

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JAMES E. BURKE and LOGISTICS AND)
DISTRIBUTION SERVICES, INC., Individually,)
and on behalf of a class of similarly situated persons)

Plaintiffs,)

v.)

MAXIMUM BOOTING COMPANY, LLC;)
KENNETH P. MCELWANEY, d/b/a)
Maximum Booting Company; JDN REALTY)
CORPORATION; DDR PROPERTY)
MANAGEMENT LLC; CYMONA WEST; and)
XYZ COMPANY,)

Defendants.)

CIVIL ACTION
FILE NO.

NOTICE OF REMOVAL

COME NOW MAXIMUM BOOTING COMPANY, LLC AND KENNETH P. MCELWANEY d/b/a MAXIMUM BOOTING COMPANY (collectively referred to herein as “MBC”), named as Defendants in the above-styled action, and herein file its Notice of Removal pursuant to 28 U.S.C. § 1332 and 42 U.S.C. § 1441.

I. The Complaint And Status Of Proceeding In State Court

1. On October 10, 2017, Plaintiffs James E. Burke and Logistics and Distribution Services, Inc. (Plaintiffs) filed a “Class Action Complaint” in the State Court of Fulton County, Georgia, CAFN 17EV004847, against Defendants MBC,

JDN Realty Corporation, DDR Property Management LLC and Cymona West.¹

2. The Complaint and Summons were served upon MBC by the Fulton County Sheriff's Office on December 1, 2017. As required by 28 U.S.C. § 1446(a), a copy of the Complaint, as well as all process, pleadings and orders served on MBC are attached as Exhibit 1.

3. No responsive pleadings have been filed by MBC in the State Court action.

4. As stated in more detail below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441 because MBC has satisfied the procedural requirements for removal and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332.

II. MBC Has Satisfied The Procedural Requirements For Removal

5. The removed action is a putative "class action" within the meaning of 28 U.S.C. §§ 1332(d)(1)(A), (B) and 1453, because it is a "civil action filed under

¹ It is noteworthy that Plaintiffs' Counsel intentionally omit reference to the citizenship of the Plaintiffs in the Complaint. This is not the first attempt by Plaintiffs' Counsel to avoid federal court jurisdiction. For example, on October 17, 2017, in another case filed by Plaintiffs' Counsel against a different booting company, Defendant Beacon Management Services, LLC, removed the case from Fulton County State Court to the Northern District of Georgia. See *Bankhead et al v. Beacon Management Services, LLC, et al*, Case No. 1:17-CV-04085-WSD. In that case, Plaintiffs' Counsel tried to avoid federal court jurisdiction by filing a motion to amend their complaint to remove the amount in controversy, i.e., that Defendants have "collected millions of dollars in fees in an unlawful manner." While the Honorable Judge William S. Duffey, Jr. allowed the Plaintiff to amend the Complaint, Judge Duffey determined that the \$5,000,000 jurisdictional requirement was met at the time of removal despite the Plaintiff's subsequent withdrawal of the language. See Opinion and Order, *Id.*, Doc. 18 filed on December 1, 2017, attached hereto as Exhibit "2". On November 15, 2017, in another booting case filed by Plaintiffs' Counsel against MBC, Plaintiffs' Counsel recently amended the Complaint to, in part, remove the language that the Plaintiff was a resident of Florida. See *Jessy Polson Individually, and on behalf of a class of similarly situated persons v. Kenny McElwaney d/b/a Maximum Booting Co.*, In the State Court of Fulton County, Georgia, Civil Action File No. 17EV003164, Complaint and Amended Complaint, I, §2 attached hereto collectively as Exhibit "3". Unfortunately, other counsel that initially represented MBC in the *Polson* case obtained several extensions of time to file the Answer and failed to remove the case to Federal Court within 30 days after service.

Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(A). The action brought by Plaintiffs is a putative class action, pursuant to Georgia’s Civil Practice Act, on behalf of a putative class of plaintiffs, as defined in 28 U.S.C. § 1332(d)(1)(A).

6. MBC was served with the Complaint on December 1, 2017. Accordingly, as this Notice of Removal is being filed within 30 days of service, removal is timely under 28 U.S.C. § 1446(b).

7. Venue in this Court is proper under 28 U.S.C. § 1441(a) as this Court is located in the same county as the State Court of Fulton County, Georgia. Thus, this Court “embrac[es] the place where such action is pending.” 28 U.S.C. § 1441(a).

8. No previous notice of removal has been filed in this action.

9. MBC has filed this Notice of Removal with this Court, and this day will serve a copy of the Notice of Removal upon counsel for Plaintiffs and other Defendants, and file a copy of this Notice of Removal in the State Court of Fulton County, Georgia pursuant to 28 U.S.C. § 1446(d). A copy of the State Court of Fulton County, Georgia docket, as of December 30, 2017, for the matter removed to this Court, is attached as Exhibit 4.

III. Basis For Jurisdiction Under The Class Action Fairness Act

10. This alleged class action is subject to removal pursuant to the Class

Action Fairness Act of 2005, Pub. L. 109-2 (“CAFA”), codified in relevant part at 28 U.S.C. §§ 1332(d) and 1453.

11. As explained below, this is a putative class action in which (A) there are 100 or more members in Plaintiffs’ proposed class; (B) one or more members of the alleged class are citizens of a state different from that of Defendants; and (C) the aggregate amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs. Thus, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A).

a. The Putative Class Contains More Than 100 Members.

12. In the Complaint, Plaintiffs allege a “unlimited” class composed of:

All persons who have been booted by, or at the request of, Defendants at any location within the State of Georgia where there are no vehicle immobilization ordinances, and who have paid fines for the removal of said device, from August 16, 2012, through present.

(Compl. Count IV, ¶ 27(a).)

13. Plaintiffs also allege “unlimited” two subclasses composed of:

All persons who have been booted by Defendants Maximum Booting and McElwaney in Coweta County, Georgia, and who have paid a fine for removal of the said device from August 16, 2012, through present; and

All persons who have been booted by, or at the request of, Defendants at 955 Bullsboro Dr., Newnan, GA 30265, and have paid a fine for removal of said device from August 16, 2012, through present (the Burke subclass).

(Compl. Count IV, ¶ 27(b)-(c).)

14. Plaintiffs allege that there are “thousands” of class members. (Compl. Count IV, ¶ 29.) This allegation demonstrates that the putative class exceeds 100. 28 U.S.C. § 1332(d)(2)(A).

b. At Least One Class Member Is A Citizen Of A State Different From Defendants.

15. CAFA jurisdiction requires that “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

16. MBC is comprised of a Georgia resident and a Georgia limited liability company with its principal place of business in Georgia, and thus is a citizen of Georgia under 28 U.S.C. § 1332(c)(1).

17. Plaintiffs allege that Defendant JDN Realty Corporation is an Ohio corporation registered to do business in Georgia, and thus a citizen of Ohio under 28 U.S.C. § 1332(c)(1). (Compl.1, ¶ 6.)

18. Plaintiffs allege that Defendant DDR Property Management LLC is an Ohio limited liability company registered to do business in Georgia, and thus a citizen of Ohio under 28 U.S.C. § 1332(c)(1). (Compl. 1, ¶ 7.)

19. Plaintiffs allege that Defendant Cymora West is a resident of Georgia, and thus a citizen of Georgia under 28 U.S.C. § 1332(c)(1). (Compl. 1, ¶ 8.)

20. Plaintiffs seek to represent “[a]ll persons who have been booted ... and paid fines for removal of said device within the State of Georgia from August 16,

2012, through present.” (Compl. Count IV, ¶ 27(a) (emphasis added).) The proposed class is not limited to citizens of Georgia, and thus Plaintiffs purport to represent “all persons” subjected to the alleged wrongful conduct, regardless of their citizenship.

21. It is reasonable to conclude from these allegations that the class would include at least one diverse member. While the class of “thousands” includes only those individuals who were “booted” in the State of Georgia, it is more likely than not that at least one member is not from Georgia. Thus the minimal diversity requirement of 28 U.S.C. § 1332(d)(2) is satisfied.²

22. Pursuant to Fed. R. Evid. 201, the Court may also take judicial notice of the public records of the Nevada Secretary of State (Nevada SOS) for Plaintiff Logistics and Distribution Services, Inc. which confirms that it is a Nevada domestic corporation that was incorporated in the State of Nevada on January 20, 1995, Entity No. C329-1995. See Exhibit “5”.³ Thus, the minimal diversity requirement of 28 U.S.C. § 1332(d)(2) is satisfied. *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1279 (11th Cir.1999) (judicial notice taken of corporate documents required to be filed with the Securities and Exchange Commission); *Abedi v. US Bank Nat'l Ass'n*, No. 1:16-CV-1747-SCJ, 2017 WL 4865459, at *3 (N.D. Ga. Oct. 2,

² See Exhibit “2” in which the Court found the diversity of citizenship requirement was met under identical circumstances.

³ See link to Nevada SOS website for Plaintiff Logistics and Distribution Services, Inc. <http://nvsos.gov/SOSEntitySearch/CorpDetails.aspx?lx8nvq=VfUWeVP83G1a8%252fYlvo040g%253d%253d&nt7>

2017) (judicial notice taken of facts per the Georgia Secretary of State Corporation Division's public records); *Davis v. Nat'l Consumer Servs. Corp.*, No. 1:14-cv-00936-ELR-LTW, 2015 WL 11236558, at *4 (N.D. Ga. Feb. 19, 2015) (judicial notice taken of records of Georgia Secretary of State on motion to dismiss), *report and recommendation adopted*, 2015 WL 11257483 (N.D. Ga. Mar. 9, 2015) (judicial notice taken of public records maintained by the Georgia Secretary of State in motion to dismiss); *Hargon v. Homeward Residential, Inc.*, No. 1: 12-CV-3425-CC-AJB, 2013 WL 12200654, at *3 (N.D. Ga. July 26, 2013) (judicial notice taken of printout from Georgia Secretary of State); *Coote v. EMC Mortg. Chase*, No. 11CV03718ODEJFK, 2012 WL 13013612, at *4 (N.D. Ga. May 8, 2012), *report and recommendation adopted*, No. 1:11-CV-3718-ODE-JFK, 2012 WL 13013611 (N.D. Ga. June 5, 2012) (judicial notice taken of the Georgia Secretary of State website showing that EMC's registered agent for service of process is CT Corporation System).

23. Similarly, the Court may take judicial notice of the public records of the Federal Motor Carrier Safety Administration (FMCSA) for Plaintiff Logistics and Distribution Services, Inc. which confirms that the USDOT Number for it is 945634 and its physical address is 992 Spice Island Drive, Sparks, Nevada 89431. See

Exhibit “5”.⁴ United States v. Manapat, 928 F.2d 1097, 1101 (11th Cir. 1991) (where the district court took judicial notice of a US Department of Transportation internal memorandum stating that the form should be changed). Thus, the minimal diversity requirement of 28 U.S.C. § 1332(d)(2) is satisfied.

c. The Amount In Controversy Exceeds The \$5,000,000 Aggregate Threshold.

24. Under 28 U.S.C. § 1332(d)(6), the claims of putative class members shall be aggregated to determine whether the amount in controversy exceeds the sum or value of \$5,000,000. This requirement is plainly satisfied by Plaintiffs’ claims and alleged damages and other monetary relief sought or implicated by the allegations of the Complaint.

25. When a defendant seeks removal under CAFA, all that is required is “a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551, 554 (2014).

26. MBC expressly disputes any liability to Plaintiffs or to a putative class for either monetary or equitable relief under any claim, and deny the alleged vehicle immobilization practices constitute false imprisonment, conversion/civil theft, negligence, negligence per se, money had and received, violations under Georgia’s

⁴ See link to the FMCSA website for Plaintiff Logistics and Distribution Services, Inc. https://safer.fmcsa.dot.gov/query.asp?query_type=queryCarrierSnapshot&query_param=USDOT&query_string=945634.

Racketeer Influenced and Corrupt Organization Act (“Georgia RICO”), O.C.G.A. § 16-14-1, *et seq.*, premises liability. MBC further denies that Plaintiffs or putative class members incurred any damages, and deny that a class exists.

27. Solely for purposes of this Notice of Removal, and no other, MBC establishes that the amount in controversy exceeds the minimum \$5,000,000 based on the allegations of the Complaint, but does not hereby admit or acknowledge the allegations of the Complaint or that MBC is liable to Plaintiffs or a putative class for monetary or equitable relief. *See Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir. 2010) (“The amount in controversy is not proof of the amount the plaintiff will recover. Rather, it is an estimate of the amount that will be put at issue in the course of the litigation.”)

i. Alleged Compensatory Damages

28. A defendant can demonstrate the amount in controversy through various means, including through whether it is facially apparent from the Complaint. *Williams v. Best Buy Co., Inc.*, 269 F.3d 1316, 1319 (11th Cir. 2001) (“When the complaint does not claim a specific amount of damages, removal from state court is [jurisdictionally] proper if it is facially apparent from the complaint that the amount in controversy exceeds the jurisdictional requirement.”)

29. Plaintiffs allege that “Defendants have a systematic process of unlawfully disabling vehicles with boots and similar devices throughout the State of

Georgia. As a result, Defendants have actively participated in the collection of an **egregious amount of booting fees** in an unlawful manner.” (Compl. I, ¶ 1)(emphasis provided).

30. Plaintiffs allege that “[MBC] perform[s] vehicle immobilization services within the State of Georgia.” (*Id.* at I, ¶ 14.), and “Defendants JDN Realty, DDR, [and] West ... hired, contracted with, authorized, or otherwise provided material support to [MBC].” (*Id.* at I, ¶ 16.)

31. Plaintiff Burke claims that, while parked in a private parking lot located at 955 Bullsboro Dr., Newnan, GA 30265 (*id.* at II, ¶ 18), “[MBC] placed a boot on Burke’s vehicle and refused to remove it unless Burke paid a \$500 fine” (*id.* at ¶ 24). Plaintiffs claim that they paid MBC the \$500 fine. (*Id.* at III, ¶ 25.)

32. Plaintiffs allege “in the absence of a vehicle immobilization [city] ordinance, booting vehicles in Georgia is strictly unlawful.” (*Id.* at II, ¶ 13.) “Because the City of Newnan and Coweta County do not have a vehicle immobilization ordinance,” Plaintiffs contend that “[MBC] unlawfully booted Plaintiff Burke’s vehicle without legal authority and caused damages to Plaintiffs.” (*Id.* at III, ¶ 26.)

33. Plaintiffs allege a class of individuals whose vehicles were booted from August 16, 2012 to present that allegedly includes “thousands of Class members.” (Compl. IV, ¶ 29.) Thus, at a minimum, Plaintiffs’ Complaint alleges a class of at

least 2,000 individuals. This is the most conservative estimate possible based on the language of Plaintiffs' Complaint; but, it would be just as reasonable to assume Plaintiffs' allegation is that the class is composed of 3,000, 5,000 or even 10,000 individuals. Hence, a conservative range of the Defendants "**collection of an egregious amount of booting fees**" is \$1,000,000 to \$5,000,000.⁵

34. In addition to these alleged compensatory damages, for each claim, Plaintiffs allege that they and all other class members "have incurred damages in an amount to be determined by the enlightened conscience of a jury as a result of Defendants' conduct." (*Id.* at Counts 1 - 7, ¶¶ 37, 43, 46, 50, 54, 65, 72.)

35. Given the allegations of Plaintiffs' Complaint, the alleged damages for the putative class on the face of the Complaint, before trebling, totals in a range of \$1,000,000 to \$5,000,000.

ii. Alleged Treble Damages, Punitive Damages and Attorneys' Fees

36. In addition to compensatory damages, the Complaint seeks punitive damages and attorneys' fees. (Compl. Counts 8 - 9, ¶¶ 73-76.) These damages are part of the amount in controversy calculation. *See Porter v. MetroPCS Commc'ns Inc.*, 592 F. App'x 780, 783 (11th Cir. 2014) (noting that the court "[does] not doubt that" attorney's fees and punitive damages are included in the amount in controversy

⁵ 2,000 class members * \$500 boot removal fee = \$1,000,000; 3,000 class members * \$500 boot removal fee = \$1,500,000; 4,000 class members * \$500 boot removal fee = \$2,000,000; 5,000 class members * \$500 boot removal fee = \$2,500,000; 10,000 class members * \$500 boot removal fee = \$5,000,000.

calculation).

37. Punitive damages may be awarded for Plaintiffs' tort claims under O.C.G.A. § 51-12-5.1, including false imprisonment and conversion and civil theft.

38. Plaintiffs allege defendants engaged in certain conduct that entitles Plaintiffs to punitive damages under O.C.G.A. § 51-12-5.1. (Compl. Count 9, ¶¶ 75-76.)

39. Conservatively applying a factor of one to Plaintiffs' alleged compensatory class damages equals \$1,000,000 to \$5,000,000 in punitive damages in controversy, totaling between \$2,000,000 to \$10,000,000 in compensatory and punitive damages in controversy. But courts within this Circuit have affirmed larger punitive damages ratios, thus placing those damages "at issue." *See e.g., Goldsmith v. Bagby Elevator Co.*, 513 F.3d 1261, 1284 (11th Cir. 2008) (noting that the 11th Circuit has upheld a 2173 to 1 ratio of punitive damages when Georgia had a compelling interest in deterring the alleged conduct); *Eastern Prop. Dev. LLC v. Gill*, 558 Fed.Appx. 882 (11th Cir. 2014) (affirming punitive damages in the ratio of 7-1 for tort claims under state law, including conversion).

40. Plaintiffs also seek treble damages (Compl. ¶¶ 78(b)), which may be recovered under Georgia RICO. *See* O.C.G.A. § 16-14-6(c); *Glob. One Fin., Inc. v. Quest Healthcare LLC*, No. 1:09-CV-2446-WBH, 2010 WL 11509142, at *3 (N.D. Ga. Feb. 22, 2010) (awarding treble damages on Georgia RICO claim). Trebling the

compensatory damages amount in controversy would equal a range of \$3,000,000 to \$15,000,000 in treble damages in controversy.

41. Moreover, Plaintiffs' Georgia RICO, conversion, and civil theft claims allow for the recovery of attorneys' fees. *See* O.C.G.A. § 16-14-6(c) (Georgia RICO); *Mays v. Lampkin*, 207 Ga. App. 739, 741, 429 S.E.2d 113, 116 (1993) (affirming grant of attorney's fees in conversion action). Plaintiffs also request recovery of attorneys' fees. (Compl. Count 8, ¶¶ 73-74, 78(g).)

42. Here, a conservative estimate of Plaintiffs' attorneys' fees in controversy would be more than \$1,000,000 based on allegations of the Complaint. *In Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991) (finding that attorney's fees of 25% of common fund is appropriate "benchmark"); *Carpenters Health & Welfare Fund v. Coca-Cola Co.*, 587 F. Supp. 2d 1266, 1272 (N.D. Ga. 2008) (affirming award of attorneys' fees amounting to 21% of settlement fund).

43. Based on the foregoing, the total potential compensatory damages (\$1,000,000 to \$5,000,000), punitive damages (\$1,000,000 to \$5,000,000), attorneys' fees (\$1,000,000) and treble damages (\$3,000,000 to \$15,000,000 compensatory damages only) placed in controversy by the allegations of the Complaint, are well exceeding the jurisdictional minimum of \$5,000,000.

44. Thus, MBC respectfully requests that this Court assume full jurisdiction

over this case as provided by law.

WHEREFORE, Defendants pray that the case be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 31st day of December, 2017.

Respectfully submitted,

/s/ Brynda Rodriguez Insley
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing **NOTICE OF REMOVAL** upon all parties to this matter by emailing a copy of the same to counsel of record as follows:

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This 31st day of December, 2017.

Respectfully submitted,

/s/ Brynda Rodriguez Insley

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), the undersigned counsel hereby certifies that the foregoing pleading was prepared in Times New Roman 14-point font, in compliance with Local Rule 5.1(C).

This 31st day of December, 2017.

Respectfully submitted,

/s/ Brynda Rodriguez Insley

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**DONALD CARL BANKHEAD, and
KEITH THOMPSON, Individually,
and on behalf of a class of similarly
situated persons,**

Plaintiff,

v.

1:17-cv-4085-WSD

**CASTLE PARKING SOLUTIONS,
LLC, and BEACON
MANAGEMENT SERVICES, LLC,**

Defendants.

OPINION AND ORDER

This matter is before the Court on Plaintiffs Donald Carl Bankhead and Keith Thompson’s (collectively, “Plaintiffs”) Motion for Leave to File Amended Complaint [2] (“Motion to Amend”). Also before the Court is Plaintiffs’ Motion for Leave to Conduct Limited Discovery Related to Jurisdiction Under the Class Action Fairness Act [3] (“Motion for Limited Discovery”).

I. BACKGROUND

On October 16, 2017, Defendant Beacon Management Services, LLC (“Beacon”) removed this class action from the State Court of Fulton County on the grounds that federal jurisdiction exists under the Class Action Fairness Act

(“CAFA”). (Defendant Beacon Management Services, LLC’s Notice of Removal [1] (“Notice of Removal”). The Complaint [1.1] asserts that Defendants Beacon and Castle Parking Solutions, LLC (“Castle”) (collectively, “Defendants”) “have a systematic process of disabling vehicles with boots and similar devices without first complying with the City of Atlanta ordinances requiring certain signage at any location where vehicle immobilization occurs.” ([1.1] at 4). Plaintiffs allege a laundry list of claims, including claims for false imprisonment, conversion/civil theft, negligence, negligence *per se*, and violations of the Georgia Racketeer Influenced and Corrupt Organizations Act. Plaintiffs seek attorney’s fees and punitive damages.

On October 17, 2017, Plaintiffs filed their Motion to Amend. In it, Plaintiffs note that after filing their Complaint, and as a result of further investigation of the claims it asserted on October 16, 2017, that “[they] determined they had additional claims against Defendant Beacon Management Services, LLC,” including claims for premises liability under O.C.G.A. § 51-3-1. ([2] ¶¶ 2, 5). Plaintiffs also state that, following the filing of their Complaint, they “determined that they had inadvertently asserted that Defendants have collected an amount certain in vehicle immobilization fees,” but that they “have no evidence at this time regarding the

total amount of vehicle immobilization fees collected by Defendants.” ([2] ¶ 4).¹ Plaintiffs therefore seek leave to amend their Complaint to add yet other claims under O.C.G.A. § 51-3-1 and to remove any reference to an amount certain regarding vehicle immobilization fees collected by Defendants. ([2] ¶ 5).

On October 31, 2017, Beacon filed its Partial Opposition to Plaintiff’s Motion for Leave to File Amended Complaint [14] (“Response”). Beacon does not oppose Plaintiffs’ proposed amendment to add additional claims under O.C.G.A. § 51-3-1, but it does oppose an amendment to remove any reference to “amount certain regarding vehicle immobilization fees collected by Defendants.” ([2] ¶ 5). Beacon argues that this proposed amendment—to rescind an allegation that Defendants “have collected millions of dollars in fees”—is an “attempt to defeat the \$5 million amount in controversy requirement for jurisdiction under [the Class Action Fairness Act].” ([14] at 2; [2] ¶ 5). Beacon contends that “[n]otably, Plaintiffs do not disclaim the allegation, they merely state they have no evidence ‘at this time.’” ([14] at 2; [2] ¶ 5). Beacon lastly argues that Plaintiffs’ attempt to

¹ The investigation that showed there is no fact basis for their original claim of “an amount certain in vehicle immobilization fees” raises a troubling concern that Plaintiffs pre-October 16, 2017, investigation was inadequate. It is difficult to understand how a specific allegation in a complaint was made “inadvertently,” especially since Plaintiffs now assert they have no evidence to support the allegation asserted in its initial pleading filed in this case.

plead around CAFA jurisdiction is futile, and Plaintiffs' request for leave to make such an amendment should be denied.

Plaintiffs also filed a Motion for Limited Discovery. Plaintiffs assert that “[b]ased on newly received evidence from other booting companies,” the amount in controversy may only be in the hundreds of thousands and “Plaintiffs [] doubt that the amount in controversy exceeds five million dollars.” ([3] at 3). Plaintiffs “request that the Court stay further proceedings and grant the parties leave to conduct limited discovery over the next ninety (90) days directed solely at (1) the total number of paid bootings in the proposed class and (2) the residency of all members of the proposed class.” ([3] at 5). Defendants oppose the Motion for Limited Discovery only to the extent that it requests a stay of proceedings because “if the request for a stay is granted, the parties would have to move the Court to lift the stay to resolve [] disputes, unnecessarily expending the court’s and parties’ time and resources.” (Partial Opposition of Defendant Beacon Management Services, LLC to Plaintiffs’ Motion for Leave to Conduct Discovery Related to Jurisdiction Under the Class Action Fairness Act [15] (“Response to Motion for Limited Discovery”) [15] at 2).

