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No. 73534-9-I

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

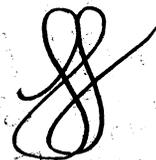
NICHOLAS E. BOONE, and all others similarly situated,

Appellants,

v.

CITY OF SEATTLE,

Respondent.



2004.11.18

BRIEF OF RESPONDENT CITY OF SEATTLE

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I. INTRODUCTION

Appellant Nicholas Boone and the absent class members he seeks to represent were ticketed for speeding in school zones. Their violations were detected by automated traffic safety cameras (“safety cameras”) with appropriate PHOTO ENFORCED signage. They received Notices of Infraction (“NOIs”) in the mail. Mr. Boone neither denied that he had been speeding in a school zone nor attempted to challenge his NOI in Municipal Court. Rather, he paid his fine in full, admitted liability and accepted the judgment against him.

Mr. Boone did not appeal the judgment to the Superior Court. Instead, several months later, he brought this class action on behalf of himself and other drivers ticketed for speeding in three particular school zones in the City. Mr. Boone alleged that the City’s signage in the three relevant school zones contained an additional two words, were thus non-compliant with the Manual on Uniform Traffic Control Devices (“MUTCD”), rendered his citation and those of the class invalid, and allowed for a refund of fines paid.

The trial court certified a limited class with respect to Mr. Boone’s declaratory judgment claim and the City’s defenses. The trial court then granted the City’s motion for summary judgment, ruling that the Appellants’ attempts to seek refunds of fines paid to satisfy their

infractions amounted to improper collateral attacks on the prior judgments of the Municipal Court. As such, the claims are barred by res judicata in the Superior Court and, thus to the extent Appellants are entitled to any relief, they are required by statute, court rule and case law to file individual motions to vacate their prior judgments in the Municipal Court.

There are numerous grounds on which the trial court should be affirmed. First, as a threshold matter, this Court should dismiss this appeal for want of jurisdiction. Boone's action seeks a refund of his \$189 fine, which is below the jurisdictional threshold for this Court's amount in controversy requirement. Secondly, in the event this Court finds jurisdiction over the appeal, the Court can affirm because Boone's claims are barred by res judicata. Boone's only remedy, if any, is to return to Municipal Court and file a motion to vacate there. Finally, the Court can affirm on the alternative basis that Boone and the absent class members cannot invalidate their infractions as a matter of law, regardless of the trial court's adjudication of the declaratory claim, because the declaratory claim fails to allege any factual grounds that could support invalidation.

II. STATEMENT OF THE CASE

On February 6, 2014, named Plaintiff Nicholas Boone drove 27 miles per hour ("mph") through a school zone where the posted speed limit was 20 mph. A traffic safety camera recorded his violation and he

received a NOI in the mail. CP 130-33. Printed on the NOI payment coupon is the following explanation of a violator's options upon receipt of an NOI:

“You must respond by midnight of the **DUE DATE** by one of the following methods. Mailed responses must be postmarked by midnight of the **DUE DATE**. **IF YOU DO NOT RESPOND BY THE DUE DATE**, the Court will find that you committed the Infraction and add a late fee. If you fail to pay, the Court may refer your case to a collection agency.

1. PAY THE **\$189.00** PENALTY (see instruction on the back); OR

2. REQUEST A MITIGATION HEARING TO EXPLAIN THE CIRCUMSTANCES (using the coupon below); OR

3. REQUEST A HEARING TO CONTEST THE NOTICE OF INFRACTION (using the coupon below); OR

4. SUBMIT A DECLARATION OF NON-RESPONSIBILITY (see instructions on the back of the Notice).

This notice represents a determination that a **speeding in a school** zone violation has been committed. This determination will be final unless you respond by method 2, 3 or 4, listed above.”

CP 133 (emphasis in original). Mr. Boone did not contest his ticket or seek a mitigation hearing; rather he paid his fine on March 3, 2014 and

accepted judgment against him.¹ As stated on the NOI, payment of the fine results in a “final” determination of liability for the infraction. CP 133.

