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NO. 73534-9-I  
(King County No. 14-2-22655-1 SEA)

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON DIV. I

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NICHOLAS E. BOONE, an individual,

Plaintiff – Petitioner,

v.

CITY OF SEATTLE,

Defendant - Respondent,

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**PETITIONER’S REPLY BRIEF**

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## I. REPLY

The City raises numerous extraneous arguments in its Response Brief that distract from the main issue in this case, which is that:

Commissioner Neel granted discretionary review for this Court to resolve the narrow and specific legal issue of whether Orwick v. City of Seattle, 103 Wn.2d 249 (1984), or Doe v. Fife Municipal Court, 74 Wn. App. 444 (1994), controls in determining the jurisdiction of the superior court to decide Boone’s claim.<sup>1</sup> Specifically, Commissioner Neel posed the question at issue as: whether the Court of Appeals decision in Doe requires Plaintiff/Petitioner Boone, and each class member he represents, to return to the Municipal Court to have their infractions vacated under the municipal court’s procedural rules *first*, or whether the Washington Supreme Court’s decision in Orwick directs that the superior court has jurisdiction to decide Boone’s declaratory judgment claim for systemic violations of Washington law and to determine that disgorgement of the fines paid is a remedy that naturally flows from such a declaratory judgment without *first* resorting to the Municipal Court procedure.

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<sup>1</sup> See Commissioner’s August 25, 2015 decision at 3, **Appendix A** (“I agree with the parties and the trial court that immediate review of the municipal/superior court “jurisdiction” issue on Boone’s refund claim is warranted. It involves a controlling question of law, there is a substantial ground for a difference of opinion (*see Doe, Orwick, and Todd*), and immediate review of the issue will materially advance the ultimate termination of the litigation.”).

The City conceded in the summary judgment hearing below that the superior court has jurisdiction over Boone's declaratory judgment act claim. Hearing Tr. at 60 ("the City has conceded that the Court has jurisdiction over the declaratory claims"). The trial court agreed that it has jurisdiction to hear the declaratory judgment claim, and further held that there were disputed issues of material fact regarding Boone's declaratory judgment act claim that were questions for a King County jury. Hearing Tr. at 84.<sup>2</sup> Thus, the sole basis of the City's argument and the trial court's ruling that Boone's declaratory judgment act claim could not be heard in the superior court *first*, before resort to the Municipal Court procedures for vacating an infraction, was that Boone's challenge in the superior court was an improper collateral attack, and that unless Boone first had his infraction vacated in municipal court, his claim would be barred by *res judicata* per the reasoning of the Court of Appeals in Doe.

For the reasons set forth in Plaintiff/Petitioner Boone's Opening Brief and reiterated and clarified below, the City's arguments are

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<sup>2</sup> Hearing Transcript at 84:15-25 (emphasis added):

MR. BRESKIN: I understand what the Court is saying, that you are adopting the Doe v. Fife approach, which is that in order to get the refund, they have to go to the district court to get the refund. But the Court has jurisdiction to decide declaratory judgment, and the Court has indicated a bunch of issues that it thinks are jury issues that have to be resolved before the Court can render its opinion.

THE COURT: *Correct*. That may - I will get back to that point. You can remind me.

unpersuasive.

Most notably: First, in Doe there had been a declaratory judgment that the Municipal Court had violated the law in imposing the subject court costs before the plaintiff was ordered to return to the municipal court. Indeed, it was only “armed with that declaration” that the remedy of repayment of the costs imposed by the Municipal Court was possible. Second, Doe does not control in this case. As the federal district court in Todd v. City of Auburn, Case No. C09-1232JCC, ruled – in a case in which the City of Seattle was a defendant - the Supreme Court’s decision in Orwick controls and sets forth the proper analysis. In Orwick – another case involving the City of Seattle - the court held that the superior courts, not the municipal courts, have jurisdiction over claims for equitable relief that relate to system-wide violations of statutory requirements in the enforcement of municipal ordinances because these claims do not “arise from” the municipal infraction. The trial court’s ruling was an error of law, one that places Boone and the class members in a Catch-22 situation in which the trial court has stated that Boone and the Class must return to Municipal Court to have their judgments vacated, but the only basis on which they can do so is based on a declaratory judgment that the infractions were unlawful, an issue which the superior court reserved for itself and about which the trial court stated there are genuine issues of

material fact for a jury.

For these reasons, the trial court's ruling should be reversed.

## II. ARGUMENT

### A. This Court Has Jurisdiction Over the Appeal

The City, despite stipulating to the trial court certifying its ruling for review by this Court, argues for the first time in its Response Brief that this Court does not have jurisdiction because Plaintiff Boone's claim, it alleges, is only for the \$189 paid to the City to satisfy his speeding ticket. Response Brief at 10-11. The City did not raise this issue in its response to Boone's motion for discretionary review, and in fact, agreed that discretionary review was appropriate.<sup>3</sup>

RCW 2.06.040 provides, "The 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." (Emphasis added.)

First, although the City continues to attempt to reframe and mischaracterize Plaintiff's claim as one solely for a "refund" of the \$189 infraction, his claim in this lawsuit and this appeal is for *declaratory relief*

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<sup>3</sup> See City's Answer to Motion for Discretionary Review at 2 ("the City agrees that discretionary review of the *res judicata*/jurisdictional ruling on the refund claims is appropriate under RAP 2.3(b)(4)").

based on the City's violation of Washington law, and the relief he seeks is *equitable* relief flowing from a determination that there was a violation.<sup>4</sup> RCW 2.06.040 applies to civil actions *at law*, not equitable relief. See Rosling v. Seattle Bldg. & Constr. Trades Council, 62 Wn.2d 905, 909 (1963)(J. Finley, noting in dissent, that, "We have consistently held that the constitutional requirement of a \$200 minimum for appeal to this court (Washington Const., Art. 4, § 4) does not apply to equity actions." Bradley v. Fowler (1948), 30 Wn. (2d) 609, 192 P. (2d) 969, 2 A.L.R. (2d) 822; Bowen v. Department of Social Security (1942), 14 Wn. (2d) 148, 127 P. (2d) 682; Ellison v. Scheffsky (1926), 141 Wash. 14, 250 Pac. 452; Fox v. Nachtsheim (1892), 3 Wash. 684, 29 Pac. 140. Thus, *if an action is equitable in nature, the amount in controversy as to appellate jurisdiction becomes inconsequential.*")(emphasis added).

