

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

MATT LIOTTA and COREY JONES, :
Individually, and on behalf of a class of :
similarly situated persons, :

Plaintiff, :

v. :

SECURE PARKING ENFORCEMENT, :
LLC, FREP III – SHANNON CROSSING, LLC, :
and THE SEMBLER COMPANY, :

Defendants. :

CIVIL ACTION
FILE NO.
22EV000598

**SECOND AMENDED ORDER PRELIMINARILY CERTIFYING SETTLEMENT
 CLASS AND APPROVING CLASS SETTLEMENT**

This matter is before the Court on the Uncontested Motion for Certification of Settlement Class and Preliminary Approval of Class Settlement filed by Plaintiffs, Matt Liotta and Corey Jones (“Plaintiffs”), individually and as Class Representatives on behalf of a proposed Settlement Class, Defendants Secure Parking Enforcement, LLC (“SPE”); FREP III – Shannon Crossing, LLC (“FREP”); and The Sembler Company (“Sembler”) (SPE, FREP, and Sembler are collectively referred to herein as “Defendants”), all acting by and through their respective counsel, have agreed, subject to Court approval, to settle this case upon the terms and conditions stated in the Settlement Agreement filed with the Court.

NOW, THEREFORE, based upon all of the files, records, and proceedings herein, statements of counsel, and it appearing to the Court that a hearing should be held to determine whether the Proposed Settlement described in the Class Action Settlement Agreement and Release (“Settlement Agreement”), attached hereto as Exhibit A, is fair, reasonable, and adequate;

IT IS HEREBY ORDERED THAT:

1. The Settlement Agreement is hereby incorporated by reference in this Order and all terms defined in the Settlement Agreement will have the same meanings in this Order.

2. For purposes of determining whether the terms of the Proposed Settlement should be finally approved as fair, reasonable, and adequate, the following Settlement Class is preliminarily certified for settlement purposes only:

All individuals who meet at least one of the following criteria:

- i. Owned or operated a vehicle that was booted by SPE within the City of Atlanta and/or Union City while they owned or operated the vehicle from December 21, 2011 through September 20, 2020; or
- ii. Paid SPE to remove a boot from a vehicle within the City of Atlanta and/or Union City from December 21, 2011 through September 20, 2020; or
- iii. Parked a vehicle that was booted by SPE within the City of Atlanta and/or Union City from December 21, 2011 through September 20, 2020.

Excluded from the Settlement Class are: (1) Defendants, and any employee, officer, or director of Defendants; (2) Any employees, officers, or directors of Defendants' insurers; (3) members of the judiciary and their staff to whom these actions are assigned; and (4) Plaintiffs' counsel.

3. Plaintiffs are preliminarily appointed as representatives of the Settlement Class ("Class Representatives"), and the following attorney for Plaintiffs is preliminarily appointed as counsel for the Settlement Class ("Class Counsel"):

Matthew Wetherington
Wetherington Law Firm, P.C.
1800 Peachtree St., NE, Suite 370
Atlanta, Georgia 30309
matt@wfirm.com
(404) 888-4444

If final approval of the Proposed Settlement is not granted, this Order, including the above description of the Settlement Class and the preliminary appointment of the Class Representatives and Class Counsel, shall be automatically vacated. If the Settlement Agreement is terminated or is disapproved in whole or in part by this Court, any appellate court and/or any other court of review, or if any of the parties invoke their right to revoke or terminate their agreement to settle as provided in the Settlement Agreement, the fact that it was entered into shall not be offered, received or construed as an admission or as evidence for any purpose, including the “certifiability” of any litigation class.

4. Pending a final determination of whether the Proposed Settlement should be approved as fair, reasonable, and adequate, neither Plaintiffs, Class Counsel, nor any potential Class Member, whether directly, indirectly, representatively or in any other capacity, shall start, join, continue, litigate or participate in or accept any benefit or relief from any other lawsuit, arbitration, or administrative or regulatory proceeding against Defendants that is based on, relates to, or involves any of the claims, facts, circumstances, or subject matters of this Action or the Settlement Agreement.

5. The parties have prepared the Individual Notice, Claim Form and Detailed Notice which have been submitted to the Court as Exhibits “2”, “3”, and “4” to the Settlement Agreement. As set forth herein, the Court has reviewed and approved the Individual Notice, Claim Form and Detailed Notice.

6. Atticus Administration, LLC (“Atticus”) is preliminarily appointed as the third-party administrator (the “Settlement Administrator.”). By accepting this appointment, Atticus agrees to be subject to the jurisdiction of this Court for any further proceedings relevant to the execution of this Order and the administration of the Settlement.

7. Within thirty (30) days of the entry of this Order, SPE shall provide to Class Counsel and the Settlement Administrator those documents in its possession and readily obtainable that include the name, address, telephone number, license plate, make, model, year model, VIN, or tag data (hereinafter collectively referred to as “Identifying Data”) of each potential Class Member that SPE has been able to identify, after conducting a reasonable search and making a reasonable inquiry of its records of bootings of Class Members during the Class Period. Any spreadsheets or other electronic documents will be provided in their native or similar machine-parsable format.

