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IN THE COURT OF APPEALS FOR
THE STATE OF WASHINGTON
DIVISION II

GEORGE KARL, REBECCA ANN, and
a class of similarly situated individuals,

Appellants/Cross-respondents,

v.

CITY OF BREMERTON,

Respondent/Cross-appellant.

BRIEF OF RESPONDENT/CROSS-APPELLANT

MASTERS LAW GROUP, P.L.L.C.
Kenneth W. Masters, WSBA No. 22278
241 Madison Avenue North
Bainbridge Island, WA 98110
(206) 780-5033
ken@appeal-law.com

TEMPLETON HORTON WEIBEL, P.L.L.C.
David P. Horton, WSBA No. 27123
3212 NW Byron Street, Suite 104
Silverdale, WA 98383
(206) 692-9444
dhorton@thwpllc.com

BREMERTON CITY ATTORNEY'S OFFICE
Kylie Purves, WSBA No. 34997
345 – 6th Street, Suite 600
Bremerton, WA 98337
(360) 473-2336
kylie.purves@ci.bremerton.wa.us

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INTRODUCTION

Appellants Mr. Karl and Ms. Ann (“Karl”) paid parking fines, but failed to appeal their Bremerton Municipal Court judgments. They instead seek to circumvent them, claiming these municipal fines were illegal. They seek refunds, asserting they should have prevailed in municipal court. The trial court properly dismissed these claims.

Initially, this Court lacks jurisdiction to consider the appeal because the amount in controversy is less than \$200. See Respondent’s Renewed Motion to Dismiss filed simultaneously.

But even if this Court had jurisdiction, the municipal court judgments bar these claims under *res judicata*: the parties, subject matter, causes of action, and quality of persons, are identical.

Karl’s claims fail for three additional reasons:

1. They ignore the municipal court judgments, which courts are vested with exclusive original jurisdiction over traffic infractions, distinguishing ***New Cingular Wireless PCS, LLC v. City of Clyde Hill***, 185 Wn.2d 594, 374 P.3d 151 (2016).
2. Their equitable claims fail because equitable relief is appropriate only in “extraordinary circumstances” where no adequate remedy at law exists under ***Orwick v. City of Seattle***, 103 Wn.2d 249, 692 P.2d 793 (1984), which is not true here.
3. They fail to show a private right of action under the statutes they claim the City violated.

This Court should affirm.

RESTATEMENT OF THE CASE

- A. The City has contracted with various private vendors to handle on-street parking enforcement since 1998, issuing limited commissions to their employees.**

The City started contracting for parking enforcement in 1998, awarding the first contract to Diamond Parking (“Diamond”). CP 264. Diamond was already handling on-street parking enforcement in other cities, including Bellevue. CP 259. Diamond was also negotiating a contract for on-street enforcement with Redmond. CP 259. The City now contracts with Imperial Parking (“Impark”). CP 133. The Bremerton Police Chief issues limited commissions for parking enforcement to Impark employees. CP 133, 268.

- B. The City changed some parking signs to “Bremerton Blue;” Karl received parking tickets under such a sign; they challenged the sign, lost, and failed to appeal.**

During the early 2000s, the City changed the color of some parking signs in its downtown core to “Bremerton blue”. CP 372, 448-63. Karl were issued parking tickets in a blue-sign area. CP 2. They contested the tickets in Bremerton Municipal Court. CP 2. At the hearing, they challenged the color of the parking signs as non-compliant with state law. CP 25. Their arguments failed. CP 604. The court deemed the violations committed. CP 604. Karl failed to appeal these final orders to the Superior Court. CP 25.

C. Karl instead brought a class action suit, which the trial court eventually dismissed.

Instead, Karl filed suit against the City several months later, seeking a refund of the \$47.95 fines they had paid, and declaratory and injunctive relief for themselves and a class. CP 1-5.

The City moved to dismiss their complaint, asserting their claims were barred by *res judicata*. CP 6-10. The trial court dismissed the fine-refund claims, but did not dismiss the declaratory and injunctive-relief claims. CP 660-61.

1. The trial court certified a class, but did not reinstate Karl's damages claims.

On May 6, 2016, the trial court certified a class under CR 23. CP 640. While the City did not object to class certification, it did object to the proposed order as overbroad and contrary to the trial court's prior orders dismissing the fine-refund claims. CP 118-20. Karl characterize the Order on Class Certification as affirming their damages theory. See BA 7-8. But in the trial court, they conceded that the "merits of plaintiffs' theories for damages will . . . be decided at a later date, *if liability is established* . . . the Court can decide whether the plaintiffs are entitled to monetary damages . . ." CP 122 (emphasis in original).

2. The trial court granted summary judgment.

After class certification, the parties brought cross-motions for summary judgment. CP 125-32, 241-51, 291-92. The trial court summarized this series of motions (CP 605):

The Court held that the blue and white parking signs used by Defendant were not substantially compliant under RCW 47.36.030. The Court reserved ruling as to whether a cause of action existed and whether Plaintiffs were entitled to declaratory or injunctive relief. The Court also held that the Defendant's use of private contracts for the limited purpose of parking enforcement was not unlawful. Reconsideration was denied.

The court's reserved ruling applied to declaratory and injunctive relief, not just injunctive relief as Karl imply. See BA 9. The court narrowed the issues on which it wanted further briefing, but did not grant declaratory relief. CP 635:

The question of whether the Plaintiffs have standing to maintain causes of action on the theories of injunctive and declaratory relief remains unsettled. The parties are directed to provide further briefing as to this issue.

The court denied Karl's request to order the City to remove and replace the signs. CP 634-35. The City voluntarily removed and replaced the signs. CP 494.

The parties again filed cross-motions for summary judgment. CP 496-522, 543-50. Karl argued (1) that monetary relief flows directly from the November 2016 order declaring that the signs did

not substantially comply with the statute; (2) that a cause of action exists; (3) that damages and/or restitution are owed in the amounts of the fines collected; and (4) that the City cannot collect unpaid fines/penalties from class members. CP 606.

The City moved for summary judgment on all claims. CP 554.

Granting the City's motion, the trial court held:

(a) the applicable statutes do not expressly provide an avenue by which individuals can bring a cause of action against a municipality or other governmental entity stemming from the use of a sign that does not substantially comply with the Manual;

(b) *res judicata* prevents class members from pursuing refunds of fines in avenues outside of direct appeal; and that

(c) a motion to vacate is a proper procedural remedy for those who have either unsuccessfully challenged or already paid fines associated with violations related to Defendant's use of non-compliant signage.

CP 606, 609. The trial court also noted the parties' agreement that the sign issue is moot (CP 606):

The parties agreed at oral argument that because Defendant has now removed and replaced all of the non-compliant signs, Plaintiffs' claim for injunctive relief is now moot.

This appeal followed. CP 612, 649. The City timely cross-appealed the trial court's order certifying the class. CP 636.