II. LEGAL STANDARDS

A. Leave to Amend

Rule 15(a) of the Federal Rules of Civil Procedure allows a plaintiff to file one amended complaint, as a matter of course, if the amended complaint is filed within 21 days of service of the original complaint or within 21 days of the defendant's filing of a responsive pleading or Rule 12 motion to dismiss. See Fed. R. Civ. P. 15(a)(1). Amended complaints may be filed outside of these time limits only "with the opposing party's written consent or the court's leave." See Fed. R. Civ. P. 15(a)(2).

Rule 15 of the Federal Rules of Civil Procedure provides that "[t]he court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). "There must be a substantial reason to deny a motion to amend." Laurie v. Alabama Court of Criminal Appeals, 256 F.3d 1266, 1274 (11th Cir. 2001). "Substantial reasons justifying a denial include 'undue delay, bad faith, dilatory motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment.'" Id. (citing Foman v. Davis, 371 U.S. 178, 182 (1962)). "The determination of whether to grant leave to amend the complaint after responsive pleadings have been filed is within the sound discretion of the trial court." Pines Properties, Inc. v. Am. Marine

Bank, 156 F. App'x 237, 240 (11th Cir. 2005) (citing Hester v. Int'l Union of Operating Eng'rs, AFL-CIO, 941 F.2d 1574, 1578 (11th Cir.1991)).

B. CAFA

CAFA provides federal courts with jurisdiction over class actions provided that: the number of plaintiffs in all proposed plaintiff classes exceeds one hundred; any member of the plaintiff class is diverse from any defendant; and the aggregate of the claims of individual class members exceeds \$5,000,000, exclusive of interests and costs.” 28 U.S.C. § 1332(d); see also Lowery v. Alabama Power Co., 483 F.3d 1184, 1194 (11th Cir. 2007).

“Defendants must establish the jurisdictional amount by a preponderance of the evidence.” Evans v. Walter Indus., Inc., 449 F.3d 1159, 1164 (11th Cir. 2006). If the Complaint does not state the amount in controversy, “the court may consider facts alleged in the notice of removal, judicial admissions made by the plaintiffs, non-sworn letters submitted to the court, or other summary judgment type evidence that may reveal that the amount in controversy requirement is satisfied.” Williams v. Best Buy Co., 269 F.3d 1316, 1319-20 (11th Cir. 2001).

A court may not speculate on the amount in controversy “without the benefit of any evidence [on] the value of individual claims.” Lowery v. Alabama Power Co., 483 F.3d 1184, 1220 (11th Cir. 2007). “The absence of factual

allegations pertinent to the existence of jurisdiction is dispositive and, in such absence, the existence of jurisdiction should not be divined by looking to the stars.” Id. at 1214-15. “A conclusory allegation . . . that the jurisdictional amount is satisfied, without setting forth the underlying facts supporting such an assertion, is insufficient to meet the defendant’s burden.” Williams, 269 F.3d at 1319-20

III. DISCUSSION

A. The Notice of Removal

Before considering Plaintiffs’ inter-related motions, the Court considers whether Defendants have adequately alleged jurisdiction under CAFA in removing this action to federal court. “[I]t is well settled that a federal court is obligated to inquire into subject matter jurisdiction *sua sponte* whenever it may be lacking.” University of South Alabama v. American Tobacco Co., 168 F.3d 405, 410 (11th Cir. 1999).

The Notice of Removal sufficiently establishes the first requirement under CAFA—that there are 100 or more members in the proposed class—by referencing the Complaint’s allegation that “there are thousands of Class members.” ([1] at 5; see also [1.1.] ¶ 31). The Notice of Removal also adequately satisfies the second

CAFA requirement that there be at least one class member that is a citizen of a state different from Defendants.² The Notice of Removal states:

Plaintiffs seek to represent “[a]ll persons who have been booted . . . and paid fines for removal of said device within the City of Atlanta from August 16, 2012, through present.” The proposed class is not limited to citizens of Georgia, and thus Plaintiffs purport to represent “all persons” subjected to the alleged wrongful conduct, regardless of their citizenship.

At least one class member, out of the alleged class of “thousands,” is a citizen of a state other than Georgia, and thus satisfies the minimal diversity requirement of 28 U.S.C. § 1332(d)(2).

([1] ¶¶ 18-19). It is reasonable to conclude from these allegations that the class would include at least one diverse member. While the class of “thousands” includes only those individuals who were “booted” by in the City of Atlanta, it is more likely than not that at least one member is not from Georgia.

Defendants also contend, in the Notice of Removal, that the Complaint’s allegations, as a whole, establish that the \$5 million amount in controversy requirement is met. Defendants point to Plaintiffs’ allegations that the signs in each parking lot where Defendants operate do not comply with Atlanta ordinances, that a class of individuals whose vehicles were booted from August 16, 2012 to present include “thousands of members,” that the fine for “booting” is

² Defendants concede their citizenship is Georgia. ([1] at ¶¶ 16-17).

approximately \$75, and that Defendants have “collected millions of dollars in fees in an unlawful manner.” ([1] at 7-9). Defendants conclude, based on these allegations, that compensatory damages total at least \$2 million. ([1] at 9). Defendants, based on this calculation, also attempt to estimate the alleged treble damages, punitive damages, and attorney’s fees. Defendants “conservatively apply[] a factor of one to Plaintiffs’ alleged compensatory class damages,” which apparently equates to \$2 million of punitive damages. Defendants further assert that “[t]rebling the compensatory damages amount in controversy of \$2 million would equal \$6 million in treble damages.” ([1] at 10). Finally, Defendants state that a “conservative estimate of Plaintiffs’ attorneys’ fees [] would be more than \$1 million based on the allegations in the Complaint.” ([1] at 11).

“Where, as here, the plaintiff has not pled a specific amount of damages, the removing defendant must prove by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional requirement.” Pretka v. Kolter City Plaza II, Inc., 608 F.3d 744, 752 (11th Cir.2010) (internal quotation marks omitted). Unlike in cases where the court found “no base amount [in controversy]” alleged, and therefore no possible way to calculate attorney’s fees or punitive damages, Defendants here satisfactorily established a base amount. See, e.g., Porter v. MetroPCS Commc’ns Inc., 592 F. App’x 780, 783 (11th Cir. 2014). The

totality of the allegations, including Plaintiffs' claim that millions in unlawful fees have been collected, is a sufficient "base amount" that this Court believes provides a starting point to calculate potential attorney's fees, treble damages, and punitive damages. Considering all of the damages Plaintiffs seek, the Court finds the \$5 million jurisdictional requirement met. Defendants removal of this action under CAFA was proper.

B. Leave to Amend

First, the Court finds no "substantial reason" justifying the denial of Plaintiffs' Motion to Amend as to the additional claims they seek to add under O.C.G.A. § 51-3-1. That Defendants do not oppose this amendment further supports the Court's finding. The Motion to Amend is granted as to Plaintiffs' proposed amendment to add claims relating to O.C.G.A. § 51-3-1.

Second, the Court considers whether Plaintiffs' Motion to Amend, to the extent it seeks to remove the amount certain in immobilization fees, is futile. Defendants argue the amendment is futile because, although Plaintiffs' implied reason for the amendment is to divest the Court of federal subject matter jurisdiction, Plaintiffs cannot do so because the amount in controversy is determined at the time of removal and cannot later be found lacking based on amendment to the Complaint. ([14] at 2).

“In an action removed from state court, the amount in controversy is measured on the date of removal.” The Burt Co. v. Clarendon Nat. Ins. Co., 385 F. App’x 892, 894 (11th Cir. 2010); see also Hardwick v. Fed. Nat’l Mortg. Ass’n, No. 1:12-cv-4247-CAP, 2013 WL 12109766, at *2 (N.D. Ga. May 6, 2013). Thus, “events occurring after removal, such as the post-removal amendment of a complaint . . . which may reduce the damages recoverable below the amount in controversy requirement, do not divest the district court of jurisdiction.” The Burt Co., 385 F. App’x at 894 (citing Poore v. Am.-Amicable Life Ins. Co. of Tex., 218 F.3d 1287, 1290-91 (11th Cir. 2000) (overruled in part on other grounds by Alvarez v. Uniroyal Tire Co., 508 F.3d 639, 640-41 (11th Cir. 2007))).

The futility question generally arises when a party seeks to add a claim or party. Here, the argument centers on whether a specific alleged fact can be amended and whether it would be futile to do so. It is apparent now that the allegation Plaintiff seeks to amend was wrong when it was asserted and, setting aside the question of futility, it is required to be changed. The Court finds that, as Defendants allege, the revised allegation will not impact its finding based on the reworded Complaint that the Court had, and currently has, federal subject matter jurisdiction. In light of Plaintiffs’ admission that they alleged an amount in controversy without an adequate investigation, they are now required to correct

their embellished allegation and the amendment is allowed for that reason. The amendment of the allegations regarding the alleged dollar amount impact of Defendants' alleged conduct does not serve as a basis to now remand.

C. Limited Discovery

Because the Court has determined that the Notice of Removal properly alleged jurisdiction under CAFA, the need for limited discovery to determine whether the jurisdictional requirements of CAFA are met is unnecessary. Moreover, such post-removal discovery is not permitted by the Eleventh Circuit. The Eleventh Circuit has held that reserving remand to allow discovery of the potential factual basis of jurisdiction is improper. "Post-removal discovery for the purpose of establishing jurisdiction in diversity cases cannot be squared with the delicate balance struck by Federal Rules of Civil Procedure 8(a) and 11 and the policy and assumptions that flow from and underlie them." Lowery, 483 F.3d at 1215. "Such fishing expeditions would clog the federal judicial machinery, frustrating the limited nature of federal jurisdiction by encouraging defendants to remove, at best, prematurely, and at worst in cases in which they will never be able to establish jurisdiction." Lowery, 483 F.3d at 1217.

The Court therefore denies Plaintiffs' Motion for Limited Discovery.

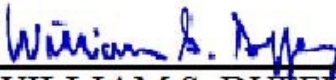
IV. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that Plaintiffs Donald Carl Bankhead and Keith Thompson's Motion for Leave to File Amended Complaint [2] is **GRANTED** and claims under O.C.G.A. § 51-3-1 and the removal of allegations regarding the "amount certain" of vehicle immobilization fees are allowed.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Leave to Conduct Limited Discovery Related to Jurisdiction Under the Class Action Fairness Act [3] is **DENIED**.

SO ORDERED this 1st day of December, 2017.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE

State Court of Fulton County
E-FILED
17EV004847
10/10/2017 6:03 PM
LeNora Ponzo, Clerk
Civil Division

GEORGIA, FULTON COUNTY

DO NOT WRITE IN THIS SPACE

STATE COURT OF FULTON COUNTY
Civil Division

CIVIL ACTION FILE #: _____

James E. Burke, and Logistics and Distribution Services, Inc.
c/o attorney Matthew Wetherington, Werner Wetherington, PC
2860 Piedmont Rd. NE, Atlanta, GA 30305

Plaintiff's Name, Address, City, State, Zip Code

vs.

Maximum Booting Company, LLC c/o Registered Agent,
Kenneth McElwaney, 99 Bay St., Suite J,
Fairburn, GA 30213

Defendant's Name, Address, City, State, Zip Code

TYPE OF SUIT	AMOUNT OF SUIT
<input type="checkbox"/> ACCOUNT	PRINCIPAL \$ <u>TBD</u>
<input type="checkbox"/> CONTRACT	
<input type="checkbox"/> NOTE	INTEREST \$ <u>TBD</u>
<input checked="" type="checkbox"/> TORT	
<input type="checkbox"/> PERSONAL INJURY	ATTY. FEES \$ <u>TBD</u>
<input type="checkbox"/> FOREIGN JUDGMENT	
<input type="checkbox"/> TROVER	COURT COST \$ <u>TBD</u>
<input type="checkbox"/> SPECIAL LIEN	

<input type="checkbox"/> NEW FILING	
<input type="checkbox"/> RE-FILING: PREVIOUS CASE NO. _____	

SUMMONS

TO THE ABOVE NAMED-DEFENDANT:

You are hereby required to file with the Clerk of said court and to serve a copy on the Plaintiff's Attorney, or on Plaintiff if no Attorney, to-wit:
Name: Matthew Wetherington, Werner Wetherington, PC

Address: 2860 Piedmont Rd. NE

City, State, Zip Code: Atlanta, GA 30305

Phone No.: 404-793-1693

An answer to this complaint, which is herewith served on you, should be filed within thirty (30) days after service, not counting the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint, plus cost of this action. **DEFENSE MAY BE MADE & JURY TRIAL DEMANDED**, via electronic filing through E-file GA or, if desired, at the e-filing public access terminal in the Self-Help Center at 185 Central Ave., S.W., Ground Floor, Room TG300, Atlanta, GA 30303.

10/10/2017 6:03 PM

LeNora Ponzo, Chief Clerk (electronic signature)

If the sum claimed in the suit, or value of the property sued for, is \$300.00 or more Principal, the defendant must admit or deny the paragraphs plaintiff's petition by making written Answer. Such paragraphs undenied will be taken as true. If the plaintiff's petition is sworn to, or if suit is based on an unconditional contract in writing, then the defendant's answer must be sworn to.

If the principal sum claimed in the suit, or value of the property sued for, is less than \$300.00, and is on a note, unconditional contract, account sworn to, or the petition sworn to, defense must be made by filing a sworn answer setting up the facts relied on as a defense.

SERVICE INFORMATION:

Served, this 01 day of Dec, 2017

[Signature]
DEPUTY MARSHAL, STATE COURT OF FULTON COUNTY

E-FILED: 17 NOV 29 PM 05:00

WRITE VERDICT HERE:

We, the jury, find for _____

This _____ day of _____, 20____, _____ Foreperson

(STAPLE TO FRONT OF COMPLAINT)

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

JAMES E. BURKE and LOGISTICS AND
DISTRIBUTION SERVICES, INC., Individually,
and on behalf of a class of similarly situated persons,

Plaintiffs,

v.

MAXIMUM BOOTING COMPANY, LLC;
KENNETH P. MCELWANEY,
d/b/a Maximum Booting Company;
JDN REALTY CORPORATION;
DDR PROPERTY MANAGEMENT LLC;
CYMONA WEST; and XYZ COMPANY,

Defendants.

CIVIL ACTION FILE NUMBER

CLASS ACTION COMPLAINT

1. Defendants have a systematic process of unlawfully disabling vehicles with boots and similar devices throughout the State of Georgia. As a result, Defendants have actively participated in the collection of an egregious amount of booting fees in an unlawful manner. Plaintiffs bring this action to recover damages and other available remedies on behalf of themselves and a class of persons similarly situated.

I. PARTIES

2. Plaintiff Burke brings this action in an individual capacity, and in the capacity of a class representative on behalf of others similarly situated. By bringing this action, Plaintiff Burke avails himself of the jurisdiction of this Court.

3. Plaintiff Logistics and Distribution Services brings this action in its individual capacity, and in the capacity of a class representative on behalf of others similarly situated. By bringing this action, Plaintiff Logistics and Distribution Services avails itself

of the jurisdiction of this Court.

4. Defendant Maximum Booting Company, LLC (“Maximum Booting”) is a limited liability company registered to do business in Georgia. Maximum Booting is a resident of Fulton County and may be served through its registered agent, Kenneth P. McElwaney, at 99 Bay St., Suite J, Fairburn, GA, 30213. Jurisdiction is proper as to Defendant Maximum Booting because it is a resident of Georgia. Venue is proper as to Defendant Maximum Booting because its registered office is located in Fulton County.
5. Defendant Kenneth P. McElwaney (“McElwaney”) is a citizen and resident of Fulton County subject to the jurisdiction and venue of this Court. McElwaney may be served at 99 Bay St., Suite J, Fairburn, GA, 30213.
6. JDN Realty Corporation (“JDN Realty”) is an Ohio corporation registered to do business in Georgia that is subject to the jurisdiction of this Court. JDN Realty may be served through its registered agent, The Corporation Company at 112 North Main Street, Cumming, GA, 30040. Venue is proper as to Defendant JDN Realty because it is a joint tortfeasor with one or more Defendants who are residents of Fulton County.
7. Defendant DDR Property Management LLC (“DDR”) is an Ohio limited liability company registered to business in Georgia that is subject to the jurisdiction of this Court. DDR may be served through its registered agent, CT Corporation System at 289 S Culver St., Lawrenceville, GA, 30046. Venue is proper as to DDR because it is a joint tortfeasor with one or more Defendants who are residents of Fulton County.
8. Defendant Cymona West (“West”) is a citizen and resident of Georgia subject to the jurisdiction and venue of this Court. Defendant West may be served at her office at 3500 Piedmont Road, Suite 730, Atlanta, GA 30305. Venue is proper as to Defendant

West because she is a joint tortfeasor with one or more Defendants who are residents of Fulton County.

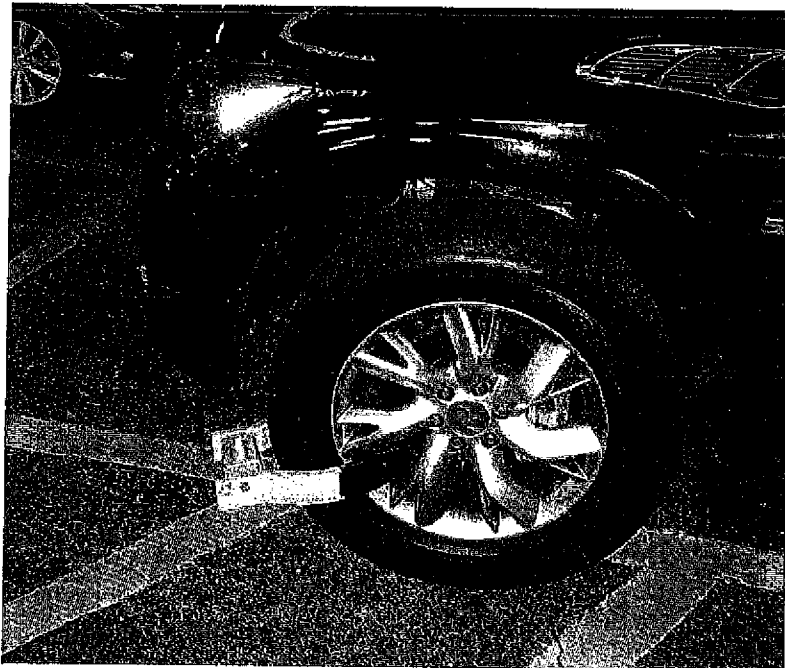
9. Defendant XYZ Company is an unknown entity that may have hired, or contracted with, Defendant Maximum Booting and/or Defendant McElwaney to boot Plaintiffs' vehicle.

II. STATEMENT OF FACTS

10. There is no provision in the Official Code of Georgia Annotated ("O.C.G.A.") which expressly authorizes vehicle immobilization on private property.

11. Some municipalities and counties authorize certain types of vehicle immobilization, including booting, by licensed vehicle immobilization services once certain requirements are met.

12. Booting is a method of using a mechanical device that is designed or adopted to be attached to a wheel, tire, or part of a parked motor vehicle so as to prohibit the motor vehicle's usual manner of movement or operation:



13. In the absence of a vehicle immobilization ordinance, booting vehicles in Georgia is strictly unlawful.

14. Defendants Maximum Booting and McElwaney perform vehicle immobilization services within the State of Georgia.

15. Defendants Maximum Booting and McElwaney offer booting services to parking lots within Georgia in counties and cities with no vehicle immobilization ordinance.

16. Defendants JDN Realty, DDR, West, and XYZ Company hired, contracted with, authorized, or otherwise provided material support to Defendants Maximum Booting.

17. On information and belief, at all locations within Georgia where Defendants engage in vehicle immobilization, there are no vehicle immobilization ordinances.

III. NAMED PLAINTIFF EXPERIENCE

18. On or about August 16, 2017, Plaintiff Burke parked in a private parking lot located at, or around, 955 Bullsboro Dr., Newnan, GA 30265, which is within the territorial limits of Newnan and Coweta County.

19. Neither the City of Newnan or Coweta County have a vehicle immobilization ordinance.

20. Defendants Maximum Booting and McElwaney were hired or otherwise authorized by the owner or operator of the private property located at, or around, 955 Bullsboro Dr., to install or attach vehicle immobilization devices or boots.

21. Defendant JDN Realty hired, or contracted with, Defendants Maximum Booting and McElwaney to provide vehicle immobilization services at, or around, 955 Bullsboro Dr.

22. Defendant DDR hired, or contracted with, Defendants Maximum Booting and McElwaney to provide vehicle immobilization services at, or around, 955 Bullsboro Dr.
23. Defendant West hired, or contracted with, Defendants Maximum Booting and McElwaney to provide vehicle immobilization services at, or around, 955 Bullsboro Dr.
24. Defendants Maximum Booting and McElwaney placed a boot on Burke's vehicle and refused to remove it unless Burke paid a **\$500.00 fine**.
25. Plaintiff Logistics and Distribution Services paid Defendants Maximum Booting and McElwaney \$500.00.
26. Because the City of Newnan and Coweta County do not have a vehicle immobilization ordinance, Defendants Maximum Booting and McElwaney unlawfully booted Plaintiff Burke's vehicle without legal authority and caused damages to Plaintiffs Burke and Logistics and Distribution Services.

IV. CLASS ACTION ALLEGATIONS

27. Plaintiff bring this action as a class action pursuant to O.C.G.A. § 9-11-23, on behalf of themselves and the following classes:
 - a. All persons who have been booted by, or at the request of, Defendants at any location within the State of Georgia where there are no vehicle immobilization ordinances, and who have paid fines for the removal of said device, from August 16, 2012, through present;
 - b. All persons who have been booted by Defendants Maximum Booting and McElwaney in Coweta County, Georgia, and who have paid fines for the removal of said device, from August 16, 2012, through present; and

- c. All persons who have been booted by, or at the request of, Defendants at 955 Bullsboro Dr., Newnan, GA 30265, and have paid a fine for removal of said device from August 16, 2012, through present (the Burke subclass).

28. Excluded from the Classes are Defendants, as well as Defendants' employees, affiliates, officers, and directors, including any individuals who incurred property damage as a result of Defendants' actions, and the Judge presiding over this case. Plaintiffs reserve the right to amend the definition of the Classes if discovery and/or further investigation reveal that the Class definitions should be expanded or otherwise modified.

29. **Numerosity / Luminosity / Impracticality of Joinder:** The members of the Classes are so numerous that joinder of all members would be impractical. Plaintiffs reasonably estimate that there are thousands of Class members. The members of the Classes are easily and readily identifiable from information and records in Defendants' possession, control, or custody.

30. **Commonality and Predominance:** There is a well-defined community of interest and common questions of law and fact that predominate over any questions affecting the individual members of the Classes. These common legal and factual questions, which exist without regard to the individual circumstances of any Class member, include, but are not limited to, the following:

- a. Whether Defendants engaged in fraudulent business practices with respect to booting vehicles without legal authority throughout Georgia;
- b. Whether Defendants engaged in racketeering activity prohibited under O.C.G.A. § 16-14-1, *et seq.*

- c. Whether Defendants engaged in civil theft \ conversion;
- d. Whether Defendants engaged in false imprisonment;
- e. Whether Defendants engaged in making false statements;
- f. Whether Defendants unlawfully disabled Plaintiffs and other Class Member's property and refused to return the property;
- g. Whether Plaintiffs and the Classes are entitled to damages; and,
- h. Whether Plaintiffs and the Classes are entitled to equitable relief or other relief, and the nature of such relief.

31. **Typicality:** Plaintiffs' claims are typical of the class claims in that Plaintiffs and the Classes all have been booted as a result of Defendants' unlawful activities and sustained damages as a direct proximate result of the same wrongful practices that Defendants engaged in. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the class claims. Plaintiffs' claims are based upon the same legal theories as the class claims.

32. **Adequacy:** Plaintiffs will fully and adequately protect the interests of the members of the Classes and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither the Plaintiffs nor their counsel have interests which are contrary to, or conflicting with, those interests of the Classes.

33. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because, *inter alia*: it is economically impracticable for members of the Classes to prosecute individual actions; prosecution as

a class action will eliminate the possibility of repetitious and redundant litigation; and, a class action will enable claims to be handled in an orderly, expeditious manner.

COUNT 1: FALSE IMPRISONMENT

34. At all times relevant to this Complaint, Defendants owed duties to Plaintiffs and other Class Members not to interfere with the free movement of Plaintiffs and other Class Members.

35. In violation of O.C.G.A. § 51-7-20, Defendants knowingly and unlawfully restrained the movements of Plaintiffs and other Class Members for varying periods of time.

36. Defendants were acting without legal authority when Defendants restrained the movements of Plaintiffs and other Class Members.

37. Plaintiffs and other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury as a result of Defendants' conduct.

COUNT 2: CONVERSION / CIVIL THEFT

38. Plaintiffs and other Class Members had an ownership interest in funds that were paid to Defendants Maximum Booting and McElwaney.

39. Defendants Maximum Booting and McElwaney took possession of Plaintiffs and other Class Members' funds by demanding that Plaintiffs and other Class Members pay \$500.00 to have a vehicle immobilization device removed.

40. Plaintiffs and other Class Members demanded that the vehicle immobilization device be removed free of charge.

41. Defendants Maximum Booting and McElwaney refused to release Plaintiffs and other Class Members' vehicles without payment of \$500.00.

42. Defendants Maximum Booting and McElwaney had no lawful right to immobilize Plaintiffs and the other Class Members' vehicles, or to demand payment to remove vehicle immobilization devices.

43. As a result, by requiring Plaintiffs and other Class Members to pay \$500.00 to have vehicle immobilization devices removed, Defendants Maximum Booting and McElwaney have wrongfully converted Plaintiffs and other Class Members' funds, and Plaintiffs and other Class Members have sustained damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 3: NEGLIGENCE

44. Defendants owed a duty to Plaintiffs and other Class Members' to comply with Georgia law before engaging in any vehicle immobilization activities.

45. Defendants were negligent in complying with this duty as Defendants failed to use reasonable care in making sure that Defendants were operating in an area with a vehicle immobilization ordinance.

46. Due to Defendants' negligence, Plaintiffs and the other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 4: NEGLIGENCE *PER SE*

47. Defendants violated numerous Georgia statutes by unlawfully booting Plaintiffs and other Class Members' vehicles.

48. Plaintiffs and other Class Members fall within the class of persons intended to be protected by these statutes.

49. These statutes were intended to guard against the unlawful activities of Defendants.

50. Due to Defendants' negligence, Plaintiffs and the other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 5: MONEY HAD AND RECEIVED

51. Defendants Maximum Booting and McElwaney have received money from Plaintiffs and other Class Members that in equity and good conscious Defendants Maximum Booting and McElwaney should not be permitted to keep.

52. Plaintiffs and other Class Members have made a demand for repayment.

53. Defendants Maximum Booting and McElwaney refused the demand.

54. As a result of Defendants Maximum Booting and McElwaney's actions, Plaintiffs and the other Class Members have suffered damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 6: VIOLATION OF GEORGIA RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT ("RICO") AGAINST DEFENDANTS MAXIMUM BOOTING AND MCELWANAY

55. Defendants Maximum Booting and McElwaney, as part of their parking company business, engage in an enterprise of unlawfully immobilizing vehicles for profit.

56. Defendants Maximum Booting and McElwaney's conduct subjects them to liability under Georgia's Racketeer Influenced and Corrupt Organization Act ("RICO"), O.C.G.A. § 16-14-1 *et seq.*, as more fully set out below.

57. Specifically, Defendants Maximum Booting and McElwaney, in furtherance of their unlawful vehicle immobilization enterprise, have engaged in a pattern of racketeering activity, including, but not limited to the following:

- a. By forcing Plaintiffs and other Class Members to pay to have an unlawfully placed vehicle immobilization device removed, Defendants Maximum

Booting and McElwaney have engaged in Theft (O.C.G.A. § 16-8-1), Theft by Taking (O.C.G.A. § 16-8-2), Theft by Deception (O.C.G.A. § 16-8-3), Theft by Conversion (O.C.G.A. § 16-8-4), and Theft by Extortion (O.C.G.A. § 16-8-16);

b. By alleging through signage, notices, and other documents provided to Plaintiffs and other Class Members, that Defendants Maximum Booting and McElwaney were lawfully permitted to immobilize Plaintiffs and other Class Members' vehicles, and lawfully permitted to charge fees for the removal of vehicle immobilization devices, Defendants Maximum Booting and McElwaney have engaged in the use of false statements in violation of O.C.G.A. § 16-10-20; and

c. By unlawfully attaching vehicle immobilization devices to Plaintiffs and other Class Members' vehicles, Defendants Maximum Booting and McElwaney knowingly and unlawfully restrained the movements of Plaintiffs and other Class Members for varying periods of time in violation of O.C.G.A. § 16-5-41.

58. Defendants Maximum Booting and McElwaney have also engaged in racketeering activity by extorting money from Plaintiffs and other Class Members under the threat of refusing to remove an unlawfully placed vehicle immobilization device.

59. Defendants Maximum Booting and McElwaney's above described racketeering activity is all done in furtherance of Defendants' enterprise of profiting off unlawfully immobilizing vehicles.

60. Defendants Maximum Booting and McElwaney's above described racketeering activity all have the same or similar methods of commission in that they all involve the

unlawful use of vehicle immobilization devices, and false or misleading signage and documentation, to force Plaintiffs and other Class Members to pay to have unlawfully placed vehicle immobilization devices removed.

61. Defendants Maximum Booting and McElwaney's racketeering activity have the same or similar objective, namely, profiting off the unlawful use of vehicle immobilization devices.

62. Defendants Maximum Booting and McElwaney's racketeering activity have the same or similar victims, namely, Plaintiffs and other Class Members who have been forced to pay Defendants to remove a vehicle immobilization device unlawfully placed on Plaintiffs and other Class Members' vehicles by Defendants.

63. Defendant Maximum Booting and McElwaney's racketeering activity are otherwise related by distinguishing characteristics including, but not limited to, the involvement and collusion of Defendants and their workers, executives, and officers.

64. Defendants Maximum Booting and McElwaney's racketeering activity is part of a long-term enterprise that has existed, and continues to, exist for over five (5) years, and will continue to exist unless halted by judicial intervention.

65. As a result of Defendants Maximum Booting and McElwaney's racketeering activity, Plaintiffs and other Class Members have suffered damages in an amount to be determined by the enlightened conscience of a jury.

**COUNT 7: PREMISES LIABILITY / O.C.G.A. § 51-3-1
AGAINST DEFENDANTS JDN REALTY, DDR, WEST, AND XYZ COMPANY**

66. As owners and occupiers of the properties at, or around, 955 Bullsboro Dr., Newnan, GA 30265, Defendants JDN Realty, DDR, West, And XYZ Company owe a duty under O.C.G.A. § 51-3-1 not to willfully or reckless cause injury to invitees,

licensees, and trespassers on the property.

67. It is considered willful or wanton not to exercise ordinary care to protect anticipated trespassers from dangerous activities or hidden perils on the premises.

68. The duties imposed by O.C.G.A. § 51-3-1 prohibit Defendants JDN Realty, DDR, West, And XYZ Company from setting up a “mantrap” to cause harm to any invitees, licensees, and trespassers on the property.

69. By hiring, contracting with, authorizing, or otherwise providing material support to Defendants Maximum Booting and McElwaney to illegally immobilize vehicles at, or around, 955 Bullsboro Dr., Defendants JDN Realty, DDR, West, And XYZ Company setup such a “mantrap,” and subjected invitees, licensees, and trespassers of the property to a known harm and dangerous activity.

70. Specifically, by hiring, contracting with, authorizing, or otherwise providing material support to Defendants Maximum Booting and McElwaney, Defendants JDN Realty, DDR, West, And XYZ Company knowingly subjected invitees, licensees, and trespassers of the property to false imprisonment, conversion, civil theft, and extortion in violation of the duties imposed on owners and occupiers of property under O.C.G.A. § 51-3-1.

71. Furthermore, because the presence of trespassers to the property located at, or around, 955 Bullsboro Dr., was known to, or anticipated by, Defendants JDN Realty, DDR, West, and XYZ Company, Defendants also violated the duties imposed on owners and occupiers of property under O.C.G.A. § 51-3-1 by failing to exercise ordinary care to protect these anticipated trespassers from the known dangerous and illegal activities of Defendants Maximum Booting and McElwaney

72. As a result of Defendants JDN Realty, DDR, West, and XYZ Company's breach, Plaintiffs and other Class Members have suffered damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 8: ATTORNEY'S FEES

73. Defendants have acted in bad faith, have been stubbornly litigious, and have caused Plaintiffs and other Class Members unnecessary trouble and expense.

74. Accordingly, Plaintiffs and other Class Members are entitled to recover their expenses of litigation, including their reasonable attorney's fees, pursuant to O.C.G.A. § 13-6-11.

COUNT 9: PUNITIVE DAMAGES

75. Defendants' conduct was willful, wanton, and reckless and evidences an entire want of care, which raised the presumption of a conscious indifference to the consequences of its actions.

76. As a result of Defendants' willful, wanton, and reckless conduct, Plaintiffs and other Class Members are entitled to an award of punitive damages under O.C.G.A. § 51-12-5.1.

V. JURY DEMAND

77. Plaintiffs demand a trial by jury for all of their claims and determination of all damages.

VI. DAMAGES AND PRAYER FOR RELIEF

78. Plaintiffs pray for the following relief:

- a. An order certifying this action as a class action, appointing Plaintiffs as class representatives and appointing Plaintiffs' counsel as lead Class counsel;
- b. All compensatory damages on all applicable claims in an amount to be proven at trial, and, as allowed by law, for such damages to be trebled or multiplied upon proof of claims under laws allowing for trebling or multiplying of compensatory damages based upon Defendants' violations of law;
- c. An order directing disgorgement and restitution of all improperly retained monies by Defendants;
- d. An order permanently enjoining Defendants from engaging in the unlawful practices, as alleged herein;
- e. For an injunction to prohibit Defendants from engaging in the unconscionable commercial practices complained of herein, and for an injunction requiring Defendants to give notice to persons to whom restitution is owing, and to identify the means by which such persons can file for restitution;
- f. Punitive damages in an amount to be determined at trial;
- g. Attorney fees for stubborn litigiousness and bad faith pursuant to O.C.G.A. § 13-6-11; and
- h. All other and further relief, including equitable and injunctive relief, that the Court deems appropriate and just under the circumstances.

This 10th day of October 2017.

WERNER WETHERINGTON, PC

/s/ Matt Wetherington

MICHAEL L. WERNER

Georgia Bar No. 748321

MATTHEW Q. WETHERINGTON

Georgia Bar No. 339639

ROBERT N. FRIEDMAN

Georgia Bar No. 945494

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KEVIN PATRICK LAW

/s/ Kevin Patrick

Kevin Patrick

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State Court of Fulton County
E-FILED
17EV004847
10/10/2017 6:03 PM
LeNora Ponzio, Clerk
Civil Division

GEORGIA, FULTON COUNTY

DO NOT WRITE IN THIS SPACE

STATE COURT OF FULTON COUNTY
Civil Division

CIVIL ACTION FILE #: _____

James E. Burke, and Logistics and Distribution Services, Inc.
c/o attorney Matthew Wetherington, Werner Wetherington, PC
2860 Piedmont Rd. NE, Atlanta, GA 30305

Plaintiff's Name, Address, City, State, Zip Code

vs.

Kenneth McElwaney

99 Bay St., Suite J,

Fairburn, GA 30213

Defendant's Name, Address, City, State, Zip Code

TYPE OF SUIT	AMOUNT OF SUIT
<input type="checkbox"/> ACCOUNT	PRINCIPAL \$ <u>TBD</u>
<input type="checkbox"/> CONTRACT	
<input type="checkbox"/> NOTE	INTEREST \$ <u>TBD</u>
<input checked="" type="checkbox"/> TORT	
<input type="checkbox"/> PERSONAL INJURY	ATTY. FEES \$ <u>TBD</u>
<input type="checkbox"/> FOREIGN JUDGMENT	
<input type="checkbox"/> TROVER	COURT COST \$ <u>TBD</u>
<input type="checkbox"/> SPECIAL LIEN	

<input type="checkbox"/> NEW FILING	
<input type="checkbox"/> RE-FILING: PREVIOUS CASE NO.	_____

SUMMONS

TO THE ABOVE NAMED-DEFENDANT:

You are hereby required to file with the Clerk of said court and to serve a copy on the Plaintiff's Attorney, or on Plaintiff if no Attorney, to-wit:

Name: Matthew Wetherington, Werner Wetherington, PC

Address: 2860 Piedmont Rd. NE

City, State, Zip Code: Atlanta, GA 30305

Phone No.: 404-793-1693

An answer to this complaint, which is herewith served on you, should be filed within thirty (30) days after service, not counting the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint, plus cost of this action. **DEFENSE MAY BE MADE & JURY TRIAL DEMANDED**, via electronic filing through E-file GA or, if desired, at the e-filing public access terminal in the Self-Help Center at 185 Central Ave., S.W., Ground Floor, Room TG300, Atlanta, GA 30303.

10/10/2017 6:03 PM

LeNora Ponzio
LeNora Ponzio, Chief Clerk (electronic signature)

If the sum claimed in the suit, or value of the property sued for, is \$300.00 or more Principal, the defendant must admit or deny the paragraphs of plaintiff's petition by making written Answer. Such paragraphs undenied will be taken as true. If the plaintiff's petition is sworn to, or if suit is based on an unconditional contract in writing, then the defendant's answer must be sworn to.

If the principal sum claimed in the suit, or value of the property sued for, is less than \$300.00, and is on a note, unconditional contract, account sworn to, or the petition sworn to, defense must be made by filing a sworn answer setting up the facts relied on as a defense.

SERVICE INFORMATION:

Served, this 01 day of Dec, 2017

[Signature]
DEPUTY MARSHAL STATE COURT OF FULTON COUNTY

WRITE VERDICT HERE:

We, the jury, find for _____

This _____ day of _____, 20____, _____ Foreperson

(STAPLE TO FRONT OF COMPLAINT)

17 NOV 29 PM 05:00

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

JAMES E. BURKE and LOGISTICS AND
DISTRIBUTION SERVICES, INC., Individually,
and on behalf of a class of similarly situated persons,

Plaintiffs,

v.

MAXIMUM BOOTING COMPANY, LLC;
KENNETH P. MCELWANEY,
d/b/a Maximum Booting Company;
JDN REALTY CORPORATION;
DDR PROPERTY MANAGEMENT LLC;
CYMONA WEST; and XYZ COMPANY,

Defendants.

CIVIL ACTION FILE NUMBER

CLASS ACTION COMPLAINT

1. Defendants have a systematic process of unlawfully disabling vehicles with boots and similar devices throughout the State of Georgia. As a result, Defendants have actively participated in the collection of an egregious amount of booting fees in an unlawful manner. Plaintiffs bring this action to recover damages and other available remedies on behalf of themselves and a class of persons similarly situated.

I. **PARTIES**

2. Plaintiff Burke brings this action in an individual capacity, and in the capacity of a class representative on behalf of others similarly situated. By bringing this action, Plaintiff Burke avails himself of the jurisdiction of this Court.

3. Plaintiff Logistics and Distribution Services brings this action in its individual capacity, and in the capacity of a class representative on behalf of others similarly situated. By bringing this action, Plaintiff Logistics and Distribution Services avails itself

of the jurisdiction of this Court.

4. Defendant Maximum Booting Company, LLC (“Maximum Booting”) is a limited liability company registered to do business in Georgia. Maximum Booting is a resident of Fulton County and may be served through its registered agent, Kenneth P.

McElwaney, at 99 Bay St., Suite J, Fairburn, GA, 30213. Jurisdiction is proper as to Defendant Maximum Booting because it is a resident of Georgia. Venue is proper as to Defendant Maximum Booting because its registered office is located in Fulton County.

5. Defendant Kenneth P. McElwaney (“McElwaney”) is a citizen and resident of Fulton County subject to the jurisdiction and venue of this Court. McElwaney may be served at 99 Bay St., Suite J, Fairburn, GA, 30213.

6. JDN Realty Corporation (“JDN Realty”) is an Ohio corporation registered to do business in Georgia that is subject to the jurisdiction of this Court. JDN Realty may be served through its registered agent, The Corporation Company at 112 North Main Street, Cumming, GA, 30040. Venue is proper as to Defendant JDN Realty because it is a joint tortfeasor with one or more Defendants who are residents of Fulton County.

7. Defendant DDR Property Management LLC (“DDR”) is an Ohio limited liability company registered to business in Georgia that is subject to the jurisdiction of this Court. DDR may be served through its registered agent, CT Corporation System at 289 S Culver St., Lawrenceville, GA, 30046. Venue is proper as to DDR because it is a joint tortfeasor with one or more Defendants who are residents of Fulton County.

8. Defendant Cymona West (“West”) is a citizen and resident of Georgia subject to the jurisdiction and venue of this Court. Defendant West may be served at her office at 3500 Piedmont Road, Suite 730, Atlanta, GA 30305. Venue is proper as to Defendant

West because she is a joint tortfeasor with one or more Defendants who are residents of Fulton County.

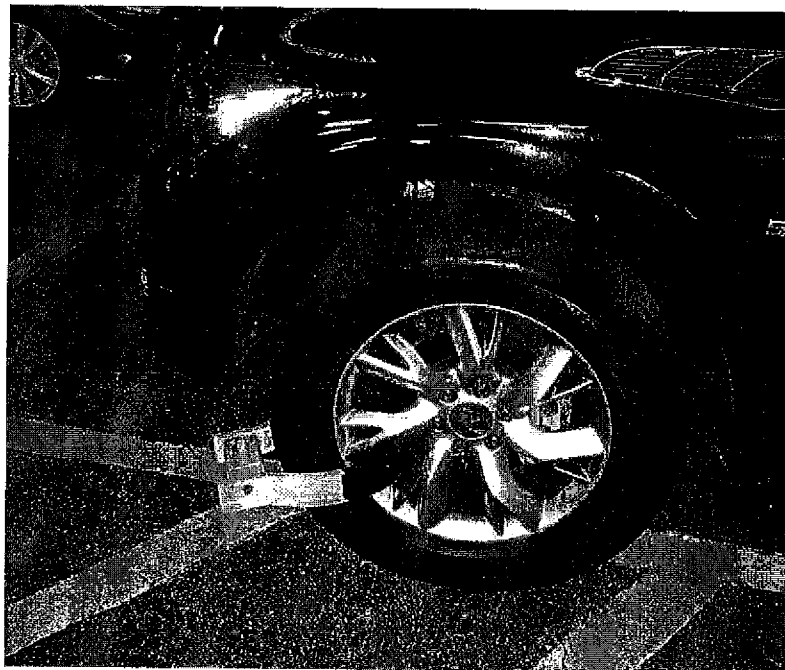
9. Defendant XYZ Company is an unknown entity that may have hired, or contracted with, Defendant Maximum Booting and/or Defendant McElwaney to boot Plaintiffs' vehicle.

II. STATEMENT OF FACTS

10. There is no provision in the Official Code of Georgia Annotated ("O.C.G.A.") which expressly authorizes vehicle immobilization on private property.

11. Some municipalities and counties authorize certain types of vehicle immobilization, including booting, by licensed vehicle immobilization services once certain requirements are met.

12. Booting is a method of using a mechanical device that is designed or adopted to be attached to a wheel, tire, or part of a parked motor vehicle so as to prohibit the motor vehicle's usual manner of movement or operation:



13. In the absence of a vehicle immobilization ordinance, booting vehicles in Georgia is strictly unlawful.

14. Defendants Maximum Booting and McElwaney perform vehicle immobilization services within the State of Georgia.

15. Defendants Maximum Booting and McElwaney offer booting services to parking lots within Georgia in counties and cities with no vehicle immobilization ordinance.

16. Defendants JDN Realty, DDR, West, and XYZ Company hired, contracted with, authorized, or otherwise provided material support to Defendants Maximum Booting.

17. On information and belief, at all locations within Georgia where Defendants engage in vehicle immobilization, there are no vehicle immobilization ordinances.

III. NAMED PLAINTIFF EXPERIENCE

18. On or about August 16, 2017, Plaintiff Burke parked in a private parking lot located at, or around, 955 Bullsboro Dr., Newnan, GA 30265, which is within the territorial limits of Newnan and Coweta County.

19. Neither the City of Newnan or Coweta County have a vehicle immobilization ordinance.

20. Defendants Maximum Booting and McElwaney were hired or otherwise authorized by the owner or operator of the private property located at, or around, 955 Bullsboro Dr., to install or attach vehicle immobilization devices or boots.

21. Defendant JDN Realty hired, or contracted with, Defendants Maximum Booting and McElwaney to provide vehicle immobilization services at, or around, 955 Bullsboro Dr.

22. Defendant DDR hired, or contracted with, Defendants Maximum Booting and McElwaney to provide vehicle immobilization services at, or around, 955 Bullsboro Dr.

23. Defendant West hired, or contracted with, Defendants Maximum Booting and McElwaney to provide vehicle immobilization services at, or around, 955 Bullsboro Dr.

24. Defendants Maximum Booting and McElwaney placed a boot on Burke's vehicle and refused to remove it unless Burke paid a **\$500.00 fine**.

25. Plaintiff Logistics and Distribution Services paid Defendants Maximum Booting and McElwaney \$500.00.

26. Because the City of Newnan and Coweta County do not have a vehicle immobilization ordinance, Defendants Maximum Booting and McElwaney unlawfully booted Plaintiff Burke's vehicle without legal authority and caused damages to Plaintiffs Burke and Logistics and Distribution Services.

IV. CLASS ACTION ALLEGATIONS

27. Plaintiff bring this action as a class action pursuant to O.C.G.A. § 9-11-23, on behalf of themselves and the following classes:

- a. All persons who have been booted by, or at the request of, Defendants at any location within the State of Georgia where there are no vehicle immobilization ordinances, and who have paid fines for the removal of said device, from August 16, 2012, through present;
- b. All persons who have been booted by Defendants Maximum Booting and McElwaney in Coweta County, Georgia, and who have paid fines for the removal of said device, from August 16, 2012, through present; and

- c. All persons who have been booted by, or at the request of, Defendants at 955 Bullsboro Dr., Newnan, GA 30265, and have paid a fine for removal of said device from August 16, 2012, through present (the Burke subclass).

28. Excluded from the Classes are Defendants, as well as Defendants' employees, affiliates, officers, and directors, including any individuals who incurred property damage as a result of Defendants' actions, and the Judge presiding over this case. Plaintiffs reserve the right to amend the definition of the Classes if discovery and/or further investigation reveal that the Class definitions should be expanded or otherwise modified.

29. **Numerosity / Luminosity / Impracticality of Joinder:** The members of the Classes are so numerous that joinder of all members would be impractical. Plaintiffs reasonably estimate that there are thousands of Class members. The members of the Classes are easily and readily identifiable from information and records in Defendants' possession, control, or custody.

30. **Commonality and Predominance:** There is a well-defined community of interest and common questions of law and fact that predominate over any questions affecting the individual members of the Classes. These common legal and factual questions, which exist without regard to the individual circumstances of any Class member, include, but are not limited to, the following:

- a. Whether Defendants engaged in fraudulent business practices with respect to booting vehicles without legal authority throughout Georgia;
- b. Whether Defendants engaged in racketeering activity prohibited under O.C.G.A. § 16-14-1, *et seq.*

- c. Whether Defendants engaged in civil theft \ conversion;
- d. Whether Defendants engaged in false imprisonment;
- e. Whether Defendants engaged in making false statements;
- f. Whether Defendants unlawfully disabled Plaintiffs and other Class Member's property and refused to return the property;
- g. Whether Plaintiffs and the Classes are entitled to damages; and,
- h. Whether Plaintiffs and the Classes are entitled to equitable relief or other relief, and the nature of such relief.

31. **Typicality:** Plaintiffs' claims are typical of the class claims in that Plaintiffs and the Classes all have been booted as a result of Defendants' unlawful activities and sustained damages as a direct proximate result of the same wrongful practices that Defendants engaged in. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the class claims. Plaintiffs' claims are based upon the same legal theories as the class claims.

