Supreme Court of Ohio Clerk of Court - Filed October 06, 2015 - Case No. 2014-0358

IN THE SUPREME COURT OF OHIO

JANINE LYCAN, *et al.*	)	**Case No. 2014 - 0358**
	)	
Plaintiffs-Appellees,	)	
	)	
v.	)	**On appeal from the Eighth District**
	)	**Court of Appeals of Ohio**
CITY OF CLEVELAND	)	
	)	
Defendant-Appellant.	)	**Eighth District Case Number 99698**

APPELLANT CITY OF CLEVELAND'S SUPPLEMENTAL BRIEF ADDRESSING QUESTIONS

Barbara A. Langhenry (0038838)
Director of Law

Gary S. Singletary (0037329)
Counsel of Record
Chief Counsel
City of Cleveland
601 Lakeside Avenue, Room 106
(216) 664-2800
(216) 664-2663 Fax
gsingletary@city.cleveland.oh.us

Counsel for Appellant
City of Cleveland

W. Craig Bashein, Esq. (0034591)
Bashein & Bashein Co., L.P.A.
Terminal Tower, 35th Floor
50 Public Square
Cleveland, Ohio 44113
(216) 771-3239
(216) 781-5876 Fax
cbashein@basheinlaw.com

Paul W. Flowers, Esq. (0046625)
Paul W. Flowers Co., L.P.A.
Terminal Tower, 35th Floor
50 Public Square
Cleveland, Ohio 44113
(216) 344-9393, (216) 344-9395 Fax
pwf@pwfco.com

Blake A. Dickson, Esq. (0059329)
The Dickson Firm, L.L.C.
3401 Enterprise Parkway – Suite 420
Beachwood, Ohio 44122
(216) 595-6501
Blakedickson@thedicksonfirm.com

Counsel for Appellees

APPELLANT CITY OFCLEVELAND'S SUPPLEMENTAL BRIEF ADDRESSING QUESTIONS

On September 16, 2015 the Court issued an "Entry" ordering, sua sponte, that each of the parties file supplemental briefs addressing the following three (3) questions:

1. Is there a final appealable order in which the trial court ruled on the res judicata question raised in appellant's proposition of law?

2. If the answer to question 1 is "yes," did the appellant timely appeal that trial court order?

3. If the answer to question 1 is "no," are there other grounds allowing this court to address res judicata in the first instance on appeal of a class certification order?

Appellant City of Cleveland ("Cleveland") addresses each of the questions in the order presented.

I. Question No. 1

Is there a final appealable order in which the trial court ruled on the res judicata question raised in appellant's proposition of law?

A. The Trial Court's Order and Opinion granting Class Certification is Considered a Final Appealable Order.

Yes. Cleveland's appeal to the Eighth District Court of Appeals followed the trial court's February 26, 2013 "Order and Opinion" granting Plaintiff/Appellees' motion for class certification. The trial court's "Order and Opinion" is a final appealable order, with Section 2505.02(B) providing in pertinent part:

> (B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:
>
> * * *
>
> (5) An order that determines that an action may or may not be maintained as a class action;

"R.C. 2505.02(B)(5) expressly provides that class certification is a final, appealable order." *Lingo v. State of Ohio*, 8th Dist. No. 97537, 2012-Ohio-2391, ¶ 15 (affirmed on

other grounds). Further, as addressed below, it is clear that the trial court's class certification order addresses the res judicata defense as asserted by Cleveland.

B. Res Judicata was properly Before the Trial Court at the Time It granted Class Certification.

With the issuance of its February 26, 2013 Order and Opinion the trial court granted class certification, therein rejecting Cleveland's argument that the named class members were barred from proceeding with their claims as a direct result of their voluntary decision to admit liability pursuant to the terms of Cleveland Codified ordinance 413.031 ("CCO 413.031"). From the very beginning of this litigation in 2009 the City had opposed class certification on the basis that Appellees lacked standing as a result of their admissions of civil liability and failure to appeal the camera citations:

> All Plaintiffs, including Lycan, lack standing because each and every one of them admitted the violation by payment and/or not appealing the violation notice. The records before this Court show that Plaintiffs Lycan, Fogle, Murphy, Charna, and Pavlish followed the instructions on the back of the violation notices which states Admit followed by the four payment options. Plaintiff Task admitted her violations by not paying or denying the notices as outlined in CCO 413.031 and the back of her notices. Because each Plaintiff admitted the violations, they do not have standing to now appeal.