On June 17, 2014, the Seattle Times published a story about a Mr. Hunt, who had also received a NOI issued by an automatic safety camera for admittedly speeding through a school zone. CP 108-112. Unlike Mr. Boone, Mr. Hunt did not pay the fine and accept judgment. Rather, he challenged his NOI in Municipal Court, and his claim was rejected. *Id.* He then properly appealed to Superior Court and prevailed. CP 110. As such, Mr. Hunt’s NOI was dismissed. CP 64-66 (Order Granting RALJ Appeal, *City of Seattle v. Hunt*, No.13-2-25366-6 SEA (King Cty. Super. Ct. Mar. 11, 2014)). Despite Appellants’ repeated suggestion to the contrary, the City was prohibited from directly appealing the *Hunt* dismissal because the amount in controversy was less than the statutorily required \$200. *See* RALJ 9.1(h); RCW 2.06.030.

The day after the Seattle Times ran a story about Mr. Hunt’s success, Mr. Boone filed this class action case. CP 4. Mr. Boone represents a class of individuals who have also received NOIs issued by

¹ Included as Appendix A is a screen shot of the City’s citation information database that shows March 3, 2014 as the date on which Boone’s citation was closed as “paid”. The Court can take judicial notice of this document as a public government record. It is available by entering Boone’s citation number (1400094374) into the “Citation” search form and opening the “Obligations” tab available at the City’s website at: <http://web1.seattle.gov/courts/cpi/>

traffic safety cameras in three particular school zones in the City. CP 146. Each of the school zones in question had signage notifying drivers that they were entering a zone where speed limits are enforced by camera, as well as signage that stated the 20 mph speed limit is in effect “WHEN LIGHTS ARE FLASHING”. *E.g.* CP 3, 379. Mr. Boone alleges the City was required to use signage reading only “WHEN FLASHING” and as such, claims that his infraction and those of the absent class members are invalid on account of the two additional (albeit accurate) words on the bottom plaque of the school zone sign assembly. Despite Mr. Boone’s repeated mischaracterization of the City’s deposition testimony, the City submitted undisputed evidence from its Traffic Engineer that in his engineering judgment, the message “WHEN LIGHTS ARE FLASHING” is just as clear, if not clearer, than the sign that merely states “WHEN FLASHING”. CP 502-504 (Chang dep. 42:8-44:8); CP 379 (Chang Decl. ¶ 19).

Nonetheless, after the *Hunt* case was widely publicized in the Seattle Times, the City elected to change the bottom plaque in the school zone assembly in the three school zones at issue to read “OR WHEN

FLASHING.”² The City submitted evidence that the change was made because the City feared drivers would read the Seattle Times article and disregard the speed limit, knowing they could “beat a ticket” as Mr. Hunt had, thus putting school children in danger. CP 502-504 (Chang dep. at 42:21-43:10). Mr. Boone did not challenge the new signs in the trial court, but conceded that the updated signs complied with the MUTCD. CP 21, 26.

Notably, there are no claims (and no evidence) in this case that Mr. Boone, or any class member, was unable to read, see or comprehend the signage at issue. *See* CP 1-10 (Complaint). Similarly, there are no claims (and no evidence) that the signs were illegible, in an improper position or unable to be seen by an ordinarily observant person. Instead, Boone claims that he and the absent class members are entitled to wholesale invalidation of their infractions and refunds via a collateral action in the Superior Court on the sole basis of a technical and accurate deviation from the MUTCD.

On cross motions for summary judgment, the trial court properly rejected this claim. CP 778-80 (Order Granting City’s MSJ). The trial

² As a result, the complete school zone sign assembly now reads “School/Speed Limit 20/When children are present/or when flashing.” The assembly communicates that the 20 MPH speed limit is in effect when either of two conditions are present, i.e., when children are present (which could occur at any time of day), or when the lights are flashing (which occurs during specified pre-programmed periods that coincide with the start and end of the school day). CP 748.

court ruled that Appellants could not get refunds of the fines paid for their NOIs via a collateral action in Superior Court because payment of their fines constituted prior judgments entered by the Municipal Court. As a result, Appellants' Superior Court case was barred by res judicata. CP 779. The court further ruled that to the extent Boone and the class members were entitled to any relief, it would have to be achieved via individual motions to vacate the judgments against them in Municipal Court. CP 779.

Contrary to Boone's claims to this Court, the City's motion for summary judgment sought dismissal of all claims, not solely Boone's request for refunds. *See* App. Br. at 20. The City argued that the three relevant signs were compliant with all applicable laws and regulations and that the propriety of the signs notwithstanding, Boone had failed as a matter of law to establish grounds for invalidation of the infractions. CP 471-73. The court, however, denied cross-motions on whether the City's former signage in fact violated any statute or regulation, ruling orally that factual issues existed regarding the impact of the additional two words. *See* Hrg. Tr. 78:9-11, 79:8-14, 80:1-3, 81:1-19.

