ORIGINAL

IN THE SUPREME COURT OF OHIO

CASE NO. 14-0358

JANINE LYCAN; THOMAS PAVLISH; JEANNE TASK; LINDSEY CHARNA; AND JOHN T. MURPHY, individually and on behalf of the Class they represent
Plaintiff-Appellees,

-vs-

CITY OF CLEVELAND
Defendant-Appellant.

ON APPEAL FROM THE EIGHTH APPELLATE DISTRICT CASE NO. 99698

MEMORANDUM OPPOSING JURISDICTION OF PLAINTIFF-APPELLEES, JANINE LYCAN, *et al.*

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EXPLANATION OF WHY THIS CASE PRESENTS NO ISSUES OF PUBLIC OR GREAT GENERAL IMPORTANCE

This is now the third attempt by Defendant-Appellant, City of Cleveland, to convince this Court to review its misapplication of its former (not current) Traffic Camera Enforcement Ordinance ("Ordinance"). Judge Richard J. McMonagle determined below from the undisputed facts that Defendant had been unjustly enriched by assessing civil fines against individuals who did qualify as the "owner" the vehicle that had been photographed allegedly committing an infraction. *T.d 81.* The Ordinance was promptly amended to correct the situation. A narrowly defined class was approved by Judge McMonagle that is limited to those non-owners who had been improperly cited between July 20, 2005 and March 11, 2009. *T.d 88.* These sensible rulings adhered to the well-established precedents recognizing that prompt refunds are in order under principles of equity whenever governmental entities have overcharged unsuspecting citizens without authority. *See, e.g., Santos v. Ohio Bur. of Workers' Comp.*, 101 Ohio St.3d 74, 2004-Ohio-28, 801 N.E.2d 441 (action for recovery of workers compensation subrogation payments litigated in Cuyahoga County); *Judy v. Ohio Bur. of Motor Vehicles*, 100 Ohio St.3d 122, 2003-Ohio-5277, 797 N.E.2d 45 (double-billed license reinstatement fees recovered in Lucas County).

As a result of a number of damaging admissions that were elicited during discovery, Defendant no longer contends either that the unlawful collection and retention of traffic camera enforcement fines is somehow equitable or that Plaintiff-Appellees failed to establish the remaining elements of the claim of unjust enrichment. There is no longer any dispute that the municipality issued hundreds of citations over a period of years to non-owners despite knowing that there was no authority under the Ordinance to do so. The Administrator of the Parking Violations Bureau and Photo Safety Division, Maria Vargas ("Vargas"), testified that a committee decision had been

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rendered to issue the citations to both non-owners, who were often just lessees, as well as the titled owners. *T.d. 67, Deposition of Maria Vargas taken October 11, 2011 ("Vargas Depo."), pp. 78-80.* In once particularly poignant exchange during the questioning, she conceded that:

> Q. *** Where in the ordinance does it allow you to issue citations to a nonowner driver?
>
> A. No, it does not.
>
> Q. So you guys were issuing notices to nonowners and you knew you weren't allowed to?
>
> MS. MEYER: Objection.
>
> Q. Is that Correct?
>
> MS. MEYER: Objection.
>
> A. Yeah.
>
> Q. And how many violations did you collect money on?
>
> A. I have no idea.
>
> Q. So if these people didn't know better, they'd get a notice and some would, some would pay, correct?
>
> MS. MEYER: Objection.
>
> A. That is correct.
>
> Q. <u>And you guys took their money even though you knew you weren't allowed to take their money</u>?
>
> MS. MEYER: Objection.
>
> A. <u>That is correct</u>.