See Defendant City of Cleveland's Memorandum in Support of its Opposition to Class Certification, at p. 8. Appellees failure in their individual cases to pursue the available due process remedies provided by the "*adequate remedy in the ordinary course of law*"[1] contained in CCO 413.031 resulted in a final disposition, res judicata, in each of their cases. The Eighth District Court of Appeals has well recognized that one subject to the

[1] *State ex rel. Scott v. Cleveland* 112 Ohio St.3d 324, 2006 -Ohio- 6573, 859 N.E.2d 923, ¶ 24

claim preclusion effects of res judicata "lacks standing to bring [an]... action."[2] *Johnson v. Allen*, 101 Ohio App.3d 181, 655 N.E.2d 240 (8th Dist. 1995), citing *Natl. Amusements, Inc. v. Springdale* (1990), 53 Ohio St.3d 60, 558 N.E.2d 117 (1990); *Johnson's Island v. Bd. of Twp. Trustees* (1982), 69 Ohio St.2d 241, 431 N.E.2d 67 (1982); *Joe Horisk's Salvage Pool Sys. of Ohio v. Strongsville* (1993), 91 Ohio App.3d 121, 631 N.E.2d 1097 (1993).[3] The second issue presented for review by Cleveland with its appeal to the Eighth District was framed as follows:

> Whether the trial court's order approving class certification was incorrect as the individual claims of the representatives and the claims of the members of the designated class are barred by res judicata.

See "Corrected Merit Brief of the Appellant City of Cleveland", at p. 1.

Shortly before issuing its February 26, 2013 ruling on the class certification issue, the *Lycan* trial court on February 9, 2013 had granted partial summary judgment in favor of Appellees.[4] Cleveland had opposed the Appellees' motion for partial summary judgment arguing, in part, that res judicata precluded their claims:

> The Ohio Supreme Court has made clear in such administrative proceedings that state claims will be precluded by the doctrine of *res*

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[2] In Ohio res judicata encompasses both estoppel by judgment and issue preclusion. See e.g. *O'Nesti v. DeBartolo Realty Corp.*, 113 Ohio St.3d 59, 2007–Ohio–1102, 862 N.E.2d 803, ¶ 6. Cleveland's Answer to the First Amended Complaint in *Lycan,* raised claim preclusion at paragraph 47 of its Affirmative Defenses as follows: "47. Plaintiffs are collaterally estopped from filing suit."

[3] Standing and class certification have been raised by Cleveland throughout. For example specific argument in this regard was identified on appeal to the Eighth District by Cleveland at Section III, Section A of the "Corrected Merit Brief of the Appellant City of Cleveland" (pp. 18-21) as follows: **"III. Res Judicata Bars Appellees Claims as Purported Class Representatives. A. In Considering Class Certification and the Determination of the Standing Of Class Members, This Court's Consideration of the Issue of Res Judicata on Appeal is Proper."**

[4] See Exhibit A hereto, "Journal Entry" of February 8, 2013. The short entry granting partial summary judgment to Plaintiffs-Appellees also set a February hearing date for the trial court to consider the class certification issues.

> *judicata* in Ohio as "[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.* 73 Ohio St.3d 379, 653 N.E.2d 226 (1995). (Syllabus). The Court further considered the equitable implications of *res judicata* in this context in allowing: "The instability that would follow the establishment of a precedent for disregarding the doctrine of *res judicata* for "equitable" reasons would be greater than the benefit that might result from relieving some cases of individual hardship." *Id.* at 383. Simply put, Plaintiffs have no claims. See also *McCarthy v. City of Cleveland*, U.S.D.C. No. 1:11–CV–1122, 2011 WL 4383206, (N.D.Ohio Sept. 20, 2011), currently on appeal to 6th Circuit Court of Appeals, at *1, "Because the Court determines that the Plaintiffs' claims are precluded by *res judicata,* the Court **DISMISSES** the Plaintiffs' complaint." (emphasis added).

