

Supreme Court No. 92729-4

COA No. 328368

Superior Court No. 2014-2-02186-5

SUPREME COURT
OF THE STATE OF WASHINGTON

FILED

JAN 27 2016
CLERK OF COURT
STATE OF WASHINGTON
SPokane, WA 99201

FILED

JAN 27 2016 CRF
WASHINGTON STATE
SUPREME COURT

JERRI MAINER

Petitioner.

vs.

CITY OF SPOKANE.

Respondents.

**MOTION FOR
DISCRETIONARY REVIEW**

Dean T. Chuang .

Attorney for Petitioner

CRARY, CLARK & DOMANICO, P.S.

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I. IDENTITY OF PARTY:

Petitioner, Jerri Mainer, as represented by Dean T. Chuang of Crary, Clark & Domanico, P.S., requests the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT:

Petitioner asks this Court to grant the motion for discretionary review of the Court of Appeals decision in this matter and review the superior court's dismissal pursuant to CR 12(b)(6).

III. FACTS RELEVANT TO MOTION:

Petitioner, Jerri Mainer, seeks discretionary review of the Court of Appeals decision denying review based on jurisdictional grounds. The petitioner seeks review of the Spokane County Superior Court decision granting dismissal of the petitioner's claim under CR 12(b)(6).

From November 1, 2008 – August 3, 2011, the City of Spokane issued thousands of photo red traffic tickets. On June 17, 2011, Spokane County Superior Court found the City's issuance of those photo red tickets violated the RCW 9A.72.085 by not accurately notating where the citation was actually signed by the issuing officer. App. 19-23. On June 13, 2014, Ms. Mainer sued the City for unjust enrichment seeking damages for herself, and a putative class, who received photo red tickets between

November 1, 2008 and June 20, 2011. App. 9-18.

The issue before this Court is whether the Spokane County Superior Court properly dismissed Ms. Mainer's putative class action lawsuit under CR 12(b)(6). For the reasons stated below, this Court should accept review.

IV. LAW AND ARGUMENT

A. This Court Should Accept Discretionary Review Because The Underlying Superior Court Decision Involves "A Significant Question Of Law Under The Constitution Of The State Of Washington Or Of The United States".

The dismissal of a putative class action pursuant to CR 12(b)(6) without review by any appellate court, in itself, involves a significant question of law under the Washington State and Federal Constitution. Such non-reviewability violates the Article I, section three of the of the Washington State and the 14th Amendment of United States Constitutions. Ms. Mainer cannot obtain review the dismissal of her claim at this early stage. Indeed, the case law supports appellate review of a CR 12(b)(6) dismissal by a trial court.

CR 12(b)(6) motions should be granted only "sparingly and with care." *Haberman v. Washington Public Power Supply System*, 109 Wn.2d 107, 120, 744 P.2d 1032 (1987). An appellate court will review the matter *de novo* to determine whether dismissal was proper. *Tenore v. AT & T*

Wireless Servs., 136 Wn.2d 322, 329, 962 P.2d 104 (1998). A motion to dismiss is only in the unusual case in which plaintiff includes allegations that show on the face of the complaint that there is insuperable bar to relief. *Hoffer v. State*, 110 Wn.2d 415, 420, 755 P.2d 781 (1988).

Here, the trial court's 12(b)(6) dismissal is not reviewable due to the jurisdictional limits of the court of appeals. The plaintiff in this situation lacks any appellate remedy other than the Supreme Court to review the dismissal. Furthermore, the trial court's order lacks any analysis or basis for the dismissal.

This Court should accept review to determine whether the superior court properly dismissed all claims by the petitioner.

B. The Trial Court Granting Of CR 12(b)(6) Dismissal Was In Error And Contrary To Established Case Law.

The trial court erred when it granted dismissal pursuant to CR 12(b)(6). The court misapplied relevant case law it dismissed. The petitioner did have a colorable claim under Washington State law for the following reasons.

1. The Trial Court Erred In Finding That the Superior Court Lacked Jurisdiction Over The Plaintiff's Claim.

The Superior Court has jurisdiction over equitable claims regarding system wide violations of mandatory statutory

requirements - - such as RCW 9A.72.085 - - and from repetitious violations of constitutional rights by a municipality in enforcement of municipal ordinances. RCW 35.20.030; Wash. Const. Art. 4, § 6; *Orwick v. City of Seattle*, 103 Wn.2d 249 (1984). In *Orwick*, the plaintiffs filed suit because of the inadequate calibration of speed measuring devices. They alleged system wide violations of mandatory statutory requirements by a municipal court and from alleged repetitious violations of constitutional rights by a municipality in enforcement of municipal ordinances. As such, the Supreme Court determined that the superior did have jurisdiction to hear the matter, enough though it stemmed from a municipal court matter. *Id.* at 252.

This case is analogous to *Orwick*: Ms. Mainer alleged that the procedures used by the City to adjudicate red light citations violated RCW 9A.72.085 (statute governing the certification of unsworn statements) and GR 30 (court rule governing electronic filing). This case is an allegation of a system-wide violation of a statutory requirement. Thus, the superior court had jurisdiction to hear the matter, even though it stemmed from a municipal court matter.

2. The Trial Court Erred In Barring Ms. Mainer's Claim Under Res Judicata.

A party asserting a *res judicata* defense must establish that the subsequent action is identical to an earlier action in: (1) identity of persons and parties, (2) the subject matter, (3) the cause of action, and (4) the quality of the persons for or against whom the claim is made. *Stevens Cnty. v. Futurewise*, 146 Wn. App. 493, 503 (2008).