32. **Adequacy:** Plaintiffs will fully and adequately protect the interests of the members of the Classes and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither the Plaintiffs nor their counsel have interests which are contrary to, or conflicting with, those interests of the Classes.

33. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because, *inter alia*: it is economically impracticable for members of the Classes to prosecute individual actions; prosecution as

a class action will eliminate the possibility of repetitious and redundant litigation; and, a class action will enable claims to be handled in an orderly, expeditious manner.

COUNT 1: FALSE IMPRISONMENT

34. At all times relevant to this Complaint, Defendants owed duties to Plaintiffs and other Class Members not to interfere with the free movement of Plaintiffs and other Class Members.

35. In violation of O.C.G.A. § 51-7-20, Defendants knowingly and unlawfully restrained the movements of Plaintiffs and other Class Members for varying periods of time.

36. Defendants were acting without legal authority when Defendants restrained the movements of Plaintiffs and other Class Members.

37. Plaintiffs and other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury as a result of Defendants' conduct.

COUNT 2: CONVERSION / CIVIL THEFT

38. Plaintiffs and other Class Members had an ownership interest in funds that were paid to Defendants Maximum Booting and McElwaney.

39. Defendants Maximum Booting and McElwaney took possession of Plaintiffs and other Class Members' funds by demanding that Plaintiffs and other Class Members pay \$500.00 to have a vehicle immobilization device removed.

40. Plaintiffs and other Class Members demanded that the vehicle immobilization device be removed free of charge.

41. Defendants Maximum Booting and McElwaney refused to release Plaintiffs and other Class Members' vehicles without payment of \$500.00.

42. Defendants Maximum Booting and McElwaney had no lawful right to immobilize Plaintiffs and the other Class Members' vehicles, or to demand payment to remove vehicle immobilization devices.

43. As a result, by requiring Plaintiffs and other Class Members to pay \$500.00 to have vehicle immobilization devices removed, Defendants Maximum Booting and McElwaney have wrongfully converted Plaintiffs and other Class Members' funds, and Plaintiffs and other Class Members have sustained damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 3: NEGLIGENCE

44. Defendants owed a duty to Plaintiffs and other Class Members' to comply with Georgia law before engaging in any vehicle immobilization activities.

45. Defendants were negligent in complying with this duty as Defendants failed to use reasonable care in making sure that Defendants were operating in an area with a vehicle immobilization ordinance.

46. Due to Defendants' negligence, Plaintiffs and the other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 4: NEGLIGENCE *PER SE*

47. Defendants violated numerous Georgia statutes by unlawfully booting Plaintiffs and other Class Members' vehicles.

48. Plaintiffs and other Class Members fall within the class of persons intended to be protected by these statutes.

49. These statutes were intended to guard against the unlawful activities of Defendants.

50. Due to Defendants' negligence, Plaintiffs and the other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 5: MONEY HAD AND RECEIVED

51. Defendants Maximum Booting and McElwaney have received money from Plaintiffs and other Class Members that in equity and good conscious Defendants Maximum Booting and McElwaney should not be permitted to keep.

52. Plaintiffs and other Class Members have made a demand for repayment.

53. Defendants Maximum Booting and McElwaney refused the demand.

54. As a result of Defendants Maximum Booting and McElwaney's actions, Plaintiffs and the other Class Members have suffered damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 6: VIOLATION OF GEORGIA RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT ("RICO") AGAINST DEFENDANTS MAXIMUM BOOTING AND MCELWANEY

55. Defendants Maximum Booting and McElwaney, as part of their parking company business, engage in an enterprise of unlawfully immobilizing vehicles for profit.

56. Defendants Maximum Booting and McElwaney's conduct subjects them to liability under Georgia's Racketeer Influenced and Corrupt Organization Act ("RICO"), O.C.G.A. § 16-14-1 *et seq.*, as more fully set out below.

57. Specifically, Defendants Maximum Booting and McElwaney, in furtherance of their unlawful vehicle immobilization enterprise, have engaged in a pattern of racketeering activity, including, but not limited to the following:

- a. By forcing Plaintiffs and other Class Members to pay to have an unlawfully placed vehicle immobilization device removed, Defendants Maximum

Booting and McElwaney have engaged in Theft (O.C.G.A. § 16-8-1), Theft by Taking (O.C.G.A. § 16-8-2), Theft by Deception (O.C.G.A. § 16-8-3), Theft by Conversion (O.C.G.A. § 16-8-4), and Theft by Extortion (O.C.G.A. § 16-8-16);

b. By alleging through signage, notices, and other documents provided to Plaintiffs and other Class Members, that Defendants Maximum Booting and McElwaney were lawfully permitted to immobilize Plaintiffs and other Class Members' vehicles, and lawfully permitted to charge fees for the removal of vehicle immobilization devices, Defendants Maximum Booting and McElwaney have engaged in the use of false statements in violation of O.C.G.A. § 16-10-20; and

c. By unlawfully attaching vehicle immobilization devices to Plaintiffs and other Class Members' vehicles, Defendants Maximum Booting and McElwaney knowingly and unlawfully restrained the movements of Plaintiffs and other Class Members for varying periods of time in violation of O.C.G.A. § 16-5-41.

58. Defendants Maximum Booting and McElwaney have also engaged in racketeering activity by extorting money from Plaintiffs and other Class Members under the threat of refusing to remove an unlawfully placed vehicle immobilization device.

59. Defendants Maximum Booting and McElwaney's above described racketeering activity is all done in furtherance of Defendants' enterprise of profiting off unlawfully immobilizing vehicles.

60. Defendants Maximum Booting and McElwaney's above described racketeering activity all have the same or similar methods of commission in that they all involve the

unlawful use of vehicle immobilization devices, and false or misleading signage and documentation, to force Plaintiffs and other Class Members to pay to have unlawfully placed vehicle immobilization devices removed.

61. Defendants Maximum Booting and McElwaney's racketeering activity have the same or similar objective, namely, profiting off the unlawful use of vehicle immobilization devices.

62. Defendants Maximum Booting and McElwaney's racketeering activity have the same or similar victims, namely, Plaintiffs and other Class Members who have been forced to pay Defendants to remove a vehicle immobilization device unlawfully placed on Plaintiffs and other Class Members' vehicles by Defendants.

63. Defendant Maximum Booting and McElwaney's racketeering activity are otherwise related by distinguishing characteristics including, but not limited to, the involvement and collusion of Defendants and their workers, executives, and officers.

64. Defendants Maximum Booting and McElwaney's racketeering activity is part of a long-term enterprise that has existed, and continues to, exist for over five (5) years, and will continue to exist unless halted by judicial intervention.

65. As a result of Defendants Maximum Booting and McElwaney's racketeering activity, Plaintiffs and other Class Members have suffered damages in an amount to be determined by the enlightened conscience of a jury.

**COUNT 7: PREMISES LIABILITY / O.C.G.A. § 51-3-1
AGAINST DEFENDANTS JDN REALTY, DDR, WEST, AND XYZ COMPANY**

66. As owners and occupiers of the properties at, or around, 955 Bullsboro Dr., Newnan, GA 30265, Defendants JDN Realty, DDR, West, And XYZ Company owe a duty under O.C.G.A. § 51-3-1 not to willfully or reckless cause injury to invitees,

licensees, and trespassers on the property.

67. It is considered willful or wanton not to exercise ordinary care to protect anticipated trespassers from dangerous activities or hidden perils on the premises.

68. The duties imposed by O.C.G.A. § 51-3-1 prohibit Defendants JDN Realty, DDR, West, And XYZ Company from setting up a “mantrap” to cause harm to any invitees, licensees, and trespassers on the property.

69. By hiring, contracting with, authorizing, or otherwise providing material support to Defendants Maximum Booting and McElwaney to illegally immobilize vehicles at, or around, 955 Bullsboro Dr., Defendants JDN Realty, DDR, West, And XYZ Company setup such a “mantrap,” and subjected invitees, licensees, and trespassers of the property to a known harm and dangerous activity.

70. Specifically, by hiring, contracting with, authorizing, or otherwise providing material support to Defendants Maximum Booting and McElwaney, Defendants JDN Realty, DDR, West, And XYZ Company knowingly subjected invitees, licensees, and trespassers of the property to false imprisonment, conversion, civil theft, and extortion in violation of the duties imposed on owners and occupiers of property under O.C.G.A. § 51-3-1.

71. Furthermore, because the presence of trespassers to the property located at, or around, 955 Bullsboro Dr., was known to, or anticipated by, Defendants JDN Realty, DDR, West, and XYZ Company, Defendants also violated the duties imposed on owners and occupiers of property under O.C.G.A. § 51-3-1 by failing to exercise ordinary care to protect these anticipated trespassers from the known dangerous and illegal activities of Defendants Maximum Booting and McElwaney

72. As a result of Defendants JDN Realty, DDR, West, and XYZ Company's breach, Plaintiffs and other Class Members have suffered damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 8: ATTORNEY'S FEES

73. Defendants have acted in bad faith, have been stubbornly litigious, and have caused Plaintiffs and other Class Members unnecessary trouble and expense.

74. Accordingly, Plaintiffs and other Class Members are entitled to recover their expenses of litigation, including their reasonable attorney's fees, pursuant to O.C.G.A. § 13-6-11.

COUNT 9: PUNITIVE DAMAGES

75. Defendants' conduct was willful, wanton, and reckless and evidences an entire want of care, which raised the presumption of a conscious indifference to the consequences of its actions.

76. As a result of Defendants' willful, wanton, and reckless conduct, Plaintiffs and other Class Members are entitled to an award of punitive damages under O.C.G.A. § 51-12-5.1.

V. JURY DEMAND

77. Plaintiffs demand a trial by jury for all of their claims and determination of all damages.

VI. DAMAGES AND PRAYER FOR RELIEF

78. Plaintiffs pray for the following relief:

- a. An order certifying this action as a class action, appointing Plaintiffs as class representatives and appointing Plaintiffs' counsel as lead Class counsel;
- b. All compensatory damages on all applicable claims in an amount to be proven at trial, and, as allowed by law, for such damages to be trebled or multiplied upon proof of claims under laws allowing for trebling or multiplying of compensatory damages based upon Defendants' violations of law;
- c. An order directing disgorgement and restitution of all improperly retained monies by Defendants;
- d. An order permanently enjoining Defendants from engaging in the unlawful practices, as alleged herein;
- e. For an injunction to prohibit Defendants from engaging in the unconscionable commercial practices complained of herein, and for an injunction requiring Defendants to give notice to persons to whom restitution is owing, and to identify the means by which such persons can file for restitution;
- f. Punitive damages in an amount to be determined at trial;
- g. Attorney fees for stubborn litigiousness and bad faith pursuant to O.C.G.A. § 13-6-11; and
- h. All other and further relief, including equitable and injunctive relief, that the Court deems appropriate and just under the circumstances.

This 10th day of October 2017.

WERNER WETHERINGTON, PC

/s/ Matt Wetherington

MICHAEL L. WERNER

Georgia Bar No. 748321

MATTHEW Q. WETHERINGTON

Georgia Bar No. 339639

ROBERT N. FRIEDMAN

Georgia Bar No. 945494

2860 Piedmont Rd., NE
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770-VERDICT
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matt@wernerlaw.com
robert@wernerlaw.com

KEVIN PATRICK LAW

/s/ Kevin Patrick

Kevin Patrick

Georgia Bar No. 225211

2860 Piedmont Rd., NE
Atlanta, GA 30305
404-566-8964
kevin@patricktriallaw.com

GEORGIA, FULTON COUNTY

DO NOT WRITE IN THIS SPACE

STATE COURT OF FULTON COUNTY
Civil Division

CIVIL ACTION FILE #: _____

JESSY POLSON, Individually,
and on behalf of a class of similarly
situated persons.

Plaintiff's Name, Address, City, State, Zip Code

vs.

KENNY McELWANEY d/b/a MAXIMUM BOOTING
99 Bay St., Ste. J
Fairburn, GA 30213

Defendant's Name, Address, City, State, Zip Code

TYPE OF SUIT	AMOUNT OF SUIT
<input type="checkbox"/> ACCOUNT	PRINCIPAL \$ _____
<input type="checkbox"/> CONTRACT	
<input type="checkbox"/> NOTE	INTEREST \$ _____
<input type="checkbox"/> TORT	
<input type="checkbox"/> PERSONAL INJURY	ATTY. FEES \$ _____
<input type="checkbox"/> FOREIGN JUDGMENT	
<input type="checkbox"/> TROVER	COURT COST \$ _____
<input type="checkbox"/> SPECIAL LIEN	

<input checked="" type="checkbox"/> NEW FILING	
<input type="checkbox"/> RE-FILING: PREVIOUS CASE NO.	_____

SUMMONS

TO THE ABOVE NAMED-DEFENDANT:

You are hereby required to file with the Clerk of said court and to serve a copy on the Plaintiff's Attorney, or on Plaintiff if no Attorney, to-wit:

Name: MATTHEW Q. WETHERINGTON

Address: THE WERNER LAW FIRM, 2860 PIEDMONT RD., NE

City, State, Zip Code: ATLANTA, GA 30305

Phone No.: (404) 793-1667

An answer to this complaint, which is herewith served on you, should be filed within thirty (30) days after service, not counting the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint, plus cost of this action. **DEFENSE MAY BE MADE & JURY TRIAL DEMANDED**, via electronic filing through E-file GA or, if desired, at the e-filing public access terminal in the Self-Help Center at 185 Central Ave., S.W., Ground Floor, Room TG300, Atlanta, GA 30303.

6/30/2017 4:50:50 PM

LeNora Ponzo
LeNora Ponzo, Interim Chief Clerk (electronic signature)

If the sum claimed in the suit, or value of the property sued for, is \$300.00 or more Principal, the defendant must admit or deny the paragraphs of plaintiff's petition by making written Answer. Such paragraphs undenied will be taken as true. If the plaintiff's petition is sworn to, or if suit is based on an unconditional contract in writing, then the defendant's answer must be sworn to.

If the principal sum claimed in the suit, or value of the property sued for, is less than \$300.00, and is on a note, unconditional contract, account sworn to, or the petition sworn to, defense must be made by filing a sworn answer setting up the facts relied on as a defense.

SERVICE INFORMATION:

Served, this _____ day of _____, 20_____.

DEPUTY MARSHAL, STATE COURT OF FULTON COUNTY

WRITE VERDICT HERE:

We, the jury, find for _____

This _____ day of _____, 20_____, _____ Foreperson

(STAPLE TO FRONT OF COMPLAINT)

General Civil Case Filing Information Form (Non-Domestic)

Court

- Superior
- State

County FULTON

Date Filed 06/30/2017
MM-DD-YYYY

Docket # _____

Plaintiff(s)

Polson, Jessy

Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

No. of Plaintiffs 1

Plaintiff/Petitioner's Attorney **Pro Se**

WETHERINGTON, MATTHEW

Last First Middle I. Suffix

Bar # 339639

Defendant(s)

McElwaney, Kenny D/B/A Maximum Booting Co

Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

No. of Defendants 1

Check Primary Type (Check only ONE)

- Contract/Account
- Wills/Estate
- Real Property
- Dispossessory/Distress
- Personal Property
- Equity
- Habeas Corpus
- Appeals, Reviews
- Post Judgment Garnishment, Attachment, or Other Relief
- Non-Domestic Contempt
- Tort (If tort, fill in right column)
- Other General Civil Specify CLASS ACTION

If Tort is Case Type:

(Check no more than TWO)

- Auto Accident
- Premises Liability
- Medical Malpractice
- Other Professional Negligence
- Product Liability
- Other Specify IN RE BOOTING CLASS

ACTIONS

Are Punitive Damages Pleaded? Yes No

Michael L. Werner
Matthew Q. Wetherington
Robert N. Friedman
THE WERNER LAW FIRM
2860 Piedmont Rd., NE
Atlanta, GA 30305

Kevin Patrick
KEVIN PATRICK LAW
2860 Piedmont Rd., NE
Atlanta, GA 30305

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

JESSY POLSON
Individually,
and on behalf of a class of similarly situated
persons,

Plaintiff,

v.
KENNY MCELWANEY D/B/A
MAXIMUM BOOTING CO.

Defendant.

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) CIVIL ACTION FILE NUMBER
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CLASS ACTION COMPLAINT

1. Defendant Kenny McElwaney d/b/a Maximum Booting Co. (“McElwaney”) has a systematic process of disabling vehicles with boots and similar devices without first complying with the City of Union City ordinances requiring certain signage at any location where vehicle immobilization occurs. As a result, McElwaney has collected thousands of dollars in booting fees in an unlawful manner. Plaintiff brings this action to recover damages and other available remedies on behalf of himself and a class of persons similarly situated.

I. PARTIES

2. Plaintiff Jessy Polson is a citizen and resident of Florida. Plaintiff brings this action in an individual capacity, and in the capacity of a class representative on behalf of others similarly situated. By bringing this action, Plaintiff avails himself of the jurisdiction of this Court.

3. Defendant McElwaney is an individual doing business as a sole proprietorship under the name "Maximum Booting Co." McElwaney may be served at 99 Bay Street, Ste. J, Fairburn, GA 30213. Jurisdiction and venue are proper as to Defendant because he is a resident of Fulton County.

II. STATEMENT OF FACTS

4. There is no provision in the Official Code of Georgia Annotated ("O.C.G.A.") which expressly authorizes vehicle immobilization on private property.

5. The City of Union City authorizes certain types of vehicle immobilization, including booting, by licensed vehicle immobilization services.

6. Booting is a method of using a mechanical device that is designed or adopted to be attached to a wheel, tire, or part of a parked motor vehicle so as to prohibit the motor vehicle's usual manner of movement or operation:



7. Once licensed, a vehicle immobilization service may only boot vehicles under the terms proscribed by City of Union City Code of Ordinances, Chapter 10, Article I, § 10-28.

8. One of the conditions precedent to legally booting a vehicle within the City of Union City is to comply with certain signage requirements as detailed in Union City Code of Ordinances, Chapter 10, Article I, § 10-28. This ordinance is provided in full here:

It shall be unlawful for any person or entity to affix a vehicle immobilization device to any vehicle in any off-street parking facility, lot or area located on private property within the city, regardless of whether a charge for parking is assessed, unless the following conditions are met:

- (1) Signs shall be located at each designated entrance to the parking facility, lot or area where such a device is to be used indicating that parking prohibitions are in effect. Signs shall be at a minimum of eighteen (18) inches by twenty-four (24) inches and reflective in nature.

(2) The wording on such signs shall contain the following information:

- a. A statement that any vehicle parked thereon which is not authorized to be parked in such area may be subject to use of a vehicle immobilization device.
- b. The maximum fee for removal of the device, as provided in subsection (c).
- c. The name, address, and phone number of the person or entity responsible for affixing the device.
- d. A statement that cash, checks, credit cards, and debit cards are accepted for payment.
- e. A statement that no additional fee will be charged for use of cash, checks, credit cards, or debit cards.
- f. The name and address of the entity that hired the vehicle immobilization service or company.
- g. The phone number referenced in subsection (b)(2)c. above must be operable and answered in person during the hours a vehicle immobilization device is affixed to a vehicle within the city.

9. Defendant McElwaney is a licensed vehicle immobilization service operating within the City of Union City.

10. Defendant McElwaney offers booting services to parking lots within the city of Union City.

11. As described more fully below, the signs erected at every parking lot wherein McElwaney operates do not comply with Union City Code of Ordinances, Chapter 10, Article I, § 10-28.

III. NAMED PLAINTIFF EXPERIENCES

12. On or about June 15, 2017, Plaintiff Polson parked in a private parking lot located at 4735 Jonesboro Rd., which is within the territorial limits of the City of Union City.

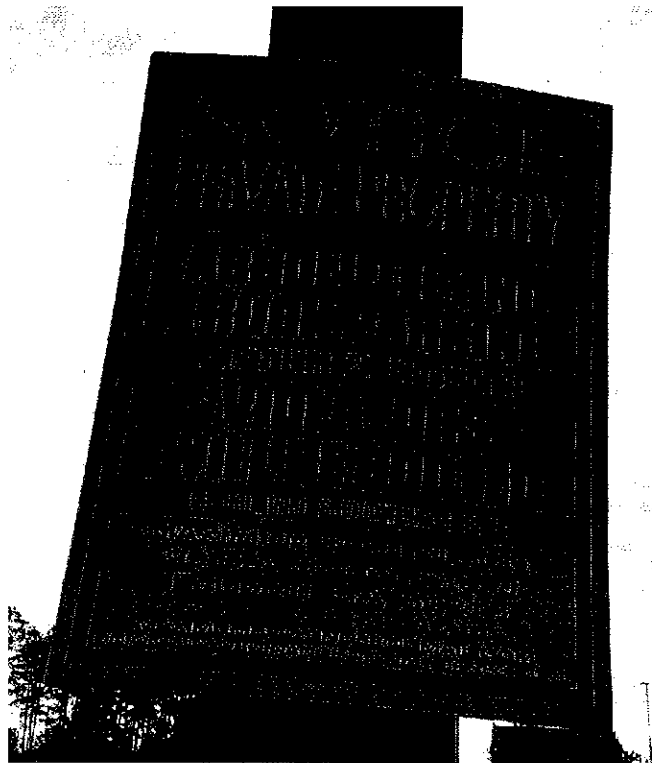
13. Plaintiff Polson parked in a parking lot owned by Wal-Mart Stores, Inc.

14. Defendant McElwaney was hired by the owner of the private property located at 4735 Jonesboro Rd., to install or attach vehicle immobilization devices or boots.

15. Defendant McElwaney placed a boot on Polson's vehicle and refused to remove it unless Polson paid a **\$500.00** fine.

16. Plaintiff Polson paid Defendant McElwaney \$500.00.

17. An exemplar of the signs erected at the parking lot located at 4735 Jonesboro Rd. is depicted below:



18. The signs do not comply with Union City Code of Ordinances, Chapter 10, Article I, § 10-28, as the signs:

- a. Do not contain a statement that cash, checks, credit cards, and debit cards are accepted for payment.

- b. Do not contain a statement that no additional fee will be charged for use of cash, checks, credit cards, or debit cards.
- c. Do not contain the name and address of the entity that hired the vehicle immobilization service or company.

19. Defendant McElwaney booted Plaintiff Polson's vehicle without legal authority and caused damages to Plaintiff Polson.

IV. CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action as a class action pursuant to O.C.G.A. § 9-11-23, on behalf of themselves and the Following Class:

- a. All persons who have been booted by Defendant McElwaney and paid fines for removal of said device within the City of Union City from June 15, 2013, through present; and
- b. All persons who have been booted by Defendant McElwaney at 4735 Jonesboro Rd., and have paid a fine for removal of said device (the Polson subclass).

21. Excluded from the Classes are Defendant, as well as Defendant's employees, affiliates, officers, and directors, including any individuals who incurred property damage as a result of Defendant's Actions, and the Judge presiding over this case. Plaintiff reserves the right to amend the definition of the Class if discovery and/or further investigation reveal that the Class definitions should be expanded or otherwise modified.

22. **Numerosity / Luminosity / Impracticality of Joinder:** The members of the Classes are so numerous that joinder of all members would be impractical. Plaintiff reasonably estimates that there are thousands of Class members. The members of the

Classes are easily and readily identifiable from information and records in Defendant's possession, control, or custody.

23. **Commonality and Predominance:** There is a well-defined community of interest and common questions of law and fact that predominate over any questions affecting the individual members of the Classes. These common legal and factual questions, which exist without regard to the individual circumstances of any Class member, include, but are not limited to, the following:

- a. Whether Defendant failed to comply with the signage requirements of Union City Code of Ordinances, Chapter 10, Article I, § 10-28 prior to engaging in booting activities at locations throughout Union City;
- b. Whether Defendant engaged in fraudulent business practices with respect to booting vehicles without complying with Union City Code of Ordinances, Chapter 10, Article I, § 10-28;
- c. Whether Defendant has been unjustly enriched;
- d. Whether Defendant has engaged in criminal trespass;
- e. Whether Defendant has engaged in false imprisonment;
- f. Whether Defendant has engaged in fraud;
- g. Whether Defendant converted Plaintiff's and other Class Member's property for its own use;
- h. Whether Defendant unlawfully disabled Plaintiff's and other Class Member's property and refused to return the property;
- i. Whether Plaintiff and the Classes are entitled to damages; and,

j. Whether Plaintiff and the Classes are entitled to equitable relief or other relief, and the nature of such relief.