8. Within 30 days after receipt of the Identifying Data, the Settlement Administrator shall provide to Class Counsel and counsel for SPE a list of the names and last known address of the potential Class Members the Settlement Administrator was able to identify through use of the Identifying Data. Thereafter, the Settlement Administrator shall send a copy of the Individual Notice and a Claim Form via first-class mail to each potential Class Member who were identified through Identifying Data. Prior to mailing the Individual Notice and Claim Form, the Settlement Administrator will run these addresses once through the National Change of Address Database for a more current name and/or address for each potential Class Member. Upon completion of the updating efforts, the Settlement Administrator shall use its best efforts to complete the mailing of the Individual Notice and Claim Form to potential Class Members at least sixty (60) days before the scheduled Final Approval Hearing. The Individual Notice and Claim Form are hereby approved as to form and content by the Court and shall be substantially in the form attached to the Settlement Agreement as Exhibits “2” and “3”, unless otherwise modified by agreement of the parties and approved by the Court. The mailing to the Class Members that contains the Individual

Notice will also include a copy of the Claim Form, in a format substantially similar to Exhibit “3” to the Settlement Agreement.

9. If any Individual Notice and/or Claim Form mailed to any potential Class Member in accordance with paragraph 8 above is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly log each Individual Notice and/or Claim Form that is returned as undeliverable and provide copies of the log to counsel for SPE and Class Counsel, as requested. If such a mailing is returned with a forwarding address, the Settlement Administrator will forward the Individual Notice and Claim Form to that address. For the remaining returned mailings, if a search of a commercial database resources entity (e.g., Accurint, TransUnion, IDI, etc.) was not previously conducted for those mailings, such a search shall be conducted and those mailings shall be forwarded to any new address or phone number obtained through such a search; *provided however*, if a determination is made in good faith by the Settlement Administrator that it is not possible to further update any particular Class Member’s address(es) in sufficient time to re-post the Class Notice(s) at least thirty (30) days before the scheduled Final Approval Hearing, then the Settlement Administrator need not make any further efforts to provide further Individual Notice to such Person(s). The Court finds the procedures set forth in this paragraph and the preceding paragraph constitute reasonable and the best practicable notice under the circumstances and an appropriate and sufficient effort to locate current addresses of Class Members such that no additional efforts to do so shall be required. Upon request, the Settlement Administrator shall provide Class Counsel and/or counsel for SPE such reasonable access to the notice process as they may need to monitor compliance with the notice campaign.

10. In addition to the Individual Notices mailed in accordance with paragraph 8, above, the Settlement Administrator shall establish a website and post on that website the Settlement

Agreement and a Detailed Notice. Claims may also be asserted through the website established by the Settlement Administrator. The Detailed Notice is hereby approved by the Court as to form and content and shall be posted on the website in a form substantially similar to that attached to the Settlement Agreement as Exhibit “4.”

11. Prior to the Final Approval Hearing provided for in paragraph 14, below, Class Counsel shall file with the Court and serve upon counsel for SPE a declaration confirming dissemination of the Individual Notice, and posting of the website Detailed Notice in accordance with the terms of this Order.

12. All fees and expenses of providing the dissemination of Class Notice as set forth above and administration of the Settlement shall be borne by Atticus and reimbursed via deduction from the Net Settlement Fund, but shall not exceed One Hundred Thousand Dollars (\$100,000) as agreed in the Settlement Agreement.

13. The Court preliminarily finds that the dissemination of the Individual Notice under the terms and in the format provided for in this Order, Claim Form, and the Detailed Notice on a website as set forth above, constitutes the best notice practicable under the circumstances, is due and sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the requirements of the Georgia Civil Practice Act, the requirements of due process under the Georgia and United States Constitutions, and the requirements of any other applicable rules or law.

14. The Court will hold a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the Proposed Settlement at 9:00 a.m. January 18, 2023, in Courtroom 3C of the Fulton County Courthouse, as shall be set forth in the Individual Notice and Detailed Notice. During the Final Approval Hearing, the Court will consider whether the Proposed Settlement described in the Settlement Agreement, including the proposed Claim Payments, the

Attorneys' Fee Award to Class Counsel, and any Incentive Award(s) to the Class Representatives, should be approved as fair, reasonable, and adequate, and whether the Court should enter the proposed Final Judgment approving the Proposed Settlement and dismissing this action on the merits, with prejudice, and without leave to amend. Upon a showing of good cause, the Final Approval Hearing may be postponed, adjourned or rescheduled by order of the Court without further notice to the members of the Settlement Class.

15. Class Members who wish to exclude themselves from the Settlement Class must submit written requests for exclusion to the Settlement Administrator. To be effective, such a request must include: the above-referenced case number, the Class Member's full name, address, and telephone number; a clear and unequivocal statement that the Class Member wishes to be excluded from the Settlement Class; and the signature of the Class Member or, in the case of a Class Member who is deceased or incapacitated only, the signature of the Legally Authorized Representative of the Class Member. The Opt-Out request must be mailed to the Settlement Administrator at the address provided in the Class Notice and must be postmarked no later than thirty (30) days prior to the Final Approval Hearing.