Here, the trial court improperly barred Ms. Mainer's claim. The City did not meet the *Stevens* criteria. As to points (1) and (4), the parties differ from the above-referenced 2011 action, as this case is *not* simply Ms. Mainer, but rather Ms. Mainer and a class of plaintiffs similarly situated. Therefore, the parties have changed since Ms. Mainer's original case, and *res judicata* does not apply. As to point (2) Ms. Mainer's claim is more than, as the City claimed, an action "seeking to overturn her citation for a traffic infraction." CP 69. Ms. Mainer's citation was "overturned" in 2011 when the Spokane County Superior Court found the photo red scheme void. Ms. Mainer now seeks repayment of a fine improperly levied (against her and a putative class of similarly situated citizens) as part of a broad scheme that violated RCW 9A.72.085. App. 9-

18. The system wide violation of RCW 9A.72.085 was not addressed at Ms. Mainer's red light infraction hearing; and, as such, is not barred in this action. As to point (3), the City's claim that "Ms. Mainer is challenging the same citation and is seeking to undo it, without any new evidence," (CP 70) is inaccurate. The cause of action originally before the municipal court was whether Ms. Mainer ran the red light, in violation of RCW 46.61.060. Ms. Mainer's claim in this case is for unjust enrichment - - - an entirely different claim. For these reasons, the trial court erred in barring Ms. Mainer's claim.

3. The trial court erred in barring Ms. Mainer's claim under the statute of limitations for unjust enrichment.

A three-year statute of limitations applies for a cause of action for restitution and unjust enrichment. *See Davenport v. Washington Educ. Ass'n.*, 147 Wn. App. 704, 737-38 (2008). A cause of action accrues when a party has a right to apply to a court for relief. *Malnar v. Carlson*, 128 Wn.2d 521 (1996). *See also Eckert v. Skagit Corp.*, 20 Wn. App. 849, 851 (1978)(evaluating the statute of limitations for a unjust enrichment claim and holding "[g]enerally cause of action accrues and the statute of limitations begins to run when a party has the right to apply to a court for relief.")(citations omitted). Under the discovery rule the statute of

limitations does not begin to run until the plaintiff, using reasonable diligence, should have discovered the cause of action. *Peters v. Simmons*, 87 Wn.2d 400, 404 (1976). Additionally, the question of when a plaintiff should have discovered the elements of a cause of action so as to begin the running of the statute of limitation is a question of fact inappropriate for dismissal on a CR 12 motion. *Green v. A.P.C. (Am. Pharm. Co.)*, 136 Wn.2d 87, 100 (1998).

The statute of limitations commenced on June 17, 2011, the day Judge Leveque ruled that photo red light infractions issued by the City were void due to the fact that the provisions of RCW 9A.72.085 and GR 30 were not followed in issuing the citations. At that point, three things happened. First, it became unjust for the City of Spokane to retain the monies it obtained from the illegal photo red scheme. Second, Ms. Mainer obtained a right seek damages for unjust enrichment. Third, the statute of limitations on Ms. Mainer's unjust enrichment claim began to run. Ms. Mainer's claim is not barred by the statute of limitations.

4. The Trial Court Erred In Finding That The Voluntary Payment Doctrine Applied.

The voluntary payment doctrine provides that "money voluntarily paid under a claim of right to the payment, and with full knowledge of the

facts by the person making the payment, cannot be recovered back on the ground that the claim was illegal, or that there was no liability to pay in the first instance.” *Indoor Billboard Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162 Wn.2d 59, 85 (2007)(holding the voluntary payment doctrine only applies to contract claims, refusing to apply the voluntary payment doctrine to a CPA claim) and (citing *Speckert v. Bunker Hill Ariz. Mining Co.*, 6 Wn.2d 39 (1940)). The voluntary payment doctrine does not apply, however, “where [the] payment of money ... is induced by fraud and deceit, it may be recovered back by the payor, and if the fraud is the inducement for the payment, the rule applies although it is not the sole producing cause.” *Id.* Additionally the doctrine does not apply when the person making the payment is (a) unaware of the facts that make the demand illegal and (b) is not faced with an immediate and urgent necessity to pay the illegal demand. *Speckert*, 6 Wn.2d at 52. And lastly, “the question whether a payment is voluntary or involuntary is one of law where the facts are undisputed, but when the facts are in dispute it is for the jury to say whether the money was paid voluntarily or in consequence of compulsion or duress.” *Id.* at 52.

The Voluntary Payment doctrine does not apply to this case because Ms. Mainer was unaware of illegality of the citations when she

paid her ticket. Furthermore, even if voluntary payment doctrine did apply, the trial court erred because issues of fact exist as to whether Ms. Mainer's payment was voluntary.

C. This Court Should Accept Discretionary Review Because The Underlying Superior Court Decision Involves "A Fundamental And Urgent Issue Of Broad Public Import Which Requires Prompt And Ultimate Determination".

Thousands of "photo red" tickets issued by the City of Spokane were illegally issued to drivers between November 1, 2009 and June 20, 2011. These tickets were later determined to be void due to non-compliance with RCW 9A.72.085. It is estimated that 18,000 tickets were illegally issued during that time period. See Spokesman Review, available at <http://www.spokesman.com/stories/2014/jun/16/spokane-faces-class-action-lawsuit-over-red-light/> (last visited December 28, 2015). The red light program has expanded subsequent years and in 2014, the City of Spokane and American Traffic Solutions (ATS) generated close to 2.1 million in fines. See Spokesman Review, available at <http://www.spokesman.com/stories/2014/jan/26/spokanes-red-light-cameras-make-streets-safer/> (last visited December 28, 2015).

Therefore, the plaintiff sought class action status, however, before certification was granted, the superior court granted dismissal of the claim.

App. 24-25. This suit involves an urgent issue of broad public import due to the sheer amount of illegally citations issued by the City of Spokane during the time period in question.

Specifically, the plaintiff alleges the City of Spokane was unjustly enriched by requiring citizens to pay \$124 per photo red light tickets. These tickets falsely stated that they were signed under penalty of perjury in Spokane, Washington, which they were not. App. 19-23.

A claim that a municipality illegally issued traffic citations and wrongfully kept such revenue is an issue of broad public import and this Court should grant review.

V. CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Court grant review.

Respectfully submitted this 29th Day of December, 2015



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CERTIFICATE OF SERVICE

STATE OF WASHINGTON)

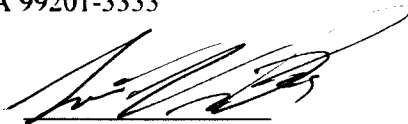
) ss.