"Defendant City of Cleveland's Opposition to Plaintiffs' Motion for Summary Judgment and Motion for Summary Judgment," at p. 8; see also "Defendant City of Cleveland's Reply Brief in Support of the City's Motion for Summary Judgment," at pp. 10-11.

The trial court made evident with its February 26 "Order and Opinion" granting Appellees' motion for class certification that the court was implicitly and directly rejecting Cleveland's argument that Appellees lacked standing to proceed as class representatives based on the claim preclusion effects of res judicata in finding there were "no unique defenses to the claims of the named class members":

> In its Summary Judgment Order, this Court has already ruled that there are no unique defenses to the claims of the named class members. Additionally, the named class members' interests are aligned with the claims of all remaining members of the proposed class, and their claims will stand or fall with the claims of the remaining members of the proposed class.

Exhibit B, "Order and Opinion" of February 26, 2013 at p. 4. The trial court's finding is logically inconsistent with the understanding that Appellees were barred by res judicata as a result of their admitted failure to pursue available procedural due process in each of

their individual cases. The trial court's order implicitly rejects the res judicata defense raised by Appellant City of Cleveland.

C. Appellees' Lack of Standing to Proceed as Class Representatives Based on Application of the Res Judicata Doctrine was Properly Appealed.

The Eighth District has recognized that consideration of a trial court's denial of a defendant's motion for summary judgment that argued for the application of res judicata is relevant to appellate review of trial court's class certification ruling:

> Although the denial of dispositive motions involving res judicata and lack of subject matter jurisdiction are generally not final, appealable orders, they are relevant to our review of the trial court's decision to certify this case as a class action.[3]
>
> [fn3] Jurisdiction is relevant when determining class certification because in order to represent the class, class members must have proper standing. *Hamilton v. Ohio Sav. Bank,* 82 Ohio St.3d 67, 70, 1998–Ohio–365, 694 N.E.2d 442. If the representative member's claims are barred by res judicata, he lacks standing and cannot represent the class. *Sierra Club v. Morton,* 405 U.S. 727, 731–32, 92 S.Ct. 1361, 31 L.Ed. 636 (1972). Individual standing is a threshold to all actions, including class actions. *Id.; see also Warth v. Seldin,* 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975).

Lingo at ¶ 15.[5] The issue of res judicata is inextricably interwoven with the class certification issue. The trial court could not determine class certification without necessarily considering the issue of standing and therefore res judicata. Clearly, the trial

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[5] Affirming the Eighth District's reversal of the trial court's certification of a class on other grounds in *Lingo*, this Court distinguished the court of appeals' reasoning solely on the appellate court's application of res judicata to void judgments:

> The Eighth District Court of Appeals declined to address the inapplicability of declaratory relief and other larger problems with the plaintiffs' action, and instead opted to reverse the trial court's decision on narrower grounds. In doing so, the appellate court approached the case as if it were a postconviction motion to vacate a void judgment. It was in this context that the Eighth District held that "whether [a judgment is] void or voidable, the remedy lies in a direct appeal, not a collateral attack on the judgment in a different court." 2012-Ohio-2391, 2012

court did consider the defense as is evidenced by the reference in the class certification "Order and Opinion" to its finding "no unique defenses to the claims of the named class members" prior summary judgment ruling.

