

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION  
GENERAL CHANCERY SECTION**

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**RABBI AARON POTEK, ADINA KLEIN, and  
STEPHEN MICHELINI, as individuals and on  
behalf of those similarly situated,**

**Plaintiffs,**

**v.**

**CITY OF CHICAGO, a municipal corporation,**

**Defendant.**

**CASE NO. 17 CH 10507**

**CALENDAR 11**

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**ORDER**

This matter came before the Court for a second hearing on Plaintiffs' Motion for Class Certification. For the reasons explained below, the Court grants the motion and certifies the class.

**BACKGROUND**

Chicago's municipal code prohibits talking on a cell phone while driving. Each of the three named Plaintiffs received a ticket for violating Section 9-76-230 of the Municipal Code of Chicago (the "Ordinance"), which prohibits motorists from using their cell phones while operating a motor vehicle. When Plaintiffs received their tickets, the City was enforcing these violations before administrative law judges in the City's Department of Administrative Hearings ("DOAH"). This putative class action raises the issue of whether the tickets should have been adjudicated in the Circuit Court of Cook County instead.

Plaintiffs' Motion for Class Certification was first argued in March of 2021, along with Defendant's Motion for Summary Judgment. On August 19, 2021, this Court granted summary judgment in favor of Defendant City of Chicago, finding that Plaintiff did not have standing. Given this ruling, the Court denied class certification as moot. Plaintiff appealed, and in *Potek v. City of Chicago*, 2022 IL App. (1<sup>st</sup>) 211286, the Appellate Court reversed the summary judgment order in part and remanded the case.

The Appellate Court decision sets forth the issues and factual background in detail. Briefly, Plaintiffs challenged as void the City's issuance of cell phone traffic tickets. Each named Plaintiff received a ticket, but they each took different approaches in response—paying the ticket or not, attending the administrative hearing or not, admitting the violation in their deposition or

not. Still, they all contended that DOAH did not have subject matter jurisdiction to adjudicate the tickets, so the tickets were void. The Appellate Court found that Plaintiffs did have standing.

After remand, the Court invited the parties to submit supplemental briefs on the class certification issue. The Court then held a second hearing on class certification on January 31, 2023, and took the matter under advisement.

### THE PROPOSED CLASS

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All individuals who, from the period of January 1, 2010 to the present day, were found liable for a violation of §9-76-230 of the Municipal Code of the City of Chicago by the City of Chicago Department of Administrative Hearings.

The Appellate Court in *Potek* found that tickets issued before January 1, 2014 were properly adjudicated before the DOAH. That completely resolved the claim of Plaintiff Luke Sequeira, who is no longer a party. It partially resolved the claim of Plaintiff Adina Klein. Plaintiffs Potek, Klein and Michelini now seek to certify the following class:

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(Order dated 11/4/22, Exh. KK to Defs' Supplemental Brief; emphasis added).

### ANALYSIS

Certification of a class is governed by Section 2-801 of the Illinois Code of Civil Procedure, which provides:

An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds:

- (1) The class is so numerous that joinder of all members is impracticable.
- (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.
- (3) The representative parties will fairly and adequately protect the interest of the class.
- (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.

735 ILCS 5/2-801.

The proponent of the class has the burden of establishing these four prerequisites. Decisions regarding class certification are within the sound discretion of the trial court, as long as that discretion is exercised within the framework of Section 2-801. *See Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 125-26 (2005). In deciding whether to certify a proposed

class, the trial court “accepts the allegations of the complaint as true and should err in favor of maintaining class certification, but should avoid deciding the underlying merits of the case or resolving unsettled legal questions.” *CE Design Ltd. v. C&T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶ 9 (internal citations omitted).

### Numerosity

In its initial Motion, Plaintiffs said the proposed class includes “tens of thousands” of members. The City does not contest Plaintiffs’ satisfaction of the numerosity requirement. The court in *Wood River Area Dev. Corp. v. Germania Fed. Sav. & Loan Ass’n*, 198 Ill. App. 3d 445 (5th Dist. 1990) noted that there is “no bright line, no magic number” of class members needed to meet the numerosity requirement. The standard is whether or not “joinder of all members is impracticable.” 735 ILCS 5/2-801(1).

