[Cite as *Lindsay v. Garfield Hts.* , 2020-Ohio-3672.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

NELL LINDSAY, :

Plaintiff-Appellee, :

Nos. 108967 and 109015

v. :

CITY OF GARFIELD HEIGHTS, ET AL., :

Defendants-Appellants. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED AND REMANDED
RELEASED AND JOURNALIZED: July 9, 2020

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-13-813804

Appearances:

Dworken & Bernstein Co., L.P.A., and Patrick J. Perotti, Nicole T. Fiorelli, and James S. Timmerberg, *for appellee*.

O'Toole, McLaughlin, Dooley & Pecora Co., L.P.A., and John D. Latchney, and Timothy J. Riley, Garfield Heights Director of Law, *for appellant* City of Garfield Heights.

Bricker & Eckler, L.L.P., and Quintin F. Lindsmith, *for appellant* Redflex Traffic Systems, Inc.

MARY J. BOYLE, P.J.:

{¶ 1} In this consolidated appeal, defendants-appellants, city of Garfield Heights ("Garfield Heights") and Redflex Traffic Systems, Inc. ("Redflex") (collectively "defendants"), separately appeal from the trial court's judgment granting the renewed motion for class certification of the plaintiff-appellee and class representative, Nell Lindsay, and defining the class as follows:

> All persons issued a notice of liability pursuant to Garfield Heights Ordinance No. 63-2009, excluding persons to which any of the following apply: (1) their notice was issued as a warning; (2) their notice resulted in a finding of no liability pursuant to subsection (E) of the ordinance; or (3) their notice was otherwise dismissed.

{¶ 2} Garfield Heights raises one assignment of error for our review:

> The trial court erred/abused its discretion, in granting plaintiff's renewed motion for class certification.

{¶ 3} Redflex raises five assignments of error for our review:

> 1. The trial court erred as a matter of law in granting Plaintiff's renewed motion for class certification where the court failed to conduct a "rigorous analysis" that resolved all relevant factual disputes and found by a preponderance of the evidence the requirements of Civ.R. 23, but only incanted the words "rigorous analysis" in two sentences which, separate from the class definition, comprised the court's entire ruling.
>
> 2. The trial court erred as a matter of law in granting Plaintiff's renewed motion for class certification without holding an evidentiary hearing to resolve factual disputes between Plaintiff's testimony and other witnesses concerning her core complaint allegations at the center of the claims asserted.
>
> 3. The trial court erred in finding that Plaintiff had standing, and that waiver and res judicata defenses applicable to Plaintiff are not threshold questions that would predominate the litigation if Plaintiff

remained a class representative so that she meets the typicality requirement of Civ.R. 23.

4. The trial court erred in finding that Lindsay had proven all prerequisites required by Civ.R. 23.

5. The trial court erred in finding that Plaintiff is an adequate class representative.

{¶ 4} After review, we find merit in part to Redflex's third assignment of error. Specifically, we agree with Redflex that Lindsay lacks standing to bring the constitutional claims set forth in the first four counts of her complaint because she did not challenge her notice of liability. We find, however, that Lindsay has standing to bring the claims set forth in Counts 5 and 6 of her complaint. Therefore, Redflex's third assignment of error is sustained in part and overruled in part. With respect to Redflex's remaining assignments of error and Garfield Heights' sole assignment of error, we find no merit to their arguments and overrule them.

{¶ 5} We further affirm the trial court's judgment granting Lindsay's renewed motion for class certification and setting forth the class definition with Lindsay as the class representative with respect to Counts 5 and 6 of Lindsay's class action complaint. We therefore remand for further proceedings consistent with this opinion.

I. Procedural History and Factual Background

{¶ 6} In November 2009, Garfield Heights passed Ordinance No. 63-2009, which amended the city's codified ordinances by enacting Garfield Heights Codified Ordinances ("G.H.C.O.") 313.11. To "reduce the frequency of vehicle operators

speeding and running red lights," G.H.C.O. 313.11 provided for the "use of automated cameras to impose civil penalties upon red light and speeding violators" within the city. The ordinance stated that the automated cameras would "work in conjunction with a traffic control signal, to produce recorded images of motor vehicles entering an intersection against a red signal indication and/or measuring the speed of a vehicle traveling in excess of the posted speed limit." G.H.C.O. 313.11(b)(3). The ordinance explicitly provided that:

> This Section applies whenever traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination.

G.H.C.O. 313.11(a)(3). The ordinance also required the intersections with the installed automated cameras to have "visible postings upon approach of the intersection indicating that the intersection is equipped with an automated traffic control signal monitoring system." G.H.C.O. 313.11(a)(4).

{¶ 7} Under the ordinance, a civil fine was imposed on the owner of any vehicle detected by one of the cameras to have been operating a motor vehicle in violation of the ordinance. For vehicles that violated the ordinance, the system generated notices of liability, which were mailed to the vehicle owners apprising them that they must pay a $100 civil penalty or oppose the alleged violation within 15 days of receiving the notice of liability. G.H.C.O. 313.11(e) and (f). The ordinance directed that "an individual desiring a hearing [was] required to post payment equal to the amount of the civil penalty before an appeal hearing [would] be scheduled." G.H.C.O. 313.11(e)(1)(c). "The failure to give notice of request for review within this

time period shall constitute a waiver of the right to contest the notice of liability." *Id.* If the vehicle owner or responsible party chose to contest the notice of liability, Section (3)(2) of the ordinances set forth affirmative defenses that could be considered by the hearing officer. These defenses were as follows:

> (A) That the driver of the vehicle passed through an intersection in order to yield the right-of-way to an emergency vehicle in accordance with Ohio Revised Code Section 4511.45, or to a funeral procession in accordance with Ohio Revised Code Section 71.14.
>
> (B) That the motor vehicle or registration plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation. In order to demonstrate that the motor vehicle or the registration plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a police report about the stolen motor vehicle or registration plates was filed prior to the violation or within 48 hours after the violation occurred.
>
> (C) That this Section is unenforceable because at the time and place of the alleged violation, the traffic control signal was not operating properly or the traffic control signal monitoring system was not in proper position and the recorded image is not legible enough to determine the information needed.
>
> (D) Evidence, other than that adduced pursuant to subsection (e)(2)(B) of this Ordinance, that the owner or person named in the notice of liability was not operating the vehicle at the time of the violation. To satisfy the evidentiary burden under this subsection, the owner or person named in the notice of liability shall provide to the Hearing Officer evidence showing the identity of the person who was operating the vehicle at the time of the violation, including, at a minimum, the operator's name and current address, and any other evidence that the Hearing Officer deems pertinent.

G.H.C.O. 313.11(e)(2).

{¶ 8} The Garfield Heights Police Department administered and enforced the ordinance. Garfield Heights contracted with Redflex, a third-party vendor, to install and operate the cameras and systems used to detect violations. Although the city was responsible for enforcing violations, Redflex performed administrative functions, including processing, encrypting, and storing the video and photographs of violations. Redflex then sent the relevant images to the city for review.

{¶ 9} Redflex, however, never installed the automated cameras in conjunction with any traffic signals or posted any warning signs upon approach of a camera as required by the ordinance. Instead, the cameras were installed in mobile units without any warning signs.