Moreover, in *Jodka v. City of Cleveland*,[6] the Eighth District held that a purported class-representative who had not availed himself of the quasi-judicial process created by CCO 413.031 "lack[ed] standing to present his claim of unjust enrichment." *Id.*, 8th Dist. No. 99951, 2014-Ohio-208, 6 N.E.3d 1208, ¶ 34. This same standing issue applies to the claims of the named class members in *Lycan*. The appellate court further concluded in *Jodka* that a plaintiff who had "simply paid the citation the city issued to him," was "an inappropriate person to assert a claim." *Id.* at ¶ 37. Similarly, this Court, in deciding *Walker v. Toledo,* was faced with facts similar to those presented in *Jodka's* challenge to Cleveland's ordinance — a purported class action brought by an individual who had paid a civil camera citation without pursuing the available administrative appeal provided by Toledo's automated red light enforcement ordinance. *Walker*,___Ohio St.3d____, 2014-Ohio-5461, ___N.E.3d___, ¶ 10. In deciding *Walker* this Court concluded that "Ohio

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WL 1952282, ¶ 18. The statement that void judgments are not open to collateral attack and that attacks on void judgments can be defeated by the doctrine of res judicata is mistaken

Lingo v. State of Ohio, 138 Ohio St.3d 427, 2014-Ohio-1052, 7 N.E.3d 1188 at ¶ 46. There is no issue of a "void" judgment presented in the *Lycan* matter before this Court and the application of res judicata to voidable judgments is not questioned in *Lingo*. It should be noted that the Eighth District decision preceding *Lycan's* class action, *Dickson & Campbell, L.L.C. v. City of Cleveland,* 181 Ohio App.3d 238, 2009-Ohio-738, 908 N.E.2d 964, 966 (8th Dist. 2009), resulted from the appellant taking timely advantage of the administrative appeals process authorized by CCO 413.031, with the result that the citation ruling in favor of the City was voided on appeal.

[6] Though alleging different infirmities with CCO 413.031, Plaintiffs in both *Jodka* and *Lycan* had voluntarily paid their civil citations and had foregone their right to the administrative appeal established in CCO 413.031. Both claimed their payments resulted in unjust enrichment and were seeking disgorgement under equitable restitution.

municipalities have home-rule authority to establish administrative proceedings, including administrative hearings, related to civil enforcement of traffic ordinances" and further held that "*these administrative proceedings must be exhausted before offenders* or the municipality *can pursue judicial remedies*." *Id.* at ¶ 3, emphasis added.

In short, Cleveland is properly before this Court following the final appealable order arising from the trial court's "Order and Opinion" certifying a class with the named *Lycan* defendants as class representatives. The trial court's order incorrectly disregarded the City's affirmative defense that the equitable claims presented by the identified class representatives were barred as each of them had no standing under the recognized res judicata doctrine.

II. Question No. 2

If the answer to question 1 is "yes," did appellant timely appeal that trial court order?

A. Yes. Cleveland timely appealed within thirty (30) days of the trial court's "Opinion and Order" granting class certification being received for filing by the Cuyahoga County Clerk of Courts.

App. R. 4(A), Time for Appeal, establishes that an appeal must be filed from an order that is final upon its entry within thirty (30) days of the entry. The trial court's "Order and Opinion" granting Appellees' motion for class certification was received for filing by the Cuyahoga County Clerk of Courts on February 26, 2013. (See Exhibit B, "Order and Opinion" at page 6). Cleveland filed its notice of appeal twenty-nine days later, on March 27, 2013. (Exhibit C, Extract, Case Docket Cv-09-686044). Cleveland's notice of appeal was accomplished within the time allowed by App. R. 4.

The Eighth District Court of Appeals recognized in the decision being appealed

by Cleveland herein that the City's appeal of the class action ruling was timely and that it addressed whether Appellees' action was barred by res judicata:

> The city timely appealed the trial court's ruling on class certification. While the city's brief lists an assignment of error relating to the trial court's granting of partial summary judgment, this ruling is not yet appealable and is not addressed in the substance of appellant's brief. Rather, the issues raised on appeal pertain to whether the Civ.R. 23(A) class action requirements were met and whether the action is barred by res judicata.

Lycan v. Cleveland, 8th Dist. No. 99698, 2014-Ohio-203, 6 N.E.3d 91, at ¶ 12.

III. Question No. 3

If the answer to question 1 is "no," are there other grounds allowing this court to address res judicata in the first instance on appeal of a class certification order?