Second, the City is incorrect that the claims of the class members cannot be aggregated in order to satisfy the jurisdictional threshold. The City cites to City of Bremerton v. Spears, 134 Wn.2d 141, 151 (1998) for the proposition that "[p]arties who object to paying a fine under \$200 may not satisfy the amount in controversy by aggregating claims of multiple parties who paid the fine." Response Brief at 12. This is *not* what Spears holds. The Washington Supreme Court in Spears states that "a number of

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<sup>4</sup> See e.g. Nelson v. Appleway Chevrolet, 160 Wn. 2d 173, 185 (2007).

actions *by the same* plaintiff against the same defendant cannot be aggregated in order to reach the \$200 limit so as to confer jurisdiction.” Spears, 134 Wn.2d at 151 (emphasis added). Boone is not aggregating a number of fines paid *by the same Plaintiff* to reach \$200, but rather is aggregating the claims of the duly certified Boone class, whose total claims far exceed \$200.<sup>5</sup> The City also cites to City of Spokane v. Wardrop, 165 Wn. App. 744, 746 (2011), which is similarly distinguishable. Wardrop involved three respondents who each received and challenged a Notice of Infraction for an alleged red light violation with a \$124 fine. The Court of Appeals, Division III, held that the Plaintiffs’ claims could not be aggregated to meet the \$200 amount in controversy requirement. Id. But in Wardrop, the three plaintiffs had merely joined their actions and were proceeding as individual plaintiffs. In contrast, in this case, the trial court has certified a class, meaning that the class is an entity and the claims of all of the class members must be aggregated to determine the amount in controversy.<sup>6</sup> See e.g. 28 U.S.C. §

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<sup>5</sup> The City agreed to class certification of the “refund” claim. See Class Certification Order at 4 (CP 145).

<sup>6</sup> See Commissioner’s August 25, 2015 Order at 1 (“The superior court has certified a class action under CR 23(b)(2). Plaintiff/petitioner Nicholas Boone, on behalf of the certified class, seeks discretionary review of a May 8, 2015 trial court order granting defendant/respondent City of Seattle’s motion for summary judgment dismissal of Boone’s refund claims and denying his motion for partial summary judgment on his claim for declaratory relief.”).

1332 (\$75,000 amount in controversy requirement for an individual action and \$5,000,000 amount in controversy requirement for a class action). The City has cited no authority to the contrary.

This Court has jurisdiction over this case for a declaratory judgment and for equitable relief without regard to the amount in controversy, and in any event, the amount in controversy is satisfied by properly aggregating the claims of the Boone class members.

**B. *Res Judicata* Does Not Bar this Action**

Whether *res judicata* bars an action is a question of law subject to *de novo* review. Kuhlman v. Thomas, 78 Wn.App. 115, 120 (1995). The City incorrectly argues that *res judicata* bars Boone's claim because he could have raised his claims about the invalidity of the signage in the municipal court, but chose not to raise them. Response Brief at 16. The trial court erred in ruling that *res judicata* bars Boone's claims and he must return to Municipal Court to have his judgment vacated before obtaining a ruling on his declaratory judgment claims.

A party seeking to bar claims under *res judicata* must show a concurrence of identity in four respects: "(1) subject matter; (2) cause of action; (3) persons and parties; and (4) the quality of the persons for or against whom the claim is made." Schoeman v. New York Life, 106 Wn.2d 855 (1986). *Res judicata* is not intended "to deny the litigant his or

her day in court." Hisle v. Todd Pacific Shipyards, 151 Wn.2d 853 (2004).

The City summarily asserts that all of these elements are met, but has not met its burden of proving that *res judicata* applies. The City asserts that the subject matter of the two actions is the same as they both involved "the infractions issued to the Appellants, and a possible defense to them." But *res judicata* prevents re-litigation only of those claims or defenses that either were, or *could have been*, decided in a prior action. As the Supreme Court clearly stated in Orwick, the Municipal Court does not have jurisdiction over claims in equity alleging systemic violations, such as the claims Boone brings in this action. Thus, not only is the subject matter of the two actions different, but Boone could not have brought his claims in municipal court. Therefore, *res judicata* is inappropriate. The City relies only on authority from other states in arguing that *res judicata* is appropriate in this instance. See Response Brief at 21.

The City argues that Hadley v. Maxwell, 144 Wn.2d 306 (2001), which held that collateral estoppel did not apply to municipal infractions because the stakes of small municipal infraction are not the same as a civil proceeding, does not apply because it is a collateral estoppel, not a *res judicata* case. But the same rationale applies in the *res judicata* context. Washington law is clear that *res judicata*, while valuing finality, is not intended "to deny the litigant his or her day in court." Hisle, 151 Wn.2d at

865. As the Washington Supreme Court in Hadley aptly recognized, paying a fine for a lane change violation based on a Municipal Court judgment did not create sufficient incentive for a citizen to challenge the judgment. Hadley, 144 Wn.2d at 313 (“the system creates too great an incentive to simply pay the fine rather than incur the time and expense to resist”). It is the odd citizen who is equipped to recognize broader legal issues within the 30-day statute of limitations for contesting an infraction.<sup>7</sup> The average citizen cannot be expected to do so and should not be denied his day in court for failing to do so.

It is in this vein that this Court held, in Hayes v. Seattle, that *res judicata* did not bar a Section 1983 claim for damages that related to and could have been combined with an earlier administrative land use writ hearing because “the limitation period for section 1983 claims involving land use permits would be effectively reduced from 3 years to 30 days. This result is incompatible with and must yield to the policies which underlie the 3-year period for section 1983 claims.” Hayes v. Seattle, 76 Wn. App. 877, 880-881 (1995). The same rationale applies here, and the 30-day statute of limitations for contesting a Notice of Infraction should not be applied to undermine litigants’ right to the longer statute of

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<sup>7</sup> The City points to the fact that Mr. Hunt did so, but he is that “odd citizen” who received an infraction and is an attorney who was able to recognize the issues and adeptly brief the case himself in the short time frame. CP 79 (Hunt briefing).

limitations for bringing actions under the Uniform Declaratory Judgment Act or other laws.

Moreover, as Petitioner Boone has previously noted, in Doe, the case the City relies on heavily, the court expressly rejected a similar argument. It held that the plaintiff was *not* barred by *res judicata* from bringing his action in the Superior Court to contest the Municipal Court's illegal imposition of court costs on him, because the judgment was void and void judgments are always subject to collateral attack. See Doe, 74 Wn. App. 444 at 451 and at fn. 9. It is quite clear that Judge Schapira "bought" the City's *res judicata* argument without reading Doe carefully as the decision does not hold that *res judicata* barred Doe's claim – it holds the opposite. Id. at 451. The trial court erred as a matter of law in holding that *res judicata* bars Boone's action based on Doe.

Equally, Judge Coughenour in Todd v. City of Auburn et al, Case No. C09-1232JCC, in which the City of Seattle was a party, ruled in a similar case that *res judicata* and collateral estoppel did not bar the Plaintiff from bringing a class action challenging the cities' systematic violation of the automated traffic control camera statute by imposing excessive fines. The court held that under Orwick, the Municipal Court lacked subject matter jurisdiction to resolve such a claim and hence, the plaintiff could not have raised his claim in the Municipal Court. See Todd

at p. 5 (**Appendix B**).

*Res judicata* does not bar Boone from bringing his claims in superior court without first returning to the municipal court to have his judgment vacated. The trial court's ruling, reviewed *de novo*, should be reversed.

**C. The City's *Res Judicata* Argument is Barred By Collateral Estoppel**

The City should be collaterally estopped by the Todd ruling that *res judicata* does not apply in this situation from arguing that Boone's claims are barred by *res judicata*. The City's arguments for why collateral estoppel should not apply are unavailing.

