

IN THE SUPREME COURT OF OHIO

State ex rel. Anthony C. Christoff, *et al.*,

CASE NO.

11-0235

Relators,

v.

Earle B. Turner, Clerk of Courts,
Cleveland Municipal Court and
Violations Clerk, Cleveland Parking
Violations Bureau, *et al.*,

Respondents.

MOTION FOR CLASS
CERTIFICATION AND
MEMORANDUM IN SUPPORT

Now comes Relator William M. Goldstein, by and through undersigned counsel, and respectfully moves this Court, pursuant to Civil Rule 23, for an order determining that this action may be maintained as a class action for the benefit of the class consisting of all those who have paid money to Respondent Earle B. Turner, Clerk of Courts, for violating or allegedly violating §413.01 of the Cleveland Municipal Codified Ordinances. This motion is made on the following grounds:

1. This action was brought and is now maintained by the named Relator, the moving party, as a class action on behalf of himself and all other persons similarly situated, comprising the class described above.
2. The named Relator is informed and believes, and on the basis of such information and belief declares, that there are thousands of members of the class, so that joinder of all members of the class in this action is impracticable.
3. Claims of the named Relator are typical of the claims of all members of the class described above.
4. Named Relator will fairly and adequately represent and protect the interests of all members of the class described above.

FILED
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CLERK OF COURT
SUPREME COURT OF OHIO

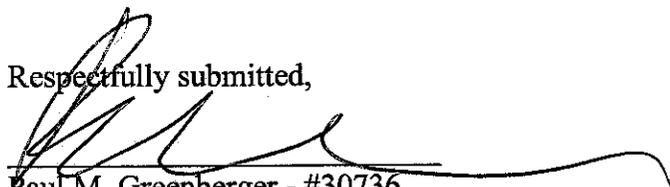
5. The prosecution of separate actions by or against individual members of the class described above would create a risk of (a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for any parties opposing the class, and/or (b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

6. There are common questions of law and fact affecting rights of each member of the class, as against the Respondents, as is more fully set forth in Relators' complaint.

7. The common questions of law and fact predominate over any questions affecting individual members only, and a class action is superior to other available methods for the fair and efficient adjudication of the controversies between the class described above and the Respondents.

The grounds for this Motion are set forth more fully in the Memorandum in Support attached hereto and incorporated herein by reference.

Respectfully submitted,



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IN THE SUPREME COURT OF OHIO

State ex rel. Anthony C. Christoff, et al.,	:	CASE NO.
	:	
Relators,	:	
	:	
v.	:	MEMORANDUM IN SUPPORT
	:	OF MOTION FOR CLASS
Earle B. Turner, Clerk of Courts,	:	CERTIFICATION
Cleveland Municipal Court and	:	
Violations Clerk, Cleveland Parking	:	
Violations Bureau, et al.,	:	
	:	
Respondents.	:	

Actions for a writ of mandamus are maintainable as a class action (*State ex rel. Gerspacher v. Coffinberry* (1952), 157 Ohio St. 32, 33, 104 N.E.2d 1), and, like all class actions in Ohio, are governed by Civil Rule 23. “The obvious intent of Rule 23 was to expand the class action concept in Ohio” and “provide access to the courts for individuals of modest means by permitting them to minimize counsel fees through united action.” *Miles v. N.J. Motors* (6th Dist. 1972), 32 Ohio App.2d 350, 358, 291 N.E.2d 758. For an action to be maintained under Civil Rule 23, the complaint “must establish that the four requirements set forth in subdivision (A) of Civ.R. 23 are satisfied and that the action falls within at least one of the three categories described in subdivision (B) of Civ.R. 23.” *Cubberley v. Chrysler Corp.* (8th Dist. 1981), 70 Ohio App.2d 263, 267, 437 N.E.2d 1. In the case at bar, each of these requirements are satisfied. Thus, this case should properly proceed as a class action.