As addressed above, the answer to question 1 is yes and no further answer to Question 3 is required by this Court's Entry of September 16, 2015. Should this court determine that the answer to question no. 1 is no, this court should continue to address res judicata within the circumstances of the City's timely appeal of the trial court's class certification order as the facts associated with Appellees' disregard of the administrative process available to each of them is not disputed. Addressing the lack of standing issue associated with the application of res judicata given the Appellees' admitted failure to take part in the administrative proceedings available to them would serve the goal of judicial economy.

> " 'Spurred by considerations of judicial economy and a policy of certainty and finality in our legal system, the doctrines of res judicata and collateral estoppel have been established to avoid repetitive litigation so that at some point litigation over a particular controversy must come to an end.' *Cook v. Sullivan,* 149 N.H. 774, 777, 829 A.D.2d 1059(2003)

Burns v. Adams, 4th Dist. No. 12CA3508, 2014-Ohio-1917, ¶ 22. The judicial economy served in this instance would accord with this Court's recent camera enforcement

decision and holding in *Walker* that "administrative proceedings must be exhausted before offenders or the municipality can pursue judicial remedies." *Id.* at ¶ 3.

IV. Conclusion

For the reasons addressed above by the City of Cleveland in response to Question 1, the "Order and Opinion" of the trial court entered on February 26, 2013 represents a final appealable order in which the trial court, given the court's proximate ruling on Appellees motion for partial summary judgment, evidenced an understanding and rejection of the res judicata defense raised in Cleveland's proposition of law. The trial court's order along with the decision of the Eighth District are incorrect decisions of law for the reasons more fully addressed in the City's merit briefs. The record clearly establishes that Cleveland timely appealed the trial court's "Order and Opinion" within the thirty (30) day time period allowed by App. R. 4 and that the appellate court necessarily considered the City's res judicata within the context of class certification. The res judicata issue is properly presented to this Court and consideration of the issues presented furthers the public policy goal of judicial economy.

Respectfully Submitted,

Barbara A. Langhenry (0038838)
Director of Law
By: /s Gary S. Singletary
Gary S. Singletary (0037329)
Counsel of Record
Chief Counsel
City of Cleveland
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
(216) 664-2800
(216) 664-2663 (Fax)
gsingletary@city.cleveland.oh.us

Counsel for Appellant City of Cleveland

CERTIFICATE OF SERVICE

A true copy of the foregoing "Appellant City of Cleveland's Supplemental Brief Addressing Questions" was duly served by electronic mail (email) this 6th day of October 2015 on counsel for Appellees at the following email addresses:

W. Craig Bashein, Esq. (0034591)
Bashein & Bashein Co., L.P.A.
Terminal Tower, 35th Floor
50 Public Square
Cleveland, Ohio 44113
cbashein@basheinlaw.com

Blake A. Dickson, Esq. (0059329)
The Dickson Firm, L.L.C.
Enterprise Place, Suite 420
3401 Enterprise Parkway
Beachwood, Ohio 44122
Blakedickson@thedicksonfirm.com

Paul W. Flowers, Esq. (0046625)
Paul W. Flowers Co., L.P.A.
Terminal Tower, 35th Floor
50 Public Square
Cleveland, Ohio 44113
pwf@pwfco.com

/s Gary S. Singletary
Gary S. Singletary (0037329)
Chief Counsel

Counsel for Appellant City of Cleveland

77983107

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

EDP NI

JANINE LYCAN, INDIVIDUALLY AND ON BEHALF OF ETC.
Plaintiff

CITY OF CLEVELAND
Defendant

Case No: CV-09-686044

Judge: RICHARD J MCMONAGLE

JOURNAL ENTRY

P1 JANINE LYCAN MTN FOR PARTIAL SUMMARY JUDGMENT WILLIAM CRAIG BASHEIN 0034591, FILED 07/25/2012, IS GRANTED.
HEARING SET FOR 02/19/2013 AT 01:30 PM. HRG ON CLASS CERTIFICATION.