ARGUMENT

A. The standard of review is *de novo*.

Appellate courts review summary judgment rulings *de novo*, engaging in the same analysis as the trial court. ***Doe v. Fife Muni. Ct.***, 74 Wn. App. 444, 448, 874 P.2d 182 (1994); CR 56.

B. *Res Judicata* bars re-litigation of a municipal parking ticket, including declaratory and injunctive relief.

Karl first argue that the trial court erred in applying *res judicata*. BA 20-33. But the court correctly dismissed the fine-refund claims because *res judicata* bars them. CP 605. The Legislature enacted a statutory scheme that diverts the superior courts' jurisdiction into an alternate procedure that a party must use to challenge a municipal fine, so a collateral action is not permitted under ***New Cingular***.

1. *Res judicata* bars Karl's claims.

Res judicata prevents a party from re-litigating all claims that were raised, or could have been raised, in an earlier action. See ***Stevens Cty. v. Futurewise***, 146 Wn. App. 493, 502, 192 P.3d 1 (2008). The doctrine exists to prevent piecemeal litigation and to ensure finality of judgments. *Id.* at 502-03. To invoke the doctrine, the City must show that the two cases have the same (1) parties, (2)

subject matter, (3) causes of action, and (4) quality of the persons for or against whom the claim is made. *Id.*

Here, the parties were identical (the violators vs. the City). The subject matter was also the same (the validity and possible defenses to the infractions). The causes of action are also identical (both arise from the infractions and the penalties). And the qualities of the parties are also identical: the City seeks to enforce its parking ordinances, and Karl seek to avoid enforcement based on defenses. Because the parties occupy the same roles, *res judicata* bars this second suit. ***Bordeaux v. Ingersoll Rand Co.***, 71 Wn.2d 392, 397-98, 429 P.2d 207 (1967).

This is consistent with the policies upheld in ***Fife Muni. Ct.*** There, the Superior Court had barred relitigating lower-court costs on *res judicata* grounds. 74 Wn. App. at 447. Affirming, this Court upheld the strong public policy that any attack on a judgment in a court of limited jurisdiction should be brought in that court (as a motion to vacate), giving that court “the opportunity to correct mistakes.” *Id.* at 444. When civil infractions are enforced in courts of limited jurisdiction, the entire civil infraction system is administered and supervised by the courts, from the issuance of the notice to the collection of the penalties. ***Post v. City of Tacoma***, 167 Wn.2d 300,

311, 217 P.3d 1179 (2009). This Court should affirm on *res judicata* grounds.

2. *New Cingular* does not aid Karl, where a separate and complete statutory scheme is in place.

Karl argue *res judicata* does not apply under the Washington Constitution because the Superior Court has original jurisdiction over “municipal fines.” BA 12-16. On the contrary, ***New Cingular*** supports the City. It holds that because no specific statutory scheme existed to challenge that fine, only the Superior Court had jurisdiction. ***New Cingular***, 185 Wn.2d at 605. But here, the opposite is true.

New Cingular involved a \$293,131 municipal tax fine imposed by the executive branch that could be appealed to, and affirmed by, the Mayor. *Id.* at 598. It did not involve a judgment from a lower court. After *New Cingular*’s appeal to the mayor failed, it filed a declaratory judgment action in Superior Court based on Wa. Const. art. IV, § 6 (“The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine...”). *Id.* at 599. Clyde Hill argued that because RCW 7.16 mandated similar exclusive procedural requirements to the procedural schemes of the Land Use Petition Act (LUPA), the Administrative Procedure

Act (APA), and the Growth Management Act (GMA), New Cingular should have sought review by filing a timely petition for writ of review. *Id.* at 601.

The Supreme Court compared the writ of review statute to the LUPA, the APA, and the GMA, noting that the writ statute “contains no specified purpose” similar to those statutes, and “fails to specify a time limit for appeal like these statutory schemes.” *Id.* at 604. The Court held that:

Had New Cingular’s complaint fallen into the category of land use, administrative, or development decisions, one of these procedural regimens might have been the appropriate avenue to seek review. However, the inverse exists here because a municipal fine does not fall into any of these specific categories.

Id. at 604-05. Concluding the Legislature created no conditional statutory procedures in the writ of review statute, the Court held that a “[d]eclaratory action is an appropriate method to resolve this dispute between New Cingular and the city of Clyde Hill.” *Id.* at 606.

Arguing for an expansion of the court’s holding in ***New Cingular***, Karl claim that the “Supreme court held that ‘[u]nder this provision, *original jurisdiction is established for the causes of action and judicial action lies in superior court.*’” BA 14 (emphasis in

original). But this statement is out of context. The context clarifies the quoted *dicta* (*id.* at 600) (emphasis added):

Under this provision, original jurisdiction is established for the causes of action listed and judicial action lies in superior court. The issue here, however, focuses on whether specific statutory schemes exist that require alternative procedures, and whether a resolution must first proceed through the specified statutory process before judicial review is sought.

Stated differently, **the focus is whether the legislature has enacted a statutory scheme that diverts the superior courts' jurisdiction into an alternate procedure that a party must use to challenge a municipal fine.** . . . We find no such statutory system [here].

But in the case at bar, state law and court rules have created a procedure to challenge traffic citations in municipal courts. Karl began that process, but stopped. Simply put, Wa. Const. art. IV, §§ 1 and 12 delegate limited authority to the Legislature to transfer judicial power from one constitutional court (superior and district courts) to another constitutional court (inferior courts) by defining the jurisdiction and powers of inferior courts to which the Legislature deems it wise to transfer judicial power. *In re Cloherty*, 2 Wash. 137, 139, 27 P. 1064 (1891). It did so here, as detailed immediately below.

RCW 3.50.020 provides that the “municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances . . .” (emphasis added). The notice of infraction form used by the City’s parking enforcement officers is approved by the

Administrative Office of the Courts pursuant to Infraction Rules for Courts of Limited Jurisdiction (IRLJ) 2.1(a). CP 579. The Bremerton Municipal Court follows the IRLJ for adjudicating parking infractions. *Id.* This includes receiving notices of infraction from the parking enforcement officers, recording defendants' responses to notices of infraction, entering judgment that the defendant has committed the infraction, collecting fines, and scheduling hearings to contest or mitigate parking infractions. *Id.* Under the IRLJ, a defendant contesting a traffic infraction can appear with a lawyer (IRLJ 3.3(b)), subpoena the citing officer (IRLJ 3.1(a)), request discovery (IRLJ 3.1(b)), appeal to the superior court after a finding of committed (IRLJ 5.2), and move to vacate a judgment (IRJL 6.7).

The class members all have Bremerton Municipal Court judgments reflecting their allegedly illegal municipal fines. CP 579. Under IRLJ 2.4(b)(1), payment of a fine results in a judgment that the defendant has committed the infraction. Under IRLJ 1.2(e), "Judgment" means any final decision in an infraction case, including but not limited to a finding entered after a hearing governed by these rules or after payment of a monetary penalty in lieu of a hearing.