LAW AND ARGUMENT

I. The eight requirements of rules 23(A) and 23(B) are satisfied in this case.

In ruling on Relator’s motion for class certification, the Court should not to consider the underlying merits of the controversy: “Class action certification does *not* go to the merits of the

action.” *Ojalvo v. Board of Trustees of Ohio State University* (1984), 12 Ohio St.3d 230, 233 (emphasis by the Court). Thus, “the question is not whether the plaintiff or plaintiffs have stated a 8 cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974), quoting *Miller v. Mackey International*, 452 F.2d 424, 427 (5th Cir. 1971).¹ Accordingly,

[a] class action is permitted under Civ. R. 23(B) subject to the satisfaction of the following prerequisites:

- (1) an identifiable class must exist and the definition of the class must be unambiguous [*“idenifiability”*];
- (2) the named representatives must be members of the class [*“membership”*];
- (3) the class must be so numerous that joinder of all members is impracticable [*“numerosity”*];
- (4) there must be questions of law or fact common to the class [*“commonality”*];
- (5) the claims or defenses of the representative parties must be typical of the claims or defenses of the class [*“typicality”*];
- (6) the representative parties must fairly and adequately protect the interests of the class [*“adequacy”*]; and
- (7) one of the three Civ. R. 23(B) requirements must be met.²

Thus, by their terms and as construed by the courts, Civil Rules 23(A) and 23(B) define the requirements for class certification. All of these requirements are satisfied in this case.

¹ See, e.g., *Ojalvo, supra*; *Zahnke v. Blaushild Chevrolet, Inc.*, Cuya. App. No. 45696, 1983 Ohio App. LEXIS 15332 at *2-3.

² *Rimedio v. Summacare Inc.*, Summit App. No. 23509, 2007-Ohio-3244, ¶10 (emphasis supplied), quoting *Carder Buick-Olds Co. v. Reynolds & Reynolds, Inc.*, 148 Ohio App.3d 635, 2002-Ohio-2912, at ¶19 (citing *Hamilton v. Ohio Savings Bank* (1998), 82 Ohio St.3d 67, 71). Accord, e.g., *Duncan v. Hopkins*, Summit App. No. 23342, 2007-Ohio-1425, ¶7; *State, ex rel. Davis v. Public Employees Retirement Board*, 111 Ohio St.3d 118; 2006-Ohio-5339, ¶18; *In re Consolidated Mortgage Satisfaction Cases*, 97 Ohio St.3d 465; 2002-Ohio-6720, ¶6.

1. The Class is “identifiable.”

At the time of certification, the members of a class need only be “identifiable” — that is, capable of being identified. *Warner v. Waste Management, Inc.* (1988), 36 Ohio St.3d 91, 96; *Planned Parenthood v. Project Jericho* (1990), 52 Ohio St.3d 57, 63. This does not mean that the members of the Class must already be identified at the time of class certification. Rather, “identifiability” simply means that the definition of the class must be “sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member.” *Hamilton v. Ohio Savings Bank* (1998), 82 Ohio St.3d 67, 71-72, quoting 7A C. WRIGHT, A. MILLER & M. KANE, FEDERAL PRACTICE & PROCEDURE § 1760, at 120-21 (2nd ed. 1986). Thus, the class definition must be precise enough “to permit identification within a reasonable effort.” *Hamilton, supra*, 82 Ohio St.3d at 71-72, quoting *Warner v. Waste Management, Inc., supra*, 36 Ohio St.3d at 96.

For example, “classes such as ‘all poor people’ are too amorphous to permit identification with a reasonable effort.” *Estate of Reed v. Hadley* (2005), 163 Ohio App.3d 464, 471. However, in *Planned Parenthood, supra*, involving a class defined as “[p]ersons picketing between the South curb of Louis Avenue and the North curb of Shields Avenue and on both sides of Vine Street from Louis Avenue to Shields Avenue,”³ the Supreme Court held this definition sufficiently provided “the means to identify the class” because, although the picketers identities were not yet known, the court could later determine whether a particular individual was or was not a member of the class. As the Court held:

Civ. R. 23 does not require a class certification to identify the specific individuals who are members as long as the certification provides a means to identify such persons. The fact that members may be added or dropped during the course of the action is not

³ 52 Ohio St.3d at 63.

controlling. The test is whether the means is specified at the time of certification to determine whether a particular individual is a member of the class.

Planned Parenthood, supra, 52 Ohio St.3d at 63 (citations omitted).

In the instant case, there is no problem of identifiability. The Class for which certification is sought is unambiguously defined as all of those identified on the Records of Respondent Clerk, as required by R.C. 1901.31(G), R.C. 4521.07(E), and R.C. 4521.08(C), as having paid money to Respondent Clerk in response to a Notice of Liability alleging a violation of Cod. Ord. §413.031. The class definition is sufficiently precise for the Court to readily determine whether a certain individual is a member of the Class. The identities of the class members can be objectively determined from the books and records of Respondent Clerk. The “identifiability” requirement is clearly satisfied.