Despite Boone's claims here, the City did not concede that the Superior Court had jurisdiction to "enter a judgment on Boone's UDJA claim that its signs were non-conforming and that its issuance of the

infraction to Boone was illegal.” App. Br. at 20. To the contrary, the City has maintained throughout this litigation that regardless of the conformity of the prior signs, the Superior Court could not declare the infractions “illegal”, both because the Court lacked jurisdiction to vacate the Municipal Court judgments and because Appellants had wholly failed to meet the statutory requirements for invalidation of an infraction based on allegedly improper signage under RCW 46.61.050 or any other potentially applicable ground. CP 471-73. The City conceded only that the Superior Court had jurisdiction to hear a declaratory claim pertaining to the City’s signage, but not that there was any relief that could be ordered or would be appropriate flowing from that claim. Indeed, the City repeatedly argued to the contrary. *See, e.g.*, CP 473 (“In sum, while the City vigorously maintains that the signs at issue have always been compliant with the MUTCD, even if the Court rules otherwise, Plaintiffs have failed to demonstrate why a technical deviation of two additional accurate words would warrant invalidation of the class members’ citations for admittedly speeding through school zones.”); Hrg. Tr. 4:22-23, 6:20-13:8, 60:19-23.³

³ Boone’s reference to the City’s statement at the hearing on class certification was made when this case was still a part of a consolidated case involving 10 additional school zones and asserting numerous other legal theories and requests for relief. *See* App. Br. at 20. Moreover, the City did not “concede” that the Plaintiffs would be entitled to refunds if the City lost on liability, rather the City argued, as it does today, that any request for relief must be made in Municipal Court and that the Superior Court lacks jurisdiction to order the class-wide relief Appellants seek.

Finally, the trial court recognized that its res judicata/jurisdictional ruling on the refund claims was likely dispositive of the litigation, given that there was no relief that could flow from the declaratory claim. The court then entered findings to enable an immediate appeal under CR 54(b) and certified its order for discretionary review under RAP 2.3 (b)(4). *See* Hrg. Tr. 87:14-18 (“I think that potentially, the res judicata judgment is dispositive in terms of whether it makes sense, for example, to go to trial on one of the other issues. I don’t think it does.”).

A Commissioner of this Court granted discretionary review of the dismissal of the refund claims. Ruling on Motions, Aug. 24, 2015. Boone moved to modify the Commissioner’s ruling, asking this Court to review not only the refund claim, but also the declaratory claim pertaining to the propriety of the extra two words on the City’s signs, notwithstanding the fact that the trial court had not expressly reached that issue. Motion to Modify Ruling, Sept. 23, 2015. On November 30, 2015, a panel of this Court denied the Motion to Modify. Order on Motions, Nov. 30, 2015.

III. ISSUES PRESENTED FOR REVIEW

1. Whether this appeal should be dismissed for lack of jurisdiction where only the refund claim is before the Court and the original amount in controversy of that claim is less than the statutorily required \$200?
2. Whether the trial court properly ruled that Appellants’ claims

constitute improper collateral attacks on their prior Municipal Court judgments and are therefore barred by the doctrine of res judicata?

3. Whether the trial court properly ruled that because Appellants' claims are barred in the Superior Court, Appellants may only challenge their infractions via a motion to vacate the prior judgments entered against them in Municipal Court pursuant to IRLJ 6.7(a), RCW 7.80.010, and *Doe v. Fife Municipal Court*, 74 Wn. App. 444, 874 P.2d 182 (1994)?

4. Whether this Court can affirm on the alternate grounds that Appellants cannot invalidate their infractions as a matter of law regardless of the trial court's adjudication of their declaratory claim because they fail to allege any factual basis on which their infractions could be invalidated?

IV. MOTION IN BRIEF TO DISMISS THE APPEAL FOR LACK OF JURISDICTION

A. Statement of Relief Sought.

Pursuant to RAP 10.4(d) and 17.4(d), the City moves to dismiss this appeal for lack of jurisdiction. Because this motion will, if granted, preclude this Court from hearing the case on the merits, this motion is included as a motion in brief.