24. **Typicality:** The Plaintiff's claims are typical of Classes in that Plaintiff and the Classes all have been booted as a result of Defendant's unlawful activities and sustained damages as a direct proximate result of the same wrongful practices that the Defendant has engaged in. Plaintiff's claims arise from the same practices and course of conduct that give rise to the members of the Classes' claims. Plaintiff's claims are based upon the same legal theories as the members of the Classes' claims.

25. **Adequacy:** Plaintiff will fully and adequately protect the interests of the members of the Classes and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither the Plaintiff nor their counsel have interests which are contrary to, or conflicting with, those interests of the Classes.

26. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because, *inter alia*: it is economically impracticable for members of the Classes to prosecute individual actions; prosecution as a class action will eliminate the possibility of repetitious and redundant litigation; and, a class action will enable claims to be handled in an orderly, expeditious manner.

COUNT 1: UNJUST ENRICHMENT

27. At all times relevant to this Complaint, Defendant owed duties to Plaintiff and the other Class Members to not interfere with Plaintiff's and the other Class Member's legally protected interest in use of their vehicles.

28. No contract exists between Defendant, Plaintiff, or any other Class Members which authorize Defendant to boot their vehicle.

29. No legal authority exists for Defendant to boot Plaintiff's and other Class Member's vehicles without first complying with Union City Code of Ordinances, Chapter 10, Article I, § 10-28.

30. Despite the lack of a contract or other legal authority, Defendant has booted Plaintiff's and other Class Member's vehicles.

31. Plaintiff and the other Class Members have paid "unlocking" fees to Defendant which were unlawfully obtained.

32. Plaintiff and the other Class Members have conferred a benefit on Defendant, which Defendant has retained and otherwise benefited from.

33. Defendant has been unjustly enriched by its unlawful booting of Plaintiff's and the Class Member's vehicles.

34. Plaintiff and other Class Members have incurred damages as a result of Defendant's criminal conduct.

35. Defendant should be required to return the benefit bestowed upon it by Plaintiff and the other Class Members.

36. Plaintiff and the other Class Members are also entitled to attorney's fees and expenses of litigation.

COUNT 2: CRIMINAL TRESPASS

37. At all times relevant to this Complaint, Defendant owed duties to Plaintiff and the other Class Members to not interfere with the possession or use of Plaintiff's and other Class Member's vehicles.

38. In violation of O.C.G.A. § 16-7-21, Defendant McElwaney knowingly and maliciously interfered with the possession or use of Plaintiff's and other Class Member's vehicles without consent.

39. Without authority, Defendant McElwaney interfered with vehicles owned by Plaintiff and the other Class Members for an unlawful purpose (to install a boot).

40. Plaintiff and other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury as a result of Defendant's criminal conduct.

COUNT 3: FALSE IMPRISONMENT

41. At all times relevant to this Complaint, Defendant owed duties to Plaintiff and the other Class Members to not interfere with the free movement of Plaintiff and the other Class Members.

42. In violation of O.C.G.A. § 51-7-20, Defendant McElwaney knowingly and unlawfully restrained the movements of Plaintiff and the other class members for varying periods of time.

43. Defendant acting without legal authority.

44. Plaintiff and other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury as a result of Defendant's criminal conduct.

COUNT 4: FRAUDULENT CONCEALMENT

45. Defendant McElwaney concealed from Plaintiff and all Class Members that Defendant lacked legal authority to a) immobilize their vehicles with a boot and b) collect a fee for removal of the boot.

46. Defendant has a duty to disclose the facts to the Plaintiff and all Class Members, but failed to do so.

47. The facts that were not disclosed were and are material.

48. Defendant knew that Plaintiff and the other Class Members were ignorant of the material facts and did not have an equal opportunity to discover the facts.

49. By failing to disclose the facts, Defendant intended to induce Plaintiff and the other Class Members into paying a fee for removal of the boot.

50. Plaintiff and the other Class Members reasonably relied on Defendant's nondisclosure.

51. Plaintiff and the other Class Members were injured as a result.

COUNT 5: CONVERSION

52. Plaintiff and the other Class Members had title (interest in) to their vehicles.

53. Defendant took possession of the property by attaching a vehicle immobilization device.

54. Plaintiff and other class members demanded possession of their property.

55. Defendant refused to surrender and/or return the property.

56. As a result, Plaintiff and other Class Members have sustained damages.

COUNT 6: TROVER, REPLEVIN, AND DETINUE

57. Plaintiff and other Class Members have title in the disputed property, or alternatively Plaintiff and other Class Members had a right to immediate possession of the property.

58. Actual possession of the property rests with Defendant.

59. Plaintiff and other Class Members made a demand to Defendant for the return of the property.

60. Defendant refused to return the property.

61. As a result of Defendant's actions, Plaintiff and other Class Members have sustained damages.

62. Plaintiff is entitled to elect (1) a verdict for the property itself, (2) the value of the property at the time of conversion with interest, (3) the highest proven value of the property from the date of the conversion.

COUNT 7: NEGLIGENCE *PER SE*

63. Defendant violated Union City Code of Ordinances, Chapter 10, Article I, § 10-28.

64. Plaintiffs and other Class Members fall within the class of persons intended to be protected by the statute.

65. Union City Code of Ordinances, Chapter 10, Article I, § 10-28 was intended to guard against the unlawful booting of vehicles.

66. Plaintiffs and the other Class Members suffered damages as a result of Defendant's negligence.

COUNT 8: MONEY HAD AND RECEIVED

67. Defendant has received money from Plaintiff and other Class Members that in equity and good conscious Defendant should not be permitted to keep.

68. Plaintiff and other Class Members have made a demand for repayment.

69. Defendant refused the demand.

70. As a result of Defendant's actions, Plaintiff and the other class members have suffered damages.

COUNT 9: PUNITIVE DAMAGES

71. Defendant's conduct was willful, wanton, and reckless and evidences an entire want of care, which raised the presumption of a conscious indifference to the consequences of its actions.

72. As a result of Defendant's willful, wanton, and reckless conduct, Plaintiff and other Class Members are entitled to an award of punitive damages under O.C.G.A. § 51-12-5.1.

V. JURY DEMAND

73. Plaintiff demands a trial by jury for all of their claims and determination of all damages.

VI. DAMAGES AND PRAYER FOR RELIEF

74. Plaintiff prays for the following relief:

- a. An order certifying this action as a class action, appointing Plaintiff as class representative and appointing Plaintiff's counsel as lead Class counsel;
- b. All compensatory damages on all applicable claims in an amount to be proven at trial, and, as allowed by law, for such damages to be trebled or multiplied upon proof of claims under laws allowing for trebling or multiplying of compensatory damages based upon Defendant's violations of law;

- c. An order directing disgorgement and restitution of all improperly retained monies by Defendant;
- d. An order permanently enjoining Defendant from engaging in the unlawful practices, as alleged herein;
- e. For an injunction to prohibit Defendant from engaging in the unconscionable commercial practices complained of herein, and for an injunction requiring to give notice to persons to whom restitution is owing of the means by which to file for restitution;
- f. Punitive damages in an amount to be determined at trial;
- g. Attorney fees for stubborn litigiousness pursuant to O.C.G.A. § 13-6-11; and,
- h. All other and further relief, including equitable and injunctive relief, that the Court deems appropriate and just under the circumstances.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

This 30th day of June 2017.

THE WERNER LAW FIRM

/s/ Matt Wetherington

MICHAEL L. WERNER

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KEVIN PATRICK LAW

/s/ Kevin Patrick

Kevin Patrick

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Atlanta, GA 30305
404-566-8964
kevin@patricktriallaw.com

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

**JESSY POLSON, Individually, and on behalf
of a class of similarly situated persons,**

Plaintiff,

v.

**KENNY MCELWANEY D/B/A
MAXIMUM BOOTING CO.**

Defendant.

CIVIL ACTION FILE NUMBER

17EV003164

FIRST AMENDED CLASS ACTION COMPLAINT

1. Defendant Kenny McElwaney d/b/a Maximum Booting Co. (“McElwaney”) has a systematic process of disabling vehicles with boots and similar devices without first complying with the City of Union City ordinances requiring certain signage at any location where vehicle immobilization occurs. As a result, McElwaney has collected thousands of dollars in booting fees in an unlawful manner. Plaintiff brings this action to recover damages and other available remedies on behalf of himself and a class of persons similarly situated.

I. PARTIES

2. Plaintiff Jessy Polson brings this action in his individual capacity, and in the capacity of a class representative on behalf of others similarly situated. By bringing this action, Plaintiff avails himself of the jurisdiction of this Court.

3. Defendant McElwaney is an individual doing business as a sole proprietorship under the name “Maximum Booting Co.” McElwaney was lawfully served on July 25, 2017. Jurisdiction and venue are proper as to Defendant because he is a resident of Fulton County.

II. STATEMENT OF FACTS

4. There is no provision in the Official Code of Georgia Annotated (“O.C.G.A.”) which expressly authorizes vehicle immobilization on private property.

5. The City of Union City authorizes certain types of vehicle immobilization, including booting, by licensed vehicle immobilization services.

6. Booting is a method of using a mechanical device that is designed or adopted to be attached to a wheel, tire, or part of a parked motor vehicle so as to prohibit the motor vehicle’s usual manner of movement or operation:



7. Once licensed, a vehicle immobilization service operating in Union City may only boot vehicles under the terms proscribed by City of Union City Code of Ordinances, Chapter 10, Article I, § 10-28.

8. One of the conditions precedent to legally booting a vehicle within the City of Union City is to comply with certain signage requirements as detailed in Union City

Code of Ordinances, Chapter 10, Article I, § 10-28. This ordinance is provided in full here:

It shall be unlawful for any person or entity to affix a vehicle immobilization device to any vehicle in any off-street parking facility, lot or area located on private property within the city, regardless of whether a charge for parking is assessed, unless the following conditions are met:

- (1) Signs shall be located at each designated entrance to the parking facility, lot or area where such a device is to be used indicating that parking prohibitions are in effect. Signs shall be at a minimum of eighteen (18) inches by twenty-four (24) inches and reflective in nature.
- (2) The wording on such signs shall contain the following information:
 - a. A statement that any vehicle parked thereon which is not authorized to be parked in such area may be subject to use of a vehicle immobilization device.
 - b. The maximum fee for removal of the device, as provided in subsection (c).
 - c. The name, address, and phone number of the person or entity responsible for affixing the device.
 - d. A statement that cash, checks, credit cards, and debit cards are accepted for payment.
 - e. A statement that no additional fee will be charged for use of cash, checks, credit cards, or debit cards.
 - f. The name and address of the entity that hired the vehicle immobilization service or company.
 - g. The phone number referenced in subsection (b)(2)c. above must be operable and answered in person during the hours a vehicle immobilization device is affixed to a vehicle within the city.
9. Defendant McElwaney is a licensed vehicle immobilization service operating within the City of Union City.
10. Defendant McElwaney offers booting services to parking lots within the city of

Union City.

11. On information and belief, the signs erected at every parking lot wherein McElwaney operates do not comply with Union City Code of Ordinances, Chapter 10, Article I, § 10-28.

III. NAMED PLAINTIFF'S EXPERIENCE

12. On or about June 15, 2017, Plaintiff parked in a private parking lot located at 4735 Jonesboro Rd, Union City, GA 30291, which is within the territorial limits of the City of Union City.

13. Plaintiff parked in a parking lot owned by Wal-Mart Stores, Inc.

14. Defendant McElwaney was hired by the owner of the private property located at 4735 Jonesboro Rd., to install or attach vehicle immobilization devices or boots.

15. Defendant McElwaney placed a boot on Plaintiff's vehicle and refused to remove it unless Plaintiff paid a **\$500.00** fine.

16. Plaintiff paid Defendant McElwaney \$500.00.

17. An exemplar of the signs erected at the parking lot located at 4735 Jonesboro Rd. is depicted below:



18. The signs do not comply with Union City Code of Ordinances, Chapter 10, Article I, § 10-28, as the signs:

- a. Do not contain a statement that cash, checks, credit cards, and debit cards are accepted for payment.
- b. Do not contain a statement that no additional fee will be charged for use of cash, checks, credit cards, or debit cards.
- c. Do not contain the name and address of the entity that hired the vehicle immobilization service or company.

19. Defendant McElwaney booted Plaintiff's vehicle without legal authority and caused damages to Plaintiff.

IV. CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action as a class action pursuant to O.C.G.A. § 9-11-23, on

behalf of himself and the following Classes:

- a. All persons who have been booted by Defendant McElwaney and paid fines for removal of said device within the City of Union City from June 15, 2012, through present; and
- b. All persons who have been booted by Defendant McElwaney at 4735 Jonesboro Rd, Union City, GA 30291, and have paid a fine for removal of said device from June 15, 2012, through present (the Polson subclass).

21. Excluded from the Classes are Defendant, as well as Defendant's employees, affiliates, officers, and directors, including any individuals who incurred property damage as a result of Defendant's actions, and the Judge presiding over this case. Plaintiff reserves the right to amend the definition of the Classes if discovery and/or further investigation reveal that the Class definitions should be expanded or otherwise modified.

22. **Numerosity / Impracticality of Joinder:** The members of the Classes are so numerous that joinder of all members would be impractical. Plaintiff reasonably estimates that there are thousands of Class members. The members of the Classes are easily and readily identifiable from information and records in Defendant's possession, control, or custody.

23. **Commonality and Predominance:** There is a well-defined community of interest and common questions of law and fact that predominate over any questions affecting the individual members of the Classes. These common legal and factual questions, which exist without regard to the individual circumstances of any Class member, include, but are not limited to, the following:

- a. Whether Defendant engaged in fraudulent business practices with respect

to booting vehicles without legal authority throughout Union City;

- b. Whether Defendant engaged in racketeering activity prohibited under O.C.G.A. § 16-14-1, *et seq.*
- c. Whether Defendant engaged in civil theft \ conversion;
- d. Whether Defendant engaged in false imprisonment;
- e. Whether Defendant engaged in making false statements;
- f. Whether Defendant unlawfully disabled Plaintiff and other Class Member's property and refused to return the property;
- g. Whether Plaintiff and the Classes are entitled to damages; and,
- h. Whether Plaintiff and the Classes are entitled to equitable relief or other relief, and the nature of such relief.

24. **Typicality:** Plaintiff's claims are typical of the Classes in that Plaintiff and the Classes have all been booted as a result of Defendant's unlawful activities, and have all sustained damages as a direct proximate result of the same wrongful practices. Plaintiff's claims arise from the same practices and course of conduct that give rise to the Classes' claims. Plaintiff's claims are based upon the same legal theories as the Classes' claims.

25. **Adequacy:** Plaintiff will fully and adequately protect the interests of the Classes and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither the Plaintiff nor their counsel have interests which are contrary to, or conflicting with, those interests of the Classes.

26. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because, *inter alia*: it is economically

impracticable for members of the Classes to prosecute individual actions; prosecution as a class action will eliminate the possibility of repetitious and redundant litigation; and, a class action will enable claims to be handled in an orderly, expeditious manner.

COUNT 1: FALSE IMPRISONMENT

27. At all times relevant to this Complaint, Defendant owed duties to Plaintiff and other Class Members not to interfere with the free movement of Plaintiff and other Class Members.

28. In violation of O.C.G.A. § 51-7-20, Defendant knowingly and unlawfully restrained the movements of Plaintiff and other Class Members for varying periods of time.

29. Defendant was acting without legal authority when Defendant restrained the movements of Plaintiff and other Class Members.

30. Plaintiff and other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury as a result of Defendant's conduct.

COUNT 2: CONVERSION / CIVIL THEFT

31. Plaintiff and other Class Members had an ownership interest in funds that were paid to Defendant.

32. Defendant took possession of Plaintiff and other Class Members' funds by demanding that Plaintiff and other Class Members pay \$500.00 to have a vehicle immobilization device removed.

33. Plaintiff and other Class Members demanded that the vehicle immobilization device be removed free of charge.

34. Defendant refused to release Plaintiff and other Class Members' vehicles without

payment of \$650.00.

35. Defendant had no lawful right to immobilize Plaintiff and the other Class Members' vehicles, or to demand payment to remove vehicle immobilization devices.

36. As a result, by requiring Plaintiff and other Class Members to pay \$500.00 to have vehicle immobilization devices removed, Defendant has wrongfully converted Plaintiff and other Class Members' funds, and Plaintiff and other Class Members have sustained damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 3: PREMISES LIABILITY / O.C.G.A. § 51-3-2

37. As occupiers of the properties at, or around, 4735 Jonesboro Rd., Union City, GA 30291, Defendant owes a duty under O.C.G.A. § 51-3-2 not to willfully or reckless cause injury to invitees, licensees, and trespassers on the property.

38. It is considered willful or wanton not to exercise ordinary care to protect anticipated trespassers from dangerous activities or hidden perils on the premises.

39. The duties imposed by O.C.G.A. § 51-3-2 prohibit Defendant from setting up a "mantrap" to cause harm to any invitees, licensees, and trespassers on the property.

40. By illegally immobilizing vehicles at, or around, 4735 Jonesboro Rd., Defendant setup such a "mantrap," and subjected invitees, licensees, and trespassers of the property to a known harm and dangerous activity.

41. Specifically, by illegally immobilizing vehicles, Defendant willfully or recklessly subjected invitees, licensees, and trespassers of the property to false imprisonment, conversion, civil theft, and extortion in violation of the duties imposed on occupiers of property under O.C.G.A. § 51-3-2.

42. As a result of Defendant's breach, Plaintiff and other Class Members have suffered damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 4: NEGLIGENCE *PER SE*

43. Defendant violated Union City Code of Ordinances, Chapter 10, Article I, § 10-28 by unlawfully booting Plaintiff and other Class Members' vehicles within Union City without proper signage.

44. Plaintiff and other Class Members fall within the class of persons intended to be protected by Union City Code of Ordinances, Chapter 10, Article I, § 10-28.

45. Union City Code of Ordinances, Chapter 10, Article I, § 10-28 is intended to guard against the unlawful activities of Defendant.

46. Due to Defendant's negligence, Plaintiff and the other Class Members have suffered harm Union City Code of Ordinances, Chapter 10, Article I, § 10-28 was intended to prevent.

47. Due to Defendant's negligence, Plaintiff and the other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 5: MONEY HAD AND RECEIVED

48. Because Defendant collected \$500.00 from Plaintiff and other Class Members to release vehicles unlawfully booted by Defendant, Defendant has received money from Plaintiff and other Class Members that in equity and good conscious Defendant should not be permitted to keep.

49. As a result of Defendant's actions, Plaintiff and the other class members have suffered damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 6: VIOLATION OF GEORGIA RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (“RICO”)

50. Defendant, as part of its parking company business, engages in an enterprise of unlawfully immobilizing vehicles for profit.

51. Defendant’s conduct subjects it to liability under Georgia’s Racketeer Influenced and Corrupt Organization Act (“RICO”), O.C.G.A. § 16-14-1 *et seq.*, as more fully set out below.

52. Specifically, Defendant, in furtherance of its unlawful vehicle immobilization enterprise, has engaged in a pattern of racketeering activity, including, but not limited to the following:

- a. By forcing Plaintiff and other Class Members to pay to have an unlawfully placed vehicle immobilization device removed, Defendant has engaged in Theft (O.C.G.A. § 16-8-1), Theft by Taking (O.C.G.A. § 16-8-2), Theft by Deception (O.C.G.A. § 16-8-3), Theft by Conversion (O.C.G.A. § 16-8-4), and Theft by Extortion (O.C.G.A. § 16-8-16);
- b. By alleging through signage, notices, and other documents provided to Plaintiff and other Class Members, that Defendant was lawfully permitted to immobilize Plaintiff and other Class Members’ vehicles, and lawfully permitted to charge fees for the removal of vehicle immobilization devices, Defendant has engaged in the use of false statements in violation of O.C.G.A. § 16-10-20; and
- c. By unlawfully attaching vehicle immobilization devices to Plaintiff and other Class Members’ vehicles, Defendant knowingly and unlawfully restrained the movements of Plaintiff and other Class Members for varying periods of time in violation of O.C.G.A. § 16-5-41.

53. Defendant has also engaged in racketeering activity by extorting money from Plaintiff and other Class Members under the threat of refusing to remove an unlawfully placed vehicle immobilization device.

54. Defendant's above described racketeering activity is all done in furtherance of Defendant's enterprise of profiting off unlawfully immobilizing vehicles.

55. Defendant's above described racketeering activity all have the same or similar methods of commission in that they all involve the unlawful use of vehicle immobilization devices, and false or misleading signage and documentation, to force Plaintiff and other Class Members to pay to have unlawfully placed vehicle immobilization devices removed.

56. Defendant's racketeering activity have the same or similar objective, namely, profiting off the unlawful use of vehicle immobilization devices.

57. Defendant's racketeering activity have the same or similar victims, namely, Plaintiff and other Class Members who have been forced to pay Defendant to remove a vehicle immobilization device unlawfully placed on Plaintiff and other Class Members' vehicles by Defendant.

58. Defendant's racketeering activity are otherwise related by distinguishing characteristics including, but not limited to, the involvement and collusion of Defendant and its workers, executives, and officers.

59. Defendant's racketeering activity is part of a long-term enterprise that has existed, and continues to, exist for over five (5) years, and will continue to exist unless halted by judicial intervention.

60. As a result of Defendant's racketeering activity, Plaintiff and other Class

Members have suffered damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 7: ATTORNEY'S FEES

61. Defendant has acted in bad faith, have been stubbornly litigious, and has caused Plaintiff and other Class Members unnecessary trouble and expense.

62. Accordingly, Plaintiff and other Class Members are entitled to recover their expenses of litigation, including their reasonable attorney's fees, pursuant to O.C.G.A. § 13-6-11.

COUNT 8: PUNITIVE DAMAGES

63. Defendant's conduct was willful, wanton, and reckless and evidences an entire want of care, which raised the presumption of a conscious indifference to the consequences of its actions.

64. As a result of Defendant's willful, wanton, and reckless conduct, Plaintiff and other Class Members are entitled to an award of punitive damages under O.C.G.A. § 51-12-5.1.

V. JURY DEMAND

65. Plaintiff demands a trial by jury for all of his claims and for a determination of all damages.

VI. DAMAGES AND PRAYER FOR RELIEF

66. Plaintiff prays for the following relief:

- a. An order certifying this action as a class action, appointing Plaintiff as class representative and appointing Plaintiff's counsel as lead Class counsel;

- b. All compensatory damages on all applicable claims in an amount to be proven at trial, and, as allowed by law, for such damages to be trebled or multiplied upon proof of claims under laws allowing for trebling or multiplying of compensatory damages based upon Defendant's violations of law;
- c. An order directing disgorgement and restitution of all improperly retained monies by Defendant;
- d. An order permanently enjoining Defendant from engaging in the unlawful practices, as alleged herein;
- e. For an injunction to prohibit Defendant from engaging in the unconscionable commercial practices complained of herein, and for an injunction requiring Defendant to give notice to persons to whom restitution is owing, and to identify the means by which to file for restitution;
- f. Punitive damages in an amount to be determined at trial;
- g. Attorney fees for stubborn litigiousness pursuant to O.C.G.A. § 13-6-11; and,
- h. All other and further relief, including equitable and injunctive relief, that the Court deems appropriate and just under the circumstances.

{SIGNATURE ON THE FOLLOWING PAGE}

This 15th day of November 2017.

WERNER WETHERINGTON, P.C.

/s/ Matt Wetherington

MICHAEL L. WERNER

Georgia Bar No. 748321

MATTHEW Q. WETHERINGTON

Georgia Bar No. 339639

ROBERT N. FRIEDMAN

Georgia Bar No. 945494

2860 Piedmont Rd., NE

Atlanta, GA 30305

770-VERDICT

mike@wernerlaw.com

matt@wernerlaw.com

robert@wernerlaw.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a true and correct copy of the foregoing *AMENDED CLASS ACTION COMPLAINT* to be served upon all parties in this case by United States Mail, proper postage prepaid, addressed as follows:

Jason S. Bell, Esq.
SMITH, GAMBRELL & RUSSELL, LLP
1230 Peachtree Street, NE
Atlanta, GA 30309

Brynda Rodriguez Insley, Esq.
Kenneth J. Bentley, Esq.
INSLEY AND RACE, LLC
The Mayfair Royal, Suite 200
181 14th Street, NE
Atlanta, GA 30309

This 15th day of November, 2017.

