar cases.

11. Class Counsel's fee agreement with Roberson is entirely contingent. 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. Moreover, the contingency fee percentage quoted to Roberson was 40%, and so in requesting only 25% of the total amount available, Class Counsel seeks compensation that

provides a substantial discount to the Class and ECI.

12. 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 Roberson. 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.

13. Class Counsel has obtained substantial monetary and non-monetary relief for the Class. Through Class Counsel's efforts, ECI has agreed to make a total of $2.4 million available to the Class, which is on par and similar to another settlement class this Court approved in *Wexler v. Post Properties, Inc.* That amount includes payment for Class Administration, which are substantial. Class Counsel also obtained a mutual release for apartment damage claims, which will provide relief to all Class members, even if they do nothing.

14. 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. Meanwhile, apartment companies have seen a surge in outside capital, incentivized by historically low interest rates, and thus, they have a far superior bargaining power and position of strength when compared to their tenants.

15. Class Counsel has no prior professional relationship with Roberson 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.

16. Class Counsel's request for 25% is 8.33% less than the usual award in similar cases and, therefore, is an even stronger case for a reasonable fee than other similar cases.

17. My firm, The Law Offices of Shimshon Wexler, has incurred a total of $1,329.96 in external expenses to litigate this class action (not including any expenses incurred after the date of this filing). Those expenses are broken down as follows:

$342.80—Filing Fees

$465.60—IAG Forensics

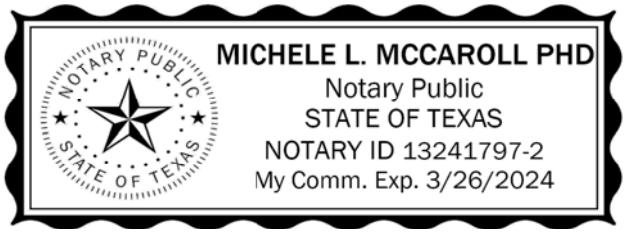
$521.56—Mediation

18. The Comprehensive Settlement Agreement provides for a single Fees and Expenses payment to Class Counsel of $600,000.00. Thus, in providing my firm's expenses number, I do so solely to further demonstrate the reasonability of the $600,000.00 request—not to request a separate payment of expenses.

My testimony is true and correct and made under penalty of perjury, and I have executed this affidavit on December 24th, 2020.

Shimshon Wexler

This affidavit has been sworn to and subscribed before me on December 24th, 2020.



Notary Public
My Commission Expires: March 26, 2024

This notarial act was an online notarization.