2. Relator Goldstein is a member of the Class.

The Complaint in this case expressly alleges, and the Affidavit with attachments of Relator Goldstein demonstrates, the Relator Goldstein is a member of the Class. *See Planned Parenthood, supra*, 52 Ohio St.3d at 64; *Hamilton, supra*, 82 Ohio St.3d at 74.

3. The members of the Class are “so numerous that joinder of all members is impracticable.”

The “numerosity” provision of Civil Rule 23(A)(1) requires a finding that “the class is so numerous that joinder of all members is impracticable.” For this purpose, “[i]mpracticable’ does not mean ‘impossible’.” *Planned Parenthood, supra*, 52 Ohio St.3d at 64. Rule 23(A)(1) “does not specify the minimum class size which will render joinder impracticable,” and thus the Rule allows “a certain degree of flexibility in the determination of whether the proposed class is sufficiently numerous.” *Vinci v. American Can Co.* (1984), 9 Ohio St.3d 98, 99. The Ohio Supreme Court has noted that “[i]f the class has more than forty people in it, numerosity is

satisfied.” *Warner v. Waste Management, Inc.* (1988), 36 Ohio St.3d 91, 97, quoting WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE. Furthermore, the Supreme Court has expressly approved certification of a class having only 68 members, and noted with apparent approval that subclasses have been certified with as few as 23 members. *Vinci, supra*, 9 Ohio St.3d at 99-100; *Marks v. C.P. Chemical Co.* (1987), 31 Ohio St.3d 200, 202.

Moreover, “[j]oinder is more likely to be impracticable if the class members can be assumed to lack the ability or the motivation to institute individual actions.” *Hamilton, supra*, 82 Ohio St.3d at 75. In *Hamilton*, the Court stated:

[I]f a class member’s individual claims involved only a small amount of damages, class members would be unlikely to file separate actions. Courts have concluded their joinder is impracticable in such circumstances.

Id., quoting 5 MOORE’S FEDERAL PRACTICE § 23.22[5].

In this case, the Class consists of thousands, and likely tens of thousands. Their claims, if assessed individually, would be too small (\$100-\$200 each) to warrant the time and expense of pursuing thousands of thousands of complex individual lawsuits. (*Id.*, ¶ 12.) Clearly, the “numerosity” criterion of Civil Rule 23(A)(1) is satisfied in this case.

4. **There are “questions of law or fact common to the Class.”**

To satisfy the “commonality” requirement, there need only be “a common liability issue.” *Hamilton, supra*, 82 Ohio St.3d at 77; *Warner, supra*, 36 Ohio St.3d at 97. As the Supreme Court has emphasized, “[i]t is important to note that this provision does not demand that all the questions of law or fact raised in the dispute be common to all the parties.” *Marks v. C.P. Chemical, supra*, 31 Ohio St.3d at 202. See also *Planned Parenthood v. Project Jericho, supra*, 52 Ohio St.3d at 64 (“[t]otal commonality of issues is not needed”); accord *Hamilton, supra*, 82 Ohio St.3d at 77:

Courts generally give this requirement a permissive application. It is not necessary that all the questions of law or fact raised in the dispute be common to all the parties. If there is a common nucleus of operative facts, or a common liability issue, the rule is satisfied.

Warner, 36 Ohio St.3d at 97 & syllabus 3.

So long as there is *a* common issue of law *or* fact, commonality is satisfied, even though there may also be differences on some issues. Quoting Professor Arthur R. Miller, renowned co-author of the WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE treatise, the Ohio Supreme Court observed that:

“If there is a common liability issue, [Fed. R. Civ. P.] 23(a)(2) is satisfied. Similarly if there is a common fact question relating to negligence, . . . the Rule is satisfied. Typically the subdivision (a)(2) is met without difficulty for the parties and very little time need be expended on it by the . . . judge.”

Id. at 97, quoting A. MILLER, AN OVERVIEW OF FEDERAL CLASS ACTIONS 24.

In particular, Civil Rule 23(A)(2) “clearly does not require commonality with respect to *damages* but merely that the basis for *liability* is a common factor for all class members.” *Ojalvo v. Board of Trustees*, *supra*, 12 Ohio St.3d at 235 (emphasis supplied).

In this case, numerous questions of law and fact are common to every member of the class, including without limitation:

- (a) whether Respondent Clerk and Respondent Hearing Examiners are unlawfully exercising judicial power; and
- (b) whether Respondent Clerk and Respondent Hearing Examiners patently and unambiguously lack jurisdiction to exercise judicial power pursuant to Ohio Const. Art. IV, §1, and R.C. 1901.20(A)(1);

Inasmuch as there are only common questions of law and fact bearing upon liability, the “commonality requirement” of Civil Rule 23(A)(2) is patently satisfied.