COUNTY OF SPOKANE)

The undersigned, being first duly sworn, upon oath deposes and says:

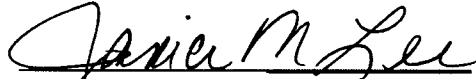
That I am a resident of Spokane County, State of Washington, that I have personal knowledge as to the facts herein contained and am competent to testify as to the matters stated in this Affidavit, and am over the age of eighteen (18) years. On the 30th day of December 2015, I personally served copies of the Petitioner's Motion for Discretionary Review by the Supreme court, by hand delivery, to of the following:

Salvatore J. Faggiano
Ofc of City Attorney
808 W Spokane Falls Blvd
Spokane, WA 99201-3333



Aaron Vanderpol

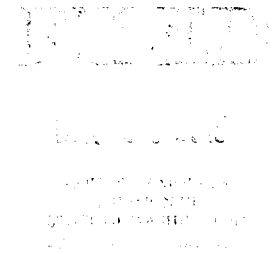
SUBSCRIBED AND SWORN TO before me this 30 day of December, 2015.



NOTARY PUBLIC in and for the State
of Washington, residing at

Spokane. My Commission Expires: 10/19/18





Supreme Court No.

COA No. 328368
Superior Court No. 2014-2-02186-5

SUPREME COURT
OF THE STATE OF WASHINGTON

JERRI MAINER

Petitioner,

vs.

CITY OF SPOKANE.

Respondents.

APPENDIX TO MOTION FOR DISCRETIONARY REVIEW

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FILED
DECEMBER 1, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

JERI MAINER, on behalf of herself and a)	
Class of persons similarly situated,)	No. 32836-8-III
)	
Appellant,)	
)	
v.)	UNPUBLISHED OPINION
)	
CITY OF SPOKANE, a municipal)	
Corporation and political subdivision of)	
the State of Washington,)	
)	
Respondent.)	

SIDDOWAY, C.J. — In June 2011, in connection with the appeal of three infractions for running red lights, a judge of the superior court of Spokane County orally ruled that the city of Spokane’s process for issuing notices for infractions detected by automated traffic cameras violated state law. On that basis, it reversed the Spokane Municipal Court’s findings of infractions and its assessments. The city asked this court to review the superior court’s decision, which we refused to do, because the \$124 fine for each violation was less than the jurisdictional threshold of this court. *City of Spokane v. Wardrop*, 165 Wn. App. 744, 267 P.3d 1054 (2011).

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No. 32836-8-III
Mainer v. City of Spokane

In June 2014 the appellant in this case, Jeri Mainer, “on behalf of herself and a class of persons similarly situated,” initiated this action in Spokane County Superior Court, asserting a claim for restitution of the fine she had paid for a red light infraction and asking that the court certify, as a class, “[a]ll people who were issued ‘photo red’ light tickets by the City of Spokane . . . from November 1, 2008 and [sic] June 20, 2011.’” Clerk’s Papers (CP) at 1, 7. Before certification of any class, the city moved the court to dismiss the complaint for failure to state a cause of action, which the court granted.

Ms. Mainer appeals. In addition to defending the appeal on the merits, the city raises a threshold argument that, as in *Wardrop*, the amount in controversy falls short of our appellate jurisdiction. The city is correct. We dismiss the attempted appeal for lack of jurisdiction.

FACTS AND PROCEDURAL BACKGROUND

In December 2010, after one of the city’s red light photo enforcement cameras captured video of her car running a red light, Jeri Mainer was issued a notice of infraction for violation of RCW 46.61.050. She contested the citation by mail, but a district court judge determined that she committed the infraction and assessed a \$124 fine. Ms. Mainer paid the fine in March 2011.

Three months later, a superior court judge hearing three individuals’ appeals of their red light infractions announced his opinion that the city’s issuance of red light photo

enforcement tickets did not comport with statutory requirements because the notices of infraction were physically signed in Arizona. This was contrary to the certificate on the notice that they were signed in Spokane. The court determined that this violated RCW 9A.72.085, the statute governing unsworn statements and certification.¹

On June 13, 2014, Ms. Mainer filed this action, asserting that the city was unjustly enriched because it retained her \$124 fine despite learning from the Spokane County Superior Court's decision that the process by which her citation was issued had violated state law. As monetary relief, she sought "the amount of the ticket paid plus prejudgment interest." CP at 11. She also sought "[a]n order enjoining Defendant and/or related entities, as provided by law, from engaging in the unlawful conduct set forth herein." *Id.* Elsewhere, however, she alleged, "It is believed that after June 20, 2011, the City of Spokane complied with the Court's ruling and changed the matter [sic] in which the photo red light citations were processed." CP at 5 (Complaint, ¶ 3.10). She sought certification of a proposed plaintiff class and the appointment of herself and her lawyers as class representative and class counsel, respectively.

¹ Other relevant authority would appear to be RCW 46.63.060(2) (identifying the minimum information required in a notice of traffic infraction, and providing that the form "shall be prescribed by rule of the supreme court") and IRLJ (Infraction Rules for Courts of Limited Jurisdiction) 2.1 and 2.2 (addressing the form of notice of infraction and providing at IRLJ 2.2(b) that a notice of infraction is issued upon a "certification" of probable cause by the issuer).

The city filed a motion to dismiss Ms. Mainer's complaint on grounds of res judicata, the three-year statute of limitations, the voluntary payment doctrine, and that the superior court lacked jurisdiction. The court granted the motion without specifying why it found dismissal appropriate.

ANALYSIS

We lack jurisdiction to entertain Ms. Mainer's appeal.

"There is no constitutional right to appeal in civil cases." *City of Bremerton v. Spears*, 134 Wn.2d 141, 148, 949 P.2d 347 (1998) (citing *In re Dependency of Grove*, 127 Wn.2d 221, 239, 897 P.2d 1252 (1995)). "[T]he right exists in civil cases when granted by the Legislature or at the discretion of the court." *Id.*

RCW 2.06.030 provides that the Court of Appeals shall have exclusive appellate jurisdiction "in all cases" subject to exceptions it identifies. One exception is that

[t]he appellate jurisdiction of the court of appeals does not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars.

Id.