All of the elements of collateral estoppel are satisfied with regard to the federal district court's order in the Todd case. (1) The issue is the same, i.e. is a plaintiff barred from obtaining a declaratory judgment and appropriate relief in the Superior Court or federal court by *res judicata* unless he first vacates the Municipal Court judgment imposing the fine. The City argues that Todd involved numerous claims not made in this case and that the "nature of the claim" in this case is different, but that is irrelevant. Collateral estoppel is *issue specific*, and the issue on which Boone seeks preclusion is identical to the issue the City raised and Judge Coughenour rejected in Todd. (2) The Todd case resulted in a judgment on

the merits. The City argues that because the Ninth Circuit did not reach the issue of *res judicata* on appeal there is no “final judgment on the merits.” This is contrary to Washington law, which holds that a judgment is final *prior to* the appeal. Nielson v. Spanaway General Medical Clinic, 135 Wn.2d 255 (1998)(“In this state an appeal does not suspend or negate the *res judicata* or collateral estoppel aspects of a judgment entered after trial in the superior courts.); Lejeune v. Clallam County, 64 Wn.App. 257, 265-66 (1992) (a judgment or administrative order becomes final for *res judicata* purposes at the beginning, not the end, of the appellate process, although *res judicata* can still be defeated by later rulings on appeal).<sup>8</sup> The ruling became “final” prior to the appeal to the Ninth Circuit, and it was not disturbed by the Ninth Circuit. Lastly, the City argues that applying Judge Coughenour’s ruling would work an injustice to the City because the City does not like the way he ruled. But that is the case *every* time collateral estoppel is applied, because no party seeks to preclude the other party from re-arguing an issue that was *favorably* decided. That a ruling was unfavorable does not mean its application is an injustice.

The trial court erred in ruling that the City is not collaterally

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<sup>8</sup> See also Ensley v. Pitcher, 152 Wn.App. 891, 895 (2009)(holding that for preclusion purposes, “a judgment will ordinarily be considered final in respect to a claim... if it is not tentative, provisional, or contingent and represents the completion of all steps in the adjudication of the claim by the court”)(citing The Restatement (Second) of Judgment ¶ 13(1987)).

estopped by the ruling in Todd on *res judicata*.

**D. Doe Does Not Require Boone and the Class to Return to Municipal Court**

The City argues that Boone “fails to distinguish” Doe in its Opening Brief. *See* Response Brief at 25. To the contrary, Boone spent multiple pages of his Opening Brief distinguishing Doe on the following grounds (*see* Opening Brief, pages 6-8, 28-29):

- 1) Unlike Boone’s case, Division II in Doe noted that the superior court had *already held* that the Fife Municipal Court had violated the law by imposing the court costs under controlling precedent and that the legislature had subsequently changed the law. Doe, 74 Wn. App. at 447-448. In other words, Doe *already had* the very type of declaratory judgment that Boone sought in his motion before Judge Schapira before Doe was ordered to return to the Municipal Court to get back his costs. Id. at 449, n.8 (“we note that the trial court found that the judgment requiring the Does to pay court costs was void”). The City admits this in its Response at p. 26 (“On appeal, the Court of Appeals agreed with the plaintiffs that the costs were not statutorily authorized...[and then held that] the plaintiffs’ exclusive remedy was to go back to the Municipal Court and file a motion to vacate”).
- 2) In Doe, the Superior Court did not retain jurisdiction to decide if

the municipality violated the law. Here, Judge Schapira did.

3) In Doe, the Superior Court did not rule there were disputed facts on whether the City of Fife had violated the law by issuing the infraction that had to be resolved by a Superior Court jury. Here, Boone's only basis for vacating the judgment is that the infraction was illegally issued, and Judge Schapira ruled that the jury must resolve disputed facts to make this determination. The jury, not the Municipal Court must decide the facts necessary for Boone and the Boone Class to vacate the Municipal Court judgments. Because, unlike in Doe, the superior court did not make such a declaratory judgment before ordering Boone to return to municipal court, but rather reserved this issue for itself for a later date, finding that there are genuine issues of material fact for a jury to decide, Boone has been placed in an untenable "Catch-22" situation whereby he is being required to vacate his municipal court judgment before seeking a declaratory judgment, but he needs the declaratory judgment in order to vacate his municipal court judgment. The City recognizes as much in its Response. See Response Brief at 26.

4) Doe involved CrRLJ 7.8, which is identical to the language of CR 60 *except that it excludes* CR 60(c), which states that "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding." The Doe court concluded

that this omission suggests that the limited jurisdiction mechanism in Municipal Court was the exclusive mechanism for a party to obtain relief from a judgment. In contrast, IRLJ 6.7, which is applicable here, does not contain identical language to CR 60 (nor to CrRLJ 7.8, for that matter). Therefore, although IRLJ 6.7(a) provides that a motion to vacate is “governed by CRLJ 60(b),” the same inference regarding the omission of 60(c) is not warranted.

5) In Doe, Division II did not address the superior court’s subject matter jurisdiction to order equitable relief of the type Boone seeks in our case. 74 Wn.App. at 444. In contrast, the superior court’s subject matter jurisdiction to order equitable relief of the type Boone seeks was addressed head-on in Orwick. Doe was decided in 1994, ten years after the Washington Supreme Court’s decision in Orwick. Division II in Doe does not mention let alone discuss Orwick. The Doe decision has not been followed or applied by any other Washington court with regard to its interpretation of CrLJR 7.8.

6) Doe involved a direct claim against the Municipal Court that had improperly imposed court costs for a deferred DUI prosecution under a Municipal Court procedure. Unlike Boone’s claim, Doe’s claim was not against the City of Fife for wrongfully issuing the subject DUI infraction.

7) In Doe, the court held that each DUI defendant must return to the

Municipal Court to get a refund on an individual basis of the illegally imposed court costs. But in Doe, no class had been certified. Here Judge Schapira certified a CR 23(b)(2) class and appointed Boone the representative for all citizens seeking relief from the City's improperly issued infractions. The City admitted that certification was proper and did not appeal that order. Under CR 23(b)(2) and the court's certification order, these class members are not entitled to notice and would be unfairly disadvantaged by not having Boone represent them in getting a refund. Because a class has been certified here, unlike Doe, there is no legal basis to force each individual class member to go to the Municipal Court to get a refund on the same basis that Boone seeks a judgment.

For all of these reasons, Doe is distinguishable and inapplicable here, and the trial court erred in concluding that under Doe, Boone and the Boone Class must return to Municipal Court to vacate their infractions. The City has not responded to or refuted the many reasons cited above that Doe is inapplicable to this case.<sup>9</sup>

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<sup>9</sup> The City argues that "judicial resources will be conserved" if the Municipal Court that entered Boone's judgment is first presented with a challenge to that order. Response Brief at 28. But it is hard to see how requiring 70,000 vehicle owners to *individually* move to vacate their convictions in Municipal Court will conserve judicial resources.