Boone's only claim for damages in this appeal is the \$189 paid to the City to satisfy his speeding ticket. App. Br. at 5; 30 ("nothing more at stake than paying a \$189 fine"). As a result, Boone cannot satisfy the \$200 amount-in-controversy requirement for invoking this Court's

jurisdiction set forth in RCW 2.06.030.⁴ For this reason, the City requests that the Court enter an order of dismissal for lack of jurisdiction.

B. Facts Relevant to Motion.

Nicholas Boone paid the \$189 fine to satisfy his NOI and his case was closed as “paid” on March 3, 2014. *See* note 1, *supra*, at 4. Boone filed this lawsuit seeking recovery of the \$189 on August 18, 2014. As a result of this Court’s denial of Boone’s Motion to Modify, the only claim before this Court is Boone’s refund claim. *See* Ruling on Motions, Aug. 24, 2015; Order on Motions, Nov. 30, 2015.

C. Grounds for Relief and Argument.

“There is no constitutional right to appeal in civil cases.” *City of Bremerton v. Spears*, 134 Wn.2d 141, 148, 949 P.2d 347 (1998). In particular, parties may not appeal when their claims involve an insufficient amount in controversy. This Court is statutorily barred from hearing appeals of “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.” RCW 2.06.030. This jurisdictional amount limitation “is absolute.” *Spears*, 134

⁴ The complete text of RCW 2.06.030 is included in **Appendix B** for the convenience of the Court, along with the text of *Todd v. City of Auburn*, 425 F. App’x 613 (9th Cir. 2011); *Todd v. City of Auburn*, Case No. C09-1232JCC, 2010 WL 774135 (W.D. Wash. March 2, 2010); *Carroll v. City of Cleveland*, 522 F. App’x 299 (6th Cir. 2013); RCW 7.80.010; RCW 46.61.050; IRLJ 1.1; IRLJ 2.4; IRLJ 6.7; and CRLJ 60.

Wn.2d at 151.

The amount in controversy threshold applies to fines imposed by a municipality for traffic infractions. *Id.* Parties who object to paying a fine under \$200 may not satisfy the amount in controversy by aggregating the claims of multiple parties who paid the fine. *Id.* Nor may the \$200 limit be satisfied by an assertion that the City could have imposed a higher fine or that a traffic citation may produce “additional unwanted consequences” with pecuniary implications. *Id.* at 151-52; *see also City of Spokane v. Wardrop*, 165 Wn. App. 744, 747, 267 P.3d 1054 (2011) (dismissing appeal from multiple plaintiffs contesting a \$124 fine for traffic infraction detected by a safety camera because “the amount in controversy requirement is clearly lacking.”).

Here, Boone’s payment of a \$189 ticket does not provide this court jurisdiction to hear the case. Nor can Boone satisfy the \$200 threshold even if the Court exercised its discretion to award the maximum amount of pre-judgment interest at the rate of 12%. *See* RCW 19.52.010(1); *TJ Landco, LLC v. Harley C. Douglass, Inc.*, 186 Wn. App. 249, 256, 346 P.3d 777 (2015) *review denied*, 184 Wn.2d 1003, 357 P.3d 666 (2015) (“Trial courts may exercise discretion in the amount of the award” of prejudgment interest); *Arzola v. Name Intelligence, Inc.*, 188 Wn. App. 588, 596, 355 P.3d 286 (2015) (trial court did not abuse discretion in

awarding 5% prejudgment interest). For purposes of determining whether the amount-in-controversy requirement is met, any such prejudgment interest may only be added from the date the party accrued the loss to the date the lawsuit was filed. *Ingham v. Wm. P. Harper & Son*, 71 Wash. 286, 288–89, 128 P. 675 (1912).⁵

Accordingly, even if prejudgment interest were applied to Boone’s claimed loss of \$189 at the maximum rate of 12% per annum (which is not warranted), the total amount in controversy claimed would be \$199.50. This is less than the \$200 “absolute” limit on appellate jurisdiction for civil fines set forth in RCW 2.06.030. The appeal must be dismissed.

V. ARGUMENT

In the event this Court finds jurisdiction over this appeal, the trial court should be affirmed. The trial court properly ruled that Appellants’ claims are barred by res judicata and constitute an improper collateral attack on their Municipal Court judgments. As a result, pursuant to statute, case law and court rule, Appellants’ only potential avenue for invalidating their infractions is to file a motion to vacate in Municipal Court.

