IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

MICHAEL STEWART, Individually, and on behalf of a class of similarly situated persons, Plaintiffs, v. BUCKHEAD PARKING ENFORCEMENT, LLC; MCDONALD'S CORPORATION; SUSO 3 NEWNAN LP; and SLATE PROPERTIES, LLC, Defendants.	)	CIVIL ACTION FILE NO. _____

NOTICE OF REMOVAL

Defendant McDonald's Corporation ("McDonald's") files its Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1446, and 1453(b) and shows as follow:

I. THE COMPLAINT AND STATE COURT PROCEEDINGS

1. Plaintiff Michael Stewart filed a complaint on behalf of a class of similarly situated persons against Defendants, including McDonald's, in the State Court of Forsyth County, Georgia (the "State Court"), on February 7, 2018.

2. The Complaint and Summons were served upon McDonald's registered agent on February 14, 2018. A Motion for Class Certification was also served on McDonald's registered agent on March 1, 2018. Copies of the State

Court Complaint and all papers served on McDonald's in the State Court action are attached as Exhibit 1.

3. McDonald's has filed no responsive pleadings in the State Court.

4. This case is properly removable pursuant to 28 U.S.C. § 1453(b) because McDonald's has satisfied the procedural requirements of 28 U.S.C. § 1446, and because this Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

II. MCDONALD'S HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL

5. The removed action is a putative "class action" because it is a "civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure," in this case O.C.G.A. § 9-11-23, "authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B).

6. Plaintiff served McDonald's with the Summons and Complaint on February 14, 2018. Hence, McDonald's filed this Notice of Removal within 30 days of service. *See* 28 U.S.C. § 1446(b).

7. Venue in this Court is proper because this is "the district court of the United States for the district and division embracing the place where such action is

pending." 28 U.S.C. § 1441(a); 28 U.S.C. § 90(a)(1) (Forsyth County lies in the Gainesville Division of the Northern District of Georgia).

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

9. McDonald's has filed this Notice of Removal with this Court, and this day will also serve a copy of the Notice on Plaintiff's counsel and the other Defendants, as well as file a copy of the Notice with the State Court. A copy of the state court docket as of March 12, 2018 is attached as Exhibit 2.

III. CLASS ACTION FAIRNESS ACT JURISDICTION

10. This putative class action is removable pursuant to the Class Action Fairness Act ("CAFA"). 28 U.S.C. §§ 1332(d) and 1453. As explained below, the proposed class contains (a) one or more members who are citizens of a state different from McDonald's; and (b) the aggregate amount in controversy exceeds $5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2)(A).

A. At Least One Class Member is a Citizen of a State Different from McDonald's

11. CAFA 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).

12. McDonald's is a citizen of Delaware, its state of incorporation, and Illinois, its principal place of business. *See* Georgia Secretary of State Registration, Ex. A

13. Plaintiff fails to allege his own citizenship, instead stating that he "avails himself of the jurisdiction of this Court" by "bringing this Action." (Compl. ¶ 2).

14. Plaintiff seeks to represent "*[a]ll persons* who have been booted … and paid fines for removal of said device within the State of Georgia from January 25, 2013, through present. . . ." (Compl. ¶ 23(a)). In other words, Plaintiff purports to represent "all persons," regardless of their citizenships, whose cars, trucks, or other vehicles have been booted in Georgia. The proposed class thus is not limited to citizens of Georgia (or Delaware or Illinois, for that matter).

15. It is highly likely, based on Plaintiff's allegations and the putative class definition, that the class includes at least one member diverse from McDonald's (*i.e.*, a member not from Illinois or Delaware). Indeed, if Plaintiff or any other class member is domiciled in Georgia, minimal diversity is satisfied. Because it is highly likely that at least one member of

the putative class is domiciled in a state other than Illinois or Delaware, the minimal diversity requirement of 28 U.S.C. § 1332(d)(2) is satisfied.[1]

B. The Amount in Controversy Exceeds $5,000,000

16. CAFA allows aggregation of class claims to determine whether the amount in controversy exceeds $5,000,000. 28 U.S.C. § 1332(d)(6). Plaintiff's and the class's alleged damages and other monetary relief sought or implicated by the Complaint's allegations exceed that bar.

17. 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, 554 (2014).

18. McDonald's denies any liability to Plaintiff or the proposed class (McDonald's also denies that a viable class exists) for either monetary or equitable relief under any claim, including those in the Complaint. Nevertheless, for purposes of this Notice of Removal, the Complaint establishes that the amount in controversy exceeds $5,000,000. *See Pretka*

[1] In *Bankhead v. Castle Parking Solutions, LLC*, Judge Duffey found CAFA's minimal diversity requirement satisfied under virtual identical allegations and claims made by the same Plaintiff's lawyer as in this case. Civ. No. 1:17-cv-4085, Order at 8 (N.D. Ga. Dec. 1, 2017). A copy of that Order is attached as Exhibit 3.

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.") (quoting *Amoche v. Guar. Trust Life Ins. Co.*, 556 F.3d 41, 51 (1st Cir. 2009)).

1. *Alleged compensatory damages*

19. A defendant can demonstrate the amount in controversy through various means, including whether that amount 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.").

20. Plaintiff alleges that "Defendant Buckhead Parking Enforcement, LLC ("Buckhead Parking") has a systematic process of unlawfully disabling vehicles with boots and similar devices throughout Georgia. As a result, Buckhead Parking has collected an ***unknown number of dollars in fees*** in an unlawful manner." (Compl. ¶ 1) (emphasis added). In a nearly identical complaint filed by the same Plaintiff's counsel who

represent Plaintiff here, the Court found the CAFA jurisdictional amount was satisfied by allegations which included "egregious amount of booting fees" collected by the defendant. *Burke v. Maximum Booting Company, LLC*, No. 1:17-cv-5553-WSD, Notice of Removal at 10 (N.D. Ga. December 31, 2017).

21. Here, Plaintiff alleges that Buckhead Parking "is a vehicle immobilization service operating within the State of Georgia." (Compl ¶ 12). The other Defendants allegedly "own or occupy property at which Buckhead Parking operates, and have hired, authorized, or otherwise provided material support to Buckhead Parking." (*Id.* ¶ 13).

22. Plaintiff alleges that he parked in a private parking lot at 58 Bullsboro Dr., Newnan, Georgia, on or about January 25, 2018. (Compl at ¶ 16). Buckhead Parking allegedly "placed a boot on Plaintiff's vehicle and refused to remove it unless Plaintiff paid a $500.00 fine." (*Id.* at ¶ 19). Because the City of Newnan does not have a vehicle immobilization ordinance," Plaintiff contends that "Buckhead Parking unlawfully booted Plaintiff's vehicle without legal authority and caused damages to Plaintiff." (*Id.* at ¶ 21).