Id., p. 114 (emphasis added). Because this was the City's official position, there was no chance that a lessee or other non-owner could successfully convince a hearing officer that the Ordinance was restricted to just registered owners. *Id., pp. 167-170.*

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After having lost two prior rounds of appeals and tacitly conceding the merits of the claim of unjust enrichment, Defendant is left only with the fundamentally flawed *res judicata* defense. In the latest appeal, the Eighth District rejected the novel argument that the mere availability of an administrative mechanism was sufficient to implicate to doctrine of claim preclusion. *Lycan v. Cleveland*, 8th Dist. No. 99698, 2014-Ohio-203, ¶13-19 (*Lycan II*). The Court justifiably noted that the defense applies only when a valid judgment has been entered, and none had been issued against any of the Named Plaintiffs or proposed class members. *Id., ¶15.* Even if that precondition could be satisfied, the record evidence had established that Defendant's administrative review procedure was designed only to determine whether a traffic infraction had been committed and was incapable of granting any non-owners a refund on the grounds that the Ordinance had been misinterpreted. *Id.*

The <u>only</u> authority that Defendant has been able to identify that is inconsistent with the Eighth District's latest opinion is the Sixth Circuit's aberrational ruling in *Carroll v. Cleveland*, 522 Fed. Appx. 299 (6th Cir. 2013). *Defendant's Memorandum in Support of Jurisdiction ("Defendant's Memo."), pp. 9-12.* The plaintiffs in that instance were attempting to secure the same type of class recovery through imaginative federal due process arguments. In holding that *res judicata* applied even in the absence of a prior judicial or administrative adjudication, the majority simply misconstrued Ohio law. As far as Defendant's briefing reveals, no other court has ever endorsed this unprecedented expansion of the doctrine. Every other case they cite recognized that *res judicata* applied only after the parties had actually litigated their dispute to a conclusion in a civil or administrative proceeding. The Eighth District refused to ignore the requirement of a prior valid judgment, and continued to adhere to the established precedents. *Lycan II*, 2014-Ohio-203, ¶ 14.

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There mere fact that a federal appellate court has adopted a view of *res judicata* that is unknown in Ohio hardly creates an issue of public or great general importance. By all appearances, jurists in this State have been routinely applying the doctrine in a consistent and just manner. As part of its unrelenting effort to avoid having to refund the unlawfully collected civil penalties, it is actually Defendant that is seeking to upend decades of established case law. Given that none of Ohio's twelve judicial districts have seen fit to adopt *Carroll's* revolutionary holding, this Court should decline the pointless invitation to examine and rework a black-letter legal principle.

The other traffic camera enforcement appeal that is pending before this Court, *Walker v. Toledo*, Case No. 2013-1277, has nothing to do with *res judicata*. Instead, the municipality is challenging the Sixth District's determination that the ordinance interferes with the jurisdiction of municipal courts and violates Section 4, Article I of the Ohio Constitution. The insinuation that the instant appeal could serve as some sort of companion to *Walker* is nonsensical, particularly given that the latter has been fully briefed.

Defendant has also referenced another pending appeal, *Jodka v. Cleveland*, Case No. 0480, but the conflict that has been certified with *Walker* is based upon constitutional challenges and <u>not</u> *res judicata*. That defense was never addressed in the Eighth District's majority opinion. *Jodka v. Cleveland*, 8th Dist. No. 99951, 2014-Ohio-208. Defendant never attempted to certify a conflict below with either *Walker* or *Jodka*, undoubtedly out of appreciation that the *Lycan* action raises only a narrow fact-intensive challenge to the municipality's misapplication of the relatively unique terms of the former ordinance. Since there is no reason to believe that this Court's decisions in *Walker* and *Jodka* will be revising the doctrine of *res judicata* in a manner that will allow the instant Defendant to finally prevail, the Eighth District's sound decision in

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Lycan II should be left intact and this protracted litigation should be brought to a final conclusion.