{¶ 10} On November 1, 2010, Lindsay received a notice of liability in the mail. The notice stated that the city's photo enforcement program captured a recorded image of her registered vehicle driving above the posted speed limit on Turney Road on October 26, 2010. The notice instructed Lindsay that if she wished to schedule a hearing and have the matter reviewed by a hearing officer, she was required to pay a bond in the amount equal to the civil penalty and an administrative fee in the amount of $50, for a total payment of $150. The ordinance provided that failure to pay the civil penalty or request a hearing "constitute[d] a waiver of the right to contest the notice of liability." G.H.C.O. 313.11(e)(1)(C). But the ordinance did not state that the city could or would collect a $50 administrative fee. Lindsay

paid the $100 civil fine on February 23, 2011, but never requested a hearing to contest the notice of liability.[1]

{¶ 11} On November 1, 2010, approximately one year after it was enacted, the voters of Garfield Heights repealed the ordinance. Within the one-year time frame, the city collected $975,667.73 in civil fines. According to Redflex, only 66 people requested a hearing, but only 19 of those 66 actually received a hearing. Of the 47 who requested but did not receive a hearing, 9 citations were dismissed before the hearing, 32 failed to pay the $100 civil penalty or the $50 administrative fee, 1 changed her mind about wanting a hearing, 2 elected to nominate another driver, and 3 failed to appear. Of the 19 hearings that were held, 10 citations were dismissed and 9 were found liable.

{¶ 12} On September 16, 2013, Lindsay filed a class action complaint against Garfield Heights and Redflex, setting forth causes of action for denial of due process and equal protection, "unlawful and void notices and collections," and unjust enrichment. The complaint alleged that the mobile unit that recorded her traffic violation failed to comply with the requirements of G.H.C.O. 313.11(a)(3) and (4) because "defendants erected cameras illegally at places not controlled by a traffic signal * * * and without erecting the warning signs required by the ordinance." The complaint further alleged that defendants violated her due process and equal

[1] Garfield Heights waived a late fee and accepted her late payment.

protection rights under the Ohio Constitution by requiring individuals to pay $150.00 before they could receive an administrative hearing.

{¶ 13} On October 17, 2013, Lindsay filed a motion for class certification. In March 2014, Garfield Heights and Redflex filed separate motions in opposition to the motion for class certification. Defendants each argued, in part, that (1) Lindsay lacked standing to represent the class because she failed to exhaust her administrative remedies, and (2) her claims were barred by res judicata because she did not contest the violation, and she paid her ticket. Defendants also moved for judgment on the pleadings and summary judgment.

{¶ 14} On December 16, 2016, the trial court denied Garfield Heights' motion for summary judgment after finding that Lindsay did not exhaust her administrative remedies because the administrative hearing process in G.H.C.O. 311.11(e)(2) did not provide for a motorist to raise the defense that mobile units were not permitted under the ordinance. Although the trial court had originally granted Redflex's motion for summary judgment, it reversed its decision after denying Garfield Heights' motion. The trial court also denied both defendants' motions for judgment on the pleadings.

{¶ 15} On April 27, 2018, the trial court granted Lindsay's motion for class certification. The trial court found Lindsay satisfied the requirements of Civ.R. 23 and certified the following class (first class certification):

> All persons issued a notice of liability pursuant to Garfield Heights Ordinance No. 63-2009, excluding those notices issued as a warning;

> that resulted in a finding of no liability pursuant to subsection (e) of the ordinance; and were otherwise dismissed.

{¶ 16} Defendants appealed. *See Lindsay v. Garfield Hts.*, 8th Dist. Cuyahoga Nos. 107230 and 107236, 2019-Ohio-1359. Defendants argued that the class was facially defective because Lindsay and all other class members lacked standing and because Lindsay failed to present evidence to meet the seven requirements of Civ.R. 23. *Id*. at ¶ 12.

{¶ 17} Defendants argued that the trial court's "intentional use of semicolons following an internal comma" in the class definition resulted in Lindsay being excluded from the class because, as defined, the class included all persons who received a notice of liability but excluded those who had not been harmed because their notices of liability were simply warnings or had been dismissed. *Id*. at ¶ 21. Thus, they claimed that the definition did not include individuals, such as Lindsay, who were found liable under the ordinance and paid the issued citation. *Id*.

{¶ 18} They explained their interpretation as follows:

> A plain grammatical construction of the class definition supports this interpretation. The presence of the semi-colon after the word "warning" is indicative of the main clause of the sentence. It reflects the universe of class members — those who received non-warnings of liability. This main class is modified further by the information after the first semi-colon to include only those who were found not liable and those who had their notice of liability dismissed. In other words, the definition provides that the class of members consists of "type x" (those who received a notice of liability) * * * that possess certain features — a notice of liability that resulted in a finding of no liability or dismissal.

Id. at ¶ 22.

{¶ 19} Lindsay argued that the "trial court broadly defined the class as all persons who received notice of liability, then excluded from that class definition persons who had not been harmed because their notices of liability were simply warnings, or because their notices of liability had been dismissed." *Id*. at ¶ 24. Thus, Lindsay interpreted the class definition as including all persons issued a notice of liability pursuant to G.H.C.O. 311.13, but excluding those notices that: (1) were issued as a warning; (2) resulted in a finding of no liability pursuant to subsection (e) of the ordinance; or (3) were otherwise dismissed.

{¶ 20} Although this court found that both Lindsay's and defendants' interpretations of the trial court's class definition reasonable, we ultimately agreed with defendants. We concluded that as a result of the ambiguity in the trial court's class definition due to the "trial court's use of an internal comma and subsequent semicolons," the "class action [could] not be maintained as currently constructed." We remanded the case to the trial court "to clarify and complete the class definition." *Id*. at ¶ 29. We therefore did not reach defendants' challenges to the remaining Civ.R. 23 requirements because their arguments were predicated on their interpretation of the ambiguous class definition. *Id*.

{¶ 21} Upon remand, Lindsay renewed her motion for class certification. In August 2019, the trial court issued the following judgment:

> After a rigorous analysis of the factual evidence in the record of this matter, this court finds that plaintiff has demonstrated the factual and legal requirements for class certification set forth in Civ.R. 23(A) and (B). Plaintiff's renewed motion for class certification is granted.

The class shall be defined as follows:

> All persons issued a notice of liability pursuant to Garfield Heights Ordinance No. 63-2009, excluding persons to which any of the following apply: (1) their notice was issued as a warning; (2) their notice resulted in a finding of no liability pursuant to subsection (E) of the ordinance; or (3) their notice was otherwise dismissed.

{¶ 22} It is from this judgment that Garfield Heights and Redflex appeal. We will discuss the assignments of error out of order and combine them where necessary or where doing so will ease the discussion.