Plaintiffs easily meet this requirement.

### Predominance

Most of the parties’ arguments focused on the predominance element, which requires the case to involve “questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.” 735 ILCS 5/2-801(2). As the Illinois Supreme Court has explained,

The test for predominance is not whether the common issues outnumber the individual ones, but whether common or individual issues will be the object of most of the efforts of the litigants and the court. ... Satisfaction of section 2-801's predominance requirement necessitates a showing that “successful adjudication of the purported class representatives’ individual claims will establish a right of recovery in other class members.”

*Smith v. Ill. Cent. R.R. Co.*, 223 Ill. 2d 441, 448-49 (2006) (internal citations omitted).

Plaintiffs describe the over-arching issue in this case as whether or not the City’s administrative court system had jurisdiction to adjudicate violations of the Ordinance. They say this question of law predominates over any questions involving only individual class members. In response, the City points out that Plaintiffs have an unjust enrichment claim, and that the Court must necessarily consider the facts and circumstances of each class member’s violation in order to determine whether the City’s collection and retention of fines was “unjust” as to that individual member. The City also notes it has defenses that must be determined on an individual basis. In sum, it argues, the Court will need to consider “whether each claimant committed the violation, whether they had any defenses to it, how they responded to receiving the ticket, whether they paid under duress, and the City’s counterclaims to enforce the ordinance and seek recoupment.” (Def’s Supp. Br. at 8).

Plaintiffs insist they do not intend to present evidence of class members’ innocence. Under their theory of the case, it is not relevant that a class member violated the Ordinance or

not. Plaintiffs seek a ruling on the legal question of whether the fine was unlawful and void because it was assessed by a body that lacked jurisdiction.

A key element of Plaintiffs' argument is that, if the Court finds that the tickets were void, no further evidence will need to be taken regarding the circumstances of an individual case—the City will have to return any money class members paid to resolve those tickets. In support of this principle, they rely on *Williamsburg Vill. Owners' Ass'n v. Lauder Assoc.*, 200 Ill. App. 3d 474 (1<sup>st</sup> Dist. 1990) (“[U]pon the reversal of a judgment, under which one of the parties has received benefits, he is under an obligation to make restitution,” citing *Buzz Barton & Assocs., Inc. v. Giannone*, 108 Ill. 2d 373 (1985)). Plaintiffs say they plan to move for summary judgment on this issue once the class is certified.

On the other hand, the City urges the Court to look past motion practice and consider what a trial of this case would look like. They argue that, in order to decide Plaintiffs' claims of unjust enrichment, the Court would have to hold hundreds or even thousands of mini-trials to hear evidence of the individual facts and circumstances relating to each class member's individual claim. They also contend they are entitled to submit evidence to prove their defenses based on the voluntary payment doctrine and the de facto officer doctrine in individual cases.

The City says this case turns on the following individual questions: (1) Did each class member commit the violation? (2) Did they attend a DOAH hearing? (3) If so, what happened at the hearing? (4) Did they pay a fine?

In support of its contention that individual issues predominate, the City cites this Court's July 24, 2020 ruling on a discovery dispute. Plaintiffs brought a motion to quash a deposition subpoena issued to Lindsay Michelini, who was in the car with Plaintiff Stephen Michelini when he received a ticket under the Ordinance. Plaintiffs argued that the Court “does not need to know about the facts leading to the tickets—whether or not Stephen Michelini ‘really did it’—to decide the jurisdictional issue.” (7/24/20 Order). The Court denied the motion to quash, finding that the unjust enrichment claim requires the Court to consider “all the facts and circumstances.” However, the Court was careful at the time to make clear that this discovery order was not “a binding decision on the relevance of Lindsay Michelini's deposition testimony.” The Court allowed the deposition to go forward, while reserving for another date a ruling on the relevance and significance of the evidence obtained. This 7/24/20 Order was *not* a ruling on whether Plaintiff's unjust enrichment claims are appropriate for class certification.

In analyzing the predominance element, the Court must “look beyond the pleadings to understand the claims, defenses, relevant facts, and applicable substantive law.” *Smith*, 223 Ill. 2d 441 at 449. At the same time, the Court is mindful that it should not decide the underlying merits of the case at this stage.