STATEMENT OF CASE AND FACTS

This class action lawsuit arises out the first of Defendant's three appeals. In *Dickson & Campbell, L.L.C. v. Cleveland*, 181 Ohio App.3d 238, 2009-Ohio-738, 908 N.E.2d 964 (8th Dist. 2009), the court held that the former version of the Ordinance, CCO 413.031, did not permit fines to be imposed against mere lessees of the vehicles that had been photographed committing traffic infractions. *Id.*, 181 Ohio App. 3d at 244-247, ¶38-54. The enactment only applied to "vehicle owner[s]" as subsection (a) specifically provided that:

> *** This civil enforcement system imposes monetary liability <u>on the owner of a vehicle</u> for failure of an operator to stop at a traffic signal displaying a steady red light indication or for the failure of an operator to comply with a speed limitation. [emphasis added]

Apx. 00014. Liability was assessed under subsections (b) and (c) solely against the "owner of a vehicle[.]" *Id.* The term "owner" was defined as follows in subsection (p)(3):

> "Vehicle owner" is the person or entity identified by the Ohio Bureau of Motor Vehicles, or registered with any other State vehicle registration office, as the registered owner of a vehicle.

Id. Because lessees and other non-owners are not identified as the registered owners by the Ohio BMV, the citations could not be lawfully issued to them. *Id.*, ¶39.

According to media reports that followed, the City's Director of Law publically acknowledged the ordinance "was flawed as originally written ***." *T.d. 58, Plaintiffs' Motion for Partial Summary Judgment ("Plaintiffs' S.J. Motion"), Exhibit D.* CCO 413.031 was then amended effective March 11, 2009 to permit fines to be imposed against both lessees as well as registered owners. The instant lawsuit concerns only the

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former version of the Ordinance.

When it became evident that none of the unlawfully collected civil penalties were going to be refunded voluntarily, the instant action was commenced on February 25, 2009. *T.d. 1.* The Class Action Complaint alleged that the original Named Plaintiff, Janine Lycan, was compelled to pay the $100.00 fine under former CCO 413.031, even though a leased vehicle had been photographed. As permitted by Civ. R. 23, relief was sought on behalf of all other similarly situated individuals on a class-wide basis.

During this same period, Defendant sought further review of the *Dickson & Campbell* decision in the Supreme Court of Ohio. The Justices were specifically alerted to the existence of the instant class action lawsuit and were warned that the Eighth District's ruling "has exposed the City to potential monetary damages and disgorgement of civil penalties[.]" *T.d. 58, Plaintiffs' S.J. Motion, Exhibit E. p. 1.* The request for further review was nevertheless denied by this Court. *Dickson & Campbell L.L.C. v. Cleveland*, 122 Ohio St.3d 1479, 2009-Ohio-3625, 910 N.E.2d 478.

Returning to the case *sub judice*, Plaintiffs moved for class certification under Civ.R. 23 on May 11, 2009. *T.d. 10.* They maintained that Defendant's uniform and systematic practice of imposing civil fines upon non-owners in a manner that was unauthorized by the Ordinance justified an equitable recovery on a classwide basis.

On July 14, 2009, Defendant filed a Motion for Judgment on the Pleadings under Civ.R. 12(C). *T.d. 25.* The City maintained that any relief was barred, as a matter of law, because (1) Plaintiffs and the class members had failed to pursue the administrative appeal procedures and (2) the funds had been "voluntarily" paid. Plaintiffs' timely Memorandum in Opposition was submitted on July 27, 2009. *T.d. 28.* While agreeing that the pertinent facts were not in dispute, the vehicle lessees argued that their decision to promptly pay the civil fines in order to avoid aggressive municipal collection efforts

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could not legally result in a waiver of their right to an equitable recovery. Defendant opposed the Motion for Class Certification on August 6, 2009. *T.d. 30.*

On November 25, 2009, Judge McMonagle granted Defendant's Motion for Judgment on the Pleadings. *T.d. 47; pp. 1-6.* The Common Pleas Judge reviewed both the *Dickson & Campbell* opinion as well as a federal decision that had been issued in a "copycat" class action styled *McCarthy v. Cleveland,* U.S. Dist. Ct., Case No. 1:09-CV-1298,[1] which later became the *Carroll v. Cleveland* opinion that Defendant is now touting ("*Carroll/McCarthy*"). The opinion then concluded that: "Given the clear language of the Ordinance, Plaintiffs and potential members of the Plaintiffs' proposed class that did not follow the appeals procedure waived their right to contest the citation." *Id., p.4.* Class certification was also denied on the grounds that the Named Plaintiffs could not allege any potentially viable claims for relief. *Id., p. 5.*