II. Standard of Review

{¶ 23} A trial judge has broad discretion when deciding whether to certify a class action. *In re Consol. Mtge. Satisfaction Cases*, 97 Ohio St.3d 465, 2002-Ohio-6720, 780 N.E.2d 556, ¶ 5, citing *Marks v. C.P. Chem. Co.*, 31 Ohio St.3d 200, 509 N.E.2d 1249 (1987). Absent a showing of abuse of discretion, a trial court's determination as to class certification will not be disturbed. *Id.*

{¶ 24} The appropriateness of applying the abuse of discretion standard in reviewing class action determinations is grounded not in credibility assessment, but in the trial court's special expertise and familiarity with case-management problems and its inherent power to manage its own docket. *Hamilton v. Ohio Savs. Bank*, 82 Ohio St.3d 67, 70, 694 N.E.2d 442 (1998), citing *Marks*. Nonetheless, the trial court's discretion is not unlimited and must be bound by and exercised within the framework of Civ.R. 23. *Id.* at 70. Thus, the trial court is required to carefully apply the class action requirements and conduct a rigorous analysis into whether the prerequisites of Civ.R. 23 have been satisfied. *Id.*

{¶ 25} "[A]ny doubts about adequate representation, potential conflicts, or class affiliation should be resolved in favor of upholding the class, subject to the trial court's authority to amend or adjust its certification order as developing circumstances demand, including the augmentation or substitution of representative parties." *Baughman v. State Farm Mut. Auto. Ins. Co.*, 88 Ohio St.3d 480, 487, 727 N.E.2d 1265 (2000).

III. Standing and Typicality

{¶ 26} In Redflex's third assignment of error, it argues that the trial court erred in finding that Lindsay had standing because she did not pay the $50.00 administrative fee and challenge her notice of liability in the appeals process set forth in the Garfield Heights ordinance. Redflex therefore maintains that Lindsay failed to exhaust her administrative remedies. Because Lindsay did not suffer an actual injury, Redflex further maintains that Lindsay's claims and defenses were not typical of those in the class. Garfield Heights makes the same argument in subsection (B)(2) of its assigned error.

{¶ 27} The Ohio Constitution provides in Article IV, Section 4(B): "The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law." (Emphasis added.)

{¶ 28} The Ohio Supreme Court has held that standing is a "'jurisdictional requirement.'" *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214, ¶ 22, quoting *State ex rel. Dallman v. Franklin*

Cty. Court of Common Pleas, 35 Ohio St.2d 176, 298 N.E.2d 515 (1973). "'It is an elementary concept of law that a party lacks standing *to invoke the jurisdiction* of the court unless he [or she] has, in an individual or representative capacity, some real interest in the subject matter of the action.'" (Emphasis sic.) *Id.*, quoting *Dallman*. Lack of standing, however, does not mean that a court lacks subject matter jurisdiction. *Lycan v. Cleveland*, 146 Ohio St.3d 29, 2016-Ohio-422, 51 N.E.3d 593, ¶ 30.

{¶ 29} Traditional standing principles require the plaintiff to show that he or she has suffered (1) an injury that is, (2) fairly traceable to the defendant's allegedly unlawful conduct, and (3) likely to be redressed by the requested relief. *Moore v. Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 22, citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). To have standing, a plaintiff must have a personal stake in the outcome of the controversy and have suffered some concrete injury that is capable of resolution by the court. *Middletown v. Ferguson*, 25 Ohio St.3d 71, 75, 495 N.E.2d 380 (1986).

{¶ 30} The fact that a plaintiff seeks to bring a class action does not change the standing requirements. *Hamilton v. Ohio Savs. Bank*, 82 Ohio St.3d 67, 74, 694 N.E.2d 442 (1998) (a class representative must have "proper standing"). Individual standing is a threshold requirement of all actions, including class actions. *Id.*

{¶ 31} A plaintiff's claim is typical "'if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory.'" *Baughman v. State*

Farm Mut. Auto. Ins. Co., 88 Ohio St.3d 480, 485, 727 N.E.2d 1265 (2000), quoting 1 Newberg, Class Actions, Section 3.13, 3-74 to 3-77 (3d Ed.1992). "'When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of varying fact patterns which underlie individual claims.'" *Id.* at 485, quoting 1 Newberg, *Class Actions*, Section 3.13, 3-74 to 3-77.

{¶ 32} While the defenses or claims of the class representative must be typical of the class members, they need not be identical. *Gattozzi v. Sheehan*, 8th Dist. Cuyahoga No. 103246, 2016-Ohio-5230, ¶ 39, citing *Baughman*. The typicality requirement is met where "there is no express conflict between the class representatives and the class." *Id.*, citing *Hamilton*.

{¶ 33} In its brief, Redflex cites to *Eighmey v. Cleveland*, 8th Dist. Cuyahoga No. 104779, 2017-Ohio-7092 ("*Eighmey I*"), in support of its argument. Since Redflex filed its brief, however, this court released *Eighmey v. Cleveland*, 8th Dist. Cuyahoga No. 108540, 2020-Ohio-1500, ¶ 15 ("*Eighmey II*"). Lindsay subsequently filed a notice of supplemental authority with respect to *Eighmey II*. Redflex filed a response to plaintiff's notice of supplemental authority. Lindsay filed a reply to Redflex's response.

{¶ 34} The background facts in *Eighmey I* and *II* are similar to those in the present case. Eighmey received a notice of liability from the city of Cleveland for speeding from a mobile speed unit with an automated traffic camera mounted to it. Cleveland's automated-traffic camera ordinance provided that the automated

cameras could be mounted in a mobile unit, but they had to be in plainly marked vehicles. Eighmey paid the $100 citation without filing a notice of appeal. In her class action suit for unjust enrichment, she alleged that challenging the citation would have been "futile because the city's own failure to comply with the ordinance is not one of the enumerated defenses to a notice of liability under C.C.O. 413.031." *Eighmey I* at ¶ 6. The trial court granted class certification, defining the class as:

> All persons (a) issued tickets or notices of Liability by a "mobile speed unit" under Cleveland Codified ordinance[s] § 413.031 et seq., (b) during the period September 25, 2013 to December 26, 2016, (c) which were not warnings, and (d) upon which there was not a finding of no liability pursuant to § 413.031(k).

Id. at ¶ 8. The city appealed. *See id.* On appeal, Cleveland argued only that "the trial court erred in granting class certification because Eighmey failed to meet the typicality requirement of Civ.R. 23(A). Cleveland [did] not challenge any of the other requirements of Civ.R. 23(A)." *Id.* at ¶ 14. Cleveland's main issue was the fact that Eighmey paid the citation without challenging it and thus, it asserted that her claims would not be typical of the class.

{¶ 35} This court discussed standing and res judicata at length in *Eighmey I* and concluded that "[i]f Eighmey cannot receive redress from this litigation and lacks standing, she may not represent the class." *Id.* at ¶ 22. We therefore held that Eighmey, as the class representative, "failed to meet the typicality requirement of Civ.R. 23, and the trial court erred in granting class certification" because Cleveland's defenses of "standing and res judicata would predominate the litigation

if Lindsay remained the class representative." *Id*. We remanded to the trial court for further proceedings. *Id*. at ¶ 25.

{¶ 36} Upon remand, Eighmey filed a motion to "re-certify the class." *Eighmey II* at ¶ 15. In her motion, Eighmey sought to resolve the typicality issue by removing class members that challenged or appealed a citation from a mobile traffic camera. Eighmey sought certification of the following class:

> All persons (a) issued tickets or notices of liability by a "mobile speed unit" under Cleveland Codified Ordinance[s] 413.031 et seq., (b) during the period September 25, 2013 to December 26, 2013, (c) which were not warnings, and (d) who did not appeal the ticket or notice of liability.

Id. at ¶ 11.