**E. Orwick Controls Here, and Provides That the Superior Court Has Jurisdiction To Decide Boone’s Claims**

The trial court erred in holding that Orwick does not control. The City attempts to distinguish Orwick’s clear holding that that the superior courts, not the municipal courts, have jurisdiction over claims for equitable relief that relate to system-wide violations of statutory requirements in the enforcement of municipal ordinances. 103 Wn.2d at 252. The Supreme Court in Orwick reasoned that although the Municipal Court has exclusive original jurisdiction over traffic infractions “arising under” city ordinances, see RCW 3.50.020, equitable claims relating to system-wide violations of statutory requirements in the enforcement of municipal ordinances, although they may “relate to” traffic infractions, *do not “arise from”* traffic infractions. Id.<sup>10</sup> The City does not address or distinguish this directly applicable holding in its Response.

The City argues that the judgments in Orwick had been dismissed prior to Orwick filing suit in superior court, therefore there were no

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<sup>10</sup> Orwick, 103 Wn.2d at 252, held (emphasis added):

However, a municipal court *does not have* exclusive original jurisdiction *merely because the factual basis for a claim is related to enforcement of a municipal ordinance*. The relevant consideration for determining jurisdiction is the nature of the cause of action and the relief sought...Here, petitioners allege system-wide violations of the statutory requirements in RCW 46.63 and state and federal constitutional violations. Petitioners' claim for injunctive and declaratory relief is based on their rights under a state statute and the state and federal constitutions. *These claims do not "arise under" a municipal ordinance and, therefore, are not within the exclusive jurisdiction of the Municipal Court.*

judgments that could have preclusive effect or that needed to be vacated in municipal court. Brief at 31. But this argument completely ignores Orwick's holding that the very type of claim Boone brings in this action (equitable claim for system-wide violations relating to the enforcement of a municipal ordinance) does *not* “arise under” city ordinances governing traffic infractions, therefore the claim does not fall within the exclusive original jurisdiction of the municipal court. See RCW 3.50.020 (Municipal courts have exclusive original jurisdiction over traffic infractions *arising under* city ordinances.) So, if this Court properly decides that *res judicata* does not bar Boone’s claim, for the reasons discussed above, the Court is faced with the *separate* question that Orwick answers and Doe does not: does the superior court have jurisdiction over Boone’s equitable claims for system-wide violations of a statute (Orwick answers yes).

The City relies on the trial court’s erroneous rationale that Orwick's holding does not apply to Boone’s case challenging the legality of the infractions issued to Boone and the class because the “system-wide violations set of violations” Boone complains of were “mechanical” and there was no “unfair targeting.” Brief at 31 (citing Hearing Tr. at 86:1-22).

The trial court’s reasoning in this regard, and the City’s reliance on it, is clear error. The trial court attempted to distinguish the “system-wide violations” it believes the Orwick court was referring to from the “system-

wide violations” Boone complains of, stating that,

Again, I don't want to say that there could never be a case - - pardon my musing -- but if, for example, we were in Ferguson, Missouri, and there was systemwide discrimination in terms of the number of tickets given and proof that that was done primarily for monetary reasons, it doesn't mean no one ever had a taillight out or that no one ever -- but that where it was used in an unlawful and discriminatory manner -- again, certainly, there should be some redress. That's not the case here. We don't have a systemwide set of violations. We don't have some unfair targeting. We have a mechanical approach and a question of these signs. I don't have any basis to conclude that they were put only in certain neighborhoods or were designed to look for old cars or that there was something else going on.

Hearing Tr. at 86. But Orwick itself involved a challenge to speeding tickets resulting from faulty radar equipment, the *same* type of challenge Boone brings in this action. See 103 Wn.2d at 250 (Plaintiffs allege that “(1) that procedures used by the Seattle Municipal Court to adjudicate traffic citations violate RCW 46.63, the statute governing traffic infractions and (2) that significant numbers of motorists are wrongfully issued citations for speeding as the result of the use of in-accurate radar equipment by inadequately trained officers”). Given that the very type of systemic violations Boone complains of were at issue in Orwick, and there is no basis in Orwick or subsequent cases for the distinction the trial court made, the trial court’s use of this rationale in holding that Orwick did not control the jurisdiction question was clear error.

The City cites to Post and McCreary as support for its argument that Orwick is inapplicable. Neither case supports the City's arguments. The City cites Post v. Tacoma, 167 Wn.2d 300, 311 (2009), which has no bearing on the superior court's authority to consider the type of claim asserted by Plaintiff Boone in this case. In Post, the court addressed the bifurcated court system set up by RCW 7.80 *et seq.*, which provides that municipalities can set up their own systems for issuing and enforcing civil infractions, but if a municipality does not do so, the default is that the state courts of limited jurisdiction are responsible for issuing and enforcing civil infractions. In the latter scenario, "infraction jurisdiction resides exclusively in the district and municipal courts, i.e., courts of limited jurisdiction." Id. at 311-312. Post *did not* address whether superior courts have jurisdiction over declaratory or equitable relief claims that challenge system-wide violations of law by a municipality. The court in Orwick addresses that very issue. Orwick controls the declaratory and equitable relief claim asserted by Plaintiff Boone in this action.

The City also argues that in City of Seattle v. McCreedy, 123 Wn.2d 260, 276-77 (1994) the court overruled or modified Orwick. To the contrary, the court favorably cites Orwick's construction of the statutory scheme in RCW 35.20.030. Id. at 276-77. At issue in McCreedy was whether the superior court had jurisdiction under Const. Art IV, § 6 to

issue search warrants designed to enforce a municipal housing ordinance. The Court held that “the search warrants sought by Seattle are ultimately designed to enforce municipal ordinances, and the exclusive jurisdiction over such proceedings is vested in the municipal courts. See...RCW 35.20.030; Orwick v. Seattle...” Id. at 276-77. Accordingly, the Court held, the City should have sought the warrants from the municipal court. Id. Unlike the search warrants in McCready, which were requested in order to enforce a municipal ordinance and therefore clearly “arise from” the municipal ordinance, Plaintiff’s claim for declaratory and equitable relief is based on his rights under a state statute and regulation. As the Court held in Orwick, these claims “do not “arise under” a municipal ordinance and, therefore, are not within the exclusive jurisdiction of the Seattle Municipal Court.” 103 Wn.2d at 251.

There is no basis for distinguishing Orwick from the legal and factual situation presented in Boone’s case, and the trial court erred in holding that Orwick does not control.

**F. A Jury Must Decide Boone’s Declaratory Judgment Claim**

The City argues that if the Court rejects the trial court’s *res judicata* analysis (as it should), the Court “can also affirm the dismissal of the refund claims” on the basis that Plaintiff Boone allegedly cannot meet

the standard for vacating his judgment under CR 60(b) and cannot show a basis for invalidating the infractions even if the superior finds the signs violated the law. Response Brief at 33-37.