WERNER WETHERINGTON, PC

/s/ Matthew Q. Wetherington
MICHAEL L. WERNER
Georgia Bar No. 748321
MATTHEW Q. WETHERINGTON
Georgia Bar No. 339639
ROBERT N. FRIEDMAN
Georgia Bar No. 945494

2860 Piedmont Rd., NE
Atlanta, GA 30305
770-VERDICT
mike@wernerlaw.com
matt@wernerlaw.com
robert@wernerlaw.com

Case Information

17EV004847 | James Burke,Logistics and Distribution Services, Inc. VS.Maximum Booting Company, LLC,Kenneth McElwaney

Case Number 17EV004847	Court State Court	Judicial Officer Porter, Patsy Y
File Date 10/10/2017	Case Type TORT	Case Status Open

Party

Plaintiff
Burke, James E.

Address
Werner Wetherington, PC
2860 Piedmont Rd. NE
Atlanta GA 30305

Active Attorneys ▾
Attorney
WERNER, MICHAEL L
Retained

Work Phone
404-793-1690

Attorney
FRIEDMAN, ROBERT N.
Retained

Work Phone
404-881-2622

Lead Attorney
WETHERINGTON, MATTHEW Q
Retained

Work Phone
404-793-1666

Attorney
JACKSON, NOLA D
Retained

Work Phone
404-881-2622

Plaintiff
Logistics and Distribution Services, Inc.

Address
Werner Wetherington, PC
2860 Piedmont Rd. NE
Atlanta GA 30305

Active Attorneys ▾
Attorney
WERNER, MICHAEL L
Retained

Work Phone
404-793-1690

Attorney
JACKSON, NOLA D
Retained

Work Phone
404-881-2622

Attorney
FRIEDMAN, ROBERT N.
Retained

Work Phone
404-881-2622

Lead Attorney
WETHERINGTON, MATTHEW Q
Retained

Work Phone
404-793-1666

Defendant
Maximum Booting Company, LLC

Address
Kenneth McElwaney
99 Bay St., Suite J
Fairburn GA 30213

Defendant
McElwaney, Kenneth

Address
99 Bay St., Suite J
Fairburn GA 30213

Defendant
JDN Realty Corporation

Address
The Corporation Company
112 North Main Street
Cumming GA 30040

Active Attorneys ▼
Lead Attorney
JONES, KENNETH D
Retained

Work Phone
404-954-5000

Attorney
DANIEL, JEFFREY R.
Retained

Work Phone
404-954-5000

Defendant
DDR Property Management, LLC

Address
CT Corporation System
289 S. Culver St.
Lawrenceville GA 30046

Active Attorneys ▼
Lead Attorney
JONES, KENNETH D
Retained

Work Phone
404-954-5000

Attorney
DANIEL, JEFFREY R.
Retained

Work Phone
404-954-5000

Defendant
West, Cymona

Address
3500 Piedmont Road, Suite 730
Atlanta GA 30305

Active Attorneys ▼
Lead Attorney
JONES, KENNETH D
Retained

Work Phone
404-954-5000

Attorney
DANIEL, JEFFREY R.
Retained

Work Phone
404-954-5000

Events and Hearings

10/10/2017 Case Initiation Form ▼

10-10-2017-Civil Case Filing Form.Maximum Booting - Newnan.pdf

Comment

Civil Case Filing Form

10/10/2017 Summons ▼

10-10-2017-Summons.Maximum Booting Company, LLC.Newnan.pdf

Comment

Summons for Maximum Booting Company

10/10/2017 Summons ▼

10-10-2017-Summons.Kenneth P. McElwaney.Newnan.pdf

Comment

Summons for Kenneth McElwaney

10/10/2017 Summons ▼

10-10-2017-Summons.JDN Realty Corporation.Newnan.pdf

Comment

Summons for JDN Realty Corporation

10/10/2017 Summons ▼

10-10-2017-Summons.DDR Property Management, LLC.Newnan.pdf

Comment

Summons for DDR Property Management, LLC

10/10/2017 Summons ▼

10-10-2017-Summons.Cymona West.Newnan.pdf

Comment

Summons for Cymona West

10/10/2017 COMPLAINT ▼

10-10-2017-Complaint.Maximum Booting.Newnan.pdf

Comment

Complaint.Maximum Booting.Newnan

11/01/2017 Service to Marshal/Process Server

11/01/2017 COMPLAINT ▼

Serving Officer

Buck, K

Serving Method

Personal Service

11/03/2017 SERVICE ▼

10-27-2017 Sheriff's EOS Return - JDN Realty.pdf

Comment

Sheriff's Entry of Service for JDN Realty Corporation

11/09/2017 SERVICE ▼

11/22/2017 ENTRY OF APPEARANCE ▾

Burke- Notice of Appearance of KDJ and JRD.pdf

Comment

Notice of Appearance

11/22/2017 EXTENSION OF TIME ▾

Burke-Plaintiffs' Stipulation Extending Answer Deadline.pdf

Comment

Plaintiffs Stipulation Extending Deadline for Defendants JDN Realty Corp. et al. to File Answers

11/29/2017 Service to Marshal/Process Server

11/29/2017 Service to Marshal/Process Server

11/29/2017 COMPLAINT ▾

Serving Officer

Spaduzzi, P

Serving Method

Corporate Service

11/29/2017 COMPLAINT ▾

Serving Officer

Spaduzzi, P

Serving Method

Personal Service

12/04/2017 SERVICE ▾

SERVICE

12/04/2017 SERVICE ▾

SERVICE

12/13/2017 ENTRY OF APPEARANCE ▾

Entry of Appearance

Comment

Notice of Appearance of Counsel for Defendants DDR Property Management LLC and Cymona West

12/18/2017 EXTENSION OF TIME ▾

Extension of Time

Comment

Joint Stipulation Extending Deadline For Defendants JDN Realty Corporation, DDR Property Management LLC, and Cynoma West To File their Answers To Plaintiffs' Complaint**Financial**

Burke, James E.

Total Financial Assessment

\$360.00

Total Payments and Credits

\$360.00

10/11/2017	Transaction Assessment			\$285.00
10/11/2017	E-File	Receipt # TCJT-328518	Burke, James E.	(\$285.00)
11/1/2017	Transaction Assessment			\$25.00
11/1/2017	Payment	Receipt # TCJT-331272	Burke, James E.	(\$25.00)
11/29/2017	Transaction Assessment			\$50.00

Documents

- 10-10-2017-Civil Case Filing Form.Maximum Booting - Newnan.pdf
- 10-10-2017-Summons.Maximum Booting Company, LLC.Newnan.pdf
- 10-10-2017-Summons.Kenneth P. McElwaney.Newnan.pdf
- 10-10-2017-Summons.JDN Realty Corporation.Newnan.pdf
- 10-10-2017-Summons.DDR Property Management, LLC.Newnan.pdf
- 10-10-2017-Summons.Cymona West.Newnan.pdf
- 10-10-2017-Complaint.Maximum Booting.Newnan.pdf
- 10-27-2017 Sheriff's EOS Return - JDN Realty.pdf

SERVICE

Burke- Notice of Appearance of KDJ and JRD.pdf

Burke-Plaintiffs' Stipulation Extending Answer Deadline.pdf

SERVICE

SERVICE

Entry of Appearance

Extension of Time

GEORGIA, FULTON COUNTY

DO NOT WRITE IN THIS SPACE

STATE COURT OF FULTON COUNTY
Civil Division

CIVIL ACTION FILE #: _____

James E. Burke, and Logistics and Distribution Services, Inc.
c/o attorney Matthew Wetherington, Werner Wetherington, PC
2860 Piedmont Rd. NE, Atlanta, GA 30305

Plaintiff's Name, Address, City, State, Zip Code

vs.

Kenneth McElwaney

99 Bay St., Suite J,

Fairburn, GA 30213

Defendant's Name, Address, City, State, Zip Code

TYPE OF SUIT	AMOUNT OF SUIT
<input type="checkbox"/> ACCOUNT	PRINCIPAL \$ <u>TBD</u>
<input type="checkbox"/> CONTRACT	
<input type="checkbox"/> NOTE	INTEREST \$ <u>TBD</u>
<input checked="" type="checkbox"/> TORT	
<input type="checkbox"/> PERSONAL INJURY	ATTY. FEES \$ <u>TBD</u>
<input type="checkbox"/> FOREIGN JUDGMENT	
<input type="checkbox"/> TROVER	COURT COST \$ <u>TBD</u>
<input type="checkbox"/> SPECIAL LIEN	

<input type="checkbox"/> NEW FILING	
<input type="checkbox"/> RE-FILING: PREVIOUS CASE NO. _____	

SUMMONS

TO THE ABOVE NAMED-DEFENDANT:

You are hereby required to file with the Clerk of said court and to serve a copy on the Plaintiff's Attorney, or on Plaintiff if no Attorney, to-wit:

Name: Matthew Wetherington, Werner Wetherington, PC

Address: 2860 Piedmont Rd. NE

City, State, Zip Code: Atlanta, GA 30305

Phone No.: 404-793-1693

An answer to this complaint, which is herewith served on you, should be filed within thirty (30) days after service, not counting the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint, plus cost of this action. **DEFENSE MAY BE MADE & JURY TRIAL DEMANDED**, via electronic filing through E-file GA or, if desired, at the e-filing public access terminal in the Self-Help Center at 185 Central Ave., S.W., Ground Floor, Room TG300, Atlanta, GA 30303.

10/10/2017 6:03 PM

LeNora Ponzio
LeNora Ponzio, Chief Clerk (electronic signature)

If the sum claimed in the suit, or value of the property sued for, is \$300.00 or more Principal, the defendant must admit or deny the paragraphs of plaintiff's petition by making written Answer. Such paragraphs undenied will be taken as true. If the plaintiff's petition is sworn to, or if suit is based on an unconditional contract in writing, then the defendant's answer must be sworn to.

If the principal sum claimed in the suit, or value of the property sued for, is less than \$300.00, and is on a note, unconditional contract, account sworn to, or the petition sworn to, defense must be made by filing a sworn answer setting up the facts relied on as a defense.

SERVICE INFORMATION:

Served, this _____ day of _____, 20_____.

DEPUTY MARSHAL, STATE COURT OF FULTON COUNTY

WRITE VERDICT HERE:

We, the jury, find for _____

This _____ day of _____, 20_____ Foreperson

(STAPLE TO FRONT OF COMPLAINT)

GEORGIA, FULTON COUNTY

DO NOT WRITE IN THIS SPACE

STATE COURT OF FULTON COUNTY
Civil Division

CIVIL ACTION FILE #: _____

James E. Burke, and Logistics and Distribution Services, Inc.
c/o attorney Matthew Wetherington, Werner Wetherington, PC
2860 Piedmont Rd. NE, Atlanta, GA 30305

Plaintiff's Name, Address, City, State, Zip Code

vs.

JDN Realty Corporation, c/o Registered Agent
The Corporation Company, 112 North Main Street
Cumming, GA 30040

Defendant's Name, Address, City, State, Zip Code

TYPE OF SUIT	AMOUNT OF SUIT
<input type="checkbox"/> ACCOUNT	PRINCIPAL \$ <u>TBD</u>
<input type="checkbox"/> CONTRACT	
<input type="checkbox"/> NOTE	INTEREST \$ <u>TBD</u>
<input checked="" type="checkbox"/> TORT	
<input type="checkbox"/> PERSONAL INJURY	ATTY. FEES \$ <u>TBD</u>
<input type="checkbox"/> FOREIGN JUDGMENT	
<input type="checkbox"/> TROVER	COURT COST \$ <u>TBD</u>
<input type="checkbox"/> SPECIAL LIEN	

<input type="checkbox"/> NEW FILING	
<input type="checkbox"/> RE-FILING: PREVIOUS CASE NO. _____	

SUMMONS

TO THE ABOVE NAMED-DEFENDANT:

You are hereby required to file with the Clerk of said court and to serve a copy on the Plaintiff's Attorney, or on Plaintiff if no Attorney, to-wit:

Name: Matthew Wetherington, Werner Wetherington, PC

Address: 2860 Piedmont Rd. NE

City, State, Zip Code: Atlanta, GA 30305 Phone No.: 404-793-1693

An answer to this complaint, which is herewith served on you, should be filed within thirty (30) days after service, not counting the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint, plus cost of this action. **DEFENSE MAY BE MADE & JURY TRIAL DEMANDED**, via electronic filing through E-file GA or, if desired, at the e-filing public access terminal in the Self-Help Center at 185 Central Ave., S.W., Ground Floor, Room TG300, Atlanta, GA 30303.

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SERVICE INFORMATION:

Served, this _____ day of _____, 20_____.

DEPUTY MARSHAL, STATE COURT OF FULTON COUNTY

WRITE VERDICT HERE:

We, the jury, find for _____

This _____ day of _____, 20_____. _____ Foreperson

(STAPLE TO FRONT OF COMPLAINT)

GEORGIA, FULTON COUNTY

DO NOT WRITE IN THIS SPACE

STATE COURT OF FULTON COUNTY
Civil Division

CIVIL ACTION FILE #: _____

James E. Burke, and Logistics and Distribution Services, Inc.
c/o attorney Matthew Wetherington, Werner Wetherington, PC
2860 Piedmont Rd. NE, Atlanta, GA 30305

Plaintiff's Name, Address, City, State, Zip Code

vs.

DDR Property Management, LLC, c/o Registered Agent
CT Corporation System, 289 S. Culver St.
Lawrenceville, GA 30046

Defendant's Name, Address, City, State, Zip Code

TYPE OF SUIT	AMOUNT OF SUIT
<input type="checkbox"/> ACCOUNT	PRINCIPAL \$ <u>TBD</u>
<input type="checkbox"/> CONTRACT	
<input type="checkbox"/> NOTE	INTEREST \$ <u>TBD</u>
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<input type="checkbox"/> FOREIGN JUDGMENT	
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<input type="checkbox"/> SPECIAL LIEN	

<input type="checkbox"/> NEW FILING	
<input type="checkbox"/> RE-FILING: PREVIOUS CASE NO.	_____

SUMMONS

TO THE ABOVE NAMED-DEFENDANT:

You are hereby required to file with the Clerk of said court and to serve a copy on the Plaintiff's Attorney, or on Plaintiff if no Attorney, to-wit:

Name: Matthew Wetherington, Werner Wetherington, PC

Address: 2860 Piedmont Rd. NE

City, State, Zip Code: Atlanta, GA 30305 Phone No.: 404-793-1693

An answer to this complaint, which is herewith served on you, should be filed within thirty (30) days after service, not counting the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint, plus cost of this action. **DEFENSE MAY BE MADE & JURY TRIAL DEMANDED**, via electronic filing through E-file GA or, if desired, at the e-filing public access terminal in the Self-Help Center at 185 Central Ave., S.W., Ground Floor, Room TG300, Atlanta, GA 30303.

10/10/2017 6:03 PM

LeNora Ponzo
LeNora Ponzo, Chief Clerk (electronic signature)

If the sum claimed in the suit, or value of the property sued for, is \$300.00 or more Principal, the defendant must admit or deny the paragraphs of plaintiff's petition by making written Answer. Such paragraphs undenied will be taken as true. If the plaintiff's petition is sworn to, or if suit is based on an unconditional contract in writing, then the defendant's answer must be sworn to.

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SERVICE INFORMATION:

Served, this _____ day of _____, 20_____.

DEPUTY MARSHAL, STATE COURT OF FULTON COUNTY

WRITE VERDICT HERE:

We, the jury, find for _____

This _____ day of _____, 20_____. _____ Foreperson

(STAPLE TO FRONT OF COMPLAINT)

GEORGIA, FULTON COUNTY

DO NOT WRITE IN THIS SPACE

STATE COURT OF FULTON COUNTY
Civil Division

CIVIL ACTION FILE #: _____

James E. Burke, and Logistics and Distribution Services, Inc.
c/o attorney Matthew Wetherington, Werner Wetherington, PC
2860 Piedmont Rd. NE, Atlanta, GA 30305

Plaintiff's Name, Address, City, State, Zip Code

vs.

Cymona West
3600 Piedmont Road, Suite 730
Atlanta, GA 30305

Defendant's Name, Address, City, State, Zip Code

TYPE OF SUIT	AMOUNT OF SUIT
<input type="checkbox"/> ACCOUNT	PRINCIPAL \$ <u>TBD</u>
<input type="checkbox"/> CONTRACT	
<input type="checkbox"/> NOTE	INTEREST \$ <u>TBD</u>
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<input type="checkbox"/> SPECIAL LIEN	

<input type="checkbox"/> NEW FILING	
<input type="checkbox"/> RE-FILING: PREVIOUS CASE NO. _____	

SUMMONS

TO THE ABOVE NAMED-DEFENDANT:

You are hereby required to file with the Clerk of said court and to serve a copy on the Plaintiff's Attorney, or on Plaintiff if no Attorney, to-wit:

Name: Matthew Wetherington, Werner Wetherington, PC

Address: 2860 Piedmont Rd. NE

City, State, Zip Code: Atlanta, GA 30305

Phone No.: 404-793-1693

An answer to this complaint, which is herewith served on you, should be filed within thirty (30) days after service, not counting the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint, plus cost of this action. **DEFENSE MAY BE MADE & JURY TRIAL DEMANDED**, via electronic filing through E-file GA or, if desired, at the e-filing public access terminal in the Self-Help Center at 185 Central Ave., S.W., Ground Floor, Room TG300, Atlanta, GA 30303.

LeNora Ponzo, Chief Clerk (electronic signature)

10/10/2017 6:03 PM

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SERVICE INFORMATION:

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DEPUTY MARSHAL, STATE COURT OF FULTON COUNTY

WRITE VERDICT HERE:

We, the jury, find for _____

This _____ day of _____, 20_____. _____ Foreperson

(STAPLE TO FRONT OF COMPLAINT)

GEORGIA, FULTON COUNTY

DO NOT WRITE IN THIS SPACE

STATE COURT OF FULTON COUNTY
Civil Division

CIVIL ACTION FILE #: _____

James E. Burke, and Logistics and Distribution Services, Inc.
c/o attorney Matthew Wetherington, Werner Wetherington, PC
2860 Piedmont Rd. NE, Atlanta, GA 30305

Plaintiff's Name, Address, City, State, Zip Code

vs.

Maximum Booting Company, LLC c/o Registered Agent,
Kenneth McElwaney, 99 Bay St., Suite J,
Fairburn, GA 30213

Defendant's Name, Address, City, State, Zip Code

TYPE OF SUIT	AMOUNT OF SUIT
<input type="checkbox"/> ACCOUNT	PRINCIPAL \$ <u>TBD</u>
<input type="checkbox"/> CONTRACT	
<input type="checkbox"/> NOTE	INTEREST \$ <u>TBD</u>
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<input type="checkbox"/> SPECIAL LIEN	

<input type="checkbox"/> NEW FILING	
<input type="checkbox"/> RE-FILING: PREVIOUS CASE NO. _____	

SUMMONS

TO THE ABOVE NAMED-DEFENDANT:

You are hereby required to file with the Clerk of said court and to serve a copy on the Plaintiff's Attorney, or on Plaintiff if no Attorney, to-wit:
Name: Matthew Wetherington, Werner Wetherington, PC

Address: 2860 Piedmont Rd. NE

City, State, Zip Code: Atlanta, GA 30305 Phone No.: 404-793-1693

An answer to this complaint, which is herewith served on you, should be filed within thirty (30) days after service, not counting the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint, plus cost of this action. **DEFENSE MAY BE MADE & JURY TRIAL DEMANDED**, via electronic filing through E-file GA or, if desired, at the e-filing public access terminal in the Self-Help Center at 185 Central Ave., S.W., Ground Floor, Room TG300, Atlanta, GA 30303.

10/10/2017 6:03 PM

LeNora Ponzio
LeNora Ponzio, Chief Clerk (electronic signature)

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SERVICE INFORMATION:

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DEPUTY MARSHAL, STATE COURT OF FULTON COUNTY

WRITE VERDICT HERE:

We, the jury, find for _____

This _____ day of _____, 20_____, _____ Foreperson

(STAPLE TO FRONT OF COMPLAINT)

General Civil Case Filing Information Form (Non-Domestic)

Court
 Superior
 State

County Fulton **Date Filed** 10-10-2017
 MM-DD-YYYY

Docket # _____

Plaintiff(s)

Burke, James E.
 Last First Middle I. Suffix Prefix Maiden

Logistics and Distribution Services, Inc.
 Last First Middle I. Suffix Prefix Maiden

 Last First Middle I. Suffix Prefix Maiden

 Last First Middle I. Suffix Prefix Maiden

Defendant(s)

Maximum Booting Company, LLC,
 Last First Middle I. Suffix Prefix Maiden

McElwaney, Kenneth P., JDN Realty Corporation,
 Last First Middle I. Suffix Prefix Maiden

DDR Property Management, LLC,
 Last First Middle I. Suffix Prefix Maiden

West, Cymona, XYZ Company
 Last First Middle I. Suffix Prefix Maiden

No. of Plaintiffs 1

No. of Defendants 6

Plaintiff/Petitioner's Attorney **Pro Se**

Wetherington, Matthew
 Last First Middle I. Suffix

Bar # 339639

Check Primary Type (Check only ONE)

- Contract/Account
- Wills/Estate
- Real Property
- Dispossessory/Distress
- Personal Property
- Equity
- Habeas Corpus
- Appeals, Reviews
- Post Judgement Garnishment, Attachment, or Other Relief
- Non-Domestic Contempt
- Tort (If tort, fill in right column)
- Other General Civil Specify Class Action

If Tort is Case Type:
 (Check no more than TWO)

- Auto Accident
- Premises Liability
- Medical Malpractice
- Other Professional Negligence
- Product Liability
- Other Specify Class Action

Are Punitive Damages Pleaded? **Yes** **No**

I hereby certify that the documents in this filing (including attachments and exhibits) satisfy the requirements for redaction of personal or confidential information in O.C.G.A. 9-11-7.1

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

JAMES E. BURKE and LOGISTICS AND
DISTRIBUTION SERVICES, INC., Individually,
and on behalf of a class of similarly situated persons,

Plaintiffs,

v.

MAXIMUM BOOTING COMPANY, LLC;
KENNETH P. MCELWANEY,
d/b/a Maximum Booting Company;
JDN REALTY CORPORATION;
DDR PROPERTY MANAGEMENT LLC;
CYMONA WEST; and XYZ COMPANY,

Defendants.

CIVIL ACTION FILE NUMBER

CLASS ACTION COMPLAINT

1. Defendants have a systematic process of unlawfully disabling vehicles with boots and similar devices throughout the State of Georgia. As a result, Defendants have actively participated in the collection of an egregious amount of booting fees in an unlawful manner. Plaintiffs bring this action to recover damages and other available remedies on behalf of themselves and a class of persons similarly situated.

I. PARTIES

2. Plaintiff Burke brings this action in an individual capacity, and in the capacity of a class representative on behalf of others similarly situated. By bringing this action, Plaintiff Burke avails himself of the jurisdiction of this Court.

3. Plaintiff Logistics and Distribution Services brings this action in its individual capacity, and in the capacity of a class representative on behalf of others similarly situated. By bringing this action, Plaintiff Logistics and Distribution Services avails itself

of the jurisdiction of this Court.

4. Defendant Maximum Booting Company, LLC (“Maximum Booting”) is a limited liability company registered to do business in Georgia. Maximum Booting is a resident of Fulton County and may be served through its registered agent, Kenneth P.

McElwaney, at 99 Bay St., Suite J, Fairburn, GA, 30213. Jurisdiction is proper as to Defendant Maximum Booting because it is a resident of Georgia. Venue is proper as to Defendant Maximum Booting because its registered office is located in Fulton County.

5. Defendant Kenneth P. McElwaney (“McElwaney”) is a citizen and resident of Fulton County subject to the jurisdiction and venue of this Court. McElwaney may be served at 99 Bay St., Suite J, Fairburn, GA, 30213.

6. JDN Realty Corporation (“JDN Realty”) is an Ohio corporation registered to do business in Georgia that is subject to the jurisdiction of this Court. JDN Realty may be served through its registered agent, The Corporation Company at 112 North Main Street, Cumming, GA, 30040. Venue is proper as to Defendant JDN Realty because it is a joint tortfeasor with one or more Defendants who are residents of Fulton County.