{¶ 37} Rather than consider the merits of Eighmey's motion to recertify, however, the trial court granted summary judgment to the city and denied Eighmey's motion as moot. The trial court concluded, in relevant part,

> Eighmey paid her fine and waived her right to appeal under C.C.O. 413.031, and as a result lacks standing and her claim is barred by res judicata. Therefore, Plaintiffs motion to re-certify class is denied as moot, and Defendant City of Cleveland's motion for summary judgment, filed July 1, 2016, is granted. Case is dismissed with prejudice and removed from the Court's active docket.

Id. at ¶ 17. Eighmey appealed. *See id*.

{¶ 38} Eighmey argued that the trial court erred in "denying [her] motion to re-certify the class and dismissing [her] case with prejudice." *Id.* at ¶ 20. This court found that because the trial court denied Eighmey's motion to recertify the class as moot, that it was not properly before this court. *Eighmey II* at ¶ 21. We noted, however, that "there [was] nothing precluding Eighmey from seeking recertification

of the class." *Id*. at ¶ 21. We explained that the issue with original class definition was that it included all persons who received a ticket "regardless of whether or not they filed an appeal." *Eighmey II* at ¶ 21. Eighmey's newly proposed class definition, however, explicitly limited the class to those who did not appeal their citations. *Id*. at ¶ 15.

{¶ 39} In reviewing whether the trial court properly granted summary judgment to the city, this court addressed the issues of standing, res judicata, and failure to exhaust administrative remedies. *See Eighmey II* at ¶ 30 - 40. We found that the trial court erred in concluding that Eighmey lacked standing to assert her unjust enrichment claim against Cleveland. *Id*. at ¶ 30. We explained:

> In this case, Eighmey challenged the validity of her ticket on the basis that Cleveland failed to comply with C.C.O. 413.031(g). In her complaint, Eighmey asserted a single cause of action for unjust enrichment, alleging that tickets issued and penalties imposed were unlawful and void because "the mobile speed units were neither plainly marked, nor vehicles[.]" Complaint at ¶ 17. Eighmey asserted that the mobile speed units contained "no distinguishable markings whatsoever." *Id*. at ¶ 10. As such, Eighmey maintained that the mobile speed units failed to comply with the requirements set forth in C.C.O. 413.031(g). Cleveland does not dispute that the mobile speed units failed to comply with C.C.O. 413.031(g).
>
> Because Eighmey paid a penalty for a ticket that was invalidly issued, she has standing to assert her unjust enrichment claim against Cleveland. Eighmey is not challenging the adequacy of the appeals process. Accordingly, the fact that Eighmey did not file an appeal contesting her ticket is inconsequential.
>
> The trial court's reliance on *Jodka v. Cleveland*, 2014-Ohio-208, 6 N.E.3d 1208 (8th Dist.), in support of its conclusion that Eighmey lacked standing is misplaced. *Jodka* involved a home rule argument in which the plaintiff alleged that the appeals process under C.C.O. 413.031(k) was unconstitutional. This court held that the plaintiff lacked standing to assert his unjust enrichment claim against the city

> because he never availed himself of the appeals process under C.C.O. 413.031(k) and (l). Here, Eighmey is not challenging the adequacy or constitutionality of the appeals process under C.C.O. 413.031(k) — she is challenging whether the ticket should have been issued in the first place. Accordingly, *Jodka* is inapposite.

Eighmey II at ¶ 31 – 33.

{¶ 40} We further found in *Eighmey II* that the trial court erred when it concluded that Eighmey's claim was barred by res judicata. *Id.* at ¶ 35. We reviewed the defenses that Cleveland's ordinance provided for and determined the following:

> In this case, after reviewing the record, we find that the doctrine of res judicata is inapplicable. The appeals process set forth in C.C.O. 413.031(k) does not provide for a ticket to be invalidated on the basis that Cleveland failed to comply with C.C.O. 413.031(g). Because Eighmey could not have contested the ticket on the basis that Cleveland failed to comply with C.C.O. 413.031(g), and because a hearing examiner was not authorized by the language of the ordinance to void a ticket on the basis that Cleveland failed to comply with C.C.O. 413.031(g), the doctrine of res judicata does not preclude Eighmey from raising her argument regarding Cleveland's failure to comply with C.C.O. 413.031(g) in her complaint.

Id. at ¶ 37.

{¶ 41} With respect to the issue of failure to exhaust administrative remedies, we found that because the trial court did not specifically address this issue, that it would have been improper for us to do so in the appeal. But we stated:

> We note, however, that it is unclear whether Eighmey would be subject to the administrative appeal process set forth in C.C.O. 413.031(k). As noted above, C.C.O. 413.031(k) did not provide for a ticket being invalidated on the basis that Cleveland failed to comply with C.C.O. 413.031(g).

Id. at ¶ 40.

{¶ 42} We found that Eighmey sufficiently demonstrated the existence of genuine issues of material fact regarding whether the tickets issued to her by a mobile unit were valid based on Cleveland's failure to comply with its ordinance. *Id*. at ¶ 42. We remanded for further proceedings. *Id*. at ¶ 43.

{¶ 43} In its response to Lindsay's notice of supplemental authority, Redflex argues that unlike Eighmey, Lindsay is challenging the appeals process. Eighmey only brought one claim against Cleveland, which was for unjust enrichment. Lindsay, however, brought due process and equal protection claims against Garfield Heights with respect to the appeals process and further alleged that Redflex violated those same rights by participating in civil conspiracy with Garfield Heights to deny her and other class members their due process and equal protection rights. Therefore, we agree with Redflex that because Lindsay paid her citation without challenging it, she lacks standing to bring her first four claims that directly challenge the appeals process under the Garfield Heights ordinance.

{¶ 44} In her fifth and sixth claims, however, Lindsay argues that Garfield Heights and Redflex issued unlawful and void notices of liability and were unjustly enriched at the expense of her and other class members in the collection of monies from the unlawful and void notices of liability. Lindsay is not challenging the appeals process in these two claims and thus, she has standing to bring them.

{¶ 45} After review, we find that Lindsay has standing to bring claims on behalf of herself and the class alleging unlawful and void notices of liability and unjust enrichment (Counts 5 and 6). The trial court in this case reached a similar

conclusion to what this court did in *Eighmey II* when denying Garfield Heights' summary judgment motion, stating:

> Plaintiff here does not challenge the ability of a city to use a photo enforcement system, and does not challenge the hearing process as illegal. She challenges for herself and others the issuance of tickets from mobile cameras, asserting that the ordinance does not provide for mobile units. As to exhaustion of administrative remedies, the Ordinance establishing the administrative hearing process does not provide for a motorist to raise that as a defense to a ticket. (Keel Deposition, Ordinance, Exhibit 3). The * * * record contains the testimony of the hearing officer, confirming that he was constrained by the listed defenses under the ordinance, which do not include the challenge being made by Lindsay here. (Sturik Deposition, p. 9). The hearing officer specifically confirmed he drafted a hearing procedure schedule for what defenses he would consider and it did not include the defense asserted by Lindsay for herself and putatively for others. (Sturik Deposition, p. 13).