5. **The named Relator’s claims are “typical of the claims of the other members of the Class.”**

“The typicality requirement has generally been liberally applied, and the courts have acknowledged that it is not a demanding requirement.” *Duncan v. Hopkins*, Summit App. No. 23342, 2007-Ohio-1425, ¶ 11, citing *Baughman v. State Farm Mut. Auto. Ins. Co.* (2000), 88 Ohio St.3d 480, 484. Thus, to satisfy the “typicality” requirement, the claims of the named Plaintiffs “need not be identical” to those of other Class members. *Planned Parenthood, supra*, 52 Ohio St.3d at 64. All that is required is that there be “no express conflict between the class representative and the class.” *Hamilton*, 82 Ohio St.3d at 77; *Warner, supra*, 36 Ohio St.3d at 98; *Marks, supra*, 31 Ohio St.3d at 202.

In this case, the named Relator’s claims arise from the same conduct by Respondent Clerk and Respondent Hearing Examiners which gives rise to the claims of other Class members. There is no conflict whatsoever between the named Plaintiffs and the other class members and thus the “typicality” requirement of Civil Rule 23(A)(3) is satisfied.

6. **The named Relator and their counsel will “fairly and adequately protect the interests of the Class.”**

“The requirement of adequacy [of representation] is placed upon both the class representatives and the class’ counsel.” *Duncan v. Hopkins*, Summit App. No. 23342, 2007-Ohio-1425, ¶ 10. That is, the “adequacy of representation” requirement “is divided into a consideration of the adequacy of the representatives and the adequacy of counsel.” *Warner*, 36 Ohio St.3d at 98; see also *Marks, supra*, 31 Ohio St.3d at 203; *Planned Parenthood, supra*, 52 Ohio St.3d at 65. A named plaintiff (Relator) “is deemed adequate so long as his or her interest is

not antagonistic to that of other class members.” *Hamilton*, 82 Ohio St.3d at 77 (emphasis supplied); *accord, Warner*, 36 Ohio St.3d at 98; *Duncan v. Hopkins, supra*, ¶ 10.

In this case, the named Relator will fairly and adequately protect the interests of the Class. Relator Goldstein is committed to the vigorous prosecution of this action, and his interests are not antagonistic to, but rather are in union with, the interests of the other Class members. Furthermore, the named Relator’s counsel have experience in handling both extraordinary writ and class action litigation, and are fully qualified to prosecute the claims asserted in this action, having successfully litigated many major extraordinary writ actions on behalf of claimants. See attached Affidavit of Paul M. Greenberger, counsel of record for Relators, and the Affidavit of Relator William M. Goldstein, the proposed class representative.

Thus, the “adequacy” requirement of Civil Rule 23(A)(4) is satisfied in this case.

7. The requirements of Civil Rule 23(B)(1)(a), (B)(1)(b), and (B)(3), are met.

In addition to the prerequisites set forth in Civil Rule 23(A) above—identifiability, membership, numerosity, commonality, typicality and adequacy—a party seeking class certification must also meet one of the requirements listed in Civil Rule 23(B). Two of these requirements are relevant in this case:

- (1) the prosecution of separate actions by or against individual members of the class would create a risk of:
 - (a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
 - (b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impeded their ability to protect their interests; or

(3) 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.

A class action is proper in this case under each of these subsections of Civil Rule 23(B).

A. The prosecution of separate actions would create a risk of (a) inconsistent or varying adjudications with respect to individual class members which would establish incompatible standards of conduct for Respondents, or a risk of (b) adjudications with respect to individual class members would as a practical matter be dispositive of the interests of other class members not parties to the adjudications or substantially impair or impeded their ability to protect their interests.

The issues and arguments presented *sub judice* are uniquely and principally based upon a specific provision of the Ohio Constitution, Art. IV, §1, and Revised Code, 1901.20(A)(1), enacted by the General Assembly pursuant to its exclusive authority to create and vest jurisdiction in municipal courts. Relators' arguments are principally based upon Ohio Supreme Court decisions which recognize the absolute supremacy of the General Assembly's over a municipality's home-rule authority, Ohio Const. Art. XVIII, §3. Relators contend that the application of Ohio Const. Art. IV, §1, militates but one result, and separate litigation involving other legal and constitutional principles presents the risk of varying adjudications and the concomitant incompatible standards of conduct for Respondents.