RCW 46.63, Disposition of Traffic Infractions, is in accord. It includes numerous sections defining the procedures to be used to

challenge a traffic citation in municipal court. Under RCW 46.63.040, any “municipal court has the authority to hear and determine traffic infractions pursuant to this chapter.”

Like the LUPA, the APA, and the GMA, these statutes and court rules are for a specified purpose (adjudicating infractions) and specify a time limit for appeal (30 days). RALJ 2.5(a). Under the reasoning in ***New Cingular***, a “specified statutory process” for traffic infractions precludes the class from “seeking declaratory judgment in superior court.” 185 Wn.2d at 600.

Karl argue otherwise. BA 16 (“superior courts cannot review fines that violate state law”). But this simply ignores the Superior Court’s appellate jurisdiction. See, e.g., ***City of Bremerton v. Spears***, 134 Wn.2d 141, 949 P.2d 347 (1998) (defendant claimed helmet statute under which he was cited was unconstitutional); ***City of Spokane v. Wardrop***, 165 Wn. App. 744, 267 P.3d 1054 (2011) (defendants claimed notices of infraction did not meet the requirements of RCW 9A.72.085); ***City of Bellevue v. Hellenthal***, 144 Wn.2d 425, 28 P.3d 744 (2001) (defendants claimed IRLJ 6.6(b) does not allow a civilian radar expert to prepare a certificate authenticating the accuracy of speed measuring devices, and IRLJ 3.3, IRLJ 6.6(b) and RCW 46.63.080 together allow only the written

declaration of the citing officer and do not allow a speed measuring device certificate as an attachment to the officer's statement). Karl's claim is simply incorrect.

Nor do the cases Karl cite support their argument; they are not analogous. BA 15 n.3. None of those cases involve a challenge to a municipal fine imposed by a municipal court.¹ Because the Legislature has established the municipal courts as the sole avenue to challenge a traffic fine, ***New Cingular*** is inapplicable, and in fact its analysis supports the City.²

3. Karl's jurisdictional arguments are unavailing.

Karl argue that the municipal court has no jurisdiction to adjudicate the legality of municipal fines, so *res judicata* should not apply. BA 16-21. In any event, even if the fines were imposed in

¹ ***Carrillo v. City of Ocean Shores***, 122 Wn. App. 592, 94 P.3d 961 (2004) (class action concerning whether availability charges for water and sewer were unconstitutional taxes); ***Dore v. Kinnear***, 79 Wn.2d 755, 489 P.2d 898 (1971) (class action concerning taxes assessed in violation of state law); ***Covell v. City of Seattle***, 127 Wn.2d 874, 905 P.2d 324 (1995) (class action concerning street utility charges); ***Okeson v. City of Seattle***, 150 Wn.2d 540, 78 P.3d 1279 (2003) (class action concerning street light charges assessed in violation of state law); ***Okeson v. City of Seattle***, 159 Wn.2d 436, 150 P.3d 556 (2007) (class action concerning utility payments charged to rate payers in violation of state law); ***Burman v. Washington***, 50 Wn. App. 433, 749 P.2d 708 (1988) (class action against the State of Washington and Shoreline District Court regarding late fees and the lack of due process to challenge them).

² The reasons that the ***Orwick*** decisions do not support an expansive reading of ***New Cingular*** are address *infra*, Arg. § C.2.

violation of state law, their recovery as damages is still barred by *res judicata* in ***Gordon v. City of Tacoma***, 2013 Wash. App. LEXIS 1455, 2013 WL 3149003 (June 19, 2013), *aff'd*, 175 Wn. App. 1027 (2013), a non-binding, unpublished opinion cited under GR 14.1(a), this Court held that *res judicata* precluded Gordon from recovering as damages illegal municipal fines that were reduced to a default judgment by a collection agency, even under 28 U.S.C. § 1983. ***Gordon*** at *11-*13. This Court should follow this same reasoning here.

And ***Shoemaker v. City of Bremerton***, 109 Wn.2d 504, 745 P.2d 858 (1987) further supports this analysis. There, a police officer filed a civil rights action after an unfavorable finding from the civil service commission. The officer sought damages equal to those he sought from the commission. He argued that the commission's findings should not have preclusive effect on the civil rights case because the civil service commission did not have jurisdiction over constitutional or § 1983 claims. *Id.* at 512.

The Supreme Court rejected Shoemaker's argument:

The fact that the issue determined is also a central element in the federal civil rights claim does not mean that giving preclusive effect to that determination is an improper application of claim preclusion or that the Commission has acted beyond its competence.

Id. at 512-13. Similarly here, the municipal court’s determination regarding the municipal fine is *res judicata* in this action.

Karl similarly argue that *res judicata* does not bar claims in a second proceeding that could not have been brought in the first proceeding due to the court’s limited jurisdiction in that first proceeding. BA 18-19, 21 (citing ***Centennial Flouring Mills Co. v. Schneider***, 16 Wn.2d 159, 132 P.2d 995 (1943)). But ***Centennial*** involved “amount in controversy” jurisdiction and is not analogous. The question in ***Centennial*** was whether a defendant in an inferior court with a counterclaim that exceeded that court’s jurisdiction could obtain from the superior court an injunction prohibiting the inferior court from adjudicating the case. ***Centennial***, 16 Wn.2d at 160–61. Here, Karl did not seek a judgment in Superior Court in excess of the municipal court’s jurisdiction. That issue does not address whether a municipal court judgment is *res judicata*. It is.

4. No injustice results here.

Karl finally argue that even if *res judicata* applies – which it does – it would work an. BA 21-25. As a practical matter, this is simply wrong. George Karl (and presumably all similarly-situated class members they represent) challenged the legality of the blue signs in municipal court. CP 25. They lost. CP 604. It is not “unjust”

to hold them to that legal determination, which they failed to appeal – even if it was incorrect.

Karl also cite ***Hadley v. Maxwell***, 144 Wn.2d 306, 27 P.3d 600 (2001), which involved *collateral estoppel*, not *res judicata*. BA 23. In ***Hadley***, a personal injury plaintiff sought to use a finding of “committed” in district court to block Maxwell from denying she violated the lane-change statute, and to have the Superior Court find as a matter of law that she was negligent. 144 Wn.2d at 309. ***Hadley*** thus involved offensive *collateral estoppel*, where “a plaintiff . . . seek[s] to estop a defendant from relitigating the issues which the defendant previously litigated and lost against another plaintiff.” *Id.* at 311 (citing ***Parklane Hoisery Co. v. Shore***, 439 U.S. 322, 329 (1979)).

But the City here does not rely on *collateral estoppel*. *Collateral estoppel* and *res judicata* are different. ***Pederson v. Potter***, 103 Wn. App. 62, 69, 11 P.3d 833 (2000). Unlike *collateral estoppel*, *res judicata* does not include consideration of whether application will work an injustice. See ***Irondale Cmty. Action Neighbors v. W. Wn. Growth Mgmt. Hearings Bd.***, 163 Wn. App. 513, 523, 262 P.3d 81 (2011), *review denied*, 173 Wn.2d 1014, 272 P.3d 246 (2012). Karl’s arguments are immaterial here.