{¶ 46} Redflex further argues in its response to Lindsay's notice of supplemental authority that *Eighmey II* is unprecedented. We disagree. This case is very similar to the facts in *Lycan v. Cleveland*, 2014-Ohio-203, 6 N.E.3d 91 (8th Dist.) ("*Lycan II*").[2] Lycan received a notice of liability from an automated traffic camera when she was not the owner of the vehicle she was driving (Cleveland's ordinance at that time specified that civil penalties could only be imposed on vehicle owners). Lycan paid the $100 civil penalty and did not challenge the citation. She filed a class action suit against Cleveland. Five other plaintiff-class representatives were added later. Five of the six class representatives paid their $100 files without

[2] There was a previous case: *Lycan v. Cleveland*, 8th Dist. Cuyahoga No. 94353, 2010-Ohio-6021 ("*Lycan I*").

challenging them. One of the class representatives did not pay the fine or challenge it and therefore, received a $320 demand from the city.

{¶ 47} The trial court in *Lycan II* had originally granted judgment on the pleadings to Cleveland because Lycan paid her citation without challenging it. *Id*. at ¶ 8. In an appeal to this court, we reversed. We explained:

> 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 foreclose any right to equitable relief. * * * We cannot say, on the face of the complaint, that [the plaintiffs] can prove no set of facts entitling them to relief. Among other things, the question of whether [the plaintiffs] were induced to pay the fines by a mistake of fact or law and whether they were coerced to pay be a threat of additional penalties may be relevant to this question.

Lycan I at ¶ 8. This court also reversed and remanded for further proceedings on the question of class certification. *Id*. at ¶ 11.

{¶ 48} Upon remand, the trial court in *Lycan II* certified the following class:

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

Lycan II at ¶ 10. Excluded from the class were the following:

> [1] Any of the above described class member[s] who filed a lawsuit involving 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.

Id. at ¶ 11.

{¶ 49} This court upheld the class definition after reviewing each of the Civ.R. 23 requirements and finding that the definition met all the requirements. *Id.* at ¶ 48.

{¶ 50} Cleveland appealed to the Ohio Supreme Court. *See Lycan v. Cleveland*, 146 Ohio St.3d 29, 2016-Ohio-422, 51 N.E.3d 593. Although the Supreme Court reversed *Lycan II* on other matters, it affirmed this court's decision upholding the class certification.[3] *Lycan*, 146 Ohio St.3d 29, 2016-Ohio-422, 51 N.E.3d 593, ¶ 1.

{¶ 51} Upon remand to the trial court, the city moved for summary judgment and for reconsideration of the trial court's decision granting the class partial summary judgment (which it had done in August 2016). The city "focused its arguments on the class's failure to exhaust administrative remedies and standing." *Lycan v. Cleveland*, 8th Dist. Cuyahoga Nos. 107700 and 107737, 2019-

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[3] The Supreme Court reversed *Lycan II* with respect to our analysis on res judicata, explaining:

> Cleveland also appeals the Eighth District's ruling, based on the doctrine of res judicata, 'that appellees' failure to appeal their traffic violations through Cleveland's administrative process did not bar them from pursuing equitable and declaratory relief in the trial court. We hold, however, that the Eighth District erred in addressing res judicata because the trial court did not decide that question in its class-certification order. In the absence of a final, appealable order from the trial court addressing res judicata, the Eighth District improperly ruled on that issue in the first instance. We therefore vacate in part the judgment of the Eighth District regarding the preclusive effect of Cleveland's administrative process, and we remand this matter to the trial court for further proceedings.

Lycan, 146 Ohio St.3d 29, 2016-Ohio-422, 51 N.E.3d 593, ¶ 2.

Ohio-3510 ¶ 9 ("*Lycan III*"). In its decision denying the city's motion for reconsideration, the trial court explained:

> [T]he [city] filed the instant motion based upon the Supreme Court case of [*Walker v. Toledo*, 143 Ohio St.3d 420, 2014-Ohio-5461, 39 N.E.3d 474]. In that case, the Supreme Court addressed the issue of whether Ohio municipalities have "home-rule" authority to establish administrative proceedings in furtherance of so-called "photo-enforcement" ordinances that must be exhausted before an individual can pursue judicial remedy. The *Walker* Court answered in the affirmative.
>
> In this case, the [city] argues that the [class] failed to exhaust the administrative remedy made available to them, and thus their claims should be dismissed. The [class] counter[s] that the administrative remedy available to them was not adequate.
>
> The Court of Appeals of Ohio, Eighth District has held that "[w]here an administrative agency has no power to afford the relief sought or an administrative appeal would otherwise be futile, exhaustion of administrative remedies is not prerequisite to seeking judicial relief." *San Allen, Inc. v. Buehrer*, 8th Dist. Cuyahoga No. 99786, 2014-Ohio-2071, ¶ 64, 11 N.E.3d 739; citing [*State ex rel. Teamsters Local Union No. 436 v. Cuyahoga Cty. Bd. Of Commrs.*, 132 Ohio St.3d 47, 2012-Ohio-1861, 969 N.E2d 224,] ¶ 23-24.
>
> The putative class in this case includes "all persons who were not a 'vehicle owner' under CCO413.031, but were issued notice of citation and/or assessed fine under that ordinance, prior to March 11, 2009," by the [city]. The [class] argue[s] that even though the ordinance in question specifically applied to vehicle owners at the time they were issued citations, they were issued citations while driving leased vehicles.
>
> The [class] provided the deposition testimony of Maria Vargas, then the [city's] Administrator of the Parking Violations Bureau and Photo Safety Division, as evidence that any administrative remedy that they would have availed themselves of would have been futile. Specifically, Vargas testified that any motorist raising the argument during an administrative hearing that they were not the owners of the vehicle cited and thus not subject to the ordinance would lose such an appeal. (Vargas Deposition pp. 168-170.) The basis of her testimony was set of rules titled "City of Cleveland Operation Safe Streets Photo

> Enforcement Business Rules" that instructs that drivers of leased vehicles were to be identified and notified of citations the same as vehicle owners. (Vargas Deposition Exhibit 2.)
>
> Based upon the foregoing, the [c]ourt finds that while there is no dispute that the [class] violated traffic laws, they were thereafter not afforded an adequate forum to dispute citations issued pursuant to CCO 413.031. Because the election to participate in the administrative hearing process created by the [city] would have been futile, the [c]ourt finds that the [class was] not required to avail themselves of that process in order to pursue judicial remedy. Accordingly, the [city's] Motion for Reconsideration is DENIED.

{¶ 52} The trial court then proceeded to finalize the class proceedings. There were over 31,000 class members who received restitution as "civil fines and penalties that were wrongfully collected and withheld" by the city in the amount of $4,121,185.89. *Id*. at ¶ 12, 15.

{¶ 53} We see no difference between the plaintiff-class representative in the present case (Lindsay) and the plaintiffs-class representatives in *Lycan*. We therefore find that Lindsay has standing to bring the class action as its representative with respect to Counts 5 and 6 of her complaint. Moreover, her claims are identical to every class member — essentially that defendants improperly implemented the automated-traffic cameras in violation of Garfield Heights' own ordinance. Thus, she meets the typicality requirement under Civ.R. 23.

{¶ 54} Redflex's third assignment of error is sustained in part and overruled in part. Garfield Heights raises the standing issue within its assigned error as well and thus, to the extent that it argues Lindsay lacks standing because she did not challenge the appeals process, we agree with respect to Counts 1 through 4 of Lindsay's complaint.