Despite relying on the trial court's ruling the Boone must return to the Municipal Court to have his "refund" claim vacated, the City completely ignores the other half of the trial court's order, which is that there are genuine issues of material fact related to Boone's claim for declaratory judgment. The trial court clearly held that there are triable issues of material fact not just relating to whether the signs violated the wording requirements of RCW 46.63.170(1)(h) and MUTCD and whether the City in fact exercised engineering judgment in deviating from the required wording (Hearing Tr. at 74-76), but also whether the deviation in wording made the sign less legible or affected the reaction time of the driver such that the sign was not in the "proper position" per RCW 46.61.050. Hearing Tr. at 80-81. Thus, in light of trial court's holding that there are genuine issues of material fact, not only is the City incorrect in arguing that this Court could overlook those issues and "affirm the grant of summary judgment" for the City on this alternate basis, but the City is also suggesting that Boone and the Boone class members be deprived of their constitutional right to have a jury decide those issues.

Moreover, the City is incorrect that RCW 46.61.050 establishes the

sole standard for invalidating an infraction based on inadequate signage. Nelson v. Appleway Chevrolet, 160 Wn.2d 173 (2007), provides an alternate basis. Nelson holds that if the court makes a declaratory judgment that a practice violates Washington law (in Nelson, a car dealer was alleged to be charging customers a “B&O tax charge” in violation of Washington law), the plaintiff is entitled to disgorgement of the unlawfully collected charges. Id. at 185. Nelson did not require the interim step that the City alleges is required (and alleges Boone cannot prove) that in addition to a declaratory judgment, Boone must also provide a statutory basis for invalidation of the statute.

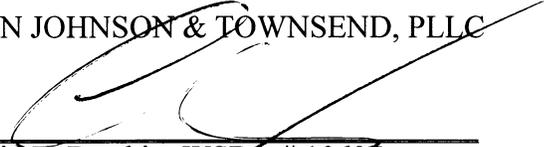
For these reasons, the City is incorrect that this is an “alternate basis” for this Court to affirm the court’s grant of summary judgment.

### **III. CONCLUSION**

Judge Schapira misread the Doe decision, failed to read the decision in Todd correctly, and did not adhere to the Supreme Court’s decision in Orwick. Her order is contrary to her prior class certification order under CR 23(b)(2), contrary to law, and sets up an unfair “Catch-22” that deprives Boone of any meaningful way to seek to vacate the Municipal Court judgment. The order deprives Boone of due process and violates his right to a jury trial. The order should be vacated.

DATED this 12th day of February, 2016.

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By: 

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# APPENDIX A

*The Court of Appeals*  
of the  
*State of Washington*

RICHARD D. JOHNSON,  
*Court Administrator/Clerk*

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August 25, 2015

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CASE #: 73534-9-I

Nicholas E. Boone, Petitioner, v. City of Seattle, Respondent

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on August 24, 2015, regarding Petitioner's Motion for Discretionary Review:

This matter involves a dispute over whether speed zone signs the City of Seattle placed in certain school zones comply with applicable statutes and regulations and whether individuals cited for speeding within the school zones may seek a refund in superior court of fines they paid in municipal court following municipal court notices of infraction. The superior court has certified a class action under CR 23(b)(2). Plaintiff/petitioner Nicholas Boone, on behalf of the certified class, seeks discretionary review of a May 8, 2015 trial court order granting defendant/respondent City of Seattle's motion for summary judgment dismissal of Boone's refund claims and denying his motion for partial summary judgment on his claim for declaratory relief that the City's school speed zone signs do not comply with regulations. On June 2, 2015, the trial court signed a stipulated order certifying the matter for discretionary review under RAP 2.3(b)(4)

In February 2014, Boone was cited for speeding in a school zone. He received a municipal court notice of infraction and paid the fine without challenge; he did not appeal or otherwise challenge the infraction in the superior court. Instead, in July 2014 he filed a class action

lawsuit in superior court against the City of Seattle, seeking a declaratory judgment that the school zone speed signs in three areas of the City, including the area where he was speeding, do not strictly comply with the Manual on Uniform Traffic Control Devices (MUTCD). Specifically, he asserted that the lower plaque of the sign improperly said "WHEN LIGHTS ARE FLASHING" instead of "WHEN FLASHING." (The signs have since been replaced.) Boone sought "equitable restitution," i.e., a refund and/or damages. The trial court certified the class under CR 23(b)(2).

On May 8, 2015, the trial court granted the City's motion for summary judgment, ruling that under Doe v. Fife Municipal Court, 74 Wn. App. 444, 874 P.2d 182 (1994), Boone's challenge was an improper collateral attack on the prior municipal court judgment and that the refund claims must be brought individually in municipal court by motion to vacate under Infraction Rules for Courts of Limited Jurisdiction (IRLJ) 6.7(a) (a motion to waive or suspend a fine or vacate a judgment is governed by CRLJ 60(b)).

The court declined to follow a decision from the U.S. Western District of Washington involving red light cameras, Todd v. City of Auburn, No. C09-1232JCC. In Todd, plaintiffs brought a class action suit against multiple cities challenging notices of infractions generated by a traffic camera. Plaintiffs challenged the legality of the traffic camera program. The defendant Cities moved to dismiss on several grounds, including that jurisdiction over claims relating to traffic infractions is limited to municipal courts. The district court disagreed. Relying on Orwick v. City of Seattle, 103 Wn.2d 249, 692 P.2d 793 (1984), the court reasoned that the superior courts, not the municipal courts, have jurisdiction over claims for equitable relief that relate to system-wide violations of statutory requirements in the enforcement of municipal ordinances. Todd, Order at 3-4.

The trial court also denied the City's and Boone's cross motions for summary judgment on the issue of whether or not the signs violate applicable statutes and regulations. In support of his motion, Boone relied on the superior court decision in another case City of Seattle v. Hunt, No. 13-2-2-25366-6 SEA. Joseph Hunt received a notice of infraction for speeding in a school zone. Unlike Boone, Hunt challenged the infraction in municipal court and was found guilty. In his RALJ appeal to the superior court, he argued that the City's sign, which said "WHEN LIGHTS ARE FLASHING" instead of "WHEN FLASHING" did not strictly comply with MUTCD specifications. The superior court agreed and reversed:

While at first glance the difference between the two appears trivial, Mr. Hunt argues they are important because the additional words could affect the visibility of the sign. While the Municipal Court made no findings regarding the sign's visibility, this is not necessary given the requirement in RCW 46.63.171(1)(h) that the City follow the specifications of the MUTCD. The court is not persuaded by the City's argument that substantial compliance with the MUTCD was sufficient.

Noting that the City did not seek discretionary review in Hunt, Boone argued that the City was collaterally estopped from arguing that anything other than strict compliance is sufficient. The trial court disagreed, noting procedural differences between the cases, and denied the cross

motions for summary judgment based on multiple disputed issues of material fact. (As the City notes, in Hunt it was precluded from seeking RALJ discretionary review under RAP 2.3(d) because the amount in controversy was under \$200. See RCW 2.06.030).

At the hearing, the parties and the court agreed to certify the municipal court/superior court jurisdiction issue for review (RP 5/8/15 at 90-91). The court also found that “the ruling falls under CR 54(b); there is no just reason for delay in entry of this order as final.” Then on June 2, 2015, the court entered a stipulated certification order under RAP 2.3(b)(4):

Pursuant to RAP 2.3(b)(4), the Court hereby certifies that its May 8, 2015 order on the parties’ cross motions for summary judgment involve controlling questions of law as to which there is a substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation. The court also finds that its rulings fall under CR 54(b); there is no just reason for delay in entry of the May 8, 2015 order as final.