In *Wardrop*, we determined that we did not have jurisdiction to grant review of the superior court's decision reversing the red light infraction findings and assessments involved in that case because the \$124 fines fell short of the \$200 threshold for our jurisdiction of civil actions. 165 Wn. App. at 746-47. Relying on *Spears*, we held that

the three citations could not be aggregated in order to meet the requirement. *Wardrop*, 165 Wn. App. at 746-47 (citing *Spears*, 134 Wn.2d at 151). We also explained that “[n]either costs nor attorney’s fees constitute a part of the original amount in controversy’” as the phrase is defined in RCW 2.06.030. *Id.* at 747 (alteration in original) (quoting *Bishop v. Hamlet*, 58 Wn.2d 911, 918, 365 P.2d 600 (1961), *overruled on other grounds by Wallace v. Evans*, 131 Wn.2d 572, 934 P.2d 662 (1997)).

Ms. Mainer tries to distinguish her case from *Wardrop* by pointing to her prayer for an award of prejudgment interest. A 1912 decision of our Supreme Court squarely addressed interest as a component of the “original amount in controversy” as that term is used in article IV, section 4 of the Washington Constitution, the constitutional limitation on the jurisdiction of the Supreme Court, which is identical in relevant part to the limitation on our jurisdiction.² *Ingham v. Wm. P. Harper & Son*, 71 Wash. 286, 288-89, 128 P. 675 (1912). In considering whether and how long interest on a principal amount

² Unlike the statutory limitation on the jurisdiction of the Court of Appeals adopted with the creation of this court in 1967, the Supreme Court’s constitutional jurisdiction includes some civil actions involving less than \$200, an example being “municipal fines.” The relevant clause of article IV, section 4 of the Washington Constitution provides:

[E]xcepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars (\$200) unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute.

The amendment to the Washington Constitution that created the Court of Appeals provides that its jurisdiction “shall be as provided by statute or by rules authorized by

should constitute part of the jurisdictional measure, the court observed that “[t]he framers of the Constitution must be presumed to have used the words ‘original amount’ advisedly”:

The most obvious meaning and purpose of the word “original” in its connection is to limit the amount to the time when the matter first originates as a controversy in court; that is, to the time when the action is commenced. In view of the language used, we can hardly assume that the framers of the Constitution intended to make the appellate jurisdiction of this court dependent upon the fortuitous circumstance of a crowded trial docket or a procrastinating litigant, which would be the case if interest to the time of trial were allowed to make up the jurisdictional amount. To so hold would, as it seems to us, deprive the word “original” of any obvious meaning. The rule that the amount due, according to the plaintiff’s claim, at the commencement of the action should govern in determining his right of appeal is certain and definite, and more in harmony with the constitutional limitation to the *original* amount in controversy than any other. It is his original claim—the amount to which he would be entitled upon an immediate confession of judgment.

Id. at 290 (alteration in original).

The inclusion of prejudgment interest up to the time Ms. Mainer filed her action is all that can be included in the “original amount in controversy” for purposes of determining our jurisdiction under *Ingham*. It does not avail her. Assuming her calculation is correct, principal and prejudgment interest would have amounted to a total of only \$183.68 at the time she filed suit, even at a 12 percent rate of interest. Reply Br. at 2.

statute.” CONST. art. IV, § 30

The second basis on which Ms. Mainer tries to distinguish *Wardrop* is that her prayer for relief included a prayer for injunctive relief. Yet, the allegations of her complaint do not state a claim for injunctive relief on which relief could be granted to Ms. Mainer. As previously observed, she asserts her belief in the complaint that after the superior court's decision in *Wardrop* the city changed the manner in which it processed red light tickets. The only "cause of action" identified in her complaint is unjust enrichment. CP at 9-10. In identifying the "common questions" presented for purposes of certification as a class action, the complaint identifies only (a) whether the city was unjustly enriched by retaining red light infraction fines and (b) whether those paying the infractions are entitled to damages. CP at 8 (Complaint, ¶ 4.6). At best, the complaint suggests that if certified as a class action, class counsel would seek to enjoin collection activity against proposed class members who (unlike Ms. Mainer) have not yet paid their fines. See CP at 10 (Complaint, ¶ 5.5). The present appeal is only of the claim asserted and relief being requested by Ms. Mainer, however, since no class was ever certified.

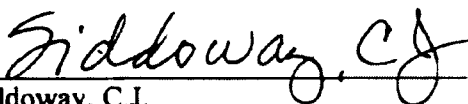
In determining what is at issue *monetarily* as limiting the right of appeal, it is "well established" that we look to the averments of the pleadings, not the demand for judgment. *Ingham*, 71 Wash. at 286-87 (citing cases). Were that not so, "any claim for a judgment which could not possibly be obtained under the pleadings would permit an appeal." *Doty v. Krutz*, 13 Wash. 169, 170, 43 P. 17 (1895). The same approach is warranted when looking at whether something other than the amount of the claim brings

No. 32836-8-III
Mainer v. City of Spokane

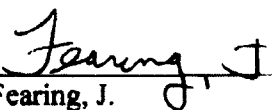
appeal of a civil action within the jurisdiction of this court. Here, no injunction could possibly be obtained for Ms. Mainer based on the allegations of her complaint. The inclusion of an unexplained and unsupported request for injunctive relief in her demand for judgment is insufficient to provide a basis for appeal.

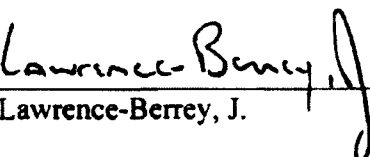
The appeal is dismissed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Siddoway, C.J.

WE CONCUR:


Fearing, J.


Lawrence-Berrey, J.

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CITY
OF SPOKANE
CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

JERI MAINER, on behalf of herself and a class of persons similarly situated,

Plaintiff,

vs.

CITY OF SPOKANE, a municipal corporation and political subdivision of the State of Washington,

Defendant.