IV. Evidentiary Hearing and Factual Disputes

{¶ 55} In its second assignment of error, Redflex argues that the trial court erred when it granted class certification without resolving factual disputes. It claims that in her deposition, Lindsay's testimony significantly contradicted the allegations in her complaint. Garfield Heights raises similar issues throughout its brief regarding Lindsay's "lack of veracity."

{¶ 56} Civ.R. 23 is silent as to whether a hearing must be held on the issue of class certification. The Ohio Supreme Court, however, has recognized that a trial court is not required to hold an evidentiary hearing before certifying a class action. *Warner v. Waste Mgmt. Inc.*, 36 Ohio St.3d 91, 98, 521 N.E.2d 1091 (1988). An evidentiary hearing is not required in cases where the pleadings in a class action are so clear that a trial court may find by a preponderance of the evidence that certification is or is not proper. *Warner* at 98. If it is not as clear, "the parties must be afforded the opportunity to discover and present documentary evidence on the issue." *Ritt v. Billy Blanks Ents.*, 171 Ohio App.3d 204, 2007-Ohio-1695, 870 N.E.2d 212, ¶ 18 (8th Dist.), citing *Ritt v. Billy Blanks Ents.*, 8th Dist. Cuyahoga No. 80983, 2003-Ohio-3645.

> [A]s long as the trial court provides a sufficient opportunity for a factual development so as to permit a meaningful determination as to whether or not a cause of action should be certified as a class action, the trial court need not conduct a hearing on the certification question. The certification determination is left within the sound discretion of the court.

Ritt, 171 Ohio App.3d 204, 2007-Ohio-1695, 870 N.E.2d 212, ¶ 20, quoting *Clark v. Pfizer, Inc.*, 6th Dist. Sandusky No. S-84-7, 1984 Ohio App. LEXIS 10239, at 5 (July 13, 1984).

{¶ 57} Therefore, a trial court has discretion as to whether to hold a class certification hearing, and "it follows that if the court had sufficient information before it to rule on certification, it did not abuse its discretion by failing to hold a hearing." *Ritt*, 171 Ohio App.3d 204, 2007-Ohio-1695, 870 N.E.2d 212, ¶ 21; *see also Lasson v. Coleman*, 2d Dist. Montgomery No. 21524, 2007-Ohio-3443, ¶ 15-17. Thus, our focus in considering whether a lower court's failure to hold an evidentiary hearing depends upon the development of the evidence, i.e., the operative facts necessary to the trial court's determination of the certification question.

{¶ 58} In her complaint, Lindsay alleged that when she received her notice of liability, she paid the $100 civil penalty and the $50 fee to request an administrative hearing. In her 2014 deposition, however, Lindsay acknowledged that she received instructions with her notice of liability informing her how to pay the ticket, which stated:

> [1.] Please do not send cash.
>
> [2.] Make Check or Money Order payable to "Garfield Heights Focus on Safety Program."
>
> [3.] Payments by Personal Check, Money Order or Visa/MasterCard are accepted. Please mail in the enclosed envelope along with the payment coupon[.]
>
> [4.] Credit Card payments can also be made online at: www.photonotice.com[.] * * * A $2.95 processing fee will be applied to online payments.

> [5.] A $25.00 administrative fee will be assessed for rejected or declined payments.

{¶ 59} Despite the fact that the instructions said "do not send cash" and did not provide for in-person payments, Lindsay testified in her deposition that she went to the police station and paid the $100 in cash to someone at a window. Lindsay stated that she did not pay the $50 administrative fee to request a hearing. When confronted with electronic records showing that she paid $102.95 online on February 23, 2011, Lindsay still insisted that she paid in person at the police station. But she ultimately admitted that she did not remember how she paid the ticket; she said that she just knew that she paid it.

{¶ 60} Redflex claims that Lindsay's deposition testimony conflicted with that of Rose Puntel-Shalek's affidavit. Puntel-Shalek, a city employee, averred that "[c]ity personnel were not permitted to and did not take payments from anyone attempting to pay a photo enforcement notice of liability." In fact, Puntel-Shalek stated that "Garfield Heights Municipal Court personnel responsible for receiving the payment of criminal traffic tickets at a teller window did not have access to the civil photo enforcement computer platform." Puntel-Shalek further stated in her affidavit that Garfield Heights did not have any record of Lindsay paying any payment in person.

{¶ 61} We disagree with Redflex, however, that these differences in testimony amounted to "significant and relevant factual disputes" requiring the trial court to resolve them by an evidentiary hearing.

{¶ 62} First, Lindsay's complaint may have contained some inaccuracies. But there is nothing in the record to establish that she or her attorneys intended to make false allegations. Under Civ.R. 11, by signing a pleading, a party certifies that to the best of the party's knowledge, information, and belief, "there is good ground to support" the claims of the complaint. Civ.R. 11 further states that if a document is signed "with intent to defeat the purpose of this rule" the document may be stricken as a sham and false. Similarly, R.C. 2323.51 penalizes "frivolous conduct" in civil actions. Frivolous conduct includes filings that "have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation" or the assertion of factual contentions that are "not warranted by the evidence." R.C. 2323.51(A)(2)(a)(iii) and(iv). Neither Redflex nor Garfield Heights makes any such allegations against Lindsay or her counsel.

{¶ 63} After review, we find that the inconsistencies in Lindsay's complaint and her deposition testimony were minor. It is highly likely from Lindsay's deposition that she simply forgot how she paid her ticket. It had been several years since she had done so. Once confronted with the electronic record, she did not deny that it was true. She admitted that she paid it however the receipt said she paid it. We further find the conflict between Lindsay's testimony and Puntel-Shalek's affidavit to be insignificant to this matter. As we stated, there is nothing in the record to indicate that either Lindsay or her counsel intended to mislead the court.

{¶ 64} Moreover, the trial court held two hearings on class certification — on August 1, 2016, and July 18, 2017. Lindsay did not go to either hearing. Lindsay asserts that she was not required to go because they were not evidentiary hearings. We agree. Lindsay received a notice of liability from a mobile unit contrary to the Garfield Heights ordinance. She paid it without contesting it. Although she asserted in her complaint that she paid the $50 administrative fee, it is clear from her deposition testimony that she did not. How she paid her fine, whether it was by cash or by Visa, is irrelevant. Moreover, a class member did not have to pay the notice of liability or pay the $50 administrative fee to be a member of the class; he or she simply had to receive a notice of liability. Defendants have not pointed to any other possible matters that the trial court would have had to determine by an evidentiary hearing. Accordingly, the trial court did not abuse its discretion when it did not hold an evidentiary hearing.

{¶ 65} Redflex cites to *Ward v. NationsBanc Mtge. Corp.*, 6th Dist. Erie No. E-05-040, 2006-Ohio-2766, and *Duncan v. Hopkins*, 9th Dist. Summit No. 23342, 2007-Ohio-1425, in support of their argument that the trial court should have conducted an evidentiary hearing in this case. These cases, however, are distinguishable. In *Ward*, the Sixth District determined that class certification was improper because "[n]o formal discovery ever took place" and there was "no evidence in the record from which [it] [could] ascertain any definitive substantive basis relied upon by the trial court in support of its decision to award class certification." *Id.* at ¶ 32 - 33. Likewise, in *Duncan*, the trial court ruled on the

motion to certify the class before discovery and therefore, there was no record from which to find a similarity of circumstances among class members. *Id*. at ¶ 13. Here, discovery was extensive, and the record is substantial. Thus, we can discern from the record whether the trial court properly granted class certification under Civ.R. 23.

