

**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 AMENDED<sup>1</sup> Unopposed Motion  
For Class Representative Service Award**

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<sup>1</sup> On December 29, 2020, Plaintiff's counsel filed Roberson's motion for class service award. In that motion, Plaintiff's counsel unintentionally requested an award in an amount that was not consistent with the Settlement Agreement. As soon as counsel learned of this error, they immediately informed ECI's counsel. Plaintiff's counsel now files this Amended motion, in which the *only* change is to correct the amount to ensure that it is consistent with the Settlement.

## **Table Of Contents**

Introduction.....	1
Factual and Procedural Background .....	2
Argument .....	9
1.    Georgia Courts Regularly Give A Service Award To A Class Representative To Compensate Them For Their Indispensable Work On The Class’s Behalf. ....	9
2.    This Court Should Grant Roberson A \$12,500.00 Service Award For Providing Over Three Years Of Work On The Class’s Behalf. ....	11
Conclusion .....	14

## **Introduction**

Serving as a class representative is an indispensable job. And in a “negative-value” class action, where the cost of an individual lawsuit is more than the damages any individual person will receive, it takes an even more special person to willingly represent the interests of thousands of class members. For such important work on the class’s behalf, Georgia courts regularly give a service award to a class representative to compensate them for service to the class.

In this case, Plaintiff and Class Representative Nichon Roberson is entitled to a service award for providing over three years of work on the Class’s behalf. Over the three years since this class action was filed, Roberson has performed admirably on the Class’s behalf. *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. Indeed, this Court’s preliminary approval order recognized that “Roberson will fairly and adequately represent the interests of the Class.” Sept. 29, 2020 Order Granting Preliminary Approval at 2.

Among other things, Roberson properly represented the Class’s interests in refusing to accept ECI’s *individual* Rule 68 settlement offer, which would have personally benefitted her at the expense of the Class. Roberson similarly opposed ECI’s efforts to limit discovery solely to her claims and moved for class-wide discovery to ensure that all Class members would receive relief. And Roberson patiently served in her Class Representative role through negotiations in this case that continued over nearly *two years*—with the first mediation occurring on September 20, 2018 and a comprehensive class settlement agreement not finalized until August 3, 2020.

Therefore, Roberson now moves for a service award of \$12,500.00. This amount is commensurate with the over three years of work that Roberson performed on the Class’s behalf. It is also consistent with the average amount courts approve nationally. *See, e.g.*, 5 Newberg on Class Actions § 17:1 (5th ed.) (“Empirical evidence shows that incentive awards are now paid in

most class suits and average between \$10-15,000 per class representative.”). And pursuant to the Comprehensive Settlement Agreement, ECI does not oppose Roberson’s request for \$12,500.00.<sup>2</sup>

For those reasons, and as set forth below, this Court should grant Roberson’s motion and award her \$12,500.00 as a service award from the common fund. 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 Roberson’s Class Representative Service Award.

### **Factual and Procedural Background**<sup>3</sup>

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.<sup>4</sup>

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.

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<sup>2</sup> 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 for a service award of \$12,500.00.

<sup>3</sup> This factual and procedural background is the same background set forth in Roberson’s motion for class counsel fees and expenses.

<sup>4</sup> 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.

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 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 weekly 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 Representative Service Award.

## Argument

### **1. Georgia Courts Regularly Give A Service Award To A Class Representative To Compensate Them For Their Indispensable Work On The Class's Behalf.**

“For class actions to be effectively litigated, it is necessary that at least one plaintiff be willing to take on the role of class representative, according to ... state procedural rules.” 60 A.L.R. 295 (originally published in 2010). As such, “[c]ourts **frequently** make incentive awards to named plaintiffs at the conclusion of class action litigation.” *Id.*; *see also* 176 Am. Jur. Proof of Facts 3d 463 (originally published in 2019) (“Courts **regularly** give incentive or service awards ... to named plaintiffs in class actions ....”) (emphasis added in both).

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

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

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

But Eleventh Circuit opinions are not binding in Georgia on a question of state law, like whether the *Georgia* Civil Practice Act and other Georgia authority allow for class representative service awards. That is especially true for an opinion like *Johnson*, which was issued over Judge Martin’s dissent; which is currently the subject of a pending petition for en banc rehearing, with at least six amicus briefs filed in support of the petition; and which is widely recognized as controversial and inconsistent with how Georgia courts have addressed this same issue.