Similarly, separate litigation upon different legal principles or lesser standards than those set forth herein as arising under Ohio Const. Art. IV, §1, might result in rulings which are either dispositive or detrimental to the interest of class members not parties to such separate litigation.

Accordingly, this action is properly maintainable as a class action under Civil Rule 23(B)(1)(a) and (B)(1)(b).

B. The “questions of law or fact common to the members of the Class predominate over any questions affecting only individual members.”

Civil Rule 23(B)(3) requires “that ‘questions of law or fact common to the members of the class predominate over any questions affecting only individual members’ (*predominance*), and that the ‘class action is superior to other available methods for the fair and efficient adjudication of the controversy’ (*superiority*).”⁴

“[T]he predominance requirement is met ‘when there exists generalized evidence which proves or disproves an element [of the claim] on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member’s individual position.’” *Duncan v. Hopkins, supra*, 2007-Ohio-1425 at ¶ 12, citing *Baughman v. State Farm, supra*, 88 Ohio St.3d at 489.

Thus, the “predominance” requirement of Civil Rule 23(B)(3) is satisfied where the common issues of law or fact “represent a significant aspect of the case” and are “able to be resolved for all members of the class in a single adjudication.” *Schmidt v. AVCO Corp.* (1984), 15 Ohio St.3d 310, 313; see *Marks, supra*, 31 Ohio St.3d at 204.

Predominance focuses on *liability* issues. If common liability issues predominate over individual liability issues, then the predominance requirement is satisfied even though the damages may be individualized:

Rule 23(b)(3) does not require that all questions of law or fact be common; it only requires that the common questions predominate over individual questions. Courts generally focus on the liability issue in deciding whether the predominance requirement is met, and *if the liability issue is common to the class, common questions are held to predominate over individual questions.*

⁴ *Rimedio v. Summacare Inc.*, Summit App. No. 23509, 2007-Ohio-3244, ¶11 (emphasis added). *Accord, e.g., Duncan v. Hopkins*, Summit App. No. 23342, 2007-Ohio-1425, ¶8.

Dura-Bilt Corp. v. Chase Manhattan Corp., 89 F.R.D. 87, 93 (S.D.N.Y. 1981) (emphasis supplied).⁵ The court in *Dura-Bilt* noted that, although class actions “always invoke many individual causation and damage issues, . . . they also frequently display common violation or liability controversies that may be resolved efficiently only on a class-wide basis.” *Id.* at 93 n.5.

Consequently, the “‘overwhelming weight of authority’ holds that the need for individual damages calculations does not diminish the appropriateness of class action certification where common questions as to liability predominate.” *Wolgin v. Magic Marker Corp.*, 82 F.R.D. 168, 176 (E.D. Pa. 1979).⁶ Moreover, in this case the damages for each member of the Class are liquidated and are part of the records which Respondent Clerk is required by statute to maintain.

The Ohio Supreme Court adopted the rule that predominant liability issues satisfy the “predominance” requirement even where there are individualized damages:

While potential dissimilarity in remedies is a factor to be considered in determining whether individual questions predominate over common questions, that alone does not prevent a trial court from certifying a cause as a class action. The overwhelming body of law so indicates.

Vinci, supra, 9 Ohio St.3d at 101 (citations omitted). *See also Ojalvo, supra*, 12 Ohio St.3d at 232 (“a trial court should not dispose of a class certification solely on the basis of disparate damages”).

In the instant case, *all* of the issues bearing upon the liability of Respondents are common—in fact identical—to the class as a whole. These common issues obviously “represent a significant aspect of the case” and are “able to be resolved for all members of the class in a single adjudication.” *Schmidt, supra*, 15 Ohio St.3d at 313; *Marks, supra*, 31 Ohio St.3d at 204.

⁵ *Accord Hamilton, supra*, 82 Ohio St.3d at 81; *Ojalvo, supra*, 12 Ohio St.3d at 232 & n.1; *Vinci, supra*, 9 Ohio St.3d at 101.

⁶ *Accord*, citations in note 5 *supra*.

Therefore, the common issues – all of which can be adjudicated in a single, class-wide trial – clearly predominate over any individual issues that might remain. (*Id.*) The “predominance” criterion of Civil Rule 23(B)(3) is satisfied in this case.