23. Plaintiff alleges that a class of individuals, "so numerous that joinder of all members would be impractical," suffered identical vehicle booting, over a ***five year*** period from January 25, 2013 to the present, ***throughout the State of Georgia***. (Compl. ¶¶ 23(a), 25). And in his motion for class certification, Plaintiff contends that the class is "made up of ***countless*** individuals." (Ex. 1, Mot. Class Certification at 5) (emphasis added). If even 400 people per year are booted by Buckhead Parking across the entire State of Georgia in Counties that lack a vehicle immobilization ordinance, Buckhead Parking's collection of an "unknown number of dollars in fees" would total at least $1,000,000 (400 x 5 years x $500 = $1,000,000). If 1,000 people per year were booted state-wide from January 25, 2013 to the present, Buckhead Parking would have collected approximately $2,500,000 in boot fees.

24. Given (1) Plaintiff's allegation that Buckhead Parking immobilized "at least twenty (20) vehicles at . . . 58 Bullsboro Rd., Newnan, Georgia" alone, and (2) that Georgia has 159 counties, $1,000,000 likely represents a conservative estimate of the compensatory damages at issue in this case, particularly given the five year timeframe and the "countless" class size.

25. In addition to these alleged booting fees, Plaintiff alleges that he and all other class members have incurred additional compensatory damages "in an amount to be determined by the enlightened conscience of a jury as a result of Defendants' conduct." (Compl. ¶¶ 32, 36, 39, 42, 46, 52, 54, 65). Given the tort claims at issue, such compensatory damages likely included alleged damage to property, alleged loss of use of the booted vehicles, cab or other transportation expenses, and emotional distress. Such damages could easily exceed $5 million on their own.

2. *Alleged treble damages, punitive damages, and attorney's fees*

26. In addition to compensatory damages, the Complaint seeks punitive damages and attorneys' fees. (Compl. at ¶¶ 66-69). These damages form part of the amount in controversy calculation. *See McDaniel v. Fifth Third Bank*, 568 F. App'x 729, 731 (11th Cir. 2014) (punitive damages may form part of the jurisdictional amount in controversy in CAFA cases); *Porter v. MetroPCS Comms., Inc.*, 592 F. App'x 780, 783-84 (11th Cir. 2014) (same for attorney's fees).

27. Plaintiff alleges that Defendants engaged in certain conduct that entitles Plaintiff and each member of the putative class to punitive damages

under O.C.G.A. § 51-12-5.1 on each of Plaintiff's tort claims. (Compl. ¶¶68-69).

28. Given a compensatory damages ratio of 2, an estimated punitive damages award could easily range from $2,000,000 to $10,000,000 ($2 million if the class is limited to recovering the booting charges, $10 million if the class is also awarded other compensatory damages, including damage to property and emotional distress). Courts in the Eleventh Circuit have affirmed punitive damages awards applying multiples of compensatory damages far greater than 2. *See, e.g.*, 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); *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003) (suggesting that a 4:1 ratio of punitive to compensatory damages approached the constitutional limit for an award in that case).

29. Plaintiff also seeks treble damages (Compl. ¶ 78(b)), which may be recovered under Georgia's RICO statute. *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 compensatory damages results in a range of treble damages of $3,000,000 to $15,000,000.

30. Plaintiff also seeks attorneys' fees, which are allowable under the Georgia RICO statute and for conversion and civil theft claims. *See* O.C.G.A. § 16-14-6(c); *Mays v. Lampkin*, 207 Ga. App. 739, 741, 429 S.E.2d 113, 116 (1993) (affirming grant of attorney's fees in conversion action). Plaintiff further requests recovery of attorneys' fees under O.C.G.A. § 13-6-11 on all claims. (Compl. at ¶¶ 66-67).

31. A conservative estimate of Plaintiff's attorneys' fees in controversy would be $1,000,000 to $3,000,000 based on the Complaint's compensatory and punitive damages allegations as well as the time and expense it takes to properly litigate a class action. *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).

32. The total alleged compensatory damages ($1,000,000 to $5,000,000), punitive damages ($2,000,000 to $10,000,000), treble damages

($3,000,000 to $15,000,000), and attorney's fees ($1,000,000 to $3,000,000) placed in controversy by Plaintiff easily exceed the $5,000,000 jurisdictional minimum.

33. Because (1) the amount in controversy exceeds $5,000,000, and (2) minimal diversity exists, McDonald's respectfully requests that this Court assume jurisdiction over this case. 28 U.S.C. § 1332(d)(2).

This 16th day of March, 2018.

/s/ Todd D. Wozniak
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Counsel for McDonald's Corporation

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

MICHAEL STEWART, Individually, and on behalf of a class of similarly situated persons,	)	
Plaintiffs,	)	CIVIL ACTION FILE NO.
v.	)	_____
BUCKHEAD PARKING ENFORCEMENT, LLC; MCDONALD'S CORPORATION; SUSO 3 NEWNAN LP; and SLATE PROPERTIES, LLC,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that on Marth 16, 2018, I electronically filed the foregoing document using Court's CM/ECF system, which will send notice of electronic filing to all counsel of record. I also certify that the foregoing document is being served this day on the following counsel of record via U.S. first class mail:

Matt Q. Wetherington, Esq.
Robert N. Friedman, Esq.
Werner Wetherington, P.C.
2860 Piedmont Rd., NE
Atlanta, Georgia 30305

This 16th day of March, 2018.

/s/ Todd D. Wozniak
Todd D. Wozniak

EXHIBIT 1

CSC

Notice of Service of Process

null / ALL
Transmittal Number: 17776105
Date Processed: 02/15/2018

Primary Contact:
SOP CSC MCD
McDonald's Corporation
Campus Office Building
2915 Jorie Blvd.
Oak Brook, IL 60523

Entity:	McDonald's Corporation Entity ID Number 0537858
Entity Served:	McDonald's Corporation
Title of Action:	Michael Stewart vs. Buckhead Parking Enforcement, LLC
Document(s) Type:	Summons/Complaint
Nature of Action:	Class Action
Court/Agency:	Forsyth County State Court, Georgia
Case/Reference No:	18SC-0099-B
Jurisdiction Served:	Georgia
Date Served on CSC:	02/14/2018
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Matt Q. Wetherington 404-793-1693

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

FORSYTH COUNTY, GEORGIA
FILED IN THIS OFFICE
2/7/2018 6:15 PM
GREG G. ALLEN
CLERK OF THE STATE COURTS
18SC-0099-B
McClelland, T. Russell, III

IN THE STATE COURT OF FORSYTH COUNTY
STATE OF GEORGIA

MICHAEL STEWART, Individually, and on behalf of a class of similarly situated persons, Plaintiff, v. BUCKHEAD PARKING ENFORCEMENT, LLC, MCDONALD'S CORPORATION, FRANCHISE REALTY INTERSTATE CORPORATION, SUSO 3 NEWNAN LP, and SLATE PROPERTIES, LLC, and Defendants.	CIVIL ACTION FILE NUMBER

SUMMONS

TO THE ABOVE-NAMED DEFENDANT: MCDONALD'S CORPORATION, c/o Registered Agent The Prentice-Hall Corp. System at 40 Technology Pkwy South, #300, Norcross, GA, 30092.