The *Lycan* Plaintiffs responded with their Notice of Appeal on December 8, 2009. *T.d. 48.* Following briefing and oral argument, the Eighth District issued a decision on December 9, 2010. *Lycan v. Cleveland,* 8th Dist. No. 94353, 2010-Ohio-6021 (*Lycan I*). The panel was unmoved by Defendant's arguments that the civil fines had been "voluntarily" paid and the lessees' right to a classwide recovery had been lost when the municipal hearing procedure was not followed. Instead, they proceeded to the merits and noted that Plaintiffs are not seeking "money damages" for unjust enrichment, but are pursuing a purely equitable remedy. *Id., ¶6.* The opinion then reasoned that:

> [Plaintiffs] conferred a benefit on the city and the city had knowledge of that benefit. The question before us, then, is whether [plaintiffs] can prove any set of facts demonstrating that it would be unjust for the city to retain the fines appellants paid. <u>While we recognize that the [plaintiffs] had the opportunity to challenge the imposition of the fines before they paid them, this opportunity does not necessarily</u>

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[1] The *Carroll/McCarthy* lawsuit was filed on May 21, 2009 only after the instant *Lycan* proceedings started to receive local media attention.

foreclose any right to equitable relief. *** [emphasis added]

Id., ¶8.

Defendant proceeded to seek Supreme Court review of the issues of public and great general importance that supposedly had been imperiled by the *Lycan I* opinion. The municipality continued to insist that "once the violations notices were paid by Appellees, they were collaterally estopped from re-litigating their notices." *T.d 77, Plaintiffs' Reply and Memorandum in Opposition, Exhibit C, p. 1.* An entire section of the Memorandum was devoted to arguing that Plaintiffs lacked "standing" and had "waived their right to appeal" by paying the assessments. *Id., pp. 7-12.* This Court still denied further review on May 25, 2011. *Lycan v. Cleveland,* 128 Ohio St. 3d 1501, 2011-Ohio-2420, 947 N.E. 2d 683 (table).

Once the class action lawsuit had returned to the court of common pleas, the parties completed their depositions and discovery. Plaintiffs filed their Motion for Partial Summary Judgment on July 25, 2012, which argued that no genuine issues of material fact existed upon the elements of the unjust enrichment claim that had been left for adjudication in *Lycan I. T.d. 58.* Defendant's response followed on August 23, 2012. *T.d. 61.* In addition to arguing that some of Plaintiffs' exhibits were improper, the municipality maintained that each of the non-owners had "voluntarily paid" their citations and conclusively "admitted" their guilt. Notably, Defendant did not suggest that a factual dispute existed that required a trial, and requested an entry of summary judgment against Plaintiffs. *Id., p. 21.* Plaintiffs refuted each of these contentions in a Reply in Support of Motion for Partial Summary Judgment dated October 18, 2012. *T.d. 77.* Defendant tendered its own Reply on November 21, 2012, which merely rehashed the positions that had been previously asserted. *T.d. 80.*

In an Entry dated February 8, 2013, Judge McMonagle granted Plaintiffs' Motion

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for Partial Summary Judgment. *T.d. 81.* The ruling resolved only the claim for equitable restitution, and the request for declaratory judgments remained pending.

Judge McMonagle conducted a lengthy hearing upon the remaining motions on February 19, 2013, during which the parties were permitted to present evidence and argumentation in support of their respective positions. *Hng. Tran. dated Feb. 19, 2013, pp. 3-65.* Plaintiffs also presented the trial judge with sworn statements without objection establishing that none of the Named Plaintiffs had qualified as vehicle owners under CCO 413.031(p)(3) but were nevertheless assessed civil fines prior to March 11, 2009, which most of them paid to avoid municipal enforcement efforts. *T.d. 82-86.* Defendant's discovery responses were also tendered to the Court without objection. *T.d. 87.*

In an Order and Opinion that was journalized on February 26, 2013, Judge McMonagle carefully reviewed each of the Rule 23 requirements for class certification. *T.d. 88.* After concluding that Plaintiffs had sustained their burden of proof, the following class was certified subject to standard exceptions:

> All persons and entities who were not a "vehicle owner" under CCO 413.031, but were issued a notice of citation and/or assed a fine under that ordinance, prior to March 11, 2009, by/or on behalf of Defendant, City of Cleveland.