Indeed, on the very same day that the Eleventh Circuit issued its opinion in *Johnson*, Judge Gregory Adams of the DeKalb County Superior Court issued a final judgment in *Gold v. DeKalb County School District*, Civil Action File No. 11-CV-3657-5, finding that “\$25,000 shall be paid to each of the Lead Plaintiffs as an incentive award for their efforts in prosecuting this case.” Sept. 17, 2020 Final Judgment & Order of Dismissal at 5.

And just two days before that, this Court and your Honor specifically issued a final judgment in *Wexler v. Post Properties, Inc.*, Civil Action File No. 16A60559, a related security-deposit class action under Georgia law, finding that “[t]he Court finds that payment of this service award is warranted and approved in this case in light of the class representative’s work on behalf of the class and the risk she took.” Sept. 15, 2020 Final Order & Judgment at 7-8.

The fact that Georgia courts have consistently given service awards to class representatives is significant. “[S]tatutes[] are properly to be expounded in light of conditions existing at the time

of their adoption.” *Ga. Motor Trucking Ass’n v. Ga. Dep’t of Revenue*, 301 Ga. 354, 357 (2017). Rule 23 of the Georgia Civil Practice Act was specifically amended by the General Assembly in 2003 and then again in 2005. The General Assembly could have prohibited the practice of awarding service awards, which was as prevalent then as it is now, but the General Assembly chose not to do so. It chose to amend other parts of Rule 23, but not to prohibit service awards.

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

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

**2. This Court Should Grant Roberson A \$12,500.00 Service Award For Providing Over Three Years Of Work On The Class’s Behalf.**

Several factors support Roberson’s request for a \$12,500.00 service award, and this Court should grant such request based on these factors, as well as any others the Court finds relevant.

*First*, like all other Class members, Roberson’s individual damages are minimal. Pursuant to the Comprehensive Settlement Agreement, Roberson will receive only \$60.00 for her individual

claim. That is the amount of “damage” ECI alleges Roberson did to the apartment premises by leaving a rug and a bag of trash under the sink in the apartment after she moved out.

Yet, \$60.00 does not remotely compensate Roberson for her work on the Class’s behalf. *See, e.g.,* Ex. 1 (Ramachandrappa Aff.) ¶ 4. And if the Court were to deny Roberson’s request for a service award and leave her only with \$60.00, it will become extremely difficult, if not impossible, to find individuals willing to serve as a class representative in negative-value suits like this one. *See, e.g., id.* ¶ 5. The damage to public policy would be substantial. In cases where aggregate damages involve millions of dollars, like this case, no suits will be brought and substantial violations of Georgia law will go unremedied.

*Second,* Roberson provided work on the Class’s behalf for over three years, far exceeding what any individual Class member must do to obtain relief. Every Class member, even those who do nothing, will receive relief in the form of a mutual release, in which ECI relinquishes claims for damage to the apartment premises against class members. And for those Class members who submit claims for damages, they need only spend thirty minutes (if that) reading the notice, reviewing their documentation, and submitting their claims online to receive monetary payment.

In stark contrast to the thirty minutes or less that other Class members will spend to obtain relief, Roberson spent over three years working on behalf of the Class. Among other things, Roberson worked with Class Counsel in extensively gathering her documents; provided Class Counsel summaries and answered questions about her facts and claim; reviewed the complaint; reviewed correspondence from ECI’s counsel regarding her claim; stayed informed of Class Counsel’s discovery requests, discovery motions, motion-to-dismiss briefing, and motion-to-strike briefing; consulted with Class Counsel regarding ECI’s Rule 68 offer of settlement; and consulted with Class Counsel regarding extended negotiations to settle this class action. *See, e.g., id.* ¶ 6. On

top of all of that, Roberson has been named and personally served as a defendant in an ongoing federal declaratory judgment action arising out of a dispute between ECI and its insurance carrier, regarding who will pay for the claims in this class action. *See AEGIS Elec. & Gas Int'l Servs. Ltd. v. ECI Mgm't LLC*, 1:17-CV-03657-LMM (N.D. Ga. Sept. 20, 2017).

To properly compensate Roberson for the work she performed on the Class's behalf, she must receive more than the \$60 for her individual claim. Roberson should receive a class representative service award so that her work does not go uncompensated.