NO. 242J2186-5

CLASS ACTION COMPLAINT FOR DAMAGES

Plaintiff JERI MAINER, by and through her attorneys of record, Dean Chuang of Crary, Clark, & Domanico, P.S. and Matthew Crotty of Crotty & Son Law Firm, PLLC make the following claims for relief:

I. INTRODUCTION

This action arises out of "photo red" tickets illegally issued by the City of Spokane against drivers between November 1, 2008 and June 20, 2011. The Honorable Jerome Leveque (Retired) found those tickets to be void. Yet the City of Spokane and/or its agents refuses to repay all of the people who wrongfully paid the tickets and/or dismiss collections efforts against those who have not paid void tickets. The City has embarked on this course despite being aware that it improperly

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1 issued all of its red light tickets before June 20, 2011. The Plaintiff seeks damages for herself and
2 similarly situated persons who have received photo tickets wrongfully issued by the City of
3 Spokane between November 1, 2008 and June 20, 2011.
4

5 6 **II. PARTIES**

7 1.1 At all relevant times, Plaintiff Jeri Mainer was and remains a resident of the County
8 of Spokane, State of Washington.
9

10 1.2 At all relevant times, the Defendant City of Spokane was and remains a municipal
11 corporation duly organized and existing under the laws of the State of Washington.
12

13 **II. JURISDICTION AND VENUE**

14 2.1 Plaintiff alleges all matters set forth in paragraphs 1.1 to 1.2 above.
15

16 2.2 The Plaintiff files this Complaint and institutes these proceedings based on the
17 Defendant's violation of RCW 9A.72.085.
18

19 2.3 The Defendant has engaged in the conduct set forth in this Complaint in Spokane
20 County, State of Washington. This Court has subject matter jurisdiction over this matter.
21

22 2.4 Venue is proper in Spokane County pursuant to RCW 4.12.020 and RCW 4.12.025.
23

24 **III. FACTUAL ALLEGATIONS**

25 3.1 Plaintiff alleges all matters set forth in paragraphs 1.1 to 2.4 above.
26

27 3.2 In 2005, the Washington State legislature voted on a bill to use traffic cameras in
28 the State of Washington. This was codified into the law in the statute RCW 46.63.170. The City
29 of Spokane subsequently enacted ordinance 16A.64 which permits the use of automated traffic
30 cameras to enforce RCW 46.61.060. The penalty for violating RCW 46.61.060 is a fine of \$124.

1 3.3 On March 10, of 2008, the City of Spokane contracted with American Traffic
2 Solutions, LLC (ATS) of Arizona, to install and maintain red light traffic cameras at certain
3 intersections. The City of Spokane uses the automated web-based citation processing system,
4 called Axis, to issue citations for violation of RCW 46.61.060. For the purpose of this complaint,
5 the ticket processing scheme decided in this case is referred to as "photo red."

6 3.4 On November 1, 2008, the City of Spokane started to issue red light violation
7 tickets, after a 30 day warning period.

8 3.5 The red light camera system is placed at selected intersections. If a vehicle
9 allegedly runs a red light, or commits a traffic infraction, the system will take video of the incident,
10 as well as photos of the vehicle and front and back license plates. The license plate numbers are
11 then run against Department of Licensing records. Citations are issued to the registered owners of
12 the vehicles.

13 3.6 The process to issue a citation involves an officer logging onto Axis using his or
14 her unique ID and secure Password. This ID and Password allows the officer to enter the system
15 and review the alleged infractions. Once in the Axis system, the Officer can review the photos
16 and videos of the alleged infractions to determine whether an infraction has occurred.

17 3.7 The officer, if after viewing the video and believing probable cause has been
18 established sufficient to issue an infraction, presses an accept button that electronically signals to
19 the American Traffic Solutions in Tempe, Arizona, the request and authorization to print the
20 citation and to affix, again in Tempe, Arizona, the officer's signature on the citation. That citation
21 then is sent electronically from Tempe, Arizona to Spokane, Washington to be issued.

22 3.8 On June 17, 2011, Judge Jerome Leveque ruled orally that photo red light
23 infractions issued to date by the Defendant City of Spokane were void due to the fact that the
24 provisions of RCW 9A.72.085 were not followed in issuing the citations.

25 3.9 On August 3, 2011, Judge Leveque's previous oral ruling was formally entered in
26 court along with findings of fact and conclusions of law; and the City of Spokane obtained an order
27 staying Judge Leveque's order pending final mandate on appeal.

28 3.10 It is believed that after June 20, 2011, the City of Spokane complied with the
29 Court's ruling and changed the matter in which the photo red light citations were processed.
30

1 3.11 The City of Spokane timely filed a notice and motion for discretionary review in the
2 Court of Appeals. On September 26, 2011, Commissioner McCown issued an order denying
3 review.

4 3.12 The City of Spokane motioned to modify the commissioner's ruling on October 26,
5 2011.

6 3.13 On December 29, 2011, the Court of Appeals, Division III, issued a published
7 opinion denying review.

8 3.14 On February 15, 2012, the City petitioned the Supreme Court of Washington for
9 discretionary review. On April 12, 2012, the Supreme Court denied review. On June 12, 2012,
10 Court of Appeals Division III issued a certificate of finality.

11 3.15 Plaintiff Jeri Mainer was issued a photo-red citation on December 14, 2010 for
12 allegedly running a red light on December 7, 2010 in the intersection of South Freya and 3rd Ave in
13 Spokane, Washington.

14 3.16 Plaintiff Jeri Mainer's citation states that it was signed in Spokane, Washington.
15 The notice stated that "Failure to appear for a requested hearing, or failure to pay a penalty
16 imposed after a hearing will result in additional monetary penalties, non-renewal of the vehicle
17 license, and unpaid penalties will be assigned to a collection agency".

18 3.17 Plaintiff Jeri Mainer contested the violation by mail, stating that she was not sure
19 who may have been driving the vehicle at the time of the alleged violation.

20 3.18 On February 8, 2011, a review was completed by an unknown individual and a
21 finding of committed was entered. A fine of \$124.00 was imposed and notice was sent to the Ms.
22 Mainer. Ms. Mainer paid the fine of \$124.00 as ordered. At the time that she paid the fine, she did
23 not know that the issuance of the citation violated RCW 9A.72.085.