Boone insists throughout his brief to this Court that the trial court’s

⁵ In *Ingham*, the Supreme Court analyzed the identical amount in controversy limitation for its own jurisdiction set forth in Article 4, Section 4 of the Washington Constitution. *Id.* at 287.

order creates a “catch-22” by mandating he return to Municipal Court in advance of adjudicating the declaratory claim. App. Br. at 9, 33-35. He further argues this is unfair because the outstanding declaratory claim presents the “only basis” on which his infraction (and those of the class) could be invalidated. App. Br. at 8, 9, 29, 33. This argument misrepresents the trial court’s order. Nothing in the trial court’s order dictates if or when Boone argues the substance of his declaratory claim. Boone can argue the substance in the Municipal Court as part of his invalidation claim. Indeed, to do so makes perfect sense.

Moreover, Boone ignores that the declaratory claim is not dispositive of the refund claim. Rather, whether or not Boone can get a refund in Municipal Court will be decided based first on the standards for vacating a judgment under the applicable court rules, i.e. whether there were “[m]istakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order” or “[n]ewly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b).” CRLJ 60(b)(1),(3). Second, regardless of whether the City’s signs were compliant with the MUTCD, Boone would have to meet the requirements of RCW 46.61.050, which requires a showing that the allegedly improper signs were not visible.

Indeed, Boone has failed to allege facts to make either (let alone

both) showing necessary to support re-opening his Municipal Court judgment and invalidating his infraction. This failure provides an alternative basis on which the Court can affirm if it disagrees with the trial court's ruling that Boone's refund claim is barred by res judicata.

A. The Trial Court Properly Ruled That Appellants' Claims Are Barred By Res Judicata.

1. Boone's Superior Court Suit is an Improper Collateral Attack on the Municipal Court Judgment Against Him.

Though Boone has packaged this suit as a declaratory claim and a request for "equitable relief", the undisputed purpose of this lawsuit is to invalidate Boone (and the class members') speeding tickets and secure refunds of their fines paid. As the trial court ruled, however, regardless of Boone's artful pleading, asking the Superior Court to invalidate his infraction amounts to an impermissible collateral attack on the judgment of the Municipal Court. Boone's characterization of his suit as seeking declaratory and equitable relief does not change this fact. The relief he seeks is barred by res judicata.

Boone does not dispute that he could have asserted as a defense in Municipal Court the legal theory he plead in the Complaint, *i.e.*, that the City's school zone sign had two words too many. CP 1-9. This is, after all, what Mr. Hunt did in the case that was eventually decided by Judge Heller. CP 64-65. Instead, Boone waived his right to a hearing and paid

the fine, resulting in entry of a judgment that he had committed the infraction. Infraction Rules for Courts of Limited Jurisdiction (“IRLJ”) 2.4(b)(1) (payment of a fine results in a judgment that the defendant has committed the infraction). Several months later, the day after learning of Mr. Hunt’s success, Boone elected to re-litigate the earlier judgment against him in a different court. The trial court properly ruled that res judicata prevents this.

Res judicata bars a party from re-litigating all claims and defenses that were raised, or could have been raised, in an earlier action. *Cacek v. Boucher*, 1 Wn. App. 905, 908, 466 P.2d 162 (1970); 14A Wash. Prac., Civil Procedure § 35:24 (2d ed.) (“all matters that were considered *or could have been considered* in the prior action, if part of the same claim or cause of action, merge with the judgment and cannot be the basis of a later action.” (emphasis in original)). The doctrine exists to prevent piecemeal litigation, to ensure the finality of judgments, and to prevent collateral attacks on judgments. *In re Marriage of Aldrich*, 72 Wn. App. 132, 138, 864 P.2d 388 (1993) (res judicata “precludes re-litigation by collateral attack”).

The doctrine applies to judgments from municipal court

proceedings, just as it does to other court or administrative proceedings.⁶ *See id.* Moreover, a “final judgment” for purposes of res judicata need not have been actually litigated to its conclusion. Rather, “[i]t is sufficient that the status of the action was such that the parties might have had their suit thus disposed of, if they had properly presented and managed their respective cases.” *Pederson v. Potter*, 103 Wn. App. 62, 70, 11 P.3d 833 (2000) (confession of judgment in settlement agreement was res judicata to later action). As such, because he could have challenged his infraction but chose not to, Boone’s payment and admission of liability is a final judgment on the merits for purposes of res judicata. *See also* IRLJ 2.4(b)(1).