In addition to the normal responsibilities that come with three years of litigating a class action, Roberson had to bear the responsibilities and pressures of ECI's Rule 68 offer. *See, e.g.*, 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. That offer sought to pay Roberson off individually for her claims, without providing any relief to the Class. Had Roberson accepted that offer, she would have received relief in December 2017—three years ago. Instead, Roberson held true to her role as a Class Representative, and she rejected ECI's Rule 68 offer without any guarantee of later recovery.

To properly incentivize that type of behavior by class representatives, Roberson should receive a class representative service award. Otherwise, class representatives—assuming they are even willing to serve in that role at all—will have every incentive to accept an offer to settle claims individually and ignore the class's interests. *See, e.g.*, Ex. 1 (Ramachandrappa Aff.) ¶ 7.

*Fourth*, Roberson was particularly involved and monitored Class Counsel's negotiation of the settlement of this class action. Among other things, Roberson asked important questions regarding the length of the notice and claims period, to ensure that Class members would have sufficient time to gather their documents and submit a claim; the means by which notice would be given to the Class; and ensuring that the absolute most relief that could be accomplished by

settlement was requested. *See, e.g.*, ¶ 8.

Because Roberson's role in assisting and monitoring Class Counsel's negotiation of the settlement was greater than a normal class representative, Roberson should receive a class representative service award for this additional reason.

*Fifth*, pursuant to the Comprehensive Settlement Agreement, ECI does not oppose Roberson's request for a service award of \$12,500.00. And ECI's non-opposition is consistent with the average amounts courts approve nationally. *See, e.g.*, 5 Newberg on Class Actions § 17:1 (5th ed.) ("Empirical evidence shows that incentive awards are now paid in most class suits and average between \$10-15,000 per class representative.").

### **Conclusion**

For those reasons, this Court should grant Roberson's unopposed motion for a Class Representative Service Award. 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 Roberson's Class Representative Service Award. Signature and certificate pages follow.



Roberson submits this AMENDED motion on January 11, 2021.

**/s/ Naveen Ramachandrappa**

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1/11/2021 8:51 AM  
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*Attorneys for Plaintiff Nichon Roberson  
on behalf of herself and the Class*

**Certificate of Service**

I certify that, on January 11, 2021, I served a copy of **Plaintiff Nichon Roberson's**  
**AMENDED Unopposed Motion For Class Representative Service Award** by email on the  
following counsel of record for the ECI Defendants:

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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,

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ECI GROUP, INC., ECI MANAGEMENT  
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Defendants.

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CLASS ACTION  
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**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](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. Based on my expertise and experience, Plaintiff and Class Representative Nichon

Roberson is entitled to a service award for providing over three years of work on the Class's behalf. Over the three years since this class action was filed, Roberson has performed admirably on the Class's behalf.

4. \$60.00 does not remotely compensate Roberson for the over three years of work that she performed on the Class's behalf.

5. If the Court were to deny Roberson's request for a service award and leave her only with \$60.00, it will become extremely difficult, if not impossible, to find individuals willing to serve as a class representative in negative-value suits like this one.

6. Moreover, in stark contrast to the thirty minutes or less that other Class members will spend to obtain relief, Roberson spent over three years working on behalf of the Class. Among other things, Roberson worked with Class Counsel in extensively gathering her documents; providing summaries and answering questions about her facts and claim; reviewing the complaint; reviewing correspondence from ECI's counsel regarding Roberson's claim; staying informed of Class Counsel's discovery requests, discovery motions, motion-to-dismiss briefing, and motion-to-strike briefing; consulting with Class Counsel regarding ECI's Rule 68 offer of settlement; and consulting with Class Counsel regarding extended negotiations to settle this class action.

7. If the Court were to deny Roberson's request for a service award and leave her only with \$60.00, class representatives—assuming they are even willing to serve in that role at all—will have every incentive to accept an offer to settle claims individually and ignore the class's interests.

8. Roberson was particularly involved and monitored Class Counsel's negotiation of the settlement of this class action. Among other things, Roberson asked important questions regarding the length of the notice and claims period, to ensure that Class members would have

sufficient to time to gather their documents and submit a claim; the means by which notice would be given to the Class; and ensuring that the absolute most relief that could be accomplished by settlement was requested.