Additionally, the facts are completely different. In ***Hadley***, the “stakes” in the personal injury claim were substantially greater than in the infraction case. Here, the stakes are the same – a \$47.95 fine. Karl’s “injustice” argument is wholly unfounded.

C. *Orwick* does not support Karl’s claims for equitable relief, or an expansive reading of *New Cingular*.

1. Karl are not entitled to equitable relief because there is an adequate remedy in municipal court and no extraordinary circumstances justify relief.

Generally, equitable relief is not available where, as here, an adequate remedy at law exists. Only in extraordinary circumstances will a Superior Court intervene in municipal court administration. Karl failed to allege – much less prove – such circumstances here.

In ***Orwick v. City of Seattle***, police stopped plaintiffs using radar, issuing speeding infractions. 37 Wn. App. 594, 595, 682 P.2d 954 (1984), *aff’d in part, rev’d in part*, 103 Wn.2d 249, 692 P.2d 793 (1984). Prior to hearings contesting their infractions, the plaintiffs filed a class action suit in Superior Court against the City of Seattle seeking declaratory and injunctive relief and damages. *Id.* The plaintiffs' complaint alleged that (1) the procedures used by the City did not comply with RCW 46.63.060; and (2) the police department's practice of issuing infractions based on radar was unlawful and violated due process. *Id.* The Superior Court dismissed the complaint

on Seattle's CR 12(b) motion to dismiss for lack of jurisdiction and for failure to state a claim upon which relief can be granted. *Id.*

The Court of Appeals affirmed the trial court's ruling that it did not have jurisdiction over petitioners' claim for injunctive and declaratory relief, but found that it did have jurisdiction over petitioners' claim for damages. **Orwick**, 37 Wn. App. at 594. It nonetheless held that the damage claim was properly dismissed because petitioners failed to allege malice, a necessary element of malicious prosecution. *Id.* Specifically, the Court of Appeals held that plaintiffs had an "adequate remedy at law" and failed to establish that they would "suffer irreparable damage as a result of the City's actions." *Id.* The Court of Appeals concluded, "the superior court was without equitable jurisdiction to consider plaintiffs' request for declaratory and injunctive relief." *Id.*

The Supreme Court affirmed the trial court's dismissal of petitioners' claim for equitable relief as moot (rather than for lack of jurisdiction) but reversed the dismissal of petitioners' claim for damages because the complaint could create an inference of malice, so dismissal was inappropriate under CR 12(b)(6). **Orwick**, 103 Wn.2d at 257. The Supreme Court clarified that an "adequate legal

remedy” was a basis for a Superior Court to deny a claim for equitable relief, not a reason to decline jurisdiction. *Id.* at 252.

Even though the Supreme Court held the Superior Court had jurisdiction to grant equitable relief, it noted that “the circumstances under which a court will exercise its equitable powers are limited;” “equitable relief is available only if there is no adequate legal remedy.” *Id.* (citing ***Tyler Pipe Indus., Inc. v. Dep. of Rev.***, 96 Wn.2d 785, 791, 638 P.2d 1213 (1982)). But ***Orwick*** found a very limited exception (*id.* at 252):

However, under extraordinary circumstances a superior court may find it necessary to use its equitable powers to intervene in the administration of the municipal courts, see ***State ex rel. Wallen v. Noe***, 78 Wn.2d 484, 485, 475 P.2d 787 (1970), or to prevent misconduct by the police. ***Jacobsen v. Seattle***, 98 Wn.2d 668, 658 P.2d 653 (1983).

Karl never even alleged extraordinary circumstances, and ***Wallen*** and ***Jacobsen*** are not analogous. Unlike here, those plaintiffs did not have an adequate legal remedy, and their claims were for a violation of their constitutional rights. Wallen wanted to contest a traffic infraction. ***Wallen***, 78 Wn.2d 484. Seattle’s code required posting bail prior to setting a trial date. *Id.* Wallen petitioned the Superior Court to declare this provision unconstitutional. *Id.* The

Supreme Court agreed with the trial court that this provision was explicitly unconstitutional. *Id.* at 485.

In ***Jacobsen***, concertgoers challenged the constitutionality of routine warrantless pat-down searches at rock concerts as a condition of admission. 98 Wn.2d at 671. The Superior Court agreed the searches were unconstitutional and issued a permanent injunction. *Id.*

These cases are distinct from Karl's case in two key respects under the ***Orwick*** analysis. First, ***Wallen*** and ***Jacobsen*** involve "extraordinary circumstances" – constitutional violations. Here, Karl did not allege violation of constitutional rights. Even if the fines were imposed in violation of statutes, due process was afforded in municipal court.

Second, the ***Wallen*** and ***Jacobsen*** plaintiffs had no legal remedy available. Wallen's infraction case was still pending and the constitutional violation was preventing him from having a hearing. The ***Jacobsen*** plaintiffs were never charged with crimes, but were subjected to unconstitutional police searches. These plaintiffs had no adequate legal remedy.

But here, George Karl's judgment was entered on October 6, 2014, when the infraction was found committed. CP 25. Later in

October, and still within the 30-day time for appeal (RALJ 2.5(a)), he spoke to the Kitsap Sun about the judge upholding his citation. CP 238. He told the paper he “plans to appeal. He has taken the issue to a Seattle law firm and said he hopes to spur a class-action lawsuit.” *Id.* Had he appealed his allegedly “illegal municipal fine” and had it been overturned, he would have no cause of action. The fine would not be imposed and the City and Bremerton Municipal Court would be on notice of the Superior Court’s decision because the Mandate of the Superior Court would be transmitted to him, the City, and Bremerton Municipal Court, under RALJ 9.2. Karl (and all class members) had an adequate legal remedy – they chose not to pursue it.

Karl are in the same position as the appellants in ***Fife Muni. Ct.*** The Does were charged in courts of limited jurisdiction with alcohol-related criminal offenses. 74 Wn. App. at 446-47. The Does petitioned the courts for consideration for a deferred-prosecution program (see RCW 10.05). *Id.* Their petitions were all granted. *Id.* The Does did not appeal from any of the orders granting their petitions for deferred prosecution and assessing court costs. *Id.* The Does instead filed suit in Pierce County Superior Court against the

Limited Courts seeking a refund of court costs and injunctive relief.
Id.

While finding the costs were imposed in violation of state law, this Court held that the costs could not be recovered through a Superior Court lawsuit. *Id.* at 455. Instead, the plaintiffs' exclusive remedy was a motion to vacate in municipal court. *Id.* at 453.

This Court emphasized that CRLJ 7.8 does not incorporate language from CR 60(c), which might permit independent actions to attack a judgment. *Id.* at 453. The omission of the equivalent of CR 60(c) "suggests that the [limited jurisdiction rule] was intended as the exclusive mechanism for a party to obtain relief from a judgment or order, and that an independent civil action [was], thus, barred." IRLJ 6.7 also incorporates only CRLJ 60(b), and not CR 60(c) or CRLJ 60(c). Here too, the IRLJ do not permit an independent action to seek relief from judgment.