The “superiority” requirement of Civil Rule 23(B)(3) is satisfied where “the efficiency and economy of common adjudication [through a class action] outweigh the difficulties and complexity of individual treatment of class members’ claims.” *Warner, supra*, 36 Ohio St.3d at 98. A class action is superior to other methods, and class certification should be granted, where “[r]epetitious adjudication of liability, utilizing the same evidence over and over, could be avoided, [even if] separate suits on individual damages would still be necessary.” *Marks*, 31 Ohio St.3d at 204.

In the instant case, class certification will permit class-wide adjudication of *all* issues bearing upon Respondents’ liability presented by Relators’ claims. Without class certification, adjudication of class members’ claims would require the filing of tens of thousands of individual lawsuits seeking \$100-\$200 each, with concomitant demands upon court resources. *Ojalvo*, 12 Ohio St.3d at 235 (a class action is “the ideal means of adjudicating in a single proceeding what otherwise become three thousand to six thousand separate administrative actions”).⁷

Similar benefits will accrue to Respondents through avoidance of multiple suits and multiple jury determinations and because “[c]lass action treatment would eliminate any potential danger of varying or inconsistent judgments.” *Cope v. Metropolitan Life Ins. Co.* (1998), 182 Ohio St.3d 426, 431.

⁷ See also *In re School Asbestos Litigation*, 789 F.2d 996, 1001 (3rd Cir. 1986) (class certification avoids “reinventing the wheel thousands of times”); *Jenkins v. Raymark Industries, Inc.*, 782 F.2d 468, 473 (5th Cir. 1986) (class certification “is clearly superior to the alternative of repeating, hundreds of times over, the litigation of the state of the art issues with . . . ‘days of the same witnesses, exhibits and issues from trial to trial’”).

Moreover, if class members were required to pursue their claims individually, the potential for recovery would be outweighed by the relatively high cost of filing fees, and the unlikelihood of the economical retention of counsel for claims typically in the \$100.00 to \$200.00 range. Present such claims in a class action will ensure there is “a forum for the vindication of rights” that is economical enough to pursue. *Id.* As the Supreme Court has stressed:

The purpose of Civ R. 23(B)(3) was to bring within the fold of maintainable class action cases in which the efficiency and economy of common adjudication outweigh the interests of individual autonomy. Thus, “[t]his portion of the rule also was expected to be particularly helpful in enabling numerous persons who have small claims that might not be worth litigating in individual actions to combine their resources and bring an action to vindicate their collective rights.”

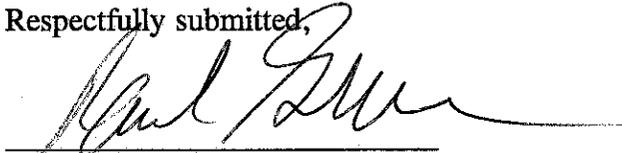
Hamilton, supra, 82 Ohio St.3d at 80 (“[t]he policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights”) (citations omitted), *quoting* 7A C. WRIGHT, A. MILLER & M. KANE, FEDERAL PRACTICE & PROCEDURE § 1777 (2nd ed. 1986).

Therefore, this case is clearly one in which “a class action is superior to other available methods for the fair and efficient adjudication of the controversy,” and thus satisfies the “superiority” requirement of Civil Rule 23(B)(3).

CONCLUSION

For the aforementioned reasons, Relator William M. Goldstein respectfully requests this Court to grant his Motion for Class Certification. As discussed above, all requirements of Civil Rule 23 have been satisfied, and the goal of judicial economy will be well-served by resolving these claims in a single action.

Respectfully submitted,



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STATE OF OHIO)
) SS: AFFIDAVIT
COUNTY OF CUYAHOGA)

I, Paul M. Greenberger, being first duly sworn, depose and say that:

1. I am an attorney at law in good standing, licensed to practice within the State of Ohio since May, 1975, and have practiced law continuously since that date on a full-time basis.

2. I am currently a member of the law firm Berns, Ockner & Greenberger, LLC.

3. I am admitted to the U.S. District Court, Northern District of Ohio, and to the Sixth Circuit Court of Appeals.

4. I earned my B.S. Chem. Eng. from The Ohio State University, 1971, and my J.D. from the George Washington University, 1975.

5. I have been the principal attorney in numerous original actions for extraordinary writs filed in Ohio courts of appeals and in the Ohio Supreme Court.

6. I represented the class in *City of Wooster v. Graines* (1990), 52 Ohio St.3d 180, 556 N.E.2d 1163.

7. I was successful in obtaining writs in the following original actions filed in the Ohio Supreme Court:

- *State ex rel GMS Mgt Co Inc v. Dennis M Callahan, Judge, et al.*, Case no. 1988-0385, Original Action in Mandamus and Prohibition (writ of mandamus allowed, 8/16/89); and
- *State ex rel GMS Mgt Co Inc v. Eugene M. Fellmeth, Judge et al.*, Case no. 1988-1594 Original Action in Mandamus and Prohibition (peremptory writ allowed, 09/27/88).