16. Prior to the Final Approval Hearing, Class Counsel shall file with the Court and serve upon counsel for SPE a declaration reporting the number and status of any Opt-Outs/requests for exclusion.

17. Potential Class Members who submit timely and valid requests for exclusion in the manner set forth in the Individual Notice and Detailed Notice shall be excluded from the Settlement Class. Such persons shall have no rights under the Proposed Settlement, shall not share in any distribution of funds under the Proposed Settlement, and shall not be bound by the Proposed Settlement or by any Final Judgment approving the Proposed Settlement.

18. All members of the Settlement Class who do not timely request exclusion in the manner set forth in the Individual Notice and Detailed Notice shall be bound by any Final Judgment entered, and shall be barred and enjoined, now and in the future, from asserting any of the Released Claims, against any Released Persons. Upon entry of a Final Judgment approving the Proposed Settlement, all members of the Settlement Class shall be conclusively deemed to have fully and finally released all of the Released Persons from any and all Released Claims.

19. Settlement Class Members who do not request exclusion from the Settlement Class may object to the Proposed Settlement. Settlement Class Members who choose to object to the Proposed Settlement may file a written objection, as described below. Any Class Member who timely files an objection with the Court may appear at the Final Approval Hearing, in person or by counsel, and be heard to the extent allowed by the Court, applying applicable law, in opposition to the fairness, reasonableness and adequacy of the Proposed Settlement, and on the application for an award of attorneys' fees and costs. The right to object to the Proposed Settlement must be exercised individually by an individual Settlement Class Member, not as a member of a group or subclass and, except in the case of a deceased, minor, or incapacitated Settlement Class Member, not by the act of another person acting or purporting to act in a representative capacity. To be effective, an objection to the Proposed Settlement must:

- (a) Contain a heading which includes the name of the case and case number;
- (b) Provide the name, address, telephone number and signature of the Settlement Class Member filing the objection;
- (c) Indicate the specific reasons why the Settlement Class Member objects to the Proposed Settlement;
- (d) Be filed with the Clerk of the Court not later than thirty (30) days prior to the Final Approval Hearing, with a copy sent to the Settlement Administrator by first-class mail, and postmarked no later than thirty (30) days prior to the Final Approval Hearing;

- (e) Contain the name, address, bar number and telephone number of the objecting Settlement Class Member's counsel, if represented by an attorney. If the Settlement Class Member is represented by an attorney, he/she or it must comply with all applicable Georgia laws and rules for filing pleadings and documents in Georgia Courts; and
- (f) State whether the objecting Settlement Class Member ("Objector") intends to appear at the Final Approval Hearing, either in person or through counsel.

In addition, an objection must contain the following additional information, if the Settlement Class Members or his/her or its attorney requests permission to speak at the Final Approval Hearing:

- (i) A detailed statement of the specific legal and factual basis for each and every objection;
- (ii) A list of any and all witnesses whom the Objector may call at the Final Approval Hearing, with the address of each witness and a summary of his or her proposed testimony;
- (iii) A detailed description of any and all evidence the Objector may offer at the Final Approval Hearing, including photocopies of any and all exhibits which the Objector may introduce at the Final Approval Hearing;
- (iv) A list of the legal authority the Objector will present at the hearing; and
- (v) Documentary proof of membership in the Settlement Class.

20. The Class Representatives and Class Counsel agree, and the Court finds, that any representation, encouragement, solicitation or other assistance, including but not limited to referral to other counsel, to any person seeking exclusion from the Settlement Class, or any other person seeking to litigate with Defendants over any of the Released Claims in this matter, prior to the Final Approval Hearing, could place Class Counsel and/or Class Representatives in a conflict of interest with the Settlement Class. Accordingly, Class Counsel and their respective firms and the Class Representatives and their attorneys shall not represent, encourage, solicit or otherwise assist,

in any way whatsoever, including but not limited to referrals to other counsel, any person requesting exclusion from the Settlement Class or objecting to the Proposed Settlement.

21. The Proposed Settlement is hereby preliminarily approved as fair, reasonable, adequate, and in the best interests of the Class Members. However, it is not to be deemed an admission of liability or fault by Defendants or by any other person, or a finding of the validity of any claims asserted in the case, of any wrongdoing or of any violation of law by Defendants, or an admission by Defendants that the case should or could otherwise be certified as a class action. The Proposed Settlement and any documents, attachments or other materials submitted to the Court in furtherance of said Proposed Settlement shall not be offered or received in evidence in any action or proceeding in any court, administrative panel or proceeding, or other tribunal, as an admission or concession of liability or wrongdoing of any nature on the part of Defendants. In the event the Proposed Settlement is not finally approved for any reason, Defendants shall retain the right to object to the maintenance of the case and/or any other case as a class action and to contest the case and/or any other case on any grounds.

22. Upon a showing of good cause, the Court may extend any of the deadlines set forth in this Order without further notice to the Settlement Class.

IT IS SO ORDERED.

Dated: August 9, 2022



Judge Eric A. Richardson
State Court of Fulton County, Georgia