Judge Signature Date

RECEIVED FOR FILING

FEB 08 2013

CUYAHOGA COUNTY
CLERK OF COURTS
By Deputy

EXHIBIT
A

02/07/2013

STATE OF OHIO	)	IN THE COURT OF COMMON PLEAS
	) SS:	
CUYAHOGA COUNTY	)	CASE NO. CV-09-686044

JANINE LYCAN, *et al.*, individually and on behalf of all other, similarly situated individuals

Plaintiffs,

v.

CITY OF CLEVELAND,

Defendant.

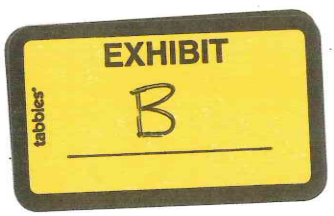
ORDER AND OPINION

CV09686044
78253885

This matter was before the Court on February 19, 2013 for a hearing on Class Certification. After argument, the Court hereby **GRANTS** Plaintiffs' motion for Class Certification and Appointment of Class Counsel.

I. LEGAL STANDARD

The following seven requirements must be satisfied before an action may be maintained as a class action under Civ.R. 23: (1) an identifiable class must exist and the definition of the class must be unambiguous; (2) the named representatives must be members of the class; (3) the class must be so numerous that joinder of all members is impracticable; (4) there must be questions of law or fact common to the class; (5) the claims or defenses of the representative parties must be typical of the claims or defenses of the class; (6) the representative parties must fairly and adequately protect the interests of the



class; and (7) one of the three Civ.R. 23(B) requirements must be met. *Hamilton v. Ohio Sav. Bank*, 82 Ohio St.3d 67, 71, 694 N.E.2d 442, 448 (1998).

The Civil R. 23(B) requirements are: (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 impede their ability to protect their interests; (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; 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.

II. ANALYSIS

1. Identifiable Class

The definition of the class must be unambiguous. *Warner v. Waste Management, Inc.* (1988) 36 Ohio St.3d 91, 96, 521 N.E.2d 1091, 1096. Plaintiffs define the proposed class as:

> 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.

The Plaintiffs' definition goes further and excludes:

1) Any of the above described class member who filed a lawsuit involve any of the claims included in the class;
2) Immediate families of class counsel, the judge of this court,, defendant's counsel of record, and their immediate families; and
3) All persons who make a timely election to be excluded from the class for the 23(B)3 claim.

The Court finds that the specific language used in the Plaintiffs' definition leaves no room for ambiguity. As such, the proposed class is identifiable.

2. **Numerosity**

Generally, if a proposed class has greater than forty members, the numerosity element is satisfied. *Warner*, 36 Ohio St.3d 91, at 97. The City of Cleveland has issued more than 357,000 total citations while CCO 413.031 was in effect (December 2005 until March 11, 2009). During the period the ordinance was in effect, 8.4% of the total vehicles registered in Cuyahoga County were leased vehicles. Based on statistical probability, the total class members in this case is likely in excess of 30,000 notice recipients. According to Dr. Jim Nieberding there is a 99% statistical probability that the number of notice of violations issued to lessees is at 23,000. Therefore, the Court finds the numerosity element has been satisfied.

3. **Commonality and Predominance**

The Commonality prerequisite has been construed to require a common questions of law and facts. *Warner*, 36 Ohio St.3d 91, at 97. "Typically, the subdivision (a)(2) requirement is met without difficulty for the parties and very little time need be expended on it by the judge." *Id.*

All the claims arise from the Defendant's common practices and procedures in enforcing CCO 413.031. Therefore, the Court finds that there are questions of law and fact

common to the Class, and that predominant over any individual questions affecting only individual Class members.

4. **Typicality**

The typicality requirement has been found to be satisfied where there is no express conflict between the representatives and the class. *Warner*, 36 Ohio St.3d 91, at 98. Plaintiff asserts that there is no express conflict, and all parties not a "vehicle owner" under CCO 413.031, but were issued a notice of citation and/or assed a fine under that ordinance.