7. Defendant DDR Property Management LLC (“DDR”) is an Ohio limited liability company registered to business in Georgia that is subject to the jurisdiction of this Court. DDR may be served through its registered agent, CT Corporation System at 289 S Culver St., Lawrenceville, GA, 30046. Venue is proper as to DDR because it is a joint tortfeasor with one or more Defendants who are residents of Fulton County.

8. Defendant Cymona West (“West”) is a citizen and resident of Georgia subject to the jurisdiction and venue of this Court. Defendant West may be served at her office at 3500 Piedmont Road, Suite 730, Atlanta, GA 30305. Venue is proper as to Defendant

West because she is a joint tortfeasor with one or more Defendants who are residents of Fulton County.

9. Defendant XYZ Company is an unknown entity that may have hired, or contracted with, Defendant Maximum Booting and/or Defendant McElwaney to boot Plaintiffs' vehicle.

II. STATEMENT OF FACTS

10. There is no provision in the Official Code of Georgia Annotated ("O.C.G.A.") which expressly authorizes vehicle immobilization on private property.

11. Some municipalities and counties authorize certain types of vehicle immobilization, including booting, by licensed vehicle immobilization services once certain requirements are met.

12. Booting is a method of using a mechanical device that is designed or adopted to be attached to a wheel, tire, or part of a parked motor vehicle so as to prohibit the motor vehicle's usual manner of movement or operation:



13. In the absence of a vehicle immobilization ordinance, booting vehicles in Georgia is strictly unlawful.

14. Defendants Maximum Booting and McElwaney perform vehicle immobilization services within the State of Georgia.

15. Defendants Maximum Booting and McElwaney offer booting services to parking lots within Georgia in counties and cities with no vehicle immobilization ordinance.

16. Defendants JDN Realty, DDR, West, and XYZ Company hired, contracted with, authorized, or otherwise provided material support to Defendants Maximum Booting.

17. On information and belief, at all locations within Georgia where Defendants engage in vehicle immobilization, there are no vehicle immobilization ordinances.

III. NAMED PLAINTIFF EXPERIENCE

18. On or about August 16, 2017, Plaintiff Burke parked in a private parking lot located at, or around, 955 Bullsboro Dr., Newnan, GA 30265, which is within the territorial limits of Newnan and Coweta County.

19. Neither the City of Newnan or Coweta County have a vehicle immobilization ordinance.

20. Defendants Maximum Booting and McElwaney were hired or otherwise authorized by the owner or operator of the private property located at, or around, 955 Bullsboro Dr., to install or attach vehicle immobilization devices or boots.

21. Defendant JDN Realty hired, or contracted with, Defendants Maximum Booting and McElwaney to provide vehicle immobilization services at, or around, 955 Bullsboro Dr.

22. Defendant DDR hired, or contracted with, Defendants Maximum Booting and McElwaney to provide vehicle immobilization services at, or around, 955 Bullsboro Dr.

23. Defendant West hired, or contracted with, Defendants Maximum Booting and McElwaney to provide vehicle immobilization services at, or around, 955 Bullsboro Dr.

24. Defendants Maximum Booting and McElwaney placed a boot on Burke's vehicle and refused to remove it unless Burke paid a \$500.00 fine.

25. Plaintiff Logistics and Distribution Services paid Defendants Maximum Booting and McElwaney \$500.00.

26. Because the City of Newnan and Coweta County do not have a vehicle immobilization ordinance, Defendants Maximum Booting and McElwaney unlawfully booted Plaintiff Burke's vehicle without legal authority and caused damages to Plaintiffs Burke and Logistics and Distribution Services.

IV. CLASS ACTION ALLEGATIONS

27. Plaintiff bring this action as a class action pursuant to O.C.G.A. § 9-11-23, on behalf of themselves and the following classes:

- a. All persons who have been booted by, or at the request of, Defendants at any location within the State of Georgia where there are no vehicle immobilization ordinances, and who have paid fines for the removal of said device, from August 16, 2012, through present;
- b. All persons who have been booted by Defendants Maximum Booting and McElwaney in Coweta County, Georgia, and who have paid fines for the removal of said device, from August 16, 2012, through present; and

- c. All persons who have been booted by, or at the request of, Defendants at 955 Bullsboro Dr., Newnan, GA 30265, and have paid a fine for removal of said device from August 16, 2012, through present (the Burke subclass).

28. Excluded from the Classes are Defendants, as well as Defendants' employees, affiliates, officers, and directors, including any individuals who incurred property damage as a result of Defendants' actions, and the Judge presiding over this case. Plaintiffs reserve the right to amend the definition of the Classes if discovery and/or further investigation reveal that the Class definitions should be expanded or otherwise modified.

29. **Numerosity / Luminosity / Impracticality of Joinder:** The members of the Classes are so numerous that joinder of all members would be impractical. Plaintiffs reasonably estimate that there are thousands of Class members. The members of the Classes are easily and readily identifiable from information and records in Defendants' possession, control, or custody.

30. **Commonality and Predominance:** There is a well-defined community of interest and common questions of law and fact that predominate over any questions affecting the individual members of the Classes. These common legal and factual questions, which exist without regard to the individual circumstances of any Class member, include, but are not limited to, the following:

- a. Whether Defendants engaged in fraudulent business practices with respect to booting vehicles without legal authority throughout Georgia;
- b. Whether Defendants engaged in racketeering activity prohibited under O.C.G.A. § 16-14-1, *et seq.*

- c. Whether Defendants engaged in civil theft \ conversion;
- d. Whether Defendants engaged in false imprisonment;
- e. Whether Defendants engaged in making false statements;
- f. Whether Defendants unlawfully disabled Plaintiffs and other Class Member's property and refused to return the property;
- g. Whether Plaintiffs and the Classes are entitled to damages; and,
- h. Whether Plaintiffs and the Classes are entitled to equitable relief or other relief, and the nature of such relief.

31. **Typicality:** Plaintiffs' claims are typical of the class claims in that Plaintiffs and the Classes all have been booted as a result of Defendants' unlawful activities and sustained damages as a direct proximate result of the same wrongful practices that Defendants engaged in. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the class claims. Plaintiffs' claims are based upon the same legal theories as the class claims.

32. **Adequacy:** Plaintiffs will fully and adequately protect the interests of the members of the Classes and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither the Plaintiffs nor their counsel have interests which are contrary to, or conflicting with, those interests of the Classes.

33. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because, *inter alia*: it is economically impracticable for members of the Classes to prosecute individual actions; prosecution as

a class action will eliminate the possibility of repetitious and redundant litigation; and, a class action will enable claims to be handled in an orderly, expeditious manner.

COUNT 1: FALSE IMPRISONMENT

34. At all times relevant to this Complaint, Defendants owed duties to Plaintiffs and other Class Members not to interfere with the free movement of Plaintiffs and other Class Members.

35. In violation of O.C.G.A. § 51-7-20, Defendants knowingly and unlawfully restrained the movements of Plaintiffs and other Class Members for varying periods of time.

36. Defendants were acting without legal authority when Defendants restrained the movements of Plaintiffs and other Class Members.

37. Plaintiffs and other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury as a result of Defendants' conduct.

COUNT 2: CONVERSION / CIVIL THEFT

38. Plaintiffs and other Class Members had an ownership interest in funds that were paid to Defendants Maximum Booting and McElwaney.

39. Defendants Maximum Booting and McElwaney took possession of Plaintiffs and other Class Members' funds by demanding that Plaintiffs and other Class Members pay \$500.00 to have a vehicle immobilization device removed.

40. Plaintiffs and other Class Members demanded that the vehicle immobilization device be removed free of charge.

41. Defendants Maximum Booting and McElwaney refused to release Plaintiffs and other Class Members' vehicles without payment of \$500.00.

42. Defendants Maximum Booting and McElwaney had no lawful right to immobilize Plaintiffs and the other Class Members' vehicles, or to demand payment to remove vehicle immobilization devices.

43. As a result, by requiring Plaintiffs and other Class Members to pay \$500.00 to have vehicle immobilization devices removed, Defendants Maximum Booting and McElwaney have wrongfully converted Plaintiffs and other Class Members' funds, and Plaintiffs and other Class Members have sustained damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 3: NEGLIGENCE

44. Defendants owed a duty to Plaintiffs and other Class Members' to comply with Georgia law before engaging in any vehicle immobilization activities.

45. Defendants were negligent in complying with this duty as Defendants failed to use reasonable care in making sure that Defendants were operating in an area with a vehicle immobilization ordinance.

46. Due to Defendants' negligence, Plaintiffs and the other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 4: NEGLIGENCE *PER SE*

47. Defendants violated numerous Georgia statutes by unlawfully booting Plaintiffs and other Class Members' vehicles.

48. Plaintiffs and other Class Members fall within the class of persons intended to be protected by these statutes.

49. These statutes were intended to guard against the unlawful activities of Defendants.

50. Due to Defendants' negligence, Plaintiffs and the other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 5: MONEY HAD AND RECEIVED

51. Defendants Maximum Booting and McElwaney have received money from Plaintiffs and other Class Members that in equity and good conscious Defendants Maximum Booting and McElwaney should not be permitted to keep.

52. Plaintiffs and other Class Members have made a demand for repayment.

53. Defendants Maximum Booting and McElwaney refused the demand.

54. As a result of Defendants Maximum Booting and McElwaney's actions, Plaintiffs and the other Class Members have suffered damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 6: VIOLATION OF GEORGIA RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT ("RICO") AGAINST DEFENDANTS MAXIMUM BOOTING AND MCELWANEY

55. Defendants Maximum Booting and McElwaney, as part of their parking company business, engage in an enterprise of unlawfully immobilizing vehicles for profit.

56. Defendants Maximum Booting and McElwaney's conduct subjects them to liability under Georgia's Racketeer Influenced and Corrupt Organization Act ("RICO"), O.C.G.A. § 16-14-1 *et seq.*, as more fully set out below.

57. Specifically, Defendants Maximum Booting and McElwaney, in furtherance of their unlawful vehicle immobilization enterprise, have engaged in a pattern of racketeering activity, including, but not limited to the following:

- a. By forcing Plaintiffs and other Class Members to pay to have an unlawfully placed vehicle immobilization device removed, Defendants Maximum

Booting and McElwaney have engaged in Theft (O.C.G.A. § 16-8-1), Theft by Taking (O.C.G.A. § 16-8-2), Theft by Deception (O.C.G.A. § 16-8-3), Theft by Conversion (O.C.G.A. § 16-8-4), and Theft by Extortion (O.C.G.A. § 16-8-16);

b. By alleging through signage, notices, and other documents provided to Plaintiffs and other Class Members, that Defendants Maximum Booting and McElwaney were lawfully permitted to immobilize Plaintiffs and other Class Members' vehicles, and lawfully permitted to charge fees for the removal of vehicle immobilization devices, Defendants Maximum Booting and McElwaney have engaged in the use of false statements in violation of O.C.G.A. § 16-10-20; and

c. By unlawfully attaching vehicle immobilization devices to Plaintiffs and other Class Members' vehicles, Defendants Maximum Booting and McElwaney knowingly and unlawfully restrained the movements of Plaintiffs and other Class Members for varying periods of time in violation of O.C.G.A. § 16-5-41.

58. Defendants Maximum Booting and McElwaney have also engaged in racketeering activity by extorting money from Plaintiffs and other Class Members under the threat of refusing to remove an unlawfully placed vehicle immobilization device.

59. Defendants Maximum Booting and McElwaney's above described racketeering activity is all done in furtherance of Defendants' enterprise of profiting off unlawfully immobilizing vehicles.

60. Defendants Maximum Booting and McElwaney's above described racketeering activity all have the same or similar methods of commission in that they all involve the

unlawful use of vehicle immobilization devices, and false or misleading signage and documentation, to force Plaintiffs and other Class Members to pay to have unlawfully placed vehicle immobilization devices removed.

61. Defendants Maximum Booting and McElwaney's racketeering activity have the same or similar objective, namely, profiting off the unlawful use of vehicle immobilization devices.

62. Defendants Maximum Booting and McElwaney's racketeering activity have the same or similar victims, namely, Plaintiffs and other Class Members who have been forced to pay Defendants to remove a vehicle immobilization device unlawfully placed on Plaintiffs and other Class Members' vehicles by Defendants.

63. Defendant Maximum Booting and McElwaney's racketeering activity are otherwise related by distinguishing characteristics including, but not limited to, the involvement and collusion of Defendants and their workers, executives, and officers.

64. Defendants Maximum Booting and McElwaney's racketeering activity is part of a long-term enterprise that has existed, and continues to, exist for over five (5) years, and will continue to exist unless halted by judicial intervention.

65. As a result of Defendants Maximum Booting and McElwaney's racketeering activity, Plaintiffs and other Class Members have suffered damages in an amount to be determined by the enlightened conscience of a jury.

**COUNT 7: PREMISES LIABILITY / O.C.G.A. § 51-3-1
AGAINST DEFENDANTS JDN REALTY, DDR, WEST, AND XYZ COMPANY**

66. As owners and occupiers of the properties at, or around, 955 Bullsboro Dr., Newnan, GA 30265, Defendants JDN Realty, DDR, West, And XYZ Company owe a duty under O.C.G.A. § 51-3-1 not to willfully or reckless cause injury to invitees,

licensees, and trespassers on the property.

67. It is considered willful or wanton not to exercise ordinary care to protect anticipated trespassers from dangerous activities or hidden perils on the premises.

68. The duties imposed by O.C.G.A. § 51-3-1 prohibit Defendants JDN Realty, DDR, West, And XYZ Company from setting up a “mantrap” to cause harm to any invitees, licensees, and trespassers on the property.

69. By hiring, contracting with, authorizing, or otherwise providing material support to Defendants Maximum Booting and McElwaney to illegally immobilize vehicles at, or around, 955 Bullsboro Dr., Defendants JDN Realty, DDR, West, And XYZ Company setup such a “mantrap,” and subjected invitees, licensees, and trespassers of the property to a known harm and dangerous activity.

70. Specifically, by hiring, contracting with, authorizing, or otherwise providing material support to Defendants Maximum Booting and McElwaney, Defendants JDN Realty, DDR, West, And XYZ Company knowingly subjected invitees, licensees, and trespassers of the property to false imprisonment, conversion, civil theft, and extortion in violation of the duties imposed on owners and occupiers of property under O.C.G.A. § 51-3-1.

71. Furthermore, because the presence of trespassers to the property located at, or around, 955 Bullsboro Dr., was known to, or anticipated by, Defendants JDN Realty, DDR, West, and XYZ Company, Defendants also violated the duties imposed on owners and occupiers of property under O.C.G.A. § 51-3-1 by failing to exercise ordinary care to protect these anticipated trespassers from the known dangerous and illegal activities of Defendants Maximum Booting and McElwaney

72. As a result of Defendants JDN Realty, DDR, West, and XYZ Company's breach, Plaintiffs and other Class Members have suffered damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 8: ATTORNEY'S FEES

73. Defendants have acted in bad faith, have been stubbornly litigious, and have caused Plaintiffs and other Class Members unnecessary trouble and expense.

74. Accordingly, Plaintiffs and other Class Members are entitled to recover their expenses of litigation, including their reasonable attorney's fees, pursuant to O.C.G.A. § 13-6-11.

COUNT 9: PUNITIVE DAMAGES

75. Defendants' conduct was willful, wanton, and reckless and evidences an entire want of care, which raised the presumption of a conscious indifference to the consequences of its actions.

76. As a result of Defendants' willful, wanton, and reckless conduct, Plaintiffs and other Class Members are entitled to an award of punitive damages under O.C.G.A. § 51-12-5.1.

V. JURY DEMAND

77. Plaintiffs demand a trial by jury for all of their claims and determination of all damages.

VI. DAMAGES AND PRAYER FOR RELIEF

78. Plaintiffs pray for the following relief:

- a. An order certifying this action as a class action, appointing Plaintiffs as class representatives and appointing Plaintiffs' counsel as lead Class counsel;
- b. All compensatory damages on all applicable claims in an amount to be proven at trial, and, as allowed by law, for such damages to be trebled or multiplied upon proof of claims under laws allowing for trebling or multiplying of compensatory damages based upon Defendants' violations of law;
- c. An order directing disgorgement and restitution of all improperly retained monies by Defendants;
- d. An order permanently enjoining Defendants from engaging in the unlawful practices, as alleged herein;
- e. For an injunction to prohibit Defendants from engaging in the unconscionable commercial practices complained of herein, and for an injunction requiring Defendants to give notice to persons to whom restitution is owing, and to identify the means by which such persons can file for restitution;
- f. Punitive damages in an amount to be determined at trial;
- g. Attorney fees for stubborn litigiousness and bad faith pursuant to O.C.G.A. § 13-6-11; and
- h. All other and further relief, including equitable and injunctive relief, that the Court deems appropriate and just under the circumstances.

This 10th day of October 2017.

WERNER WETHERINGTON, PC

/s/ Matt Wetherington

MICHAEL L. WERNER

Georgia Bar No. 748321

MATTHEW Q. WETHERINGTON

Georgia Bar No. 339639

ROBERT N. FRIEDMAN

Georgia Bar No. 945494

2860 Piedmont Rd., NE
Atlanta, GA 30305
770-VERDICT
mike@wernerlaw.com
matt@wernerlaw.com
robert@wernerlaw.com

KEVIN PATRICK LAW

/s/ Kevin Patrick

Kevin Patrick

Georgia Bar No. 225211

2860 Piedmont Rd., NE
Atlanta, GA 30305
404-566-8964
kevin@patricktriallaw.com

Civil Action No. 17EV001847

Superior Court
State Court
Juvenile Court

Magistrate Court
Probate Court

11/3/2017 3:19 PM
LeNora Ponzo, Clerk
Civil Division

Date Filed 10/16/2017

Georgia, Fulton COUNTY

Attorney's Address
The Werner Law Firm
2860 Piedmont Road, NE
Atlanta, GA 30305
(404) 793-1690

James E. Burke
Logistics and Distribution Service, Inc
Plaintiff

VS.
JDN Realty Corporation
c/o R.A. The Corporation Company
Defendant

Name and Address of Party to be Served.
JDN Realty Corporation c/o Registered Agent
The Corporation Company, 112 North Main St.
Cumming, GA 30040

Garnishee

SHERIFF'S ENTRY OF SERVICE

PERSONAL

I have this day served the defendant _____ personally with a copy of the within action and summons.

NOTORIOUS

I have this day served the defendant _____ by leaving a copy of the action and summons at his most notorious place of abode in this County.
 Delivered same into hands of _____ described as follows: age, about _____ years; weight _____ pounds; height, about _____ feet and _____ inches, domiciled at the residence of defendant.

CORPORATION

Served the defendant Corporation Company a corporation by leaving a copy of the within action and summons with Ashley Mashburn in charge of the office and place of doing business of said Corporation in this County.

TACK & MAIL

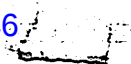
I have this day served the above styled affidavit and summons on the defendant(s) by posting a copy of the same to the door of the premises designated in said affidavit, and on the same day of such posting by depositing a true copy of same in the United States Mail, First Class in an envelope properly addressed to the defendant(s) at the address shown in said summons, with adequate postage affixed thereon containing notice to the defendant(s) to answer said summons at the place stated in the summons.

NON EST

Diligent search made and defendant _____ not to be found in the jurisdiction of this Court.

This 27 day of Oct, 20 17.

L Devereaux
DEPUTY



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STATE COURT OF FULTON COUNTY

The Werner Law Firm

2860 Piedmont Road, NE

Atlanta, GA 30305

(404) 793-1690

DO NOT WRITE IN THIS SPACE

FILED IN OFFICE

NOV 09 2017

DEPUTY CLERK STATE COURT
FULTON COUNTY, GA.

17EV004847

Attorney or Plaintiff Name and Address

James E. Burke
Logistics and Distribution Services, PC

vs.

Cymona West
3600 Piedmont Rd. Suite 730
Atlanta, GA 30305

Name and Address of PLAINTIFF

Name and Address of DEFENDANT

MARSHAL'S ENTRY OF SERVICE

PERSONAL	GEORGIA, FULTON COUNTY I have this day served the defendant(s) <u>CYMONA WEST (3500 PIEDMONT RD.)</u> _____ personally with a copy of the within action and summons. This <u>8</u> day of <u>NOV.</u> <u>2017</u> <u>MRS. BUCK 413</u> _____ DEPUTY MARSHAL
	GEORGIA, FULTON COUNTY I have this day served the defendant(s) _____ By leaving a copy of the action and summons at his/their most notorious place of abode in said County. Delivered same in hands of _____, a _____ _____ described as follows: Age, about _____ years; weight, about _____ lbs; height, about _____ ft. _____ in., Domiciled at the residence of the defendant(s). This _____ day of _____ _____ DEPUTY MARSHAL
CORPORATION	GEORGIA, FULTON COUNTY Served the defendant _____, a corporation, by leaving a copy of the within action and summons with _____ in charge of the office and doing business of said corporation, in Fulton County, Georgia. This _____ day of _____ _____ DEPUTY MARSHAL
BETTER ADDRESS	GEORGIA, FULTON COUNTY Diligent search made and the defendant(s): _____ Not to be found in the jurisdiction of said Court for the following reason: _____ _____
NON-EST	Please furnish this office with a new service form with the correct address. This _____ day of _____ _____ DEPUTY MARSHAL

REC'D MARSHAL 11/7/17 9M1152

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

JAMES E. BURKE and LOGISTICS AND
DISTRIBUTION SERVICES, INC.,
individually and on behalf of a class of
similarly situated persons,

Plaintiffs,

v.

MAXIMUM BOOTING COMPANY, LLC,
KENNETH P. MCELWANEY, d/b/a
Maximum Booting Company; JDN
REALTY CORPORATION, DDR
PROPERTY MANAGEMENT LLC,
CYMONA WEST, and XYZ COMPANY,

Defendants.

CIVIL ACTION FILE
NO. 17EV004847

**NOTICE OF APPEARANCE OF COUNSEL FOR DEFENDANT JDN REALTY
CORPORATION**

COME NOW, Kenneth D. Jones and Jeffrey R. Daniel of Hall Booth Smith, P.C., 191
Peachtree St, NE, Suite 2900, Atlanta, Georgia 30303, and hereby appear as counsel of record
for Defendant JDN Realty Corporation in the above-styled action.

[Signatures on following page]

Respectfully submitted this 22nd day of November, 2017.

HALL BOOTH SMITH, P.C.

/s/ Jeffrey R. Daniel

KENNETH D. JONES

Georgia Bar No. 402101

JEFFREY R. DANIEL

Georgia Bar No. 9490075

Attorneys for JDN Realty Corporation

191 Peachtree Street, N.E.
Suite 2900
Atlanta, GA 30303-1775
Tel: 404-954-5000
Fax: 404-954-5020

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

JAMES E. BURKE and LOGISTICS AND
DISTRIBUTION SERVICES, INC.,
individually and on behalf of a class of
similarly situated persons,

Plaintiffs,

v.

MAXIMUM BOOTING COMPANY, LLC,
KENNETH P. MCELWANEY, d/b/a
Maximum Booting Company; JDN
REALTY CORPORATION, DDR
PROPERTY MANAGEMENT LLC,
CYMONA WEST, and XYZ COMPANY,

Defendants.

CIVIL ACTION FILE
NO. 17EV004847

CERTIFICATE OF SERVICE

I hereby certify that I have this day served all parties with a copy of the within and foregoing **Notice of Appearance of Counsel for Defendant JDN Realty Corporation** by the E-Filing system as follows:

Michael L. Werner
Mathew Q. Wetherington
Robert N. Friedman
Werner Wetherington,PC
2860 Piedmont Rd.NE
Atlanta, GA 30305

Kevin Patrick
Kevin Patrick Law
2860 Piedmont Rd. NE
Atlanta, GA 30305

[Signatures on following page]

Respectfully submitted this 22nd day of November, 2017.

HALL BOOTH SMITH, P.C.

/s/ Jeffrey R. Daniel

KENNETH D. JONES

Georgia Bar No. 402101

JEFFREY R. DANIEL

Georgia Bar No. 9490075

Attorneys for JDN Realty Corporation

191 Peachtree Street, NE
Suite 2900
Atlanta, GA 30303
T: 404-954-5000/F:404-954-5020

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

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KENNETH P. MCELWANEY, d/b/a
Maximum Booting Company; JDN
REALTY CORPORATION, DDR
PROPERTY MANAGEMENT LLC,
CYMONA WEST, and XYZ COMPANY,

Defendants.