Boone filed a motion for discretionary review under RAP 2.3(b)(4). Alternatively, Boone argues that review is warranted under RAP 2.3(b)(1), obvious error that renders further proceedings useless. He argues that the trial court erred in ruling that his refund request was an improper collateral attack on the municipal court judgment and must be brought in municipal court by individual motions to vacate under IRLJ 6.7(a). He also argues that the court erred in denying summary judgment on his claim that the signs do not comply with the MUTCD.

The City agrees that discretionary review is warranted on the issue of whether the superior court properly ruled that Boone must bring his refund request by motion to vacate in the municipal court. But the City argues that because the trial court ruled there were disputed issues of fact, this court should not now review the denial of Boone’s claim for declaratory relief.

In his reply, Boone argues that the parties stipulated to discretionary review of *both* issues and the trial court granted the certification as to *both* issues.

To the extent the City and Boone dispute the scope of the certification, it is not controlling because this court retains the discretion to determine whether a RAP 2.3(b)(4) certification is well taken. The rule requires three things: a controlling question of law; a substantial ground for a difference of opinion on the question of law; and a showing that immediate review may materially advance the ultimate termination of the litigation. Although the court did not enter detailed findings, the court also found there was no just reason for delay. See CR 54(b) and RAP 2.2(d).

I agree with the parties and the trial court that immediate review of the municipal/superior court “jurisdiction” issue on Boone’s refund claim is warranted. It involves a controlling question of law, there is a substantial ground for a difference of opinion (see Doe, Orwick, and Todd), and immediate review of the issue will materially advance the ultimate termination of the litigation.

Page 4 of 4  
August 25, 2015  
CASE #: 73534-9-1

I also conclude that even assuming the City agreed to the stipulation for immediate review of all issues, review of Boone's declaratory judgment claim is not warranted at this time. Boone's position is that the City must strictly comply with the MUTCD (citing Hunt) and that because the City's signs did not strictly comply, he was entitled to declaratory relief as a matter of law, it was error for the trial court to deny summary judgment, and the question of law he raises is controlling.

But the trial court disagreed and reasoned that although it had jurisdiction to address Boone's claim for declaratory relief (RP at 74, 84), and it was undisputed that the "WHEN LIGHTS ARE FLASHING" signs did not strictly comply with the "WHEN FLASHING" regulation, the court could not and would not rule as a matter of law because there were disputed issues of fact, for example, as to whether the signs substantially conformed with the regulations (RP 79), and whether or not the nonconformity made a difference in terms of engineering and individual circumstances (RP 78, 79-81). The court further reasoned that in light of its ruling that the refund claims must be brought in the municipal court individually by way of motions to vacate and its certification for immediate review of this decision, it did not make sense to proceed to trial on the declaratory judgment class action claims (RP 87-88). Similarly, immediate review under RAP 2.3(b)(4) of the declaratory judgment issue is not warranted, and Boone has not demonstrated that review should be granted under RAP 2.3(b)(1).

Therefore, it is

ORDERED that discretionary review of the trial court order denying Boone's motion for summary judgment on his declaratory judgment claim is denied; and it is

ORDERED that discretionary review of the trial court order granting the City of Seattle's motion for summary judgment dismissal of Boone's refund claims is granted, and the clerk will set a perfection schedule.

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

lls

## APPENDIX B

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL TODD, GREGORY STACKHOUSE, )  
STEVE BLAI, VONDA SARGENT, MAX )  
HARRISON, ZOANN CHASE-BILLING, OGNJEN )  
PANDZIC, SEUNGRAN CHWE, DANIEL WU, )  
MARCUS NAYLOR, MELISSA MILLER, LEN )  
JOHNSON, ASHLEY ALM, JIM AMES, BLANCA )  
ZAMORA, CHARLES MAEL, SOMER CHACON, )  
BRAD HAMPTON, NICHOLAS JUHL, )  
GEORGINA LUKE, JUDITH STREDICKE, RICH )  
NEWMAN, MARK CONTRATTO, ANEVA )  
FREEMAN, CHRIS CLINE, TERA CLINE, JIM )  
ABRAHAM, CATHERINE IWAKIRI, VICKI )  
WAGNER, CODY EDWARDS, JULIE WILLIAMS, )  
MICHAEL SALOKAS, BARBARA KELLER, )  
CRAIG COATES, CHRIS SPERLICH, LORI )  
FLEMING, BEN BACCARELLA, DALTON )  
SHOTWELL, JERE KNUDTSSEN, BELINDA RIBA )  
GREIG FAHNLANDER, DONALD STAVE, )  
RICHARD MERCHANT, DAVID ROARK, )  
TIMOTHY MORGAN, CHARLES GUST, CASEY )  
HALVORSON, STEVEN MOODY, RICHARD )  
DAIKER, individually and on behalf of two classes )  
of similarly situated persons, )

Plaintiffs

v.

THE CITIES OF AUBURN, BELLEVUE, BONNEY )  
LAKE, BREMERTON, BURIEN, FEDERAL WAY, )  
FIFE, ISSAQUAH, LACEY, LAKE FOREST )  
PARK, LAKEWOOD, LYNNWOOD, PUYALLUP, )  
RENTON, SEATAC, SEATTLE, SPOKANE, )  
TACOMA, , as well as AMERICAN TRAFFIC )  
SOLUTIONS (d/b/a "ATS"); AMERICAN )  
TRAFFIC SOLUTIONS, LLC (DBA "ATS )  
SOLUTIONS") AND REDFLEX TRAFFIC )  
SYSTEMS, INC., )

Defendants

Case No. C09-1232JCC

ORDER

1 This matter comes before the Court on Defendants' motion to dismiss (Dkt. No. 108),  
2 Plaintiffs' response (Dkt. No. 118), and Defendants' reply. (Dkt. No. 119.) Having thoroughly  
3 considered the parties' briefing and the relevant record, the Court finds oral argument  
4 unnecessary and hereby GRANTS the motion for the reasons explained herein.

5 **I. BACKGROUND**

6 In 2005, the Washington State Legislature passed a law granting municipalities the  
7 authority to issue citations to owners of vehicles that were photographed violating red lights or  
8 school speed zones. WASH. REV. CODE 46.63.170. Several municipalities throughout the state  
9 adopted the traffic camera program and contracted with either American Traffic Solutions,  
10 LLC or Redflex Traffic Systems, Inc. to provide equipment and services. (Mot. 4 (Dkt. No.  
11 108).) Plaintiffs are a group of vehicle owners who were issued a notice of infraction ("NOI")  
12 generated by a traffic camera. (Resp. 20 (Dkt. No. 118).) Plaintiffs are at different stages of the  
13 proceedings that ensued from the issuance of the NOI, but all have either paid or are subject to  
14 fines of \$101, \$104 or \$124. (*Id.*) Defendants are a group of municipalities in Washington  
15 State ("Defendant Cities") and two companies that contracted with Defendant Cities to operate  
16 and maintain the traffic cameras.