Karl and the class thus have a remedy in municipal court, but nonetheless argue that the municipal court lacks jurisdiction because it cannot provide injunctive relief. BA 19. This Court already rejected that argument in ***Fife Muni. Ct.*** (*id.* at 454-55) (emphases added):

The Does next contend that CRLJ 7.8(b) provides inadequate and ineffective relief for large numbers of people who are attempting to recoup court costs that were allegedly

wrongfully assessed. In that regard, *they argue that the district and municipal courts do not have jurisdiction to hear class action suits, award “money-had-and received” damages or provide injunctive relief in this case. **We reject these arguments.*** We see no barrier to a party obtaining effective relief, even in the absence of a class action suit. The mere fact that the Does might be unable to maintain a class action suit does not preclude their ability to recover the overpaid costs. Indeed, the procedure each of the Does would have to follow to obtain relief is quite simple. We are also not persuaded by the Does’ argument that the district and municipal courts will be overwhelmed with litigants.

In dismissing Karl’s claims for declaratory and injunctive relief and damages, the trial court correctly determined that the “Superior Court has original jurisdiction over equitable claims such as injunctive and declaratory relief,” but “no such due process violations exist in the present matter;” rather, a “motion to vacate is a proper procedural remedy,” and “such a motion to vacate would be a matter for Bremerton Municipal Court.” CP 609. This court should affirm the trial court’s correct rulings.

2. *Orwick* does not support an expansive reading of *New Cingular*.

The facts in *Orwick* are similar to the facts in this case. As here, the *Orwick* plaintiffs also sought injunctive and declaratory relief as well as damages for a refund of traffic fines. 37 Wn. App. at 596. The appellate decisions contain in-depth analysis regarding a Superior Court’s jurisdiction over such a case, and the applicable

analysis justifying relief. This analysis contains no mention of original jurisdiction via Wa. Const. art. 4, § 6's "municipal fine" "cause of action" under ***New Cingular***.

Under ***New Cingular***, Karl argue that if a statute is violated, the fine imposed is illegal and damages should follow. BA 10-11. This is a far different standard than the limited ***Orwick*** exception. Karl's faulty analysis attempts to evade whether an adequate remedy or extraordinary circumstances exist, reducing the question to whether any possible statute or ordinance was violated by a municipality or municipal court in the adjudicating a traffic infraction. ***Orwick*** does not support Karl's overreaching arguments under ***New Cingular***. This court should reject them.

D. Karl have no standing to challenge parking signs or the City contractors enforcing parking ordinances.

To have standing a party must (1) be within the zone of interest protected by statute, and (2) suffer an injury in fact, economic or otherwise. ***Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake***, 150 Wn.2d 791, 802, 83 P.3d 419 (2004). Here, Karl are not within the zone of interest protected by the statutes incorporating the Manual, or establishing that law enforcement officers are members of the civil service.

1. **Karl are not in the zone of interest protected by Title 47 RCW – violation of the Manual does not create a private right of action.**

There is no private right of action to challenge parking signs. The “fact that a statute has been violated and some person harmed does not automatically give rise to a private cause of action in favor of that person.” ***Cannon v. Univ. of Chicago***, 441 U.S. 677, 688 (1979). No private right of action is authorized by state or federal law, for four reasons.

First, the Manual was never intended to be the basis for an independent cause of action. The Manual is incorporated into 23 C.F.R. § 655.603, under 23 U.S.C. § 402(a). Section 402(a) is part of the Highway Safety Act, 23 U.S.C. §§ 401 et seq., passed in 1966, to “enhance the personal safety of the motoring public.” ***Miller v. United States***, 710 F.2d 656, 667 (10th Cir.1983).

The statute uses financial incentives to regulate compliance. *Id* at 667. It is not intended to create a private right of action. *Id*. Rather, the “pervading legislative purpose disclosed by the historical materials was to encourage research, development and application of safety measures by a financial incentive system to be executed through the state highway departments.” *Id*. Non-compliance can

lead to the withdrawal of funding

(http://mutcd.fhwa.dot.gov/knowledge/faqs/faq_general.htm):

Failure to replace non-compliant devices for which a compliance date is established could result in withdrawal of Federal-aid funds. Now that most States no longer have sovereign immunity, tort liability in lawsuits is another possible penalty for non-compliance, especially in situations where a crash has occurred that might be attributed to inadequate, inappropriate, or noncompliant traffic control devices.

Courts thus generally hold that no private right of action exists under the Highway Safety Act, 23 U.S.C. §§ 402.³

Second, Washington statutes not only do not authorize a private right of action, they expressly forbid it. Uniform standards for signage are required under RCW 47.36.030. The Manual is adopted in WAC 468-95-010 to provide this standard. There is no provision authorizing a private right of action. On the contrary, the transportation policy goals for Title 47 explicitly state, “This section does not create a private right of action.” RCW 47.04.280(6).

³ See, e.g., *Miller*, 710 F.2d at 667–68 (no private cause of action under the Highway Safety Act); *Morris v. United States*, 585 F.Supp. 1543, 1547–48 (W.D.Mo.1984) (no private cause of action under Highway Safety Act for violation of Manual); *Daye v. Com. of Pa.*, 344 F.Supp. 1337 (E.D.Pa.1972), *aff’d*, 483 F.2d 294 (3d Cir.1973), *cert. denied*; *Meyers v. Pennsylvania*, 416 U.S. 946 (1974) (no private cause of action under Section 402(a) of Highway Safety Act and its regulations); *Cox v. New York*, 110 Misc.2d 924, 443 N.Y.S.2d 141 (N.Y.Ct.Cl.1981) (same).

Manual compliance is enforced in other ways. For instance, federal and state agencies can withhold funding for projects if they do not meet Manual guidelines. 710 F.2d at 656. The Legislature delegates the Manual's enforcement to the Washington Department of Transportation. RCW 47.36.060.⁴

Third, no private action is necessary because an aggrieved party can challenge a citation, and can appeal if unsuccessful. See IRLJ 5.1; 5.2.

Finally, an injury resulting from a nonconforming sign can result in a negligence action against the municipality. See **Schneider v. Yakima Cty**, 65 Wn.2d 352, 397 P.2d 411 (1964), **Kitt v. Yakima Cty.**, 93 Wn.2d 670, 673, 611 P.2d 1234 (1980).

Karl cites no case – from anywhere – in which the Manual formed the basis for a private right of action. Substantial authority is to the contrary. Karl lack standing.

⁴ Under RCW 47.36.060, “The traffic devices, signs, signals, and markers shall comply with the uniform state standard for the manufacture, display, direction, and location thereof as designated by the department”; and “if the city or town fails to comply with any such directions, the department shall provide for the design, location, erection, or operation thereof, and any cost incurred therefor shall be charged to and paid from any funds in the motor vehicle fund of the state that have accrued or may accrue to the credit of the city or town, and the state treasurer shall issue warrants therefor upon vouchers submitted and approved by the department.”