CIVIL ACTION FILE
NO. 17EV004847

**PLAINTIFFS' STIPULATION EXTENDING DEADLINE FOR DEFENDANTS JDN
REALTY CORPORATION, DDR PROPERTY MANAGEMENT LLC, AND CYNOMA
WEST TO FILE THEIR ANSWERS TO PLAINTIFFS' COMPLAINT**

COME NOW, Plaintiffs James E. Burke and Logistics and Distribution Services, Inc.,
individually and on behalf of a class of similarly situated persons, by and through their
undersigned counsel, and hereby stipulate and agree as follows:

- (i) That JDN Realty Corporation shall have until and through Monday, December 25,
2017 to file its Answer to Plaintiffs' Complaint;
- (ii) That DDR Property Management, LLC shall have until and through Monday,
December 25, 2017 to file its Answer to Plaintiffs' Complaint; and
- (iii) That Cymona West shall have until and through Monday, January 7, 2018 to file her
Answer to Plaintiffs' Complaint.

[Signatures on following page]

Stipulated and agreed on this 22nd day of November, 2017.

WERNER WETHERINGTON, PC

*/s/ Matthew Q. Wetherington (signed and filed by
Jeffrey R. Daniel with express permission of
Matthew Q. Wetherington)*

MICHAEL L. WERNER
Georgia Bar No. 748321
MATTHEW Q. WETHERINGTON
Georgia Bar No. 339639
ROBERT N. FRIEDMAN
Georgia Bar No. 945494

2860 Piedmont Rd., NE
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mike@wernerlaw.com
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robert@wernerlaw.com

KEVIN PATRICK LAW
Kevin Patrick
Georgia Bar No. 225211

2860 Piedmont Rd., NE
Atlanta, GA 30305
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kevin@patricktriallaw.com

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

JAMES E. BURKE and LOGISTICS AND
DISTRIBUTION SERVICES, INC.,
individually and on behalf of a class of
similarly situated persons,

Plaintiffs,

v.

MAXIMUM BOOTING COMPANY, LLC,
KENNETH P. MCELWANEY, d/b/a
Maximum Booting Company; JDN
REALTY CORPORATION, DDR
PROPERTY MANAGEMENT LLC,
CYMONA WEST, and XYZ COMPANY,

Defendants.

CIVIL ACTION FILE
NO. 17EV004847

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' STIPULATION EXTENDING DEADLINE FOR DEFENDANTS JDN REALTY CORPORATION, DDR PROPERTY MANAGEMENT LLC, AND CYNOMA WEST TO FILE THEIR ANSWERS TO PLAINTIFFS' COMPLAINT** was served upon the following by the Odyssey E-file System:

Michael L. Werner
Mathew Q. Wetherington
Robert N. Friedman
Werner Wetherington,PC
2860 Piedmont Rd.NE
Atlanta, GA 30305

Kevin Patrick
Kevin Patrick Law
2860 Piedmont Rd. NE
Atlanta, GA 30305

Respectfully submitted this 22nd day of November, 2017.

HALL BOOTH SMITH, P.C.

/s/ Jeffrey R. Daniel

KENNETH D. JONES
Georgia Bar No. 402101
JEFFREY R. DANIEL

Georgia Bar No. 9490075
Attorneys for JDN Realty Corporation

191 Peachtree Street, NE
Suite 2900
Atlanta, GA 30303
T: 404-954-5000/F:404-954-5020

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

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Maximum Booting Company; JDN
REALTY CORPORATION, DDR
PROPERTY MANAGEMENT LLC,
CYMONA WEST, and XYZ COMPANY,

Defendants.

CIVIL ACTION FILE
NO. 17EV004847

**NOTICE OF APPEARANCE OF COUNSEL FOR DEFENDANTS DDR PROPERTY
MANAGEMENT LLC AND CYMONA WEST**

COME NOW, Kenneth D. Jones and Jeffrey R. Daniel of Hall Booth Smith, P.C., 191
Peachtree St, NE, Suite 2900, Atlanta, Georgia 30303, and hereby appear as counsel of record
for Defendants DDR Property Management LLC and Cymona West in the above-styled action.

[Signatures on following page]

Respectfully submitted this 13th day of December, 2017.

HALL BOOTH SMITH, P.C.

/s/ Jeffrey R. Daniel

KENNETH D. JONES

Georgia Bar No. 402101

JEFFREY R. DANIEL

Georgia Bar No. 9490075

*Attorneys for Defendants JDN Realty
Corporation, DDR Property Management,
LLC, and Cymona West*

191 Peachtree Street, N.E.

Suite 2900

Atlanta, GA 30303-1775

Tel: 404-954-5000

Fax: 404-954-5020

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

JAMES E. BURKE and LOGISTICS AND
DISTRIBUTION SERVICES, INC.,
individually and on behalf of a class of
similarly situated persons,

Plaintiffs,

v.

MAXIMUM BOOTING COMPANY, LLC,
KENNETH P. MCELWANEY, d/b/a
Maximum Booting Company; JDN
REALTY CORPORATION, DDR
PROPERTY MANAGEMENT LLC,
CYMONA WEST, and XYZ COMPANY,

Defendants.

CIVIL ACTION FILE
NO. 17EV004847

CERTIFICATE OF SERVICE

I hereby certify that I have this day served all parties with a copy of the within and foregoing **Notice of Appearance of Counsel for Defendants DDR Property Management LLC and Cymona West** by the E-Filing system as follows:

Michael L. Werner
Mathew Q. Wetherington
Robert N. Friedman
Nola D. Jackson
Werner Wetherington,PC
2860 Piedmont Rd.NE
Atlanta, GA 30305

Kevin Patrick
Kevin Patrick Law
2860 Piedmont Rd. NE
Atlanta, GA 30305

Respectfully submitted this 13th day of December, 2017.

HALL BOOTH SMITH, P.C.

/s/ Jeffrey R. Daniel
KENNETH D. JONES
Georgia Bar No. 402101
JEFFREY R. DANIEL
Georgia Bar No. 9490075

Attorneys for Defendants JDN Realty Corporation, DDR Property Management, LLC, and Cymona West

191 Peachtree Street, NE
Suite 2900
Atlanta, GA 30303
T: 404-954-5000/F: 404-954-5020

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

JAMES E. BURKE and LOGISTICS AND
DISTRIBUTION SERVICES, INC.,
individually and on behalf of a class of
similarly situated persons,

Plaintiffs,

v.

MAXIMUM BOOTING COMPANY, LLC,
KENNETH P. MCELWANEY, d/b/a
Maximum Booting Company; JDN
REALTY CORPORATION, DDR
PROPERTY MANAGEMENT LLC,
CYMONA WEST, and XYZ COMPANY,

Defendants.

CIVIL ACTION FILE
NO. 17EV004847

**JOINT STIPULATION EXTENDING DEADLINE FOR DEFENDANTS JDN REALTY
CORPORATION, DDR PROPERTY MANAGEMENT LLC, AND CYNOMA WEST TO
FILE THEIR ANSWERS TO PLAINTIFFS' COMPLAINT**

COME NOW, Plaintiffs James E. Burke and Logistics and Distribution Services, Inc., individually and on behalf of a class of similarly situated persons, and Defendants JDN Realty Corporation, DDR Property Management LLC, and Cymona West, by and through their respective undersigned counsel, and hereby jointly stipulate and agree that Defendants JDN Realty Corporation, DDR Property Management LLC, and Cymona West shall have until and through Monday, January 15, 2018 to file their Answers to Plaintiffs' Complaint in the above-styled action.

[Signatures on following page]

Stipulated and agreed on this 18th day of December, 2017.

WERNER WETHERINGTON, PC

/s/ Matthew Q. Wetherington (signed and filed by Jeffrey R. Daniel with express permission)

MICHAEL L. WERNER
Georgia Bar No. 748321
MATTHEW Q. WETHERINGTON
Georgia Bar No. 339639
ROBERT N. FRIEDMAN
Georgia Bar No. 945494

2860 Piedmont Rd., NE
Atlanta, GA 30305
770-VERDICT
mike@wernerlaw.com
matt@wernerlaw.com
robert@wernerlaw.com

2860 Piedmont Rd., NE
Atlanta, GA 30305
404-566-8964
kevin@patricktriallaw.com

KEVIN PATRICK LAW
KEVIN PATRICK
Georgia Bar No. 225211

Counsel for Plaintiffs

HALL BOOTH SMITH, P.C.

/s/ Jeffrey R. Daniel

KENNETH D. JONES
Georgia Bar No. 402101
JEFFREY R. DANIEL
Georgia Bar No. 949075

191 Peachtree Street, N.E.
Suite 2900
Atlanta, GA 30303-1775
Tel: 404-954-5000
Fax: 404-954-5020

Counsel for Defendants JDN Realty Corporation, DDR Property Management LLC, and Cymona West

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

JAMES E. BURKE and LOGISTICS AND
DISTRIBUTION SERVICES, INC.,
individually and on behalf of a class of
similarly situated persons,

Plaintiffs,

v.

MAXIMUM BOOTING COMPANY, LLC,
KENNETH P. MCELWANEY, d/b/a
Maximum Booting Company; JDN
REALTY CORPORATION, DDR
PROPERTY MANAGEMENT LLC,
CYMONA WEST, and XYZ COMPANY,

Defendants.

CIVIL ACTION FILE
NO. 17EV004847

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **JOINT STIPULATION EXTENDING DEADLINE FOR DEFENDANTS JDN REALTY CORPORATION, DDR PROPERTY MANAGEMENT LLC, AND CYNOMA WEST TO FILE THEIR ANSWERS TO PLAINTIFFS' COMPLAINT** was served upon the following by the Odyssey E-file System:

Michael L. Werner
Mathew Q. Wetherington
Robert N. Friedman
Werner Wetherington,PC
2860 Piedmont Rd.NE
Atlanta, GA 30305

Kevin Patrick
Kevin Patrick Law
2860 Piedmont Rd. NE
Atlanta, GA 30305

Respectfully submitted this 18th day of December, 2017.

HALL BOOTH SMITH, P.C.

/s/ Jeffrey R. Daniel

KENNETH D. JONES
Georgia Bar No. 402101
JEFFREY R. DANIEL

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Georgia Bar No. 9490075

*Counsel for Defendants JDN Realty
Corporation, DDR Property Management
LLC, and Cymona West*

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NEVADA SECRETARY OF STATE

Barbara K. Cegavske

[GO](#)

[SOS INFORMATION](#) | [ELECTIONS](#) | [BUSINESSES](#) | [LICENSING](#) | [INVESTOR INFORMATION](#) | [ONLINE SERVICES](#)

LOGISTICS AND DISTRIBUTION SERVICES INC.

Q New Search	Manage this Business	\$ Calculate List Fees	Printer Friendly
------------------------------	--------------------------------------	--	----------------------------------

Business Entity Information			
Status:	Active	File Date:	1/20/1995
Type:	Domestic Corporation	Entity Number:	C329-1995
Qualifying State:	NV	List of Officers Due:	1/31/2019
Managed By:		Expiration Date:	
NV Business ID:	NV19951043531	Business License Exp:	1/31/2019

Additional Information	
Central Index Key:	

Registered Agent Information			
Name:	MAUPIN, COX & LEGOY, A PROFESSIONAL CORPORATION	Address 1:	4785 CAUGHLIN PARKWAY
Address 2:		City:	RENO
State:	NV	Zip Code:	89519
Phone:		Fax:	
Mailing Address 1:	PO BOX 30000	Mailing Address 2:	
Mailing City:	RENO	Mailing State:	NV
Mailing Zip Code:	89520		
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

[View all business entities under this registered agent](#)

Financial Information			
No Par Share Count:	1,000.00	Capital Amount:	\$ 0
No stock records found for this company			

<input type="checkbox"/> Officers	<input type="checkbox"/> Include Inactive Officers
-----------------------------------	--

President - ROSS A KLINE			
Address 1:	14331 LEAR BLVD	Address 2:	
City:	RENO	State:	NV
Zip Code:	89506	Country:	
Status:	Active	Email:	
Secretary - ROSS A KLINE			
Address 1:	14331 LEAR BLVD	Address 2:	
City:	RENO	State:	NV
Zip Code:	89506	Country:	
Status:	Active	Email:	
Treasurer - ROSS A KLINE			
Address 1:	14331 LEAR BLVD	Address 2:	
City:	RENO	State:	NV
Zip Code:	89506	Country:	
Status:	Active	Email:	
Director - ROSS A KLINE			
Address 1:	14331 LEAR BLVD	Address 2:	
City:	RENO	State:	NV
Zip Code:	89506	Country:	
Status:	Active	Email:	

- Actions\Amendments
Click here to view 27 actions\amendments associated with this company

USDOT Number MC/MX Number Name

Enter Value:

Company Snapshot

LOGISTICS AND DISTRIBUTION SERVICES INC
 USDOT Number: 94563-

ID/Operations | [Inspections/Crashes In US](#) | [Inspections/Crashes In Canada](#) | [Safety Rating](#)

Other Information for this Carrier

- [SMS Results](#)
- [Licensing & Insurance](#)

Carriers: If you would like to update the following ID/Operations information, please complete and submit form [MCS-150](#) which can be obtained [online](#) or from your State FMCSA office. If you would like to challenge the accuracy of your company's safety data, you can do so using FMCSA's [DataQs](#) system.

Carrier and other users: FMCSA provides the Company Safety Profile (CSP) to motor carriers and the general public interested in obtaining greater detail on a particular motor carrier's safety performance then what is captured in the Company Snapshot. To obtain a CSP please visit the [CSP order page](#) or call (800)832-5660 or (703)280-4001 (Fee Required).

For help on the explanation of individual data fields, click on any field name or for help of a general nature go to [SAFER General Help](#).

The information below reflects the content of the FMCSA management information systems as of **12/29/2017**. **Carrier VMT Outdated.**

Entity Type:	CARRIER		
Operating Status:	AUTHORIZED FOR Property	Out of Service Date:	None
Legal Name:	LOGISTICS AND DISTRIBUTION SERVICES INC		
DBA Name:			
Physical Address:	992 SPICE ISLAND DR SPARKS, NV 89431		
Phone:	(775) 398-2612		
Mailing Address:	1755 PURINA WAY SPARKS, NV 89431		
USDOT Number:	945634	State Carrier ID Number:	
MC/MX/FF Number(s):	MC-405789	DUNS Number:	--
Power Units:	176	Drivers:	176
MCS-150 Form Date:	06/20/2017	MCS-150 Mileage (Year):	8,999,051 (2014)
Operation Classification:			
	<input checked="" type="checkbox"/> Auth. For Hire	Priv. Pass.(Non-business)	State Gov't
	Exempt For Hire	Migrant	Local Gov't
	Private(Property)	U.S. Mail	Indian Nation
	Priv. Pass. (Business)	Fed. Gov't	
Carrier Operation:			
	<input checked="" type="checkbox"/> Interstate	Intrastate Only (HM)	Intrastate Only (Non-HM)
Cargo Carried:			
<input checked="" type="checkbox"/> General Freight	Liquids/Gases	Chemicals	
Household Goods	Intermodal Cont.	Commodities Dry Bulk	
Metal: sheets, coils, rolls	Passengers	<input checked="" type="checkbox"/> Refrigerated Food	
Motor Vehicles	Oilfield Equipment	<input checked="" type="checkbox"/> Beverages	
Drive/Tow away	Livestock	<input checked="" type="checkbox"/> Paper Products	
Logs, Poles, Beams, Lumber	Grain, Feed, Hay	Utilities	
Building Materials	Coal/Coke	Agricultural/Farm Supplies	
Mobile Homes	Meat	Construction	
Machinery, Large Objects	Garbage/Refuse	Water Well	
<input checked="" type="checkbox"/> Fresh Produce	US Mail		

[ID/Operations](#) | [Inspections/Crashes In US](#) | [Inspections/Crashes In Canada](#) | [Safety Rating](#)

US Inspection results for 24 months prior to: **12/29/2017**

Total Inspections: 286
 Total IEP Inspections: 0

Note: Total inspections may be less than the sum of vehicle, driver, and hazmat inspections. Go to [Inspections Help](#) for further information.

Inspection Type	<u>Inspections:</u>			
	Vehicle	Driver	Hazmat	IEP
Inspections	184	286	0	0
Out of Service	28	6	0	0
Out of Service %	15.2%	2.1%	%	0%
Nat'l Average % (2009-2010)	20.72%	5.51%	4.50%	N/A

Crashes reported to FMCSA by states for 24 months prior to: 12/29/2017

Note: Crashes listed represent a motor carrier's involvement in reportable crashes, without any determination as to responsibility.

Type	<u>Crashes:</u>			
	Fatal	Injury	Tow	Total
Crashes	0	0	7	7

[ID/Operations](#) | [Inspections/Crashes In US](#) | [Inspections/Crashes In Canada](#) | [Safety Rating](#)

Canadian Inspection results for 24 months prior to: 12/29/2017

Total inspections: 0

Note: Total inspections may be less than the sum of vehicle and driver inspections. Go to [Inspections Help](#) for further information.

Inspection Type	<u>Inspections:</u>	
	Vehicle	Driver
Inspections	0	0
Out of Service	0	0
Out of Service %	0%	0%

Crashes results for 24 months prior to: 12/29/2017

Note: Crashes listed represent a motor carrier's involvement in reportable crashes, without any determination as to responsibility.

Type	<u>Crashes:</u>			
	Fatal	Injury	Tow	Total
Crashes	0	0	0	0

[ID/Operations](#) | [Inspections/Crashes In US](#) | [Inspections/Crashes In Canada](#) | [Safety Rating](#)

The Federal safety rating does not necessarily reflect the safety of the carrier when operating in intrastate commerce.

Carrier Safety Rating:

The rating below is current as of: 12/29/2017

Review Information:

Rating Date:	None	Review Date:	11/04/2014
Rating:	None	Type:	Non-Ratable

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JAMES E. BURKE and LOGISTICS AND)
DISTRIBUTION SERVICES, INC., Individually,)
and on behalf of a class of similarly situated)
persons)

Plaintiffs,)

v.)

MAXIMUM BOOTING COMPANY, LLC;)
KENNETH P. MCELWANEY, d/b/a)
Maximum Booting Company; JDN REALTY)
CORPORATION; DDR PROPERTY)
MANAGEMENT LLC; CYMONA WEST; and)
XYZ COMPANY,)

Defendants.)

CIVIL ACTION
FILE NO.

CERTIFICATE OF FILING NOTICE OF REMOVAL

COMES NOW MAXIMUM BOOTING COMPANY, LLC AND
KENNETH P. MCELWANEY d/b/a MAXIMUM BOOTING COMPANY, named
as Defendants in the above-captioned case, and hereby certifies that on this day a
copy of its Notice of Removal of this action to this Court was filed with the Clerk
of the State Court of Fulton County, Georgia.

This 31st day of December, 2017.

Respectfully submitted,

/s/ Brynda Rodriguez Insley
BRYNDA RODRIGUEZ INSLEY
Georgia Bar No. 611435
KENNETH J. BENTLEY
Georgia Bar No. 715496
Attorneys for Defendants
Maximum Booting Company, LLC
And Kenny McElwaney d/b/a
Maximum Booting Company

INSLEY & RACE, LLC
The Mayfair Royal
181 14th Street, NE, Suite 200
Atlanta, Georgia 30309
(404) 876-9818
binsley@insleyrace.com
kbentley@insleyrace.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing **CERTIFICATE OF FILING NOTICE OF REMOVAL** upon all parties to this matter by emailing a copy of the same to counsel of record as follows:

Attorneys for Plaintiffs:

Michael L. Werner, Esq.
Matthew Q. Wetherington, Esq.
Robert N. Friedman, Esq.
The Werner Law Firm
2860 Piedmont Rd. NE
Atlanta, GA 30305
Mike@WernerLaw.com
Matt@WernerLaw.com
robert@wernerlaw.com

Kevin Patrick, Esq.
Kevin Patrick Law
2860 Piedmont Rd. NE
Atlanta, GA 30305
kevin@patricktrialaw.com

**Attorneys for Defendant JDN Realty Corporation
DDR Property Management, LLC and Cymona West**

Kenneth D. Jones, Esq.
Jeffrey R. Daniel, Esq.
Hall Booth Smith, PC
191 Peachtree Street, NE
Suite 2900
Atlanta, GA 30303
kjones@hallboothsmith.com
jdaniel@hallboothsmith.com

This 31st day of December, 2017.

Respectfully submitted,

/s/ Brynda Rodriguez Insley _____
BRYNDA RODRIGUEZ INSLEY
Georgia Bar No. 611435
KENNETH J. BENTLEY
Georgia Bar No. 715496
Attorneys for Defendants
Maximum Booting Company, LLC
And Kenny McElwaney d/b/a
Maximum Booting Company

INSLEY & RACE, LLC
The Mayfair Royal
181 14th Street, NE, Suite 200
Atlanta, Georgia 30309
(404) 876-9818
binsley@insleyrace.com
kbentley@insleyrace.com

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), the undersigned counsel hereby certifies that the foregoing pleading was prepared in Times New Roman 14-point font, in compliance with Local Rule 5.1(C).

This 31st day of December, 2017.

Respectfully submitted,

/s/ Brynda Rodriguez Insley
BRYNDA RODRIGUEZ INSLEY
Georgia Bar No. 611435
Attorneys for Defendants
Maximum Booting Company, LLC
And Kenny McElwaney d/b/a
Maximum Booting Company

INSLEY & RACE, LLC
The Mayfair Royal
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Atlanta, Georgia 30309
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binsley@insleyrace.com

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

JAMES E. BURKE and LOGISTICS AND DISTRIBUTION SERVICES, INC., Individually, and on behalf of a class of similarly situated persons

DEFENDANT(S)

MAXIMUM BOOTING COMPANY, LLC; KENNETH P. MCELWANEY, d/b/a Maximum Booting Company; JDN REALTY CORPORATION; DDR PROPERTY MANAGEMENT LLC; CYMONA WEST; and XYZ COMPANY

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Fulton (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Fulton (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Matthew Q. Wetherington
Werner Wetherington PC
2860 Piedmond Road NE
Atlanta, GA 30305
770-837-3428

ATTORNEYS (IF KNOWN)

Brynda Rodriguez Insley
INSLEY & RACE, LLC
The Mayfair Royal
181 14th Street, NE, Suite 200
Atlanta, Georgia 30309

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
2 U.S. GOVERNMENT DEFENDANT
3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

- PLF DEF PLF DEF
1 1 CITIZEN OF THIS STATE 4 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
2 2 CITIZEN OF ANOTHER STATE 5 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
3 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY 6 6 FOREIGN NATION

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
2 REMOVED FROM STATE COURT
3 REMANDED FROM APPELLATE COURT
4 REINSTATED OR REOPENED
5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
6 MULTIDISTRICT LITIGATION - TRANSFER
7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
8 MULTIDISTRICT LITIGATION - DIRECT FILE

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Class Action Fairness Act of 2005 codified at 28 U.S.C. 13329d) and 1453. This is a putative class action in which (a) there are 100 or more members in plaintiffs' proposed class, (b) one or more members of the alleged class are citizens of a state different from the defendants, and (c) the aggregate amount in controversy exceeds the sum or value of \$5 million, exclusive of interests and costs.

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties.
2. Unusually large number of claims or defenses.
3. Factual issues are exceptionally complex
4. Greater than normal volume of evidence.
5. Extended discovery period is needed.
6. Problems locating or preserving evidence
7. Pending parallel investigations or actions by government.
8. Multiple use of experts.
9. Need for discovery outside United States boundaries.
10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # AMOUNT \$ APPLYING IFP MAG. JUDGE (IFP)
JUDGE MAG. JUDGE (Referral) NATURE OF SUIT CAUSE OF ACTION

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 440 OTHER CIVIL RIGHTS
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT
- 835 PATENT-ABBREVIATED NEW DRUG APPLICATIONS (ANDA) - a/k/a Hatch-Waxman cases

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395f)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 Qui Tam 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTI-TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ N/A

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

/s/ Brynda Rodriguez Insley, Esq.

December 4 31, 2017

SIGNATURE OF ATTORNEY OF RECORD

DATE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Seeks to Boot Unauthorized Vehicle Immobilization in Georgia](#)