17 Plaintiffs originally filed suit in King County Superior Court, but Defendants removed  
18 the case to this court pursuant to the Class Action Fairness Act, which grants original  
19 jurisdiction to federal district courts for any civil action in which the amount in controversy  
20 exceeds \$5,000,000 and is a class action in which any plaintiff is a citizen of a State different  
21 from any defendant. 28 U.S.C. § 1332(d)(2)(A). Plaintiffs challenge the legality of the traffic-  
22 camera program on the grounds that the fines are excessive, the contracts with the Defendant  
23 corporations are contrary to statute, and Defendant Cities failed to get the required approval for  
24 the NOIs from the Administrative Office of the Courts ("AOC"). Defendants dispute Plaintiffs'  
25 claims and bring this motion to dismiss on the grounds that jurisdiction over claims relating to  
26 traffic infractions should be limited to the municipal courts.

1 **II. APPLICABLE LAW**

2 Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a claim  
3 for “failure to state a claim upon which relief can be granted.” Although a complaint  
4 challenged by a Rule 12(b)(6) motion to dismiss need not provide detailed factual allegations,  
5 it must offer “more than labels and conclusions” and contain more than a “formulaic recitation  
6 of the elements of a cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).  
7 The complaint must indicate more than mere speculation of a right to relief. *See id.* When a  
8 complaint fails to adequately state a claim, such deficiency should be “exposed at the point of  
9 minimum expenditure of time and money by the parties and the court.” *Id.* at 558. A complaint  
10 may be lacking for one of two reasons: (1) absence of a cognizable legal theory or (2)  
11 insufficient facts under a cognizable legal claim. *Robertson v. Dean Witter Reynolds, Inc.*, 749  
12 F.2d 530, 534 (9th Cir. 1984). In ruling on a defendant’s motion to dismiss under Rule  
13 12(b)(6), the Court assumes the truth of the plaintiff’s allegations and draws all reasonable  
14 inferences in the plaintiff’s favor. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir.  
15 1987).

16 **III. ANALYSIS**

17 **A. Jurisdiction**

18 Defendants argue that the Court lacks jurisdiction to hear Plaintiffs’ claims. The Seattle  
19 Municipal Court has statutory jurisdiction over traffic cases. WASH. REV. CODE 35.20.010(1).  
20 Municipal courts in all other Defendant Cities have exclusive original jurisdiction over traffic  
21 infractions arising under city ordinances. WASH. REV. CODE 3.50.020. However, this does not  
22 mean that municipal courts have original jurisdiction over any case conceivably related to the  
23 enforcement of municipal ordinances; many such cases will be outside their purview. *Orwick*  
24 *v. City of Seattle*, 692 P.2d 793, 796 (Wash. 1984). The Supreme Court of Washington has held  
25 that “superior courts have original jurisdiction over claims for equitable relief from alleged  
26 system-wide violations of mandatory statutory requirements by a municipal court and from

1 alleged repetitious violations of constitutional rights by a municipality in the enforcement of  
2 municipal ordinances.” *Id.* at 795.

3 The Court notes that there was some inconsistency with respect to the different claims  
4 and defenses made by different Plaintiffs in municipal court. (Reply 12–13 (Dkt. No. 119).)  
5 Before the filing of this case, some municipal courts allowed Plaintiffs to bring the claims that  
6 they repeat now. (*Id.*) This, Defendants argue, proves that municipal courts did indeed have  
7 jurisdiction to hear these claims. (*Id.*) Plaintiffs argue that the examples Defendants cite are  
8 merely instances where *Orwick* was not properly applied, and that because municipal courts  
9 lacked the authority to hear tort claims, Consumer Protection Act (“CPA”) claims, and  
10 equitable claims, prior arguments to the municipal courts should be disregarded and considered  
11 here afresh. (Resp. 11 (Dkt. No 118).) The Court agrees. Article IV Section 6 of the  
12 Washington State Constitution does not grant municipal courts the authority to hear equitable  
13 claims. These claims can be resolved consistently only in federal courts or Washington  
14 superior courts.

15 Defendants offer two more jurisdictional reasons why this Court should dismiss. First,  
16 Plaintiffs argue that municipal courts have jurisdiction over these claims and that where two  
17 tribunals have jurisdiction, the one first obtaining jurisdiction maintains it exclusively. *Yakima*  
18 *v. Int’l Ass’n of Fire Fighters, et al.*, 117 Wn.2d 655, 673–76 (1991). Second, Defendants cite  
19 *Younger v. Harris*, 401 U.S. 37 (1971) for the position that a federal court must abstain in  
20 deference to state courts where: (1) there is an ongoing state proceeding; (2) the proceeding  
21 implicates important state interests; and (3) the federal litigant is not barred from litigating  
22 federal constitutional issues in that proceeding.

23 However, as stated above, the Court finds that municipal courts do not have jurisdiction  
24 over claims that relate to system-wide violations of statutory requirements in the enforcement  
25 of municipal ordinances. The Court agrees with Plaintiffs that they could be barred from  
26

1 litigating federal constitutional issues, and, accordingly, will not abstain from hearing  
2 Plaintiffs' claims.

3 **B. Res Judicata**

4 Defendants argue that res judicata bars Plaintiffs' claims. Res judicata prevents a party  
5 from re-litigating all claims that were raised, or could have been raised, in an earlier action.  
6 *Stevens County v. Futurewise*, 192 P.3d 1, 6 (Wash. Ct. App. 2008). Defendants cite several  
7 cases in which Plaintiffs failed to bring possible claims in municipal courts or superior courts  
8 and were therefore prohibited from bringing these claims in federal court. *Idris v. City of*  
9 *Chicago*, 552 F.3d 564, 565 (7th Cir. 2009); *McCarthy v. City of Cleveland*, 2009 WL  
10 2424296 (N.D. Ohio Aug. 6, 2009); *Kovach v. District of Columbia*, 805 A.2d 957 (D.C. Ct.  
11 App. 2002); *Dajani v. Governor & General Assemble of the State of Md.*, 2001 WL 85181 (D.  
12 Md. Jan. 24, 2001). The Court finds these cases to be unpersuasive.

13 None of Defendants' cases is from Washington. As stated above, the Washington  
14 Supreme Court has stated that the superior courts have original jurisdiction over claims  
15 alleging system-wide violations in the enforcement of municipal ordinances. *Orwick v. Seattle*,  
16 692 P.2d at 795. Defendants have not established that the states in which their cases were  
17 decided have similar laws. To the extent that Defendants' cases stand for the proposition that  
18 Plaintiffs should have brought their claims in municipal court, they simply do not apply to  
19 Washington law.<sup>1</sup>

20 Accordingly the Court finds that res judicata does not bar Plaintiffs' claims.

21 **C. Declaratory and Injunctive Relief Claims**

22 Plaintiffs present three challenges to the traffic camera system. The first is that  
23 Defendant municipalities violated due-process requirements when they failed to get approval

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24  
25 <sup>1</sup> This logic also applies to Plaintiffs' failure to appeal the infractions. Because Superior  
26 Courts have *original* jurisdiction, Plaintiffs cannot be faulted for not engaging in an appeals  
process that would have skirted that jurisdiction.