2. Karl lack standing to challenge City parking-enforcement procedures.

Karl complain the City's commissioned, contracted parking enforcement officers are not police officers and not members of the civil service under RCW 41.12, so they should not be able to issue parking infractions. But these complaints are not the basis for a private lawsuit. A "person whose only interest in a legal controversy is one shared with citizens in general has no standing to invoke the power of the courts to resolve the dispute." **Casebere v. Clark Cty. Civil Serv. Comm'n-Sheriff's Office**, 21 Wn. App. 73, 76, 584 P.2d 416, 418 (1978) (citing **Schlesinger v. Reservists Comm. to Stop the War**, 418 U.S. 208 (1974)).

Casebere holds that without specific language in the statute giving citizens standing to challenge the results of civil service investigations, no standing exists for them to seek review of a Lieutenant's examination. Similarly here, absent language in Title 41 RCW giving citizens standing, there is no standing for Karl to seek review. **Casebere**, 21 Wn. App. at 76 (examining an almost identical chapter, RCW 41.14, covering county sheriffs). Again, Karl lack standing to bring these challenges.

E. Contracting for parking enforcement is not unlawful.

Being in civil service has nothing to do with issuing notices of infraction. Police chiefs and other supervisors can issue citations, yet are not included in the civil service. RCW 41.12.050(b). Volunteers and transit fare enforcement officers can issue citations, yet are not in the civil service. RCW 35.58.585(2)(b), RCW 81.112.210(2)(b) and RCW 46.19.050. There is no correlation between issuing citations and the civil service.

The Washington Constitution gives municipalities authority to enforce ordinances. Wa. Const. art. XI, § 11 provides that any “county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” “Municipal police power is as extensive as that of the legislature, so long as the subject matter is local and the regulation does not conflict with general laws.” **Covell**, 127 Wn.2d at 878. “The scope of police power is broad, encompassing all those measures which bear a reasonable and substantial relation to promotion of the general welfare of the people.” *Id.* An ordinance must yield to state law only “if a conflict exists such that the two cannot be harmonized.” **Brown v. City of Yakima**, 116 Wn.2d 556,

561, 807 P.2d 353 (1991); accord **City of Bellingham v. Schampera**, 57 Wn.2d 106, 111, 356 P.2d 292 (1960).

Here, Title 46 RCW – the relevant statute – does not forbid a city from contracting for parking enforcement. It does not say, as Karl argue, that only a law enforcement officer employed by a municipality, and a member of civil service, can issue a parking citation. The subsection applicable to parking, RCW 46.63.030(3), does not even use the term “law enforcement officer.”

Karl cite to RCW 46.63.030(1), allowing a “law enforcement officer” to issue *traffic* citations. But it is RCW 46.63.030(3) that applies to *parking* citations:

If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, the *officer* finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic infraction. [emphasis added].

Bremerton Municipal Code (“BMC”) 10.10.080(a) provides that the City’s parking regulations may be enforced by (1) the City’s police officers and other law enforcement officers; and/or (2) the City’s parking enforcement officers, as applicable. Under BMC 10.10.080(d), “The City’s Police Department is authorized to appoint

parking enforcement officers with a limited commission to issue notices of infractions for violations of the City's parking regulations."

The municipal code is not in conflict with Title 46, and it is in accord with RCW Chapter 7.80 and the IRLJ. An "enforcement officer" is "a person authorized to enforce the provisions of the ... ordinance in which the civil infraction is established." RCW 7.80.040. A "citing officer" can initiate an infraction (IRLJ 2.2(b)(1)); and a "citing officer" is "a law enforcement officer or *other official* authorized by law to issue a notice of infraction" (IRLJ 1.2(j)) (emphasis added). Contracting for parking enforcement is not in conflict with state law. It also is not unlawful. This Court should affirm.

F. The municipal court correctly found an infraction and no cause of action.

The Bremerton Municipal Court properly found the class's infractions committed. Karl's argument improperly conflates Title 46 RCW with Title 47 RCW's sign requirements. BA 26-30. Confusion leads to error.

Title 46 RCW regulates motor vehicles and driving. It contains the statutes covering most driving-related crimes and infractions. Title 47 RCW regulates transportation and highway development, including a directive regarding the adoption of the Manual at RCW

47.36.020. Titles 46 and 47 both cover traffic control devices, but do so differently.

RCW 47.36.020 – Traffic Control Signals – says:

The secretary of transportation shall adopt specifications for a uniform system of traffic control signals *consistent with the provisions of this title* for use upon public highways within this state. Such uniform system shall correlate with and so far as possible conform to the system current as approved by the American Association of State Highway Officials and as set out in the manual of uniform traffic control devices for streets and highways. [Emphasis added.]

But RCW 46.04.611 – Traffic-control Devices – limits such devices to compliance with Title 46:

Official traffic-control devices means all signs, signals, markings and devices not inconsistent with *Title 46 RCW* placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic. [Emphasis added.]

In most circumstances, Title 46 and Title 47 are meant to be read together.⁵ But as noted above, RCW 46.04.611 specifically limits the definition of “official traffic control devices” to Title 46. This definition was adopted *after* the adoption of the provision regarding

⁵ RCW 46.98.020: “The provisions of this title shall be construed in *pari materia* even though as a matter of prior legislative history they were not originally enacted in the same statute. The provisions of this title shall also be construed in *pari materia* with the provisions of Title 47 RCW, and with other laws relating to highways, roads, streets, bridges, ferries and vehicles. This section shall not operate retroactively.” 1961 c 12 § 46.98.020.

Title 46, and should not be construed in *pari materia* with the provisions in Title 47. RCW 46.04.611 Traffic-control devices, 1965 ex.s. c 155 § 88. That is, the Legislature chose not to bring Title 47 sign standards into Title 46 traffic enforcement.

This choice is understandable. The Manual has 816 pages of standards.⁶ Each page generally has 2-4 standards. Karl ask this Court to treat each one – approximately 2000 standards – as a basis to declare illegal all infractions and fines based on a nonconforming sign. Had the Legislature intended such an absurd result, it could have drafted reference to the Manual directly into the statute defining “official traffic control devices,” like it did for several other sections of Title 46.⁷ It did not.

⁶ The 2009 Edition of the MUTCD with Revision Numbers 1 and 2 incorporated, dated May 2012 (official current version) is available for download from the Federal Highway Administration at https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/pdf_index.htm.

⁷ 46.63.170. Automated traffic safety cameras—Definition “Signs placed in automated traffic safety camera locations after June 7, 2012, must follow the specifications and guidelines under the *manual of uniform traffic control devices* for streets and highways as adopted by the department of transportation . . .”

46.44.020. Maximum height—Impaired clearance signs—unlawful “if impaired clearance signs of a design approved by the state department of transportation are erected and maintained on the right side of any such public highway in accordance with the *manual of uniform traffic control devices* for streets and highways as adopted by the state department of transportation . . .”