In addition to a final judgment, the party seeking to bar claims under res judicata principles must show an identity between the prior action and the second action by showing that the two cases have the same (1) parties, (2) quality of the persons for or against whom the claim is made, (3) subject matter, and (4) cause of action. *Symington v. Hudson*,

⁶ Likewise, Washington courts have long recognized judgments by municipal courts (and other courts of limited jurisdiction) are not subject to collateral attack in the form of statutory writs because errors “could be raised and determined on [direct] appeal” of the judgments. *State ex rel. Morrow v. De Grief*, 40 Wn.2d 667, 668, 246 P.2d 459 (1952); *State ex rel. O’Brien v. Police Court of Seattle*, 14 Wn.2d 340, 346, 128 P.2d 332 (1942); *State v. Police Court of City of Hoquiam*, 53 Wash. 361, 363, 101 P. 1082 (1909) (“It is the policy of the law, and the practice should be so regulated, that a person accused of [an infraction] before an inferior court shall have a continuous trial... and when judgment is pronounced in the case, if it be against him, one review of the judgment in which all the questions that arose in the trial and which he believes were erroneously decided to his prejudice can be examined by the appellate tribunals for error”).

40 Wn. 2d 331, 337, 243 P.2d 484 (1952). Here, each element is satisfied.

First and second, the parties and quality of the parties are the same. Boone (and the absent class members) and the City were parties to the Municipal Court judgment, just as they are parties to this lawsuit. The quality of the parties is the same, because Appellants and the City occupy the same roles: (a) Boone and the class members allegedly violated traffic laws; and (b) the City made an infraction decision based upon a review of the evidence.

Third, the subject matter is the same. Both the Municipal Court proceedings and this lawsuit involve the infractions issued to the Appellants, and a possible defense to them.

Fourth, the claims or defenses are the same. Res judicata prevents re-litigation of claims or defenses that either were, or could have been, decided in the prior action. *See Norris v. Norris*, 95 Wn.2d 124, 130, 622 P.2d 816 (1980). Thus, a defendant may not withhold defenses in one action and attempt to assert those same defenses affirmatively in a second action. *Symington*, 40 Wn.2d at 338. “[A]n action based on an omitted defense cannot be permitted in guise of a claim for restitution of a former judgment already paid or for damages measured by its execution.” 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice & Procedure § 4414 (2d ed. 2002). Rather, parties “must present

all the facts and raise all the issues which may be relied upon ... as a defense; hence the judgment in a case will operate as an estoppel ... as to all grounds of ... defense which might have been, but were not, presented and passed upon.” *White v. Miley*, 138 Wash. 502, 509, 244 P. 986 (1926). Appellants’ claim in this case is based entirely on a defense that Boone (and the absent class members) failed to assert in Municipal Court, and therefore is barred by res judicata.

Boone claims that res judicata does not apply because the Municipal Court lacks jurisdiction to enter a declaratory judgment or to grant equitable relief. App. Br. at 29. This argument fails. The relief Boone seeks is a refund of his traffic fine.⁷ App. Br. at 30 (“nothing more at stake” than \$189 fine.). When Boone paid his fine, he admitted liability for speeding in the school zone. *See* CP 133. But had Boone contested his ticket, he could have made the same arguments he made below to the Municipal Court with a right of appeal to the Superior Court. The desire to aggregate his claims with others or seek a large attorney fee award is insufficient to justify a collateral attack based on a defense he could have

⁷ In applying res judicata to an identical case seeking refunds for speed camera tickets, the Sixth Circuit Court of Appeals noted that “the only damages that Appellants seek are the fines that they paid. Had they successfully contested their citations in the first instance, they would not have owed anything. Had they failed, they would have owed precisely what they paid. The administrative process, in other words, could have afforded Appellants the very monetary relief they demand, had they taken advantage of it.” *Carroll v. City of Cleveland*, 522 F. App’x 299, 305 (6th Cir. 2013).

raised. If this Court holds otherwise, a plaintiff who fails to contest his infraction (like Boone) would paradoxically have access to broader relief than the plaintiff who timely contested his infraction through the proper procedures.