Id., p. 8.

Defendant's Notice of Appeal followed on March 27, 2013. *T.d. 92.* As previously noted, the trial judge's certification of a class and entry of summary judgment in Plaintiffs' favor was unanimously upheld. *Lycan II*, 2014-Ohio-203.

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ARGUMENT

PROPOSITION OF LAW: CLEVELAND CODIFIED ORDINANCE 413.031 PROVIDES AN ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW TO THOSE RECEIVING CIVIL NOTICES OF LIABILITY BY WAY OF THE ADMINISTRATIVE PROCEEDINGS SET

FORTH IN THE ORDINANCE. *STATE EX REL. SCOTT V. CLEVELAND* 112 Ohio St.3d 324, 2006 OHIO-6573, 859 N.E.2d 923. INDIVIDUALS WHO RECEIVE A CIVIL CITATION ISSUED PURSUANT TO A LOCAL ORDINANCE AND WHO KNOWINGLY DECLINE TO TAKE ADVANTAGE OF AN AVAILABLE ADEQUATE REMEDY AT LAW ARE PRECLUDED BY *RES JUDICATA* FROM SUBSEQUENTLY ACTING AS CLASS REPRESENTATIVES AND PRESENTING EQUITABLE CLAIMS PREDICATED IN UNJUST ENRICHMENT. *CARROLL V. CLEVELAND,* 522 FED.APPX. 299 (6th CIR. OHIO 2013).

Defendant's single Proposition of Law is predicated squarely upon the notion that *res judicata* is implicated once an individual or business entity opts against pursuing an administrative review mechanism. *Defendant's Memo., pp. 7-14.* It is important to note that, unlike worker's compensation and zoning proceedings, no statute exists that affords the municipality exclusive jurisdiction over the relief sought in this action. This Court is expected to be the first in the history of Ohio jurisprudence to hold that a prior judicial or administrative judgment is unnecessary to impose res judicata effect to a non-mandatory municipal review procedure that is never pursued. *Id.* At a time when Cuyahoga County officials should be working diligently together to regain the public trust, the City of Cleveland persists in playing a game of legal "gotcha" with its citizens.

This state has long recognized that the doctrine of *res judicata* is triggered only once a final judgment has actually been entered without fraud or collusion. *In re Guardianship of Lombardo*, 86 Ohio St. 3d 600, 604, 1999-Ohio-132, 716 N.E. 2d 189, 193; *Holzemer v. Urbanski*, 86 Ohio St. 3d 129, 133, 1999-Ohio-91, 712 N.E. 2d 713, 716. Since none of the Named Plaintiffs or class members pursued the Violations Bureau's hearing process, which was neither mandatory nor exclusive, no "judgment" exists that could support a *res judicata* defense. *United Tele. Co. of Ohio v. Tracy*, 84 Ohio St. 3d 506, 511, 1999-Ohio-366, 705 N.E. 2d 679, 684 (holding that *res judicata* did not apply where an administrative proceedings was not filed with the board of tax appeals);

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Metropolis Night Club, Inc. v. Ertel, 104 Ohio App. 3d 417, 419, 662 N.E. 2d 94, 95 (8th Dist. 1995) (*res judicata* was no longer a bar once prior final judgment was reversed on appeal).