24 3.19 The Defendant became aware that it improperly issued a photo red light ticket to
25 Plaintiff, and others similarly situated, on June 17, 2011, when Judge Jerome Leveque ruled orally
26 that the tickets issued to date were void in violation of RCW 9A.72.085. The ruling was issued as
27 a written order August 3, 2011, after which time the City of Spokane was on notice that it had a
28 legal obligation to repay all of the people who were wrongfully issued a photo red light ticket
29 and/or cancel collection proceedings against those who had not fully paid their citations.

30

1 3.20 Plaintiff demanded restitution for the monies she paid for a ticket that was issued in
2 violation of Washington law on January 15, 2013. The Defendant refused to pay. Based on Judge
3 Jerome Leveque's August 3, 2011 ruling, it is unjust for the City of Spokane to retain the monies
- 4 paid to it for invalid photo red light tickets.

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7 **IV. CLASS ACTION ALLEGATIONS**

8 4.1 Plaintiff alleges all matters set forth in paragraphs 1.1 to 3.20 above.

9
10 4.2 Pursuant to Civil Rule 23, the above named Plaintiffs bring this case as a class
-11 action on behalf of:

12 All people who were issued "photo red" light tickets by the City of
13 Spokane, through American Traffic Solutions, from November 1,
14 2008 and June 20, 2011.

15 4.3 Excluded from the Class are the Defendant, the Defendant's legal representatives,
16 assignees, and successors, the judge to whom this case is assigned, any member of the judge's
17 immediate family, and any person who has settled the same claims as set forth in this Complaint.

18
19 4.4 This action is properly maintainable as a class action because the requirements of
20 Civil Rules 23(a) and Rule 23(b)(1),(2), and (3) are met as follows:

21 4.5 Impracticability of Joinder. The Class is each so numerous that joinder of all
22 members is impracticable. Upon information and belief, the Class has hundreds of members thus
23 joinder of those class members would be, at a minimum, extremely difficult and inconvenient as
24 the class members hail from across Eastern Washington. Additionally, the small size of the
25 individual claims, the limited financial resources of the class members, and the inability of the
26 claimants to institute individual actions favors resolution of this case through the class action
27 device. Moreover, the disposition of the claims of the Class in a single action will provide
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1 substantial benefits to all parties and the Court by resolving the issues concerning the City's use of
2 "photo red" during the operative timeframe in one forum thus preserving judicial economy.

3 4.6 Commonality. Defendant engaged in a common course of conduct toward
4 Plaintiffs and members of the Class by issuing traffic tickets in violation of the law. There are
5 questions of law and fact common to Plaintiffs and members of the Class. These common
6 questions of law and fact include, but are not limited to, the following:
7

8 (a) Whether Defendants and/or other persons or entities acting on Defendants'
9 behalf were unjustly enriched by withholding Plaintiffs' payment of "photo red"
10 traffic ticket fines even though the traffic tickets were issued in violation of RCW
11 9A.72.085.

12 (b) Whether Plaintiffs are entitled to damages for Defendant's violations of the law.

13 4.7 The above-referenced legal and factual questions relate to all of the class members
14 and those legal questions are substantially related to resolving this litigation.

15 4.8 Typicality. Plaintiff's claims are typical of the claims of the Class. Plaintiff's
16 claims, like the claims of the Class, arise out of the same common course of conduct by Defendant
17 and are based on the same legal and remedial theories.

18 4.9 Adequacy. Plaintiff will fairly and adequately protect the interests of the Class.
19 Plaintiff has retained competent and capable attorneys with experience in class action litigation.
20 Plaintiff and counsel is committed to prosecuting this action vigorously on behalf of the Class, and
21 neither have interests that are contrary to, or that conflict with, those of the proposed Class.
22

23 4.10 CR 23(b)(1). This action is properly maintainable as a class action under CR
24 23(b)(1) because the prosecution of separate actions by, or against, members of the class would
25 create a risk of inconsistent adjudications regarding individual class members that would establish
26 incompatible standards of conduct for defendant.
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1 4.11 CR 23(b)(2). This action is also properly maintainable as a class action under CR
2 23(b)(2). Defendant acted on grounds generally applicable to the Class, thereby making final
3 injunctive relief and corresponding declaratory relief with respect to the Class appropriate on a
4 class-wide basis. Defendant maintained a uniform policy or practice of knowingly violating RCW
5 9A.72.085 by virtue of the "photo red" system and have applied that uniform policy to all members
6 of the Class. As such, Defendant has acted or refused to act on grounds that apply generally to the
7 Class. Thus, final declaratory relief is appropriate respecting the Class as a whole. The monetary
8 relief Plaintiff seeks either flows from and/or is incidental to the declaratory relief sought, as it
9 flows directly from the ordering of such declaratory relief and can be calculated in a simple,
10 objective, and mechanical manner.

11 4.12 CR 23(b)(3). This action is also properly maintainable as a class action under CR
12 23(b)(3). The questions of law and fact common to members of the class predominate over
13 questions affecting only individual members and a class action is superior to other available
14 methods for the fair and efficient resolution of this controversy.

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20 **V. CAUSE OF ACTION – UNJUST ENRICHMENT**

21 5.1 Plaintiff alleges all matters set forth in paragraphs 1.1 to 4.9 above.

22 5.2 The Plaintiff, and others similarly situated, was required to pay \$124 per photo red
23 light issued to them between November 1, 2008 and June 20, 2011. These tickets falsely stated
24 that they were signed under penalty of perjury in Spokane, Washington, which they were not.
25 These plaintiffs have paid these tickets under the threat of "failure to appear for a requested
26 hearing, or failure to pay a penalty imposed after a hearing will result in additional monetary
27 penalties, non-renewal of the vehicle license, and unpaid penalties will be assigned to a collection
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1 agency." The fines were not paid voluntarily, but instead under invalid legal compulsion, because
2 failure to pay the fine would have resulted in additional legal action against them by the Defendant.