Karl also cite the Model Traffic Ordinance (MTO), adopted by Bremerton at BMC 10.040.010. The MTO states “no prohibition . . . shall be effective unless *official traffic control devices* are erected and in place at the time of any alleged offense.” WAC 308-330-409. But the MTO adopts the RCW 46.04.611 definition of “official traffic-control devices,” which requires signs “placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.” WAC 308-330-110. The City Attorney’s email in response to the Bremerton Municipal Court Judge’s inquiry about the Manual notes this distinction: “It was adopted by WAC 468-95-010 but I didn’t see it in the MTO.” CP 15. Karl repeatedly truncate that email to read only “adopted by WAC 468-95-010.” CP 38, 166; BA 5. Department of Transportation regulations like WAC 468-95-010 are not applicable. Karl use the truncated quote to argue that the City knew its signs were illegal and did nothing. But that is not what the email says. The City has always

46.08.185. Electric vehicle charging stations—Signage—Penalty “The signage must be consistent with *the manual on uniform traffic control devices*, as adopted by the department of transportation”

46.09.540. Multiuse roadway safety account “Such signs must conform to the *manual on uniform traffic control devices*.”

46.08.175. Golf cart zones “The signage must be in compliance with the department of transportation’s *manual on uniform traffic control devices* for streets and highways.” [Emphasis added].

contended that the signs substantially complied and were enforceable.⁸ CP 74, 131.

Karl also cite numerous cases of defendants challenging citations from other states based on nonconforming signs. Unlike Washington, all those states include references to the Manual in their title on enforcement, so they are not helpful.⁹ As the trial court noted in its first decision on the parties' summary judgment motions (CP 629):

The problem with these submissions is that they deal with direct appeals from municipal court challenging unlawful signage, rather than independent actions outside of direct appeal. Further, the applicable statutes in those cases left far less room for interpretation than those applicable in Washington.

The trial court also noted again in its decision on the final summary judgment motions (CP 607):

⁸ Nonetheless, the City did not appeal this trial court finding and has removed the signs.

⁹ See OH ST § 4511.09 and §4511.12; M.SA § 169.011, subd. 49 and M.SA § 169.06, subd. 1 and subd. 4; 75 Pa.C.S.A. § 311 and 75 Pa.C.S.A. § 102; 625 ILCS 5/11-305 and 652 ILCS 5/1-154 (Official traffic-control devices. All signs, signals, markings, and devices which conform with the State Manual and not inconsistent with this Act placed or erected by authority of a public body or official having jurisdiction, for regulating, warning, or guiding traffic).

. . . those cases deal with direct appeals of court fines¹⁰ or where the issue of non-compliant signs was decided at the municipal court level.¹¹ These cases directly challenge the imposition of fines. They do not address whether a cause of action exists for declaratory relief as to signs that are substantially non-compliant.

The trial court correctly ruled that the applicable Washington statutes are different than those in other states. The municipal court correctly found the infractions committed. The trial court correctly determined no cause of action exists for declaratory relief as to non-compliant signs. This Court should affirm.

G. The “blue-sign issue” is moot.

1. The City has removed its “Bremerton blue” signs.

This issue is moot because no further infraction tickets based on the blue signs will be issued. “It is a general rule that, where only moot questions or abstract propositions are involved . . . the appeal . . . should be dismissed.”¹² An exception exists when “matters of continuing and substantial public interest are involved.” **Sorenson**,

¹⁰ **State v. Adams**, 140 N.W.2d 847, 849, 273 Minn. 228 (Minn.1966), **City of Maple Heights v. Smith**, 722 N.E.2d 607, 610, 131 Ohio App. 3d 406 (Ohio Ct. App. 1999), **City of Chicago v. Myers**, 242 N.E.2d 14 100Ill. App. 2d 87 (Ill. Ct. App. 2016), **City of Madison v. Crossfield**, 2016 WL 635158, ¶¶19-23 (Wisc. Ct. App. 2016).

¹¹ **State v. Trainer**, 670 N.E.2d 1378, 79 Ohio Misc. 2d 62 (Ohio Mun. 1995), **Commonwealth v. Lee**, 10 Pa. D. & C. 692, 698, 18 Beaver 234, 48 Mun.L.R. 295 (Penn. Quar. Sess. 1957).

¹² **Sorenson v. City of Bellingham**, 80 Wn.2d 547, 558, 496 P.2d 512 (1972).

80 Wn.2d at 558. And this Court considers three factors in determining public interest: (1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur. **Hart v. Dep't of Soc. & Health Servs.**, 111 Wn.2d 445, 448, 759 P.2d 1206, 1208 (1988). Here, while the issue is public, no "Bremerton blue" signs exist. No further guidance is required. This issue will not recur.

Karl argue that because infractions may have been issued based on blue signs their claim for injunctive relief is not moot. But a party moving for summary judgment can meet its burden by pointing out that the nonmoving party lacks sufficient evidence to support its case. **Young v. Key Pharmaceuticals, Inc.**, 112 Wn.2d 216, 225 n. 1, 770 P.2d 182 (1989) (citing **Celotex Corp. v. Catrett**, 477 U.S. 317, 325 (1986)). The moving party must identify portions of the record, with affidavits, demonstrating the absence of a genuine issue of material fact. **White v. Kent Med. Ctr., Inc.**, 61 Wn. App. 163, 170, 810 P.2d 4, 9 (1991) (citing **Celotex**, 477 U.S. at 323; **Baldwin v. Sisters of Providence in Wash., Inc.**, 112 Wn.2d 127, 132, 769 P.2d 298 (1989)).

Karl cite no evidence in this record regarding any infractions issued or adjudicated during this period. None exists. This issue is moot – as a matter of law.

2. Karl did not receive declaratory relief.

Karl falsely claim receiving declaratory relief. The trial court did make a preliminary finding that the “Bremerton blue parking signs do not substantially comply with the Manual.” CP 606. But it quickly qualified that statement: “The Court finds that Plaintiffs have not established that a cause of action exists for declaratory relief by which they may challenge the Defendant’s use of non-compliant parking signage.” CP 606.

Karl ignore this material qualification, claiming liability was established and damages. BA 43-44. They do so using a misleading, partial, and out-of-context “quote” from the City. *Id.* They erroneously state that the “City admits the Court effectively granted declaratory relief that the City’s blue parking signs violate state law standards on sign color when it granted summary judgment on that issue.” *Id.*

The City made no such admission. The City’s Motion for Judgment on the Pleadings says, “***At best*** Plaintiffs are entitled to their statutory costs and attorney’s fees for prevailing on the declaratory judgment claim.” CP 492 (emphasis added). This

statement came after the court had given its Memorandum Opinion and Order on the first set of summary judgment motions. After the City's so-called "concession," it clarified (CP 492):

The Court seems have given the Plaintiffs an opportunity to establish a cause of action for damages other than fines, stating in its November 3, 2016 Memorandum Opinion that "It remains unclear how Plaintiffs can establish an actual cause of action and whether they are entitled to declaratory or injunctive relief." But because it is Plaintiffs' burden to prove a cause of action, and they have not done so when faced with a motion under CR 56, the case should be dismissed.