Even though the absence of prior judicial or administrative orders was the primary justification for the lower courts' rejection of the *res judicata* defense, Defendants have furnished just a few sentences in response. *Defendant's Memo., p. 12.* Apart from the misguided *Carroll/McCarthy* decision, no authorities have been cited actually holding that the failure to pursue a non-mandatory administrative review mechanism implicates *res judicata*. The municipality has asserted instead that:

> *** As clearly stated in CCO 413.031(k): "failure to give notice of appeal or pay the civil penalty within this time period [21 days] shall constitute a waiver of the right to contest the ticket and shall be considered an admission." ***

Id., p. 12. No explanation has been furnished with how a municipality can sidestep the requirement for a valid judgment by enacting an ordinance or regulation imposing a waiver or admission. *Id.* But more significantly than that, the overwhelming majority of the Named Plaintiffs and class members had indeed paid the civil penalty within 21 days. *T.d. 82-86, Plaintiff's Affidavits*; *Lycan II*, 2014-Ohio-203, ¶6. This has been admitted by Defendant. *Defendant's Memo., pp. 2 & 6.* Plaintiffs thus have <u>not</u> waived or admitted anything under the express terms of CCO 413.031(k).

The notice appearing on the reverse side of the standardized citations fully supports Plaintiffs' position that under CCO 413.031(k), paying the penalty avoided any admissions.

> **YOU MUST EITHER ADMIT OR DENY THIS INFRACTION[.] IF YOUR ADMISSION OR DENIAL IS NOT RECEIVED WITHIN 21 CALENDAR DAYS OF THE NOTICE DATE OF THE TICKET, LATE PENALTIES WILL BE ADDED AND YOU WILL LOSE YOUR RIGHTS TO APPEAL.** [emphasis original]

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T.d. 83, Lycan Affidavit, Exhibit B. Anyone reading this directive would have been led to believe that an "admission" preserves, and not "waives," rights to appeal. *Id.*

Rather than address the Ordinance's actual terminology, Defendant has retorted that Plaintiffs' analysis of CCO 413.031(k) supposedly defies "all common sense[.]" *T.d. 16, Defendant's First Reply in Support of Motion to Dismiss, p. 2.* Nonetheless, subsection (k) of the Ordinance, as originally enacted, makes perfect sense. The "or pay the civil penalty within this time period" language served to encourage prompt payment of the civil fines by assuring that those who did so would not be forfeiting their right to appeal or admitting to wrongdoing. By all appearances, Defendant was willing to make these concessions in order to eliminate any hesitation by those who had been cited.

Unlike both the *Carroll/McCarthy* and *Walker* proceedings, substantial evidence was introduced below establishing that Defendant's internal review mechanism was adept only at finding that traffic laws had been violated and was powerless to furnish any relief on the grounds that a non-owner had been cited. Administrator Vargas had testified that a committee decision had been made to include lessees as "owners" and a Business Rule was even adopted to this effect. *T.d. 67, Vargas Depo., pp. 71-72.* The hearing officers were expected to abide by this directive. *Id., p. 167.* Any attempt by a non-owner to argue that he/she was not subject to the Ordinance therefore would have been unsuccessful. *Id., pp. 168-170.*

And just to reach that point in the administrative hearing where the claim would be denied as contrary to the City's policy, an applicant would be forced to incur fees and fines substantially in excess of the $100 civil penalty. Administrator Vargas confirmed that if a citation was not paid within 27 days, a delinquency notice was issued automatically that imposed an additional twenty-dollar penalty. *T.d. 67, Vargas Depo., pp. 32 & 35.* Three weeks after that, a third notice followed and an additional forty

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dollars was assessed. *Id., pp. 37-38.* Since the administrative hearing process could not be completed before the additional penalties were imposed as required by CCO 413.031(o), the non-owners had no choice but to immediately pay the civil penalties or else watch the debt balloon to $160.00 in a little over a month. No provisions had been included in the former Ordinance that allowed the additional failure-to-pay penalties to be avoided when administrative review was sought in good faith.