8. I was successful in obtaining writs in the following original actions filed in the courts of appeals:

- *State ex rel. Beach, L.P. v. Vilkas* (Ohio App. 8th Dist.), 2005-Ohio-4581 (writ allowed) (Reporter's Note: An appeal to the Supreme Court of Ohio was

dismissed *sua sponte* for want of prosecution in (1990), 52 Ohio St.3d 709, 557 N.E.2d 1218.); and

- *State, ex rel. GMS Mgt. Co., v. Callahan* (Ohio App. 11th Dist. 1989), 65 Ohio App.3d 335, 583 N.E.2d 1339 (writ granted) (The Supreme Court, 49 Ohio St.3d 712, 552 N.E.2d 946, overruled motion to dismiss, but then, 52 Ohio St.3d 709, 557 N.E.2d 1218, dismissed for want of prosecution, and, 54 Ohio St.3d 710, 561 N.E.2d 945, denied motions for rehearing and to reinstate appeal.)

9. I represented the prevailing party in *Christe v. GMS Mgt. Co., Inc.* (2000), 88 Ohio St.3d 376, 376, 726 N.E.2d 497 (under our common law, attorney fees are in the nature of costs. Attorney fee awards made pursuant to R.C. 5321.16(C) are to be assessed as costs.)

10. The Ohio Supreme Court adopted the theory I propounded in an amicus brief in *Katz v. Ohio Ins. Guar. Assn.*, 103 Ohio St.3d 4, 2004-Ohio-4109, 812 N.E.2d 1266, and applied that theory in *Witt v. Ohio Ins. Guar. Assn.*, 103 Ohio St.3d 557, 2004-Ohio-5846, 817 N.E.2d 76, in which I was counsel of record.

11. My co-counsel from Berns, Ockner & Greenberger, LLC is Jordan Berns. Mr. Berns received his B.A. from the University of Michigan in 1987. And his J.D. from The Ohio State University in 1990. Mr. Berns practiced law from 1990 to 2002 in the Cleveland office of Baker & Hostetler. Mr. Berns is a member of the firm and a member in good standing of the Ohio Bar and has been admitted to practice in the Sixth Circuit of the United States Court of Appeals. Since his admission to the bar, Mr. Berns has represented parties in complex civil litigation, including appellate practice matters and litigation involving political subdivisions. Mr. Berns has represented parties in actions seeking extraordinary relief, including, without limitation, *State ex rel. Shemo v. Mayfield Hts.*, 96 Ohio St.3d 379, 775 N.E.2d 493, 2002-Ohio-4905; *State ex rel. Republic Services of Ohio v. Pike Twp. Bd. of Trustees* (Stark Cty. App.), 2007-Ohio-2086, *State ex rel. Republic Services of Ohio II, LLC v. Pike Twp. Bd. of Trustees*

(Stark Cty. App.), 2005-Ohio-6460 and 2005-Ohio-6463. In addition to the present case, the class action cases in which Mr. Berns has served include *Deegan & McGarry v. Med Cor*, Case No. CV-94-274292 (Cuyahoga C.P.).

12. My co-counsel from Berns, Ockner & Greenberger, LLC is Timothy J. Duff. Mr. Duff received his B.A. from Denison University in 1986, and his J.D. from Case Western Reserve School of Law in 1990. Mr. Duff clerked in the Ohio Court of Appeals, 8th Appellate District, for the Honorable John V. Corrigan and the Honorable Leo M. Spellacy from 1990 until 1995. Mr. Duff practiced law with Climaco, Climaco, Seminatore, Lefkowitz & Garofoli in 1996 and 1997 and with Kelley, McCann & Livingstone from 1997 until its merger with Taft, Stettinius & Hollister in 2001, and then with Taft, Stettinius & Hollister until 2005. Since 2005, Mr. Duff has practiced law with Berns, Ockner & Greenberger. Mr. Duff is a member of the firm and a member in good standing of the Ohio Bar and has been admitted to practice in the Northern District of Ohio and the Sixth Circuit of the United States Court of Appeals. Mr. Duff has represented parties in complex civil litigation, including appellate practice matters and litigation involving political subdivisions. Mr. Duff has represented parties in actions seeking extraordinary relief, including: *State ex rel. Baldzicki v. Cuyahoga County Board of Elections*, 90 Ohio St.3d 238, 740 N.E.2d 242, 200-Ohio-67; *State ex rel Demaline v. Cuyahoga County Board of Elections*, 90 Ohio St.3d 523, 740 N.E.2d 242, 2000-Ohio-108; and *State ex rel. North Royalton Storage, LLC v. City of North Royalton*, Cuyahoga County Court of Common Pleas Case No. 05-58061.