You are hereby summoned and required to file with the Clerk of said Court, and serve upon the Plaintiff's attorney, whose name and address is:

Matt Q. Wetherington, Esq.
Robert N. Friedman, Esq.
Werner Wetherington, P.C.
2860 Piedmont Rd. NE
Atlanta, GA 30305
(404) 793-1693

an answer to the Petition which is herewith served upon you, within 30 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in this Petition.

This the ___ day of _____, 2018.

Clerk of State Court

_____

By: Deputy Clerk

FORSYTH COUNTY, GEORGIA
FILED IN THIS OFFICE
2/7/2018 6:15 PM
GREG G. ALLEN
CLERK OF THE STATE COURTS
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MICHAEL STEWART, Individually, and on behalf of a class of similarly situated persons, Plaintiff, v. BUCKHEAD PARKING ENFORCEMENT, LLC, MCDONALD'S CORPORATION, FRANCHISE REALTY INTERSTATE CORPORATION, SUSO 3 NEWNAN LP, and SLATE PROPERTIES, LLC, and Defendants.	CIVIL ACTION FILE NUMBER

CLASS ACTION COMPLAINT

1. Defendant Buckhead Parking Enforcement, LLC ("Buckhead Parking") has a systematic process of unlawfully disabling vehicles with boots and similar devices throughout Georgia. As a result, Buckhead Parking has collected an unknown number of dollars in fees in an unlawful manner. All other Defendants own or occupy property at which Buckhead Parking operates, and have hired, authorized, or otherwise provided material support to Buckhead Parking and / or other individuals or entities that unlawfully boot vehicles throughout Georgia. Plaintiff brings this action to recover damages and other available remedies on behalf of themselves and a class of persons similarly situated.

I. PARTIES

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

3. Buckhead Parking is a limited liability company registered to do business in Georgia that is subject to the jurisdiction of this Court. Buckhead Parking may be served through its registered agent, John Willam Page at 345 Vineyard Drive NW, Marietta, GA, 30064. Venue is proper as to Buckhead Parking because it is a joint tortfeasor with one or more Defendants who are residents of Forsyth County.

4. McDonald's Corporation is a corporation registered to do business in Georgia that is subject to the jurisdiction of this Court. McDonald's Corporation may be served through its registered agent, The Prentice-Hall Corp. System at 40 Technology Pkwy South, #300, Norcross, GA, 30092. Venue is proper as to McDonald's Corporation because it is a joint tortfeasor with one or more Defendants who are residents of Forsyth County.

5. Franchise Realty Interstate Corporation is a corporation registered to do business in Georgia that is subject to the jurisdiction of this Court. Franchise Realty Interstate Corporation may be served through The Prentice-Hall Corp. System at 40 Technology Pkwy South, #300, Norcross, GA, 30092. Venue is proper as to Franchise Realty Interstate Corporation because it is a joint tortfeasor with one or more Defendants who are residents of Forsyth County.

6. Suso 3 Newnan LP is a limited partnership registered to do business in Georgia that is subject to the jurisdiction of this Court. Suso 3 Newnan LP may be served through its registered agent C T Corporation System at 289 S Culver St, Lawrenceville, GA, 30046. Venue is proper as to Suso 3 Newnan LP because it is a joint tortfeasor with one or more Defendants who are residents of Forsyth County.

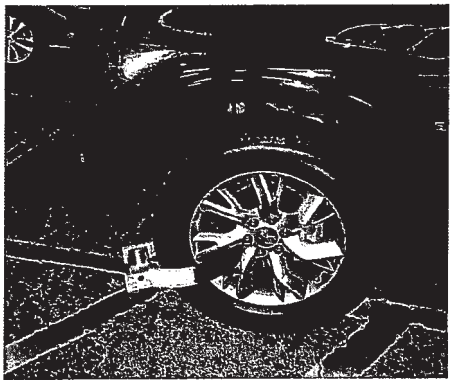
7. Slate Properties, LLC is a limited liability company registered to do business in Georgia that is subject to the jurisdiction of this Court. Slate Properties, LLC may be served through its registered agent Ralph J. Amos at 111 Industrial Park Drive, Cumming, GA, 30040. Venue is proper as to Slate Properties, LLC because it is a resident of Forsyth County.

II. STATEMENT OF FACTS

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

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

10. 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:



11. In the absence of a vehicle immobilization ordinance, and complete compliance with that ordinance, booting vehicles in Georgia is strictly unlawful.

12. Buckhead Parking is a vehicle immobilization service operating within the State of Georgia.

13. On information and belief, all other Defendants own or occupy property at which Buckhead Parking operates, and have hired, authorized, or otherwise provided material support to Buckhead Parking and / or other individuals or entities that unlawfully immobilize vehicles.

14. Defendants have immobilized at least twenty (20) vehicles in the state of Georgia and received payment for the removal of the vehicle immobilization device.

15. Defendants have immobilized at least twenty (20) vehicles at, or around, 58 Bullsboro Dr, Newnan, GA 30263 and received payment for the removal of the vehicle immobilization device.

III. NAMED PLAINTIFF'S EXPERIENCE

16. On or about January 25, 2018, Plaintiff parked in a private parking lot located at, or around, 58 Bullsboro Dr, Newnan, GA 30263, which is within the territorial limits of the City of Newnan.

17. The City of Newnan does not have a vehicle immobilization ordinance.

18. Buckhead Parking was hired by the owner or occupier of the private property located at, or around, 58 Bullsboro Dr, Newnan, GA 30263, to install or attach vehicle immobilization devices or boots.

19. Buckhead Parking placed a boot on Plaintiff's vehicle and refused to remove it unless Plaintiff paid a $500.00 fine.

20. Plaintiff paid A Buckhead Parking $500.00.

21. Because the City of Newnan does not have a vehicle immobilization ordinance, Buckhead Parking unlawfully booted Plaintiff's vehicle without legal authority and caused damages to Plaintiff.

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

IV. CLASS ACTION ALLEGATIONS

23. 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 January 25, 2013, through present; and

b. A subclass of all persons who have been booted by, or at the request of, Defendants at, or around, 58 Bullsboro Dr, Newnan, GA 30263, and have paid a fine for removal of said device from January 25, 2013, through present (the Stewart subclass).

24. Excluded from the Classes are Defendants, as well as Defendants' employees, affiliates, officers, and directors, and any individuals who incurred property damage as a result of Defendants' 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.

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

26. **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 immobilizing 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 negligently caused Plaintiffs harm;

d. Whether Defendants engaged in civil theft \ conversion;

e. Whether Defendants engaged in false imprisonment;

f. Whether Defendants engaged in making false statements;

g. Whether Defendants unlawfully disabled Plaintiff and other Class Member's property and refused to return the property; and

h. Whether Plaintiff and the Classes are entitled to damages.

27. **Typicality**: The Plaintiff's claims are typical of the class claims in that Plaintiff 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 the Defendants have engaged in. Plaintiff's claims arise from the same practices and course of conduct that give rise to the class claims. Plaintiff's claims are based upon the same legal theories as the class claims.

28. **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 Plaintiff nor their counsel have interests which are contrary to, or conflicting with, those interests of the Classes.