Despite meeting each element of res judicata, Boone argues that this Court should permit his collateral attack on the “broad grounds of public interest alone”, because adhering to well-established finality principles would “work an injustice.” App. Br. at 29; 31. Boone is incorrect. First, the “injustice” factor he cites is an element of collateral estoppel, not res judicata. *Id.* (citing *Hadley v. Maxwell*, 144 Wn.2d 306 (2001), a collateral estoppel case); *see also Pederson*, 103 Wn. App. at 69 (“Collateral estoppel and res judicata are not the same.”). Second, the federal authorities collected in the treatise on which Boone relies explain that there is no general “public policy” or “fairness” exception to res judicata, and no “broad principle that can be generalized to many cases.” § 4415 Claim Preclusion—Exceptions to Claim Preclusion Rules, 18 Fed. Prac. & Proc. Juris. § 4415 (2d ed.). To the contrary, the cited authority discusses “a small number” of outlier cases where the ordinary principles of res judicata were set aside in “very rare and special” circumstances, such as unusual antitrust issues or a new private right of recovery against state sponsors of terrorism. *Id.* These cases present no corollary to

Boone's speeding ticket. Even if a general "public interest" factor existed in res judicata, which it does not, Boone has articulated no compelling public interest to support re-litigating his \$189 speeding ticket on the basis of two additional (and accurate) words on a former school zone sign.

The trial court's order is consistent with decisions from other states establishing that res judicata cannot be avoided by combining a large number of paid fines into a putative class action. *See, e.g., Edwards v. City of Ellisville*, 426 S.W.3d 644, 655-56 (Mo. Ct. App. 2013) *transfer denied* (Jan. 27, 2014), *transfer denied* (Apr. 29, 2014) (applying res judicata to dismiss challenge to red light camera tickets because plaintiffs could have raised their constitutional claims in the Ellisville municipal court proceeding but instead chose to pay the fine); *Mills v. City of Grand Forks*, 813 N.W.2d 574, 576-79 (N.D. 2012) (class action seeking recovery of allegedly excessive traffic fines barred by res judicata where defense had not been raised in original infraction proceeding); *Merrilees v. Treasurer, State of Vermont*, 618 A.2d 1314, 1316 (Vt. 1992) (no class action exception to res judicata; fines that had not been challenged in earlier proceedings could not be re-litigated). The trial court should be affirmed.

2. Collateral Estoppel Does Not Lie Against the City.

Appellants claim that the federal district court decision in *Todd v.*

City of Auburn, Case No. C09-1232JCC, 2010 WL 774135 (W.D. Wash. March 2, 2010) should have collaterally estopped the City from arguing res judicata as a defense to Boone's claims. The trial court appropriately rejected this argument. This Court should do the same.

For collateral estoppel to apply, the party seeking application of the doctrine must establish that (1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding, (2) the earlier proceeding ended in a judgment on the merits, (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding, and (4) application of collateral estoppel does not work an injustice on the party against whom it is applied. *Christensen v. Grant Cty. Hosp. Dist. No. 1*, 152 Wn.2d 299, 307, 96 P.3d 957, 961 (2004). As set forth below, the *Todd* decision does not satisfy this test.

In *Todd*, a class of plaintiffs sued 18 Washington cities (including Seattle) and two private camera companies to invalidate infractions issued by traffic safety cameras monitoring red lights. 2010 WL 774135. Relying on *Orwick v. City of Seattle*, 103 Wn.2d 249, 692 P.2d 793 (1984), Judge Coughenour upheld the validity of the camera-issued infractions, but rejected the City of Seattle's argument that the plaintiffs' claims were barred by res judicata. *Id.* at *2-3. The plaintiffs appealed

and the City cross-appealed. The Ninth Circuit affirmed the issuance of the citations on the merits and expressly did not reach the res judicata issue. *Todd v. City of Auburn*, 425 F. App'x 613, 616-17 (9th Cir. 2011).

Todd does not collaterally estoppel the City from asserting res judicata as a defense here. First, the *Todd* case involved numerous claims not asserted in this case, including Consumer Protection Act claims against the camera companies and injunctive claims relating to the contractual relationships between the cities and the camera companies and to the forms of NOI used by some of the cities. 2010 WL 774135, at *5. Not surprisingly, there were serious questions as to whether these claims could have been raised in Municipal Court during infraction proceedings. Here, by contrast, though Boone has attempted to repackage his refund request as “equitable relief” flowing from a declaratory judgment, it is undisputed that he merely seeks a refund of his fine, based on a defense that could have been (and was, in the case of Mr. Hunt) raised in the Municipal Court.⁸ App. Br. at 32; CP 64-65. Accordingly, because the nature of the claim in this case is different from the claims raised in *Todd*, collateral estoppel does not apply.