When the recipients refused to pay, collection agencies were then employed to place phone calls and send threatening letters. *T.d. 67, Vargas Depo., pp. 38-39.* The debts were referred to credit reporting offices, which would impair his/her ability to obtain financing. *Id., pp. 41 & 123-124.* In extreme cases, vehicles would even be impounded. *Id., p. 131.*

As was confirmed in the extensive evidentiary record that was developed through the cross-motions for summary judgment below, Defendant was determined to ensure that those few citation recipients who did accept the late fees and challenged the municipality's application of the ordinance would be saddled with even more filing fees, forced to endure the relentless efforts of private collection agencies, and subjected to the irreparable impairment of their credit ratings and standing. For example, two "Delinquency Notices" were issued to the Dickson & Campbell Firm (which was a vehicle lessee) on December 14, 2007. *T.d. 9, Plaintiff's First Memorandum, Exhibits B & C.* At that point in time, the citation had been issued less than a year earlier and the appeal was still pending in the court system. Nevertheless, Defendant declared that:

> You have been identified as the registered owner of the vehicle cited in the photo infraction(s) listed below and <u>have failed to respond to the Notice of Liability sent to you</u>. Your failure to respond has resulted in an additional $20 penalty being assessed against you.
>
> **DO NOT DISREGARD THIS NOTICE.** Continued failure to satisfy this matter will result in an additional

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$40.00 fee being assessed against you. [emphasis original]

Id. Rather curiously, the lessee was further admonished that: "Due to your failure to respond to the first notification; you have forfeited your right to appeal." *Id.* The Cuyahoga County Court of Appeals apparently did not agree, as the Firm was vindicated roughly a year later. *Dickson & Campbell,* 2009-Ohio-738.

Defendant's strategy was not difficult to discern. If the non-owner had capitulated and paid the fine and additional penalties in order to preserve its credit standing and ability to secure financing, the appeal would have been dismissed as moot and the Violations Bureau would still be misapplying the Ordinance today. *Blodgett v. Blodgett,* 49 Ohio St. 3d 243, 551 N.E. 2d 1249 (1990); *Spencer v. Kiowa Devel. Co.,* 9th Dist. No. 19524, 2000 W.L. 15079 (Jan. 5, 2000).

Defendant did its best, moreover, to discourage those who lost their administrative appeals from seeking further review through the judicial system as permitted by R.C. Chapter 2506. They were inaccurately warned in writing not only that they must pay an initial "nonrefundable" fee of $100.00, but also that additional costs may be incurred. *T.d. 67, Vargas Depo., pp. 139-140.* The notice also cautioned that no forms or legal advice would be provided to those who possessed the temerity to question the hearing officer's decision. *Id., p. 144.* And any such appeals were vigorously defended by City attorneys. *Id., p. 138.*

The Dickson & Campbell Firm prevailed only because it was represented by an attorney *pro bono*, possessed the resources to pay the requisite filing fees, and was willing to endure the additional fines and relentless collection efforts until the appellate court finally determined that Defendant had been issuing citations to non-owners without authority. *Dickson & Campbell,* 2009-Ohio-738.

For the Named Plaintiffs and class members, the expensive and time-consuming

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administrative review mechanism was not a viable option. As Defendant undoubtedly intended, simply paying the civil penalties within 21 days was the only real choice available. As has now been established over the course of three appeals, each of the non-owners still retained their fundamental right to seek a refund under equitable principles in a common pleas court as recognized in *Santos*, 101 Ohio St.3d 74, syllabus. *Lycan I*, 2010-Ohio-6021 ¶8; *Lycan II*, 2014-Ohio-203, ¶13-19. No further review is warranted.

CONCLUSION

Because the Eighth District properly applied the doctrine of *res judicata* in affirming the trial judge's certification of a class and entry of partial summary judgment, this Court should refuse to disturb those unerring rulings.

Respectfully Submitted,

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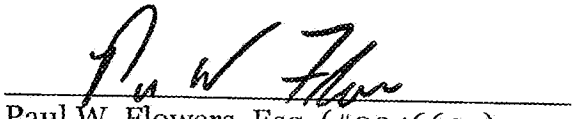

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CERTIFICATE OF SERVICE

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