29. **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: NEGLIGENCE

30. At all times relevant to this Complaint, Defendants owed duties to Plaintiff and other Class Members not to immobilize vehicles without legal authority.

31. Defendants breached their duties to Plaintiff by immobilizing Plaintiff's and other Class Member's vehicles without legal authority.

32. As a result of Defendants' negligence, Plaintiff and the other Class Members have incurred damages in an amount to be determined by the enlightened conscience of a jury.

COUNT 2: NEGLIGENCE *PER SE*

33. Defendants violated numerous Georgia statutes by unlawfully booting Plaintiff and other Class Members' vehicles.

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

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

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

COUNT 3: PREMISES LIABILITY / O.C.G.A. §§ 51-3-1, 51-3-2

37. As owners and occupiers of the property located at, or around, 58 Bullsboro Dr, Newnan, GA 30263 Defendants have a duty of ordinary care not to cause harm to individuals at this property.

38. By illegally immobilizing vehicles at, or around, 58 Bullsboro Dr, and any other locations without a vehicle immobilization ordinance, Defendants breached this duty and caused harm to Plaintiff and other Class Members.

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

COUNT 4: IMPUTED NEGLIGENCE / O.C.G.A. § 51-2-5

40. Defendants hired, authorized, or provided material support to Buckhead Parking and / or any other individual or entity that unlawfully immobilized vehicles.

41. Defendants are therefore vicariously liable for their negligence under O.C.G.A. § 51-2-5.

42. Due to Defendants' 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: FALSE IMPRISONMENT

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

Members.

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

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

46. 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 Defendants' conduct.

COUNT 6: CONVERSION / CIVIL THEFT

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

48. Defendants took possession of Plaintiff and other Class Members' funds by demanding that Plaintiff and other Class Members pay to have a vehicle immobilization device removed.

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

50. Defendants refused to release Plaintiff and other Class Members' vehicles without payment.

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

52. As a result, by requiring Plaintiff and other Class Members to pay to have vehicle immobilization devices removed, Defendants have 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 7: MONEY HAD AND RECEIVED

53. Because Defendants collected money from Plaintiff and other Class Members to release vehicles unlawfully booted by Defendants, Defendants have received money from Plaintiff and other Class Members that in equity and good conscious Defendants should not be permitted to keep.

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

COUNT 8: VIOLATION OF GEORGIA RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT ("RICO")

55. Buckhead Parking, as part of its parking company business, engages in an enterprise of unlawfully immobilizing vehicles for profit.

56. Buckhead Parking'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.

57. Specifically, Buckhead Parking, 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, Buckhead Parking 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 Buckhead Parking was lawfully permitted to immobilize Plaintiff and other Class Members' vehicles, and lawfully permitted to charge fees for the removal of vehicle immobilization devices, Buckhead Parking 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, Buckhead Parking 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.

58. Buckhead Parking 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.

59. Buckhead Parking's above described racketeering activity is all done in furtherance of Buckhead Parking's enterprise of profiting off unlawfully immobilizing vehicles.

60. Buckhead Parking'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.

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

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

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

64. Buckhead Parking'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 Buckhead Parking'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 9: ATTORNEY'S FEES

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

67. 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 10: PUNITIVE DAMAGES

68. 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.

69. As a result of Defendants' 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

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

VI. DAMAGES AND PRAYER FOR RELIEF

71. 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 Defendants' violations of law;

c. Punitive damages in an amount to be determined at trial;

d. Attorney fees for stubborn litigiousness pursuant to O.C.G.A. § 13-6-11; and

e. All other and further relief that the Court deems appropriate and just under the circumstances.

{Signatures on the Following Page}

This 7th day of February 2018.

WERNER WETHERINGTON, P.C.

/s/ Matt Wetherington
MATTHEW Q. WETHERINGTON
Georgia Bar No. 339639
ROBERT N. FRIEDMAN
Georgia Bar No. 945494

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

SHERIFF'S ENTRY OF SERVICE SC18512 CLERK OF SUPERIOR COURT, FORSYTH CO., CUMMING, GA 30040

Superior Court ☐ Magistrate Court ☐
State Court ☑ Probate Court ☐
Juvenile Court ☐

Civil Action No. 18SC-1099-A

Date Filed 2/7/18

Georgia, Forsyth COUNTY

Attorney's Address

Michael Stewart

Plaintiff

VS.

Buckhead Parking Enforcement, LLC et al.

Defendant

Name and Address of Party to be Served.

McDonald's Corporation c/o registered agent The Prentice Hall Corp. System 40 Technology Pkwy South #300 Norcross, GA 30092

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 McDonald's a corporation

☒ by leaving a copy of the within action and summons with Alisha Smith 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 14 day of Feb, 20 18.

Dempsey 5081 3

DEPUTY

SHERIFF DOCKET _____ PAGE _____

WHITE-CLERK CANARY-PLAINTIFF PINK-DEFENDANT

CSC

Notice of Service of Process

NJH / ALL
Transmittal Number: 17841845
Date Processed: 03/02/2018

Primary Contact:
SOP CSC MCD
McDonald's Corporation
Campus Office Building
2915 Jorie Blvd.
Oak Brook, IL 60523

Entity:	McDonald's Corporation Entity ID Number 0537858
Entity Served:	McDonald's Corporation
Title of Action:	Michael Stewart vs. Buckhead Parking Enforcement, LLC
Document(s) Type:	Motion
Nature of Action:	Class Action
Court/Agency:	Forsyth County State Court, Georgia
Case/Reference No:	18SC-0099-B
Jurisdiction Served:	Georgia
Date Served on CSC:	03/01/2018
Answer or Appearance Due:	Other/NA
Originally Served On:	CSC
How Served:	Certified Mail
Sender Information:	Sarah Michelle Quinn 404-793-1694

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

WERNER WETHERINGTON
2860 Piedmont Rd., NE | Atlanta, GA 30305

Sarah M. Quinn, Paralegal
404-793-1694
855-873-2090
sarah@wernerlaw.com

2/26/2018

VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED
9414711899560555985717

The Prentice Hall Corporation System
ATTN: McDonald's Corporation
40 Technology Parkway South, Suite 300
Norcross, GA 30092

RE: Michael Stewart v. Buckhead Parking Enforcement, LLC et al.
CAFN: 18SC-0099-B
State Court of Forsyth County

Dear Sir/Madam,

Enclosed, please find your service copy of the following:

1) Plaintiff's Motion for Class Certification; and
2) Plaintiff's Brief in Support of Motion for Class Certification.

Should you have any questions or concerns, please do not hesitate to contact me at (404) 793-1694.

Sincerely,

Werner Wetherington, P.C.