In its Summary Judgment Order, this Court has already ruled that there are no unique defenses to the claims of the named class members. Additionally, the named class members' interests are aligned with the claims of all remaining members of the proposed class, and their claims will stand or fall with the claims of the remaining members of the proposed class.

As such, the Court finds that there is no issue with the typicality prong. Furthermore, the proposed class representatives are all members of the proposed class, thereby satisfying the second requirement under the *Hamilton* test. See *Hamilton v. Ohio Sav. Bank*, 82 Ohio St.3d 67, 71, 694 N.E.2d 442, 448 (1998).

5. **Adequate Representation**

The analysis under this requirement is divided into a consideration of the adequacy of the representatives and the adequacy of counsel. *Warner*, 36 Ohio St.3d 91, at 98.

a. Adequacy of the representatives

A representative is deemed adequate so long as his interest is not antagonistic to that of other class members. *Warner*, 36 Ohio St.3d 91, at 98. The court finds that Plaintiffs' interests are not antagonistic to that of other class members.

b. Adequacy of Counsel

This Court is aware of Plaintiff's Counsel's experience in dealing with class-action law. The Court finds Plaintiff's Counsel to be adequate.

6. Civil Rule 23(B)

A trial court judge must find that one of the three Civ.R. 23(B) requirements is met before a class may be certified. Id., at 94.

> An action may be maintained as a class action if the prerequisites of subdivision (A) are satisfied, and in addition:
>
> (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 impede their ability to protect their interests; or
>
> (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; 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. The matters pertinent to the findings include: (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; (d) the difficulties likely to be encountered in the management of a class action.

Warner v. Waste Management, Inc. 36 Ohio St.3d 91, 96, 521 N.E.2d 1091, 1095 – 1096 (1988).

The Supreme Court of Ohio has confirmed that the class action would seemingly provide the ideal means of adjudicating in a single proceeding what might otherwise become thousands of separate administrative actions. *Ojalvo v. Board of Trustees of Ohio State University*, 12 Ohio St.3d 230, 233, 466 N.E.2d 875, 877 (Ohio,1984). This is particularly true where, for any of the reasons previously articulated, the individual class members might prefer not to seek redress or could even be unaware of the availability or redress. See *id.* Consequently, a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

III. CONCLUSION

THEREFORE, the Court hereby grants Plaintiffs' motion for class certification.

The named Plaintiffs, Janine Lycan, Thomas Pavlish, Jeanne Task, Lindsey Charna, Ken Fogle, Ian Murphy, and ITW Hobart shall serve as the class representative.

W. Craig Bashein from Bashein & Bashein Co., LPA, Blake A. Dickson from The Dickson Firm, LLC, and Paul Flowers of Paul W. Flowers Co., LPA are appointed, as and shall serve, as Class Counsel.

Within thirty days of this Order, Class Counsel shall confer with defense counsel about the proper manner and form of notification to class members of this Order.

Counsel to appear May 8, 2013 at 1:30 P.M.

IT IS SO ORDERED.

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February 25, 2013

RICHARD J. McMONAGLE, JUDGE

FEB 26 2013

CUYAHOGA COUNTY
CLERK OF COURTS
By Williams Deputy

Copies to:

W. Craig Bashein
Bashein & Bashein Co., LPA
Terminal Tower, 35th Fl.
50 Public Square
Cleveland, Ohio 44113

Blake A. Dickson
The Dickson Firm, LLC
3401 Enterprise Parkway, Suite 420
Beachwood, Ohio 44122

Paul Flowers
Paul W. Flowers Co., LPA
Terminal Tower, 35th Fl.
50 Public Square
Cleveland, OH 44113

Jennifer Myer
Gary Singletary
Assistant Directors of Law
601 Lakeside Ave., Rm. 106
Cleveland, OH 44114

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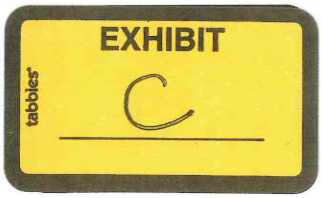
CASE INFORMATION