3 5.3 The issuance of the photo red light tickets that did not comply with applicable
4 Washington law proximately caused the recipients of the citations to make payments of up to \$124
5 exclusive of collection charges to the City of Spokane that were not legally owing.
6

7 5.4 The Defendant became aware as early as June 17, 2011 and by formal ruling on
8 August 3, 2011 that the photo red tickets issued to date were invalid and void, and that they
9 therefore had an obligation to repay all the people who wrongfully paid the tickets. As a result, the
10 Defendant became aware that as of August 3, 2011 there was a benefit conferred upon them, i.e.
11 \$124 per ticket, which was not required to be paid as the tickets were rendered invalid.
12

13 5.5 The Defendant has retained the monies paid for invalid photo red tickets despite a
14 demand to return the money to Plaintiff and others similarly situated. The Defendant is unjustly
15 enriched as a result.
16

17 5.4 The actions of the Defendant set forth in this Complaint proximately caused
18 Plaintiff, and others similarly situated, to incur damages totaling at least \$124 per invalid photo red
19 ticket received and paid for. Victims of these acts are therefore entitled to restitution and refunds
20 of fees paid.
21

22 5.5 Defendant continues to seek unjust enrichment from class members by attempting to
23 collect funds for illegally issued citations.
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25 VI. DAMAGES

26 6.1 Plaintiff alleges all matters set forth in paragraphs 1.1 to 5.5 above.
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6.2 The City of Spokane's issuance of photo red light tickets in violation of RCW 9A.72.085 between November 1, 2008 and June 19, 2011 proximately caused Plaintiff, and other similarly situated class members, damages in the amount of up to \$124 per ticket plus any collections fees or costs. Said damages are equal to the dollar amount of each photo red light ticket collected by the City of Spokane in violation of RCW 9A.72.085.

VII. PRAYER FOR RELIEF

1. **WHEREFORE**, Plaintiffs pray for judgment and relief against the Defendants as follows:
2. Certification of the proposed Class.
3. Appointment of the Named Plaintiff as representatives of the Class;
4. Appointment of the undersigned counsel as counsel for the Class;
5. An order enjoining Defendant and/or related entities, as provided by law, from engaging in the unlawful conduct set forth herein;
6. An award to Plaintiff and the Class for the amount of the ticket paid plus prejudgment interest.
7. An award for equitable relief as the Court deems just;
8. Leave to amend this Complaint to conform to the evidence presented at trial;
9. Orders granting such other and further relief as the Court deems necessary, just, and proper;
and
10. For such other and further relief as this Court deems just and equitable.

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11. That the Court adjudge and decree that the conduct complained of constitutes unjust enrichment and that the Defendant be required to pay restitution to compensate for the violations and cancel any further collections activities against class members.

DATED this 13 day of June, 2014.

CRARY, CLARK, & DOMANICO, P.S.


DEAN CHUANG, WSBA #38095
Attorneys for Plaintiff

CROTTY & SON LAW FIRM, PLLC


MATTHEW CROTTY, WSBA # 39284
Attorneys for Plaintiff

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COPY
ORIGINAL FILED

AUG 03 2011

THOMAS R. FALLOUST
SPOKANE COUNTY CLERK

FILED

AUG 03 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

CITY OF SPOKANE,
Plaintiff/Respondent,

v.

MARK WARDROP, JENNIFER M. LEE,
AND SUSAN ANNECHIARICO
Defendants/Petitioners.

Case No. 2011-02-00432-0

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

THIS MATTER was heard by the Court on June 17, 2011. The Honorable Jerome J. Leveque presided at the hearing. The Appellants were represented through their attorney Dean T. Chuang of CRARY, CLARK & DOMANICO, P.S. and Margaret Harrington, Assistant City Attorney, appeared on behalf of the City of Spokane. This case was an appeal from the City of Spokane Municipal Court.

The Court has considered the briefing by the parties, the declarations and exhibits filed herein, transcripts of the municipal court proceedings, the argument of counsel, and being fully advised on the premises, now enters the following:

FINDINGS OF FACT

1. The legislature in 2005 voted on a bill to use traffic cameras in the State of Washington. This was codified into the law in the statute RCW 46.63.170. The City of Spokane

FINDINGS OF FACT
AND CONCLUSIONS OF LAW - 1

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1 subsequently enacted ordinance 16A.64 which permits the use of automated traffic cameras to
2 enforce RCW 46.61.060.

3 2. The penalty for violations of RCW 46.61.060 are fines of \$124.

4 3. The City of Spokane has contracted with American Traffic Solutions L.L.C.
5 ("ATS") to install and maintain red light traffic cameras at certain intersections. The City of
6 Spokane uses the automated web-based citation processing system, called Axis, to issue
7 citations of RCW 46.61.060.

8 4. The red light camera system is placed at an intersection. If a vehicle allegedly
9 runs a red light, the system will take video of the incident, as well as photos of the vehicle and
10 front and back license plates. The license plate numbers are then run against Department of
11 Licensing records. Citations are issued to the registered owners of the vehicles.

12 5. The process to issue a citation involves an officer logging onto Axis using his or
13 her unique user ID and secure Password. This ID and Password allows the officer to enter the
14 system and review the alleged infractions.

15 6. Once in the Axis system, the Officer can review the photos and videos of the
16 alleged infractions to determine whether an infraction has occurred.

17 7. The officer, if after viewing the video and believing proximate cause has been
18 established sufficient to issue an infraction, presses an accept button that electronically signals to
19 the Arizona Traffic Systems in Tempe, Arizona, the request and authorization to print the
20 citation and to affix, again in Tempe, Arizona, the officer's signature on the citation.

21 8. That citation then is sent electronically from Tempe, Arizona to Spokane,
22 Washington to be issued.

23 9. Mark R. Wardrop was issued a photo red citation on 1/20/2010 for allegedly
24 running a red light on 1/16/2010 in the intersection of Browne Street and Sprague Avenue in
25 Spokane, Washington.

26 10. Mark R. Wardrop's citation states that it was signed in Spokane, Washington.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW - 2

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1 11. Susan Annechiarico was issued a photo red citation on 4/26/2010 for allegedly
2 running a red light on 4/20/2010 at the intersection of Division Street and Francis Avenue in
3 Spokane, Washington.

4 12. Susan Annechiarico's citation states that it was signed in Spokane, Washington.

5 13. Jennifer M. Lee was issued a photo red citation on 5/03/2010 for allegedly
6 running a red light on 4/10/2010 at the intersection of Division Street and Francis Avenue in
7 Spokane, Washington.