1 for the NOIs from the Administrative Office of the Courts. (Resp. 6–9 (Dkt. No. 118).) Rule  
2 2.1 of the Infraction Rules for Courts of Limited Jurisdiction (“ILRJ”) states: “Infraction cases  
3 shall be filed on a form entitled ‘Notice of Infraction’ *prescribed* by the Administrative Office  
4 of the Courts; except that the form used to file cases alleging the commission of a parking,  
5 standing or stopping infraction shall be *approved* by the Administrative Office of the Courts.”  
6 (emphasis added). WASH. REV. CODE 46.63.170(2) states: “infractions generated by the use of  
7 automated traffic safety cameras under this section shall be *processed* in the same manner as  
8 parking infractions, including for the purposes of RCW 3.50.100, 35.20.220, 46.16.216, and  
9 46.20.270(3).” (emphasis added). Plaintiffs argue that because traffic camera infractions should  
10 be processed in the same manner as parking infractions, and the form used to file cases  
11 alleging parking infractions requires AOC approval, then NOIs generated by traffic cameras  
12 must also require approval. Not so.

13         The Code does not require a traffic camera infraction to be treated like a parking  
14 infraction in every single respect. WASH. REV. CODE 46.63.170(2) states only that when an  
15 infraction is generated, is to be processed like a parking infraction. This refers to individual  
16 NOIs given to individual drivers and the legal steps and consequences that ensue. The four  
17 code sections that WASH. REV. CODE 46.63.170(2) specifies, WASH. REV. CODE 3.50.100,  
18 35.20.220, 46.16.216, and 46.20.270(3), confirm this interpretation in that they all concern  
19 aspects of post-infraction procedure: treatment of funds collected by an infraction, renewal of a  
20 driver’s license following infractions, and withholding of driving privileges following traffic  
21 offenses. AOC approval is not a step contemplated in the processing of any infraction; it is a  
22 way of ensuring, before any processing of infractions begins, that a municipality is using  
23 legally sufficient forms. Although NOIs from traffic cameras are processed like parking  
24 tickets, the forms are to be drafted in compliance with rules for traffic tickets. And ILRJ 2.1  
25 states that NOIs for traffic tickets need only be on forms prescribed by the AOC, not approved  
26 by them. Plaintiffs have not alleged that the NOIs fail to meet any of the AOC’s prescriptions.

1 Plaintiffs' second challenge is that the fines generated by traffic cameras are excessive.  
2 WASH. REV. CODE 46.63.170(2) states that the fines "shall not exceed the amount of a fine  
3 issued for other parking infractions within the jurisdiction." Plaintiffs argue that the  
4 Washington State Legislature intended for the fines to be no higher than a normal parking  
5 ticket, i.e. twenty dollars. (Resp. 4 (Dkt. No. 118).) Defendants respond that in the intervening  
6 five years, the Legislature could have clarified its views on fine limits if they felt they had been  
7 misinterpreted. (Mot. 23 (Dkt. No. 108).) A more plausible reading of the Code, Defendants  
8 argue, is that the municipalities may set fine amounts at or below those of the maximum fine  
9 allowed for parking infractions. (*Id.* at 22.) Traffic camera fines range from \$101 to \$124. (*Id.*  
10 at 23.) Fines for fire lane parking and disabled parking violations in each municipality range  
11 from \$175 to \$250. (*Id.*) While these fines are set by state law rather than municipal code  
12 (WASH. REV. CODE 46.16.381(7)–(9); WASH. REV. CODE 46.55.105(2)), Plaintiffs offer no  
13 reason to conclude that these fines are outside the jurisdiction of the city, and therefore an  
14 impermissible ceiling on fine amounts, given that WASH. REV. CODE 35A.12.140 allows  
15 municipalities to adopt state code by reference. The Court agrees that the Code grants  
16 municipalities flexibility in determining fine levels, and that the fines are not excessive.

17 Plaintiff's third challenge is that the municipalities' contracts with ATS and Redflex  
18 violate Washington law. WASH. REV. CODE 46.63.170(1)(i) states that "the compensation paid  
19 to the manufacturer or vendor of the equipment used must be based only upon the value of the  
20 equipment and services provided or rendered in support of the system, and may not be based  
21 upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment."  
22 Plaintiffs argue that the contracts violate this statute in two ways, but they are misinterpreting  
23 the law.

24 First, the contracts contain "stop-loss" provisions. These provisions allow the  
25 municipalities to defer payment until the cameras generate enough revenue to cover their  
26 expense. (Mot. 18 (Dkt. No. 108).) But they do not change the amount that the municipalities

1 must eventually pay the camera companies. (*Id.*) Plaintiffs insist that these provisions run  
2 counter to the prohibition on any system of compensation based on a portion of the revenue  
3 generated. (Resp. 6 (Dkt. No. 118).) The Court does not agree. Under this system, it is the  
4 payment schedule, not the amount of compensation, that is based on a portion of revenue  
5 generated. The stop-loss provisions have allowed the municipalities to purchase traffic  
6 enforcement on a layaway plan, but not to change the price.

7         Second, Plaintiffs argue that some contracts with Bellevue, Lynwood, Seattle, and  
8 Spokane include unlawful volume-based payments. The Lynwood contract, for example, states  
9 that ATS charges a fee of \$5.00 for the first infraction per camera, and then processes all  
10 following infractions via that camera during a month, up to 800, as part of the flat fee per  
11 camera. (Mot. 6 n. 6 (Dkt. No. 108).) However, when infractions per camera exceed 800 per  
12 month, Lynwood pays ATS a processing fee of \$5.00 per infraction over 800. (*Id.*) As with the  
13 stop-loss provisions, Plaintiffs argue that this is a system of compensation based on a portion  
14 of the revenue generated. Again, Plaintiffs misread the statute. The statute specifically allows  
15 for compensation based on the value of services provided. WASH. REV. CODE 46.63.170(1)(i).  
16 The Court agrees with Defendants that the \$5.00 is a service charge, not a share of the  
17 revenues.

18         Plaintiffs have failed to state facts sufficient to support their claims for declaratory and  
19 injunctive relief.

20         **D. Additional Claims.**

21         Plaintiffs also bring a claim for violation of the CPA and common law claims for  
22 Abuse of Process and Unjust Enrichment. (Resp. 32–36 (Dkt. No. 118).) But all of these claims  
23 are predicated on the finding that Defendants violated Washington law by entering into illegal  
24 contracts, charging excessive fees, and issuing unapproved NOIs. (*Id.*) As detailed above, the  
25 Court finds that Defendants' actions were not in violation of Washington law. Accordingly,  
26 Plaintiff's CPA and common law claims fail.

1 **IV. CONCLUSION**

2 Defendants' motion to dismiss (Dkt. No. 108) is GRANTED. The Clerk is DIRECTED  
3 to CLOSE the case.

4  
5 DATED this 2nd day of March, 2010.

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8 

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10  
11 John C. Coughenour  
12 UNITED STATES DISTRICT JUDGE