Sarah Michelle Quinn
Paralegal

SMQ/tim
enclosures

FORSYTH COUNTY, GEORGIA
FILED IN THIS OFFICE
2/8/2018 10:32 AM
GREG G. ALLEN
CLERK OF THE STATE COURTS
18SC-0099-B
McClelland, T. Russell, III

IN THE STATE COURT OF FORSYTH COUNTY
STATE OF GEORGIA

MICHAEL STEWART, Individually, and on behalf of a class of similarly situated persons, Plaintiff, v. BUCKHEAD PARKING ENFORCEMENT, LLC, MCDONALD'S CORPORATION, FRANCHISE REALTY INTERSTATE CORPORATION, SUSO 3 NEWNAN LP, and SLATE PROPERTIES, LLC, and Defendants.	CIVIL ACTION FILE NUMBER 18SC-0099-B

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

COMES NOW Plaintiff, and, pursuant to O.C.G.A. § 9-11-23, files his Motion for Class Certification. In support of this motion, Plaintiff relies on: (1) Plaintiff's Brief in Support of Motion for Class Certification; (2) Plaintiff's Complaint; and (3) all other pleadings and evidence filed with the Court. For all of the reasons set forth in Plaintiff's Brief in Support of her Motion for Class Certification, Plaintiff respectfully requests that the Court grant his Motion for Class Certification, and enter an order: (1) appointing Plaintiff as class representative; (2) appointing undersigned counsel as class counsel; and (3) certifying this case as a class action pursuant to O.C.G.A. § 9-11-23(b)(3).

This 8th day of February 2018.

WERNER WETHERINGTON, PC

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

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FORSYTH COUNTY, GEORGIA
FILED IN THIS OFFICE
2/8/2018 10:32 AM
GREG G. ALLEN
CLERK OF THE STATE COURTS
18SC-0099-B
McClelland, T. Russell, III

IN THE STATE COURT OF FORSYTH COUNTY
STATE OF GEORGIA

MICHAEL STEWART, Individually, and on behalf of a class of similarly situated persons, Plaintiff, v. BUCKHEAD PARKING ENFORCEMENT, LLC, MCDONALD'S CORPORATION, FRANCHISE REALTY INTERSTATE CORPORATION, SUSO 3 NEWNAN LP, and SLATE PROPERTIES, LLC, and Defendants.	CIVIL ACTION FILE NUMBER 18SC-0099-B

PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

COMES NOW Plaintiff, and, pursuant to O.C.G.A. § 9-11-23, herein files his Brief in Support of Plaintiff's Motion for Class Certification, respectfully showing the Court as follows:

INTRODUCTION

Plaintiff alleges that Defendants engaged in a systematic pattern of illegally immobilizing Plaintiff's, and all proposed class members', vehicles for a period of several years at a particular shopping center in Newnan, and throughout the State of Georgia. This case is ideal for class treatment as: (1) it involves a large number of small identical claims; (2) all proposed class members' claims are based on the same factual allegations; (3) all proposed class members' claims are based on the same legal theory of liability; and (4) it would impractical for the proposed class member to purse their claims individually due to their small monetary value.

STATEMENT OF FACTS

This lawsuit arises out of Defendants' unlawful practice of disabling vehicles with boots and similar devices without legal authority. (Pl.'s Comp., ¶ 1). There is no provision in the

Official Code of Georgia Annotated ("O.C.G.A.") which expressly authorizes vehicle immobilization. (Pl.'s Comp., ¶ 8). Some municipalities authorize certain types of vehicle immobilization, including booting, by licensed vehicle immobilization services once certain requirements are met. (Pl.'s Comp., ¶ 9). Plaintiff was booted by Defendants at a shopping center located in Newnan. (Pl.'s Comp., ¶¶ 16-22). Because Newnan does not have a vehicle immobilization ordinance, Defendants unlawfully booted Plaintiff's vehicle without legal authority and caused damages to Plaintiff. (Pl.'s Comp., ¶ 21). On information and belief, at all other locations within Georgia where Defendants engage in vehicle immobilization, there are no vehicle immobilization ordinances. (Pl.'s Comp., ¶ 22).

THE PROPOSED CLASS

A class definition "simply must meet a minimum standard of definiteness which will allow the trial court to determine membership in the proposed class." *In re Polypropylene Carpet Antitrust Litig.*, 178 F.R.D. 603, 612 (N.D. Ga. 1997); *In re Tri-State Crematory Litig.*, 215 F.R.D. 660, 690 (N.D. Ga. 2003) ("Although it is not necessary that the members of the class be so clearly identified that any member can be presently ascertained Plaintiffs must establish that there exists a legally definable 'class' that can be ascertained through reasonable effort.").[1] As such, Plaintiff proposes certifying the following classes:

a. All persons who have had a vehicle in their possession 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 January 25, 2013, through present; and

[1] Georgia case law holds, "it is appropriate that we look to federal cases interpreting Rule 23 of the Federal Rules of Civil Procedure, the rule upon which O.C.G.A. § 9-11-23 was based, for guidance." *Brenntag Mid S., Inc. v. Smart*, 308 Ga. App. 899, 903, 710 S.E.2d 569, 574 (2011).

b. a subclass of all persons who have had a vehicle in their possession booted by, or at the request of, Defendants at, or around, 58 Bullsboro Dr, Newnan, GA 30263, and have paid a fine for removal of said device from January 25, 2013, through present (the Stewart subclass).

Excluded from the proposed class are Defendants, as well as Defendants' employees, affiliates, officers, and directors, including any of Defendants' employees, affiliates, officers, and directors who incurred property damage as a result of Defendants' actions, and the Judge presiding over this case. This proposed class meets the standard of definiteness as all class members can be ascertained through reasonable effort, namely by reference to Defendants' records.

LEGAL STANDARDS

A case may proceed as a class action under Georgia law if plaintiff can "satisfy all four prerequisites of O.C.G.A. § 9-11-23(a) and meet the additional requirements set forth in any one of the three subsections of O.C.G.A. § 9-11-23(b)(1) or (2) or (3)." *Gay v. B.H. Transfer Co.*, 287 Ga. App. 610, 611, 652 S.E.2d 200, 201 (2007). The relevant question for class certification "is not whether the plaintiffs have stated a cause of action or may ultimately prevail on the merits but whether the requirements of O.C.G.A. § 9-11-23 have been met." *Glynn Cty. v. Coleman*, 334 Ga. App. 559, 559–60, 779 S.E.2d 753, 754 (2015), *cert. denied* (Feb. 22, 2016); *Peck v. Lanier Golf Club, Inc.*, 298 Ga. App. 555, 556, 680 S.E.2d 595, 597 (2009).

Thus, for the purposes of determining class certification, "[a]ny assertion that the named plaintiff cannot prevail on his claims does not comprise an appropriate basis for denying class certification." *Glynn Cty.*, 334 Ga. App. at 559-60; *Peck*, 298 Ga. App. at 556; *Vill. Auto Ins. Co., Inc. v. Rush*, 286 Ga. App. 688, 692, 649 S.E.2d 862, 866-67 (2007) ("[M]erit-based

disputes are not ripe for resolution at the class certification stage...."). Nor can Defendants defeat Plaintiff's Motion for Class Certification by challenging the merits of any of the named Plaintiff's claims. *Peck*, 298 Ga. App. at 556 ("Any argument that Peck is not an adequate representative because he will not ultimately prevail on his claim does not comprise an appropriate basis for denying class certification."); *Taylor Auto Grp., Inc. v. Jessie*, 241 Ga. App. 602, 603, 527 S.E.2d 256, 258 (1999).