Applying these guidelines, the Court finds that common questions predominate in this case over questions affecting only individual members. While the Appellate Court in *Potek* did not decide the class certification issue, its ruling on standing neatly framed the main issue in the case:

Plaintiffs are not contending that the procedures used by the DOAH were improper—they are arguing the DOAH did not have the authority to hear the cases at all. This is a question they most certainly had the standing to raise.

*Potek*, 2022 IL App. (1st) 211286, at ¶40.

According to the Appellate Court, this question of the agency’s authority arises “[r]egardless of whether plaintiffs paid the fine or participated in the proceedings,” because in either event the result is the same: “a legal finding of liability against each plaintiff, issued by an agency which allegedly had no authority to do so.” *Potek*, 2022 IL App. (1st) 211286 at ¶39. This statement recognizes the predominance of the common legal questions. Those common legal questions include (1) whether the tickets were void because they were adjudicated by an administrative agency that lacked subject matter jurisdiction; (2) whether the City’s defense of voluntary payment applies as a matter of law to members who paid their tickets without contesting liability; and (3) whether the *de facto* officer doctrine cures any jurisdictional defect as a matter of law.

Plaintiffs have satisfied the predominance element.

#### Adequacy of Representation

The third requirement for class certification is that the class representatives “will fairly and adequately protect the interest of the class.” 735 ILCS 5/2-801(3). Plaintiffs ask the Court to approve as class representatives Aaron Potek, Adina Klein, and Stephen Michelini.

In appointing class representatives, the standard is whether their interests are the same as those of the rest of the class, and whether they will fairly represent the class. *See Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981). The City argued that, by resolving Plaintiff Luke Sequeira’s claim, the Appellate Court removed from the case the only named Plaintiff who could represent class members who have not paid their fines and are seeking only debt relief. According to the City, the remaining Plaintiffs do not adequately represent the interests of the entire class. The City argues that, if the Court does certify a class, it should amend the class definition to exclude persons with unpaid fines.

The Court finds that the remaining three Plaintiffs can adequately represent the entire class—even those who did not pay their fines. Plaintiffs’ Amended Complaint contains counts for declaratory judgment and unjust enrichment. Everyone in the class has an interest in the declaratory judgment claim, which seeks a declaration that the “administrative findings of liability pursuant to the Ordinance are null and void *ab initio*.” (Am. Compl., ¶¶129, 138). If that declaratory judgment is entered, those who did not pay will never have to pay; those who paid will be able to seek damages for unjust enrichment. A finding that the Ordinance is void is a prerequisite to damages, and Plaintiffs have the same interest as all other class members in obtaining that ruling.

The City also suggests that Plaintiffs’ counsel (Myron M. Cherry and Jacie C. Zolna) are “less aligned” with the interests of those class members whose only potential remedy is debt

relief and not money. The Court finds that Plaintiffs' counsel will fairly and adequately represent the interests of the entire class. Again, counsel would need to get a favorable ruling for the whole class on declaratory judgment before they could obtain a monetary judgment for a subset of the class on the unjust enrichment claim. Their interests are aligned.

Plaintiffs have satisfied the adequacy element.

Appropriateness

Finally, a class action must be "an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801(4). The Court has determined that the class is sufficiently numerous, that common questions predominate, and that the class representatives and counsel will fairly and adequately protect the interest of the class. The efficiency of determining the common issues in one proceeding is apparent.

In this case, many individuals have allegedly been issued invalid traffic tickets and, if they paid them, incurred damages too small to justify a separate action. Collectively, a court may efficiently adjudicate their claims. This is what class actions were designed to achieve.

CONCLUSION

The Court certifies the following class:

All individuals who, from the period of January 1, 2014 to the present day, were found liable for a violation of §9-76-230 of the Municipal Code of the City of Chicago by the City of Chicago Department of Administrative Hearings.

The Court appoints Aaron Potek, Adina Klein, and Stephen Michelini as class representatives.

The Court appoints Myron M. Cherry and Jacie C. Zolna as class counsel.

This matter is continued to May 23, 2023 at 10:15 a.m. for further status by Zoom. Meeting 928 9663 2736, Password 813107.



Judge Pamela McLean Meyerson

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APR 14 2023

Circuit Court - 2097

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