{¶ 66} Redflex's second assignment of error is overruled and Garfield Heights' arguments within its assigned error relating to Lindsay's "lack of veracity" lack merit.

V. Class Certification

{¶ 67} In Redflex's fourth and fifth assignments of error, it contends that the trial court erred when it found that Lindsay had proven the Civ.R. 23 requirements for class certification. Garfield Heights makes the same argument in its sole assignment of error. We will address the specific arguments that defendants raise with respect to Civ.R. 23.

{¶ 68} The class action is an invention of equity. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997). Class certification in Ohio is based upon Civ.R. 23, which is nearly identical to Fed.R.Civ.P. 23. As the United States Supreme Court explained in *Amchem Prods., Inc.* at 617:

> The 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. A class action solves this problem by aggregating the relatively paltry potential

> recoveries into something worth someone's (usually an attorney's) labor.

{¶ 69} To be eligible for class certification pursuant to Civ.R. 23, a plaintiff must establish that (1) an identifiable and unambiguous class exists, (2) the named representative of the class is a class member, (3) the class is so numerous that joinder of all members of the class is impractical, (4) there are questions of law or fact that are common to the class ("commonality"), (5) the claims or defenses of the representative plaintiff or plaintiffs are typical of the claims and defenses of the members of the class ("typicality"), (6) the representative parties fairly and adequately protect the interests of the class ("adequacy"), and (7) one of the three requirements of Civ.R. 23(B) is satisfied. *Stammco, L.L.C. v. United Tel. Co. of Ohio*, 125 Ohio St.3d 91, 2010-Ohio-1042, 926 N.E.2d 292, ¶ 6.

{¶ 70} The last of these requirements refers to the three different grounds for maintaining a class action under Civ.R. 23(B). The type of class Lindsay sought to certify falls under Civ.R. 23(B)(3), which requires (in addition to the six general requirements of class actions) that "questions of law or fact common to the members of the class predominate over any question 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"). Civ.R. 23(B)(3).

{¶ 71} Before certifying the class, the trial court must find that the plaintiff has proven by a preponderance of the evidence that each of the seven requirements

of Civ.R. 23 are met. *Ritt.*, 171 Ohio App.3d 204, 2007-Ohio-1695, 870 N.E.2d 212, ¶ 34.

A. Adequacy

{¶ 72} Both Redflex (in its fifth assignment of error) and Garfield Heights argue that Lindsay did not prove that she is an adequate class representative.

{¶ 73} Adequacy in class actions looks to both the class representative and counsel. *Warner*, 36 Ohio St.3d at 98, 521 N.E.2d 1091. Defendants only claim that Lindsay is not adequate.

{¶ 74} The authorization of a class representative can only be made under Civ.R. 23(A)(4) upon a showing that the representative will "fairly and adequately" protect the interests of the class. Implicit in the concept of adequate representation of a class is the idea that those being represented possess similar claims constituting a cohesive class and the representative is a member of this class. *Westgate Ford Truck Sales, Inc. v. Ford Motor Co.*, 8th Dist. Cuyahoga No. 86596, 2007-Ohio-4013, ¶ 60.

{¶ 75} Questions of adequacy in class actions look to both the class representative and counsel; defendants claim only that Lindsay is not adequate. *Vinci v. Am. Can Co.*, 9 Ohio St.3d 98, 101, 459 N.E.2d 507 (1984). The courts employ a broad, inclusive standard for determining the adequacy of class representation:

> Moreover, any doubts about adequate representation, potential conflicts, or class affiliation should be resolved in favor of upholding the class, subject to the trial court's authority to amend or adjust its

> certification order as developing circumstances demand, including the augmentation or substitution of representative parties.

Baughman, 88 Ohio St.3d at 487.

{¶ 76} A class representative 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 78, 694 N.E.2d 442.

{¶ 77} Defendants argue that Lindsay cannot be an adequate class representative because her complaint is based on false allegations. We already addressed this in the last assignment of error, finding that there is nothing in the record to indicate that Lindsay purposefully tried to mislead the court, and that the inconsistencies in her complaint and deposition testimony were minor and irrelevant.

{¶ 78} Defendants further argue that Lindsay lacked adequate knowledge about the case, failed to actively participate in the litigation, and improperly delegated decision-making authority to class counsel. Specifically, they claim that she "did not even bother to show up at the two class certification hearings" and admitted in her deposition that "she did not recall seeing or reviewing interrogatories or being asked to sign them under oath."

{¶ 79} The trial court held two hearings on class certification — on August 1, 2016, and July 18, 2017. As we explained earlier, Lindsay was not required to go to the hearings because they were not evidentiary hearings. We further disagree with defendants that the fact that Lindsay did not recall signing interrogatories is

significant. We would not be surprised if a large percentage of plaintiffs did not recall signing interrogatories.

{¶ 80} After review, we find no merit to defendants' arguments. The record reflects that Lindsay possesses the same interest in the outcome of the litigation as each of the class members. There is nothing indicative of any conflict or antagonistic interest between Lindsay and the class. We therefore overrule Redflex's fifth assignment of error.

B. Commonality and Predominance

{¶ 81} In its fourth assignment of error, Redflex further maintains that the trial court erred in certifying the class because Lindsay failed to establish the commonality and predominance requirements. Garfield Heights does not raise this argument.

{¶ 82} Civ.R. 23(A)(2) requires that "there are questions of law or fact that are common to the class." In *Warner*, 36 Ohio St.3d 91, 97, 521 N.E.2d 1091, the Ohio Supreme Court stated:

> Courts generally have given a permissive application to the commonality requirement in Civ. R. 23(A)(2). *See Marks v. C. P. Chemical Co.* (1987), 31 Ohio St. 3d 200, 31 OBR 398, 509 N.E. 2d 1249. This prerequisite has been construed to require a "common nucleus of operative facts." *Marks*, *supra*, at 202, 31 OBR at 400, 509 N.E. 2d at 1253. Professor Miller indicates:
>
> "'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, or the existence of a contract or its breach, or a practice of discrimination, or misrepresentation, or conspiracy, or pollution, or the existence of a particular course of conduct, the Rule is satisfied. 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.'" (Footnote and internal quotations omitted.)

{¶ 83} Civ.R. 23(B)(3) requires the court to find "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members." For common questions of law or fact to predominate, "it is not sufficient that such questions merely exist; rather, they must present a significant aspect of the case. Furthermore, they must be capable of resolution for all members in a single adjudication." *Marks v. C.P. Chem. Co., Inc.*, 31 Ohio St.3d 200, 204, 509 N.E.2d 1249 (1987). "To meet the predominance requirement, a plaintiff must establish that issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject to only individualized proof." *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 544 (6th Cir.2012).

{¶ 84} Redflex claims that Lindsay's renewed motion for class certification "relied upon the fundamentally flawed assumption that all people who received a notice of liability under the ordinance have the same right to recover in this case[,] but they do not." Redflex asserts that the "[c]rux of this case will turn on the defenses that would have been raised to the claims of the vehicle owners who are now class members." Redflex maintains that it would have been able to raise defenses "including lack of standing, waiver, estoppel, failure to exhaust administrative remedies, and the like" if the class members had appealed their notices of liability.