The four O.C.G.A. § 9-11-23(a) prerequisites are numerosity, commonality, typicality, and adequacy:

> (1) The class is so *numerous* that joinder of all members is impracticable;
> (2) There are questions of law or fact *common* to the class;
> (3) The claims or defenses of the representative parties are *typical* of the claims or defenses of the class; and
> (4) The representative parties will fairly and *adequately* protect the interests of the class.

O.C.G.A. § 9-11-23(a) (emphasis added).

Once these prerequisites are established, the basis for class certification under § 9-11-23(b)(3) is:

> The court finds that the questions of law or fact common to the members of the class *predominate* over any questions affecting only individual members, and that a class action is *superior* to other available methods for the fair and efficient adjudication of the controversy....

O.C.G.A. § 9-11-23(b)(3) (emphasis added).

The trial court has broad discretion to certify a class under O.C.G.A. § 9-11-23, and the decision to approve class certification will only be overturned for abuse of discretion. *See Glynn Cty.*, 334 Ga. App. at 559 ("On appellate review of a trial court's decision on a motion to certify a class, the discretion of the trial judge in certifying or refusing to certify a class action is to be

respected in all cases where not abused."); *State Farm Mut. Auto. Ins. Co. v. Mabry*, 274 Ga. 498, 499–500, 556 S.E.2d 114, 117 (2001).

ARGUMENT AND CITATION OF AUTHORITY

1. THE PROPOSED CLASS SATISFIES THE PREREQUISITES OF O.C.G.A. § 9-11-23(A)

1.1 The Claims of the Proposed Classes are Sufficiently Numerous

Plaintiff's proposed classes easily satisfies the numerous requirements of O.C.G.A. § 9-11-23 as the proposed classes are made up of countless individuals who have had their cars illegally immobilized by Defendants during the last five years. As stated by the Georgia Court of Appeals, "[c]lass actions have been approved by courts involving as few as 25 and 40 persons in the class." *Sta-Power Indus., Inc. v. Avant*, 134 Ga. App. 952, 955, 216 S.E.2d 897, 901 (1975) (internal cits. omitted) ("They have provided the court with the names of 253 persons within the State of Georgia who purchased distributor agreements from Sta-Power ... We find that the class is sufficiently numerous as to make it impractical to bring them all before the court."). Defendants have immobilized at least 25 vehicles within the last five years at the shopping center Plaintiff was booted at, and throughout the state of Georgia. Because it would be impractical to bring all such claims before the Court individually, Plaintiff's proposed classes are sufficiently numerous to warrant class certification under O.C.G.A. § 9-11-23.

1.2 Plaintiff's Claims Satisfy the Commonality Requirement

Commonality is a low threshold. The commonality requirement "does not require that all the questions of law and fact raised by the dispute be common or that the common questions of law or fact predominate over individual issues." *In re Delta/AirTran Baggage Fee Antitrust Litig.*, 317 F.R.D. 675, 693 (N.D. Ga. 2016); *Brenntag Mid S., Inc. v. Smart*, 308 Ga. App. 899,

903-04, 710 S.E.2d 569, 574-75 (2011); *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1557 (11th Cir. 1986). All that is required is the "capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation." *In re Delta*, 317 F.R.D. at 693; *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 984 (11th Cir. 2016) ("That common contention must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.") (internal cits. omitted). Consequently, it has been repeatedly held that, "a single common question," will satisfy the commonality requirement necessary to certify a class. *In re Delta*, 317 F.R.D. at 694 ("[F]or purposes of Rule 23(a)(2) even a single common question will do."); *Carriuolo*, 823 F.3d at 984.

Statutory liability across a broad class of individuals are common questions capable of supporting a class action, as demonstrated by the following examples:

> The central issue in the case-whether Defendant violated the FCRA in failing to disclose the entire file upon request for a consumer report by a curious consumer arises out of Defendant's standardized method of responding to requests by curious consumers, and is common to each potential class member. **This common question of statutory interpretation, deriving from Defendant's standardized business practice, makes Plaintiffs' claims appropriate for treatment as a class action.**

Campos v. ChoicePoint, Inc., 237 F.R.D. 478, 485 (N.D. Ga. 2006) (emphasis added).

> **Here, the first FDUTPA element is amenable to class-wide resolution**: the factfinder must only determine whether a Monroney sticker that inaccurately states a vehicle had received perfect safety ratings in three categories would deceive an objectively reasonable observer when in fact no safety ratings had been issued.
> [...]
> Because that theory is consistent for all class members, the predominance requirement under Rule 23(b)(3) is satisfied. **This consistency is also sufficient to establish the commonality requirement under Rule 23(a)(2).** The district court's determination on these points does not amount to an abuse of discretion.

Carriuolo, 823 F.3d at 985-86.

Here, as in *Campos* and *Carriuolo*, the central question at issue that will resolve the validity of all proposed class member's claims is whether Defendants are liable under statutory law. Plaintiff has alleged that Defendants booted Plaintiff's and all other class members' vehicles, without any legal authority. (Pl.'s Comp., ¶¶ 30-69). Such an unlawful exercise of dominion and control over property creates liability under countless Georgia statutes including, but not limited to, O.C.G.A. § 51-7-20 (false imprisonment); O.C.G.A. § 51-10-6 (conversion / civil theft), O.C.G.A. § 51-3-1, 51-3-2 (premises liability), and O.C.G.A. § 16-14-1 *et seq.* (RICO). *Id.* Just as in *Campos* and *Carriuolo*, because Plaintiff's Complaint alleges statutory liability for all proposed class members, Plaintiff's lawsuit presents common questions that are central to the validity of all proposed class members' claims. Therefore, based on the holdings in *Campos* and *Carriuolo*, Plaintiff's lawsuit satisfies the commonality requirements of O.C.G.A. § 9-11-23(a).

1.3 Plaintiff's Claims are Typical of the Proposed Classes

The typicality requirement "under O.C.G.A. § 9-11-23(a) is satisfied upon a showing that the defendant committed the same unlawful acts in the same method against an entire class." *Liberty Lending Servs. v. Canada*, 293 Ga. App. 731, 738, 668 S.E.2d 3, 10 (2008); *Walker v. City of Calhoun, Georgia*, 4:15-CV-170-HLM, 2016 WL 361580, at *7 (N.D. Ga. Jan. 28, 2016) ("A representative plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of the other class members, and her or his claims are based on the same legal theory."). To warrant class certification, claims of the proposed class members "need not be identical to satisfy the typicality requirement; rather, there need only exist a sufficient nexus between the legal claims of the named class representatives and those of

individual class members...." *Ault v. Walt Disney World Co.*, 692 F.3d 1212, 1216 (11th Cir. 2012); *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1279 (11th Cir. 2000). A sufficient nexus exists "if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." *Ault*, 692 F.3d at 1216; *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984).