8 14. Jennifer M. Lee's citation states that it was signed in Spokane, Washington.

9 15. Each of the above citations included the language in the form as follows:

10 **NOTICE OF INFRACTION**



11 City of Spokane
12 Red Light Photo Enforcement Program
13 PO Box 22851
14 Tualuma, AZ 85285-0852

15 I certify, as true and correct, under penalty of perjury under the laws of the State of Washington
16 that based upon my review of the photographs and video recording made by an automated
17 traffic camera, as authorized by Spokane Municipal Code 16A.64, I have probable cause to
18 believe, and do believe, that on the date, time, and location indicated above, the operator of the
19 vehicle described was in violation of RCW 46.61.050(1) (Red Light Violation). The photographs
20 and video recording taken together show the vehicle and the license plate, portray a fair and
21 accurate representation of the location listed above and show that the vehicle operator was
22 facing a steady red signal when the operator failed to stop the vehicle at the clearly marked stop
23 line or other stopping point. The registered owner of the vehicle is named above based upon
24 information received from the State of Washington Department of Licensing. Signed at
25 Spokane, Washington.

26 OFFICER 	BADGE# 581	DATE ISSUED 04/26/2010
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This Notice of Infraction is filed in Spokane Municipal Court, 1100 W. Milton, Spokane, WA 99201, (509) 625-4400.

City of Spokane
Red Light Photo Enforcement Program
P.O. Box 742503
Cincinnati, OH 45274-2503



FINDINGS OF FACT
AND CONCLUSIONS OF LAW - 3

1 16. The defendants filed motions to dismiss the photo red tickets on the basis that the
2 tickets did not comply with RCW 9A.72.085 and GR13. The defendants filed additional briefing
3 arguing that the City failed to comply with GR 30(d)(2)(D), that the process for issuance of the
4 photo red tickets had not been approved by the Administrative Office of the Courts, and that
5 photo red tickets failed to comply with the electronic filing technical standards.

6 17. After extensive briefing, and two oral arguments, the Spokane Municipal Court
7 denied the motions to dismiss and a written decision was filed on November 29, 2010.

8 18. On December 16, 2010 Mark Wardrop, Susan Arnechiaro and Jennifer Lee went
9 to hearing. At the contested hearing, counsel renewed the issues presented at the motion hearing.
10 The motions were denied and the Spokane Municipal Court entered a finding of Committed.

11 19. On January 7, 2011, defendants filed a Notice of Appeal to Superior Court and
12 Certification of Filing Status of the Spokane Municipal Court decision.

13 CONCLUSIONS OF LAW

14 Based upon the Findings of Fact, the Court makes the following Conclusions of Law:

15 1. General Rule 30 governs court signature and tracks in the requirements of RCW
16 9A.72.085.

17 2. RCW 9A.72.085 has four requirements that must be present: (1) recites that it is
18 certified or declared by the person to be true under penalty of perjury; (2) is subscribed by the
19 person; (3) states the date and place of its execution; and (4) states that it is so certified or
20 declared under the laws of the State of Washington.

21 3. General Rule 30(D)(2)(d) creates a presumption for an arresting or citing officer
22 only to the date of the execution to be at the same time as the officer uses their ID and Password.

23 4. This presumption does not include a presumption of where the ticket is signed.

24 5. The clicking of an accept button is not a signature.

25 6. The place of the signature is Arizona.

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FINDINGS OF FACT
AND CONCLUSIONS OF LAW - 4

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7. Because the signature is cited as taking place in Spokane, Washington, but actually takes place in Arizona, the citation is factually incorrect and fails to meet one of the requirements of RCW 9A.72.085.

8. The failure to correctly state the location where the signature is affixed fails to comply with RCW 9A.72.085. This failure makes the citations issued to the parties involved in the appeal void.

9. The finding of committed for the appellants Mark Wardrop, Jennifer Lee and Susan Annunzio is hereby reversed and the infractions are dismissed.

DONE IN OPEN COURT this 3rd day of August, 2011.

By JEROME J. LEVEQUE
The Honorable Jerome J. Leveque

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

JERI MAINER, on behalf of herself and a Class of persons similarly situated,)	CASE NO. 2014-02-02186-5
)	
Plaintiff(s))	ORDER ON MOTION TO DISMISS
)	PURSUANT TO CR 12(b)(6)
vs.)	
)	
CITY OF SPOKANE, a municipal corporation and political subdivision of the State of Washington,)	
)	
Defendant(s))	
)	
)	
)	

This matter came before the Court for hearing on Friday September 19, 2014, on the motion of Defendant City of Spokane to dismiss Plaintiffs cause of action filed in Spokane County Superior Court on June 13, 2014.

The Defendant City of Spokane is represented by Mr. Salvatore J. Faggiano, Assistant Attorney for City of Spokane. The Plaintiff, Jeri Mainer, is represented by Mr. Dean T. Chuang of Crary, Clark & Domanico, P.S., and Mr. Matthew Crotty of Crotty and Son Law Firm, P.S.

The Court has reviewed the files and records herein, is mindful of counsels' argument at the time of hearing and has otherwise considered the following:

1. Summons and Complaint dated June 13, 2014.

2. Affidavit of Service dated June 16, 2014.
3. Defendant's Request for Judicial Notice filed August 8, 2014 with exhibits attached thereto.
4. Defendant City of Spokane's Memorandum of Authorities in Support of its Motion to Dismiss Pursuant to CR 12(b)(6).
5. Defendant City of Spokane's Motion to Dismiss.
6. Declaration of Plaintiff Jeri Mainer.
7. Plaintiff's Reply to City's Motion to Dismiss Pursuant to CR 12(b)(6).
8. Defendant City of Spokane's Reply in Support of Motion to Dismiss.

Now, therefore, mindful of the above, argument of counsel at the time of hearing, having considered applicable case law and statutory authority and otherwise being fully advised now
ORDERS AS FOLLOWS:

Defendant City of Spokane's Motion to Dismiss Pursuant to CR 12(b)(6) is forthwith
GRANTED and this matter is **Dismissed**.

DATED: September 22, 2014



Michael P. Price
Superior Court Judge