13. In the instant action, Relators seek extraordinary writs to enforce the courts provision of the Ohio Constitution embodied in Art. IV, §1, against the usurpation of the General Assembly's exclusive power to establish courts and their jurisdiction by Respondent Cleveland

by expanding the authority of its parking violations bureau over matters which the General Assembly determined are to be handled by a municipal court.

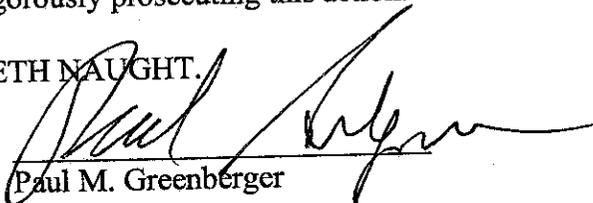
14. As set forth more fully in the Complaint for writs of prohibition and writs of mandamus, Relators seek (a) a writ of prohibition to both prevent Respondent Clerk and Respondent Hearing Examiners from exercising judicial power they are about to exercise over Relator Christoff's Notice of Liability for a violation of §413.031, and to correct the results of prior actions taken without jurisdiction, and (b) a writ of mandamus compelling Respondent Clerk, Respondent Treasurer, Respondent Director of Finance, and Respondent Cleveland to disgorge, refund, and pay to each Relator the specific amount paid by each Relator to Respondent Clerk, less attorneys fees and costs, because such amounts were wrongfully collected pursuant to the unconstitutional exercise of judicial power.

15. The proposed class consists of thousands, or possibly tens of thousands, of persons who have paid Respondent Clerk amounts that were wrongfully collected pursuant to the unconstitutional exercise of judicial power.

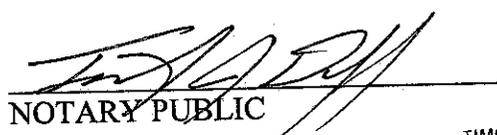
16. Berns, Ockner & Greenberger, LLC has the means by which to handle the financial burdens of this action.

17. I am committed to vigorously prosecuting this action.

FURTHER AFFIANT SAYETH NAUGHT.


Paul M. Greenberger

Sworn to before me and subscribed in my presence this 9th day of February, 2011.


NOTARY PUBLIC

TIMOTHY J. DUFF, ESQUIRE
Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date.
Section 147.03 O. R. C.

STATE OF OHIO)
) SS: AFFIDAVIT
COUNTY OF CUYAHOGA)

I, WILLIAM M. GOLDSTEIN, being first duly sworn, depose and say that:

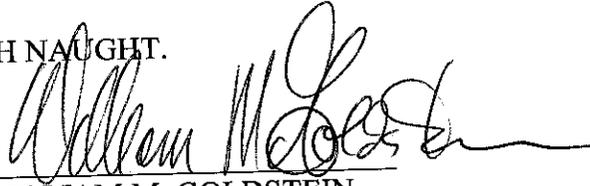
1. I am a Relator in the instant action and the proposed class representative, and I state the following on personal knowledge.

2. I paid a total of \$400.00 to the Cleveland Parking Violations Bureau, at the rate of \$100.00 for each for four (4) separate violations of Cleveland Cod. Ord. §413.031, as accurately represented on the relevant portion of the attached 1/25/2011 "eTIMS : CLEVELAND, OH" printout which my attorney Paul M. Greenberger obtained from the office of said Parking Violations Bureau.

3. I have read the Complaint for writs of prohibition and writs of mandamus and the facts therein pertaining to my violations of Cod. Ord. §413.031, including, without limitation, the process issued with respect thereto, and the jurisdiction asserted and exercised by Respondents, are true.

4. I am committed to vigorously prosecuting this action on my own behalf and on behalf of the proposed class.

FURTHER AFFIANT SAYETH NAUGHT.


WILLIAM M. GOLDSTEIN

Sworn to before me and subscribed in my presence this 9 day of February, 2011.


NOTARY PUBLIC
LINDSAY DUNSMOOR
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires April 26, 2015