In the instant case, Plaintiff's claims are not merely typical of the proposed classes, they are identical in all material respects. For the named Plaintiff, and all members of the proposed classes, the sole allegation is that Defendants immobilized Plaintiff's vehicle without any legal authority. Hence, there is no doubt that Plaintiff's claims meet the typicality requirements of O.C.G.A. § 9-11-23(a). *See Ault*, 692 F.3d at 1216-17 (11th Cir. 2012) ("All claims in this class action arise from the same policy—Disney's ban on Segways®—and are all based upon liability pursuant to Title III. Thus, we conclude ... the claims of the class representatives and class members are typical and warrant class certification."); *Walker*, 2016 WL 361580, at *7 ("Plaintiff's claims arise out of the same conduct as the class's claims, and his claims are the same as those of the proposed class. ... Plaintiff therefore satisfies the typicality requirement.").

1.4 Plaintiff and their Counsel Will Adequately Represent the Proposed Classes

For class certification, "[t]he important aspects of adequate representation are whether the plaintiffs' counsel is experienced and competent and whether plaintiffs' interests are antagonistic to those of the class." *Brenntag Mid S., Inc.*, 308 Ga. App. at 905; *Liberty Lending Servs.*, 293 Ga. App. at 739, 668 S.E.2d 3, 10 (2008). In the present lawsuit, Plaintiff does not have any conflict of interest with the proposed classes as Plaintiff and the proposed classes are united in seeking the maximum possible recovery for their claims. Additionally, Plaintiff is represented

by experienced and qualified counsel with significant experience in complex litigation, including class action lawsuits. Because the record is devoid of any conflict between Plaintiff and the proposed classes, and because there nothing to suggest that Plaintiff's counsel cannot provide competent representation, Plaintiff's lawsuit satisfies the requirement of adequacy for class certification. *Brenntag Mid S., Inc.*, 308 Ga. App. at 905 ("[N]othing in the record suggests any such antagonistic interests or that Smart and Elmore would not vigorously pursue the claims on behalf of the class. ... [T]he trial court did not abuse its discretion in adopting the finding of adequacy.").

2. THIS CLASS ACTION SATISFIES O.C.G.A. § 9-11-23(b)(3)

The most straightforward and appropriate basis for class certification in this case is pursuant to O.C.G.A. § 9-11-23(b)(3), which applies where, as here, (1) "questions of law or fact common to the members of the class *predominate* over any questions affecting only individual members,"; and (2) "a class action is *superior* to other available methods for the fair and efficient adjudication of the controversy." *Id.* (emphasis added).

2.1 Common Issues of Law and Fact Predominate for the Proposed Classes

To satisfy the predominance requirement of O.C.G.A. § 9-11-23(b)(3), "the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, must predominate over those issues that are subject only to individualized proof." *Campos* 237 F.R.D. at 488 (internal cits. omitted); *Carriuolo*, 823 F.3d at 985 ("Common issues can predominate *only* if they have a direct impact on every class member's effort to establish liability that is more substantial than the impact of individualized issues in resolving the claim or claims of each class member."). (internal cits. omitted). As with the commonality requirement of

O.C.G.A. § 9-11-23(a), for cases involving specific identified practices, and whether those practices create liability under statutory law, Courts have held common questions of fact and law predominate over individual issues:

> Here, the first FDUTPA element is amenable to class-wide resolution: the factfinder must only determine whether a Monroney sticker that inaccurately states a vehicle had received perfect safety ratings in three categories would deceive an objectively reasonable observer when in fact no safety ratings had been issued.
> [...]
> By inaccurately communicating that the 2014 Cadillac CTS had attained three perfect safety ratings, General Motors plainly obtained enhanced negotiating leverage that allowed it to command a price premium. ... **Because that theory is consistent for all class members, the predominance requirement under Rule 23(b)(3) is satisfied.**

Carriuolo, 823 F.3d at 986, 989. (emphasis added).

> The focal point of this action is Defendant's alleged, and admitted practice of responding to curious consumer's requests for a consumer report in a manner which allegedly violates the FCRA. The issues of law and fact which stem from Defendant's policy predominate over individual issues. **Because common issues of law and fact are likely to dominate the proceedings for curious consumers who requested a "consumer report," common questions of law and fact predominate.**

Campos, 237 F.R.D. at 489. (emphasis added).

As in *Carriuolo* and *Campos*, Plaintiff in the instant case has met the predominance requirements of O.C.G.A. § 9-11-23(b)(3) because Plaintiff's Complaint primarily concerns liability under statutory law. For Plaintiff, and all proposed class members, it is alleged that by immobilizing their vehicles without legal authority Defendants are liable under numerous Georgia statutes. (Pl.'s Comp., ¶¶ 30-69). Such statutes include, but are not limited to, O.C.G.A. § 51-7-20 (false imprisonment); O.C.G.A. § 51-10-6 (conversion / civil theft), O.C.G.A. § 51-3-1, 51-3-2 (premises liability), and O.C.G.A. § 16-14-1 *et seq.* (RICO). *Id.*

Because these issues are consistent for all proposed class members, common questions of law and fact will predominate the proceedings. *Id.*

2.2 A Class Action is Superior for the Proposed Classes

In assessing whether a class action superior to other available methods, "the issue is not whether a class action will be difficult to manage. Instead, the trial court is to consider the relative advantages of a class action suit over other forms of litigation which might be available." *Brenntag Mid S., Inc.*, 308 Ga. App. at 907; *EarthLink, Inc. v. Eaves*, 293 Ga. App. 75, 77, 666 S.E.2d 420, 424 (2008). Although superiority is a separate analysis under O.C.G.A. § 9-11-23(b)(3), "the predominance analysis ... has a tremendous impact on the superiority analysis ... for the simple reason that, the more common issues predominate over individual issues, the more desirable a class action lawsuit will be as a vehicle for adjudicating the plaintiffs' claims." *Klay v. Humana, Inc.*, 382 F.3d 1241, 1269 (11th Cir. 2004); *Jones v. Advanced Bureau of Collections LLP*, 317 F.R.D. 284, 294 (M.D. Ga. 2016) ("As discussed, common issues predominate in this case; thus, a class action is likely the superior vehicle for adjudicating Jones's claims.").

As stated above, here, because all of the proposed class members' claims are premised on the same factual allegations, and the same theories of liability, common issues of fact and law predominate. *Carriuolo*, 823 F.3d at 986, 989; *Campos*, 237 F.R.D. at 489. Just as in *Klay* and *Jones*, because common issues of fact and law predominate for all proposed class members, a class action is the superior vehicle for adjudicating the proposed class members' claims. Furthermore, the Georgia Court of Appeals, and the 11th Circuit Court of Appeals, have held that a class action is a superior method of adjudication when the class members' claims are, individually, of small monetary value:

> Moreover, as the Ichter Report found, the damages involved for each class member are likely to be relatively small making it unlikely that other class members would have a strong interest in controlling the litigation for themselves. And it is unlikely that counsel could be found to pursue such relatively minor claims on an individualized basis so that economic reality dictates that petitioner's suit proceed as a class action or not at all.

Brenntag Mid S., Inc., 308 Ga. App. at 907. (internal cits. omitted).