The City did not – and does not – admit that Karl prevailed. Rather, the court had not yet decided whether declaratory relief was available and, at best, this relief might be available. Ultimately, the trial court found it available. CP 609.

Karl claim their entitlement to damages or restitution a "ruling that the City's blue parking signs violate state law." BA 41. From there, they jump to "the City imposed fines on the Drivers without lawful authority." *Id.*

The trial court never made that leap in its opinion (CP 629):

[T]he federal statute under which the Manual was developed was intended to use financial incentives to state highway departments as a means of regulating compliance, not to create a private right of action by which a non-government plaintiff can challenge non-compliance. As referenced earlier, the state statute employs a similar scheme between the state and underlying municipalities.

In their Supplemental Authorities, Plaintiffs assert that signs have been declared unlawful and unenforceable in other jurisdictions. The problem with these submissions is that they deal with direct appeals from municipal court challenging unlawful signage, rather than independent actions outside of direct appeal. Further, the applicable statutes in those cases left far less room for interpretation than those applicable in Washington.

The trial court never determined that the blue signs were unenforceable, that the municipal court erred in finding the infractions committed, or that fines imposed while the blue signs were in place were illegal. The trial court denied Karl's request that the City be ordered to replace the blue signs or stop ticketing. CP 634. They never established liability.

This Court should affirm.

CONTINGENT CROSS-APPEAL

ASSIGNMENT OF ERROR

The trial court erred in entering its May 6, 2016 Order Certifying Class because language in the order contradicted the court's previous dismissal of Karl's claim for a refund of fines pursuant to the City's CR 12(b)(6) motion.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Did the trial court err in finding that the class held a claim for monetary damages?

ARGUMENT

A. Standard of review.

The trial court's class certification decision is reviewed for a manifest abuse of discretion. *Lacey Nursing Ctr., Inc. v. Dep't of Revenue*, 128 Wn.2d 40, 47, 905 P.2d 338 (1995). The court's decision will be upheld if the record indicates that the court considered the CR 23 criteria and if the decision is based on tenable grounds and is not manifestly unreasonable. *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 318, 54 P.3d 665, 672 (2002).

B. The trial court properly dismissed Karl's damages claim, so they cannot represent a class seeking damages.

If this Court affirms dismissal of Karl's claims as argued above, this issue is moot, and this Court need not reach this cross-appeal.

But if not, then a party to a class action “cannot assert the action merely because the class has a claim if he himself does not.” **Wash. Educ. Ass’n v. Shelton School Dis. No. 309**, 93 Wn.2d. 783, 790, 613 P.2d 769 (1980). **Johnston v. Beneficial Mgmt. Corp. of Am.**, 85 Wn.2d 637, 645, 538 P.2d 510 (1975) addressed this issue concisely:

Kirkland insists that, even though he is not entitled to sue under any of the statutes upon which he relies for his claim against Nationwide, he should nevertheless be permitted to maintain the action as a representative of a class. The only class which he can represent, however, is one which does not have a claim under the Consumer Protection Act and whose claims under the retail installment sales act and the usury statute are barred by the statutes of limitations. A party who lacks standing himself cannot represent a class of which he is not a party. **Bailey v. Patterson**, 369 U.S. 31, 82 S.Ct. 549, 7 L.Ed.2d 512 (1962). **DeFunis v. Odegaard**, 84 Wn.2d 617, 529 P.2d 438 (1974), is in harmony with this principle.

The class representatives did not have a claim to recover fines. These claims were dismissed under CR 12 (b)(6). CP 606. Because they held no claim for monetary relief, they could not bring a claim on behalf of a class.

A plaintiff who does not hold the causes of action “cannot ‘fairly and adequately protect the interests’ of those who do have such causes of action.” **Doe v. Spokane and Inland Empire Blood Bank**, 55 Wn. App. 106, 780 P.2d 853 (1989) (quoting **La Mar v. H**

& B Novelty Loan Co., 489 F.2d 461 (9th Cir. 1973)). This is so even if the plaintiffs suffered “an identical injury” and plaintiffs’ lawyer is “excellent in every material respect.” *Id.*

The trial court’s order on class certification was overly broad because it permitted Karl to assert a claim for monetary relief that was already dismissed. If the Court does not simply affirm the trial court’s rulings, then it should reverse this order.

CONCLUSION

Karl do not have a cause of action and this Court should affirm the trial court’s dismissal of their claims.

Karl do not have a cause of action for an illegal municipal fine via ***New Cingular*** because the Legislature has vested exclusive original jurisdiction over municipal traffic infractions in municipal court.

Karl do not have a cause of action in equity via ***Orwick*** because they have an adequate remedy at law exists in municipal court and the claims do not allege a violation of constitutional rights or extraordinary circumstances.

Karl are not entitled to a refund of fines because the fines were lawfully imposed and secured pursuant to municipal court judgments.

Finally, Karl otherwise lack standing under the statutes allegedly violated.

Karl made an argument against the imposition of a fine in municipal court and lost. They could have appealed or moved to vacate the judgments. They did not. This Court should affirm the trial court's dismissal of all claims.

RESPECTFULLY SUBMITTED the 1st day of December 2017.

MASTERS LAW GROUP, P.L.L.C.

A handwritten signature in cursive script, appearing to read "K. Masters", is written over a horizontal line.

Kenneth W. Masters, WSBA No. 22278
Attorney for Respondent/Cross-appellant
241 Madison Avenue North
Bainbridge Island, WA 98110
(206) 780-5033
ken@appeal-law.com

CERTIFICATE OF SERVICE

I certify that I caused to be mailed via U.S. mail, postage prepaid, and/or emailed, a copy of the foregoing **BRIEF OF RESPONDENT/CROSS-APPELLANT** on the 1st day of December 2017 as follows:

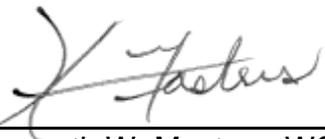
Co-counsel for Respondent/Cross-appellant

David P. Horton _____ U.S. Mail
Templeton Horton Weibel, P.L.L.C. x E-Service
3212 NW Byron Street, Suite 104 _____ Facsimile
Silverdale, WA 98383
dhorton@thwpllc.com

Kylie Purves _____ U.S. Mail
Bremerton City Attorney’s Office x E-Service
345 – 6th Street, Suite 600 _____ Facsimile
Bremerton, WA 98337
kylie.purves@ci.bremerton.wa.us

Counsel for Appellants/Cross-respondents

Stephen K. Festor _____ U.S. Mail
Alexander F. Strong x E-Service
Bendich Stobaugh & Strong, P.C. _____ Facsimile
701 – 5th Avenue, Suite 4850
Seattle, WA 98104
skfestor@bs-s.com
astrong@bs-s.com



Kenneth W. Masters, WSBA 22278
Attorney for Respondent/Cross-appellant

MASTERS LAW GROUP PLLC

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