{¶ 85} Redflex created a hypothetical class member in support of its argument. Redflex states that this hypothetical person who received a notice of liability might remember "being in a rush that morning to avoid being late for work or for some other reason, * * * concede the truth of the violation [and] knowingly and intentionally pay the civil citation, knowingly and intentionally waive the right to a hearing, and knowingly and intentionally waive any defenses that could be offered."

{¶ 86} Redflex is mistaken, however, that it or Garfield Heights would have been able to present any of those hypothetical defenses. Garfield Heights' ordinance did not provide for the automated-traffic cameras to be mounted in mobile units. Because defendants failed to comply with the ordinance, they had no authority to collect the fines. Thus, Redflex cannot claim that the class members who received notices of liability — even if they promptly paid the $100.00 civil penalty without challenging it — are barred from succeeding on their claims due to any of those defenses when the mobile unit that ticketed the class members was not lawful under the ordinance. This is especially true when challenging the ordinance due to the improper mobile unit would have been for naught. As this court explained in *San Allen v. Buehrer*, 8th Dist. Cuyahoga No. 99786, 2014-Ohio-2071, ¶ 64:

> Where an administrative agency has no power to afford the relief sought or an administrative appeal would otherwise be futile, exhaustion of administrative remedies is not a prerequisite to seeking judicial relief. *State ex rel. Teamsters Local Union No.* 436 at ¶ 23-24; *see also Kaufman v. Newburgh Hts.*, 26 Ohio St.2d 217, 219, 271 N.E.2d 280 (1971) ("'failure to exhaust administrative remedies available' may be a defense * * * only if interposed * * *, and if a remedy

> exists which is effectual to afford the relief sought"). In determining futility for exhaustion of remedies purposes, it does not matter that it may be improbable that the claimant will receive the requested relief. "'The focus is on the power of the administrative body to afford the requested relief, and not on the happenstance of the relief being granted.'" (Emphasis omitted.) *State ex rel. Teamsters Local Union No. 436* at ¶ 24, quoting *Nemazee v. Mt. Sinai Med. Ctr.*, 56 Ohio St.3d 109, 115, 564 N.E.2d 477 (1990); *see also McNally v. Cleveland*, 8th Dist. Cuyahoga No. 92697, 2010-Ohio-512, ¶ 12 ("'[a] vain act is defined in the context of lack of authority to grant administrative relief and not in the sense of lack of probability that the application for administrative relief will be granted'"), quoting *Gates Mills Invest. Co. v. Pepper Pike*, 59 Ohio App.2d 155, 167, 392 N.E.2d 1316 (8th Dist.1978).

{¶ 87} Redflex claims that according to Puntel-Shalek's affidavit, defenses heard before the hearing officer included but were not limited to the defenses set forth in the Garfield Heights ordinance. But the trial court, in denying Garfield Heights' motion for summary judgment, specifically found that the hearing officer testified that the ordinance establishing the administrative hearing process did not provide for a motorist to raise that as a defense to a ticket. The trial court explained that the hearing officer confirmed "that he was constrained by the listed defenses under the ordinance," which did not include the challenge being made by Lindsay in this case. The trial court further noted that the "hearing officer specifically confirmed he drafted a hearing procedure schedule for what defenses he would consider, and it did not include the defense asserted by Lindsay for herself and putatively for others."

{¶ 88} After review, we find that there is a common nucleus of operative facts in this case. The trial court certified a class that includes all persons who were issued a notice of liability pursuant to the ordinance (i.e., the unlawful mobile units with

automated cameras) but excluding those (1) who only received a warning, (2) whose notice resulted in a finding of no liability, or (3) whose notice was dismissed. Our review reflects that common proof exists concerning each class members' claims and that common questions predominate over questions affecting only individual members.

{¶ 89} Accordingly, Redflex's fourth assignment of error and Garfield Heights' sole assignment of error is overruled.

VI. Rigorous Analysis by the Trial Court

{¶ 90} In its first assignment of error, Redflex argues that the trial court's judgment entry does not reflect that it conducted a rigorous analysis before certifying the class. Reflex maintains that because the trial court stated that it conducted a "rigorous analysis" is not sufficient.

{¶ 91} In its judgment entry granting Lindsay's renewed motion for class certification, the trial court stated, "After a rigorous analysis of the factual evidence in the record of this matter, this court finds that plaintiff has demonstrated the factual and legal requirements for class certification set forth in Civ.R. 23(A) and (B)." The trial court then set forth the definition of the class.

{¶ 92} Although we agree that a "rigorous analysis" is required under *Hamilton*, 82 Ohio St. 3d 67, 694 N.E.2d 442, and other cases, neither Civ.R. 23 nor the Ohio Supreme Court mandates that a trial court must make formal findings evidencing that it did so. In *Hamilton*, the Ohio Supreme Court stated as much. *Id.* at 70 (a trial court is not required to "make formal findings to support its decision

on a motion for class certification"). Although the Ohio Supreme Court acknowledged "there are compelling policy reasons for doing so," such as ease of appellate review, "there is no explicit requirement in Civ.R. 23." *Id*.

{¶ 93} Thus, while a fully articulated decision is preferable, it is not essential to a class certification. Other courts have also held that "'nothing in *Hamilton* requires us to find an abuse of discretion solely because the trial court did not comply with this recommendation.'" *Jacobs v. FirstMerit Corp.*, 11th Dist. Lake No. 2013-L-012, 2013-Ohio-4308, ¶ 23, quoting *Pyles v. Johnson*, 143 Ohio App.3d 720, 758 N.E.2d 1182 (4th Dist.2001). Indeed, in *Hamilton*, although the trial court did not rule on each class-action requirement or provide any rationale for its class-certification decision, the Supreme Court addressed the merits of the trial court's denial of class certification based on the Supreme Court's review of the record.

{¶ 94} Redflex cites to *Cullen v. State Farm Mut. Auto. Ins. Co.*, 137 Ohio St.3d 373, 2013-Ohio-4733, 999 N.E. 2d 614, in support of its argument that the trial court failed to conduct a rigorous analysis. *Cullen*, however, is distinguishable from the present case. In *Cullen*, the Supreme Court found that the trial court erred in granting class certification because "the record reveal[ed] that individual issues overwhelm[ed] the questions common to the class, and the trial court therefore abused its discretion in certifying the class action." *Id*. at ¶ 36. Neither Redflex nor Garfield Heights makes such an argument here.

{¶ 95} Just as the Supreme Court was able to analyze and determine in *Hamilton* whether the trial court abused its discretion in certifying the class, we are

able to do so in this case. After a thorough review, we find no abuse of discretion on the part of the trial court.

{¶ 96} Accordingly, we overrule Redflex's first assignment of error.

{¶ 97} Judgment affirmed and remanded consistent with this opinion; Lindsay has standing to raise Counts 5 and 6 of her complaint, but not Counts 1 through 4.

It is ordered that appellee recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, PRESIDING JUDGE

KATHLEEN ANN KEOUGH, J., and
RAYMOND C. HEADEN, J., CONCUR