⁸ Boone concedes this case involves “nothing more at stake than paying a \$189 fine.” App. Br. at 30; *see also* CP 30 (Boone’s Mot. for Class Certification) (“Each individual class member’s claim is small, around \$189 plus interest.”) The declaratory claim is meant only to serve as the basis for the refund claim, and there is no request for injunctive relief.

Second, although Judge Coughenour rejected the City's defense, the Ninth Circuit affirmed on the merits without reaching his decision on res judicata. As such, the "final judgment on the merits" in the *Todd* case does not discuss the applicability of res judicata, despite the City's cross-appeal.

Finally, application of the doctrine would work an injustice. With all due respect to Judge Coughenour, the trial court properly recognized that the *Todd* order did not accurately reflect the state of Washington law on res judicata. Judge Coughenour relied on *Orwick v. City of Seattle* to reject the res judicata defense, but as further detailed below, *Orwick* did not involve any prior judgments of another court. As such, *Orwick* does not support re-litigating paid traffic fines in a collateral action. For each of these reasons, the trial court properly concluded that the City was not collaterally estopped from asserting res judicata as a defense to Boone's claim.

In sum, courts in Washington and other jurisdictions have relied on res judicata to reject identical efforts to repackage paid camera and other traffic fines into new lawsuits. The trial court was correct to do the same, and this Court should affirm.

B. Appellants May Only Challenge Their Infractions Via A Motion to Vacate Brought in Municipal Court.

Because res judicata prevents a collateral attack on Appellants' infractions in Superior Court, the trial court properly ruled that Appellants' only avenue for potential relief resides in a motion to vacate in Municipal Court. In arguing to the contrary, Boone fails to distinguish *Doe v. Fife Municipal Court* and the unambiguous Infraction Rules for Courts of Limited Jurisdiction, which plainly vest jurisdiction over any challenge to his infraction in the Municipal Court.

1. Court Rules Require Adjudication of Infraction Proceedings in Municipal Court.

Contested traffic infraction proceedings, including camera-detected infractions, are governed by the IRLJ and require adjudication exclusively in Municipal Court. See CP 779. As detailed above, Mr. Boone and all absent class members have had judgments entered against them in Municipal Court, a court of limited jurisdiction. IRLJ 6.7(a) provides "Relief from Judgment. A motion to waive or suspend a fine, or to convert a penalty to community restitution, or to vacate a judgment is governed by CRLJ 60(b)." That rule, identical to CR 60(b), requires the Plaintiff to bring a motion in the court that entered the judgment. CRLJ 60(b) provides: "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or

proceeding” for several enumerated reasons, including “(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order; (3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b).” CRLJ 60(b) further provides that such a “motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken.”

Here, the “court” identified in the rules is the Municipal Court. *See* IRLJ 1.2(d) (“‘Court’ means court of limited jurisdiction...”). Nothing in CR 60(b) permits a Superior Court to grant relief from Municipal Court judgments.

This issue was comprehensively addressed by the Court of Appeals in *Doe v. Fife Municipal Court*, 74 Wn. App. 444, 874 P.2d 182 (1994). *Doe* involved court costs that were assessed as part of deferred prosecution in connection with alcohol-related traffic offenses. Drivers who had paid those costs filed a class action lawsuit in superior court, claiming that the costs were illegal because there was no statutory authority to impose them. The lawsuit was dismissed by the superior court. On appeal, the Court of Appeals agreed with the plaintiffs that the costs were not statutorily authorized. 74 Wn. App. at 450. However, the court also held that the costs could not be recovered through a Superior

Court lawsuit. Instead, the plaintiffs' exclusive remedy was to go back to Municipal Court and file a motion to vacate. *Id.* at 451-53.

The trial court properly found that the reasoning of *Doe* applies to Appellants' claims. Specifically, CrRLJ 7.8, the court rule at issue in *Doe*, and IRLJ 6.7(a), which governs here, both provide that a Rule 60(b) motion to vacate is the exclusive means (aside from a direct appeal) of obtaining relief from a judgment in either a criminal or infraction