> As the trial court stated, there is simply no need to burden either the court system or the individual class members by requiring each member of the class to pursue his or her own action to recover a relatively small amount of damages. The trial court did not abuse its broad discretion in deciding to certify the class.

EarthLink, Inc., 293 Ga. App. at 77. (internal cits. omitted).

> Here, General Motors has identified 1,058 potential class vehicles in Florida. As the district court noted, individual claims may be too small for a separate action by each class member. Because common questions of law and fact predominate, class-wide adjudication appropriately conserves judicial resources and advances society's interests in judicial efficiency. Again, we can discern no abuse of discretion.

Carriuolo v. Gen. Motors Co., 823 F.3d 977, 989 (11th Cir. 2016) (internal cits. omitted).

Here, as in *Brenntag Mid S., Inc.*, *EarthLink, Inc.*, and *Carriuolo*, the individual claims of the proposed class members are too small ($500 or less) to adjudicate separately. Accordingly, based on the above referenced authority, because common questions predominate, and because the proposed class members' claims are of small monetary value, a class action is a superior method of adjudicating the proposed class members' claims, and Plaintiff's lawsuit satisfies the superiority requirements of O.C.G.A. § 9-11-23(b)(3).

This conclusion if further supported by reference to the additional factors listed in O.C.G.A. § 9-11-23(b)(3) for determining the superiority of a class action:

(A) The interest of members of the class in individually controlling the prosecution or defense of separate actions;
(B) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
(D) The difficulties likely to be encountered in the management of a class action.

Id.

All of these factors point strongly in favor of certifying the class here. *First,* because each of the proposed class members' claims is so small, there is no indication that individual class members would want to, or benefit from, individual control of the litigation. *Brenntag Mid S., Inc.*, 308 Ga. App. at 907. To the contrary, the relatively small amount in controversy assures that the cost of each individual action would exceed any potential recovery. *Id. Second,* because there is no other pending litigation concerning this dispute, either by or against the proposed class members, there is no possibility of contrary or conflicting rulings in other cases. *Third,* since each of the proposed class members' claim is identical, concentrating the litigation is ideal for both judicial economy, and for reaching a speedy resolution of all proposed class members' claims. *Finally,* as the proposed class members' claims are based on common theories of liability there are no foreseeable management difficulties with this litigation. As a result, based on the additional factors provided in O.C.G.A. § 9-11-23(b)(3), a class action is superior to other means of resolving this dispute, and the proposed classes should be certified pursuant to O.C.G.A. § 9-11-23(b)(3).

CONCLUSION

WHEREFORE, based upon the above reasons, Plaintiff respectfully requests that his Motion for Class Certification be GRANTED and that the Court enter an order: (1) appointing Plaintiff as class representative; (2) appointing undersigned counsel as class counsel; and (3) certifying this case as a class action pursuant to O.C.G.A. § 9-11-23(b)(3).

This 8th day of February 2018.

WERNER WETHERINGTON, PC

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

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CERTIFIED MAIL

$7.830
US POSTAGE
FIRST-CLASS
FROM 30305
02/26/2018
stamps endicia

9414 7118 9956 0555 9857 17

The Prentice Hall Corporation System
ATTN: McDonald's Corporation
40 Technology Parkway South, Suite 300
Norcross GA 30092-2924

EXHIBIT 2

REGISTER OF ACTIONS
CASE NO. 18SC-0099-B

Michael Stewart vs. BUCKHEAD PARKING ENFORCEMENT, LLC, MCDONALD S CORPORATION, FRANCHISE REALTY INTERSTATE CORPORATION, SUSO 3 NEWNAN LP, Slate Properties, LLC

§ § § § § §

Case Type: **Other Tort**
Date Filed: **02/07/2018**
Location: **State B**
Judicial Officer: **McClelland, T. Russell, III**

PARTY INFORMATION

		Lead Attorneys
Defendant	**BUCKHEAD PARKING ENFORCEMENT, LLC** Marietta, GA 30064	
Defendant	**FRANCHISE REALTY INTERSTATE CORPORATION** Norcross, GA 30092	
Defendant	**MCDONALD S CORPORATION** Norcross, GA 30092	
Defendant	**Slate Properties, LLC** Cumming, GA 30040	
Defendant	**SUSO 3 NEWNAN LP** Lawrenceville, GA 30046	
Plaintiff	**Stewart, Michael** Atlanta, GA 30305	**Matthew Q Wetherington** *Retained* 770verdict(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

02/07/2018	**Complaint**
02/07/2018	**Summons**
02/07/2018	**Summons**
02/07/2018	**Summons**
02/07/2018	**Summons**
02/07/2018	**Summons**
02/08/2018	**Motion No Specific Code Available**
02/16/2018	**Sheriffs Entry of Service-Served**
02/16/2018	**Sheriffs Entry of Service-Served**
02/16/2018	**Sheriffs Entry of Service-Served**
02/20/2018	**Sheriffs Entry of Service-Served**
02/21/2018	**Sheriffs Entry of Service-Served**
02/23/2018	**Sheriffs Entry of Service-Served**
03/01/2018	**Motion No Specific Code Available**

FINANCIAL INFORMATION

	Plaintiff Stewart, Michael		
	Total Financial Assessment		217.00
	Total Payments and Credits		217.00
	Balance Due as of 03/12/2018		**0.00**
02/08/2018	Transaction Assessment		217.00
02/08/2018	E-File Electronic Payment Receipt # 2018-200493	Stewart, Michael	(217.00)

EXHIBIT 3

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.** **CASTLE PARKING SOLUTIONS, LLC, and BEACON MANAGEMENT SERVICES, LLC,** **Defendants.**	**1:17-cv-4085-WSD**

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

WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE

JS44 (Rev. 6/2017 NDGA)

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)

MICHAEL STEWART, Individually, and on behalf of a class of similarly situated persons

DEFENDANT(S)

BUCKHEAD PARKING ENFORCEMENT, LLC; MCDONALD'S CORPORATION; SUSO 3 NEWNAN LP; and SLATE PROPERTIES, LLC

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

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(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)

Matt Q. Wetherington, Esq.
Robert N. Friedman, Esq.
Werner Wetherington, P.C.
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ATTORNEYS (IF KNOWN)

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Lennon B. Hass
GREENBERG TRAURIG LLP
Terminus 200, 3333 Piedmont Rd., NE, Ste. 2500
Atlanta, Georgia 30305

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. GOVERNMENT PLAINTIFF
- ☐ 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
- ☐ 2 U.S. GOVERNMENT DEFENDANT
- ☑ 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)

28 U.S.C. §§ 1332, 1446, AND 1453(b)

Plaintiffs bring this action as a class action pursuant to O.C.G.A. § 9-11-23, on behalf of themselves and others.

(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 _____ NATURE OF SUIT _____ CAUSE OF ACTION _____
(Referral)

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 (1395ff)
- ☐ 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 ANTITRUST
- ☐ 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 $**_____

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.**

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: Class Action Over Booting of Vehicles on Private Property in GA Lands in Federal Court