CV-09-686044 JANINE LYCAN, INDIVIDUALLY AND ON BEHALF OF ETC. vs. CITY OF CLEVELAND

Docket Information

Filing Date	Side	Type	Description	Image
01/09/2015	N/A	JE	THIS COMMERCIAL DOCKET MATTER HAVING PREVIOUSLY BEEN PRESIDED OVER BY JUDGE RICHARD J. MCMONAGLE, IS HEREBY TRANSFERRED TO VISITING JUDGE RICHARD J. MCMONAGLE, SITTING BY ASSIGNMENT BY THE SUPREME COURT OF OHIO FOR FURTHER PROCEEDINGS ACCORDING TO LAW. CASE IS HEREBY TRANSFERRED TO JUDGE RICHARD MCMONAGLE COMM (198) (M). NOTICE ISSUED	
01/23/2014	N/A	JE	Affirmed.	
05/06/2013	D1	CA	TRANSCRIPT OF PROCEEDINGS FILED AND TRANSMITTED TO THE COURT OF APPEALS ON CA NO. 99698. 1 VOLUME	
04/09/2013	D1	CA	APPELLANT'S 9B RECORD TRANSMITTED TO THE COURT OF APPEALS CONSISTING OF THE TRANSCRIPT OF THE DOCKET, JOURNAL ENTRIES AND THE ORIGINAL PAPERS ON CA NO. 99698.	
03/27/2013	D1	OT	D1 CITY OF CLEVELAND NOTICE OF TRANSCRIPT ORDER. JENNIFER MEYER 0077853	
03/27/2013	D1	OT	D1 CITY OF CLEVELAND NOTICE OF TRANSCRIPT ORDER. JENNIFER MEYER 0077853	
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03/27/2013	D1	OT	D1 CITY OF CLEVELAND NOTICE OF TRANSCRIPT ORDER. JENNIFER MEYER 0077853	
03/27/2013	D1	CA	---------- NOTICE OF APPEAL ---------- CA NO. 99698 NOTICE OF APPEAL FILED BY THE DEFT. APPELLANT W/A 9B PRAECIPE AND DOCKETING STATEMENT ON THE REGULAR CALENDAR. COPIES MAILED.	
03/08/2013	N/A	JE	PLAINTIFF(S) JANINE LYCAN(P1), THOMAS PAVLISH(P2), JEANNE TASK (P3), LINDSEY CHARNA(P4), KEN FOGLE(P5), JOHN T MURPHY(P6) AND ITW HOBART(P7) MOTION FOR ANTISUIT INJUNCTION PAUL W FLOWERS 0046625, FILED 03/04/2013, IS GRANTED. OSJ NOTICE ISSUED	
03/07/2013	D1	OT	D1 CITY OF CLEVELAND NOTICE OF CLEVELAND'S NOTICE OF TRANSCRIPT ORDER. JENNIFER MEYER 0077853	
03/04/2013	P	MO	PLAINTIFF(S) JANINE LYCAN(P1), THOMAS PAVLISH(P2), JEANNE TASK (P3), LINDSEY CHARNA(P4), KEN FOGLE(P5), JOHN T MURPHY(P6) and ITW HOBART(P7) MOTION FOR ANTISUIT INJUNCTION PAUL W FLOWERS 0046625 03/08/2013 - GRANTED	
02/26/2013	P	JE	ORDER AN OPINION: THE COURT HEREBY GRANTS PLTFS. MOTION FOR CLASS CERTIFICATION . WITHIN THIRTY DAYS OF THIS ORDER, CLASS COUNSEL SHALL CONFER WITH DEFENSE COUNSEL ABOUT THE PROPER MANNER AN FORM OF NOTIFICATION TO CLASS MEMBERS OF THIS ORDER. COUNSEL TO APPEAR MAY 8,2013 AT 1:30 P.M. NOTICE ISSUED.	
02/21/2013	N/A	CS	COURT REPORTER FEE	
02/19/2013	P1	OT