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.*



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

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

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

# 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. Based on my expertise and experience, Plaintiff and Class Representative Nichon Roberson is entitled to a service award for providing over three years of work on the Class’s behalf.

Over the three years since this class action was filed, Roberson has performed admirably on the Class's behalf.

4. \$60.00 does not remotely compensate Roberson for the over three years of work that she performed on the Class's behalf.

5. If the Court were to deny Roberson's request for a service award and leave her only with \$60.00, it will become extremely difficult, if not impossible, to find individuals willing to serve as a class representative in negative-value suits like this one.

6. Moreover, in stark contrast to the thirty minutes or less that other Class members will spend to obtain relief, Roberson spent over three years working on behalf of the Class. Among other things, Roberson worked with Class Counsel in extensively gathering her documents; providing summaries and answering questions about her facts and claim; reviewing the complaint; reviewing correspondence from ECI's counsel regarding Roberson's claim; staying informed of Class Counsel's discovery requests, discovery motions, motion-to-dismiss briefing, and motion-to-strike briefing; consulting with Class Counsel regarding ECI's Rule 68 offer of settlement; and consulting with Class Counsel regarding extended negotiations to settle this class action.

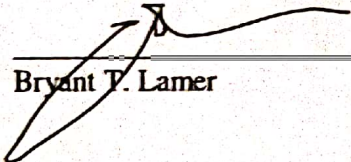
7. If the Court were to deny Roberson's request for a service award and leave her only with \$60.00, class representatives—assuming they are even willing to serve in that role at all—will have every incentive to accept an offer to settle claims individually and ignore the class's interests.

8. Roberson was particularly involved and monitored Class Counsel's negotiation of the settlement of this class action. Among other things, Roberson asked important questions regarding the length of the notice and claims period, to ensure that Class members would have sufficient time to gather their documents and submit a claim; the means by which notice would



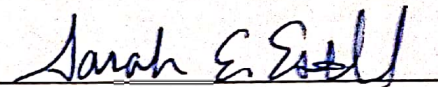
be given to the Class; and ensuring that the absolute most relief that could be accomplished by settlement was requested.

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

  
Bryant T. Lamer

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

  
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. Based on my expertise and experience, Plaintiff and Class Representative Nichon

Roberson is entitled to a service award for providing over three years of work on the Class's behalf. Over the three years since this class action was filed, Roberson has performed admirably on the Class's behalf.

4. \$60.00 does not remotely compensate Roberson for the over three years of work that she performed on the Class's behalf.

5. If the Court were to deny Roberson's request for a service award and leave her only with \$60.00, it will become extremely difficult, if not impossible, to find individuals willing to serve as a class representative in negative-value suits like this one.

6. Moreover, in stark contrast to the thirty minutes or less that other Class members will spend to obtain relief, Roberson spent over three years working on behalf of the Class. Among other things, Roberson worked with Class Counsel in extensively gathering her documents; providing summaries and answering questions about her facts and claim; reviewing the complaint; reviewing correspondence from ECI's counsel regarding Roberson's claim; staying informed of Class Counsel's discovery requests, discovery motions, motion-to-dismiss briefing, and motion-to-strike briefing; consulting with Class Counsel regarding ECI's Rule 68 offer of settlement; and consulting with Class Counsel regarding extended negotiations to settle this class action.

7. If the Court were to deny Roberson's request for a service award and leave her only with \$60.00, class representatives—assuming they are even willing to serve in that role at all—will have every incentive to accept an offer to settle claims individually and ignore the class's interests.

8. Roberson was particularly involved and monitored Class Counsel's negotiation of the settlement of this class action. Among other things, Roberson asked important questions regarding the length of the notice and claims period, to ensure that Class members would have

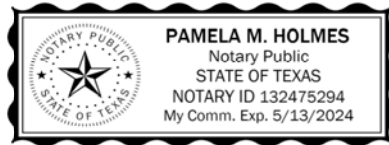
sufficient to time to gather their documents and submit a claim; the means by which notice would be given to the Class; and ensuring that the absolute most relief that could be accomplished by settlement was requested.


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

  
Shimshon Wexler

State of Texas, County of Fort Bend

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



  
Notary Public  
My Commission Expires: May 13, 2024

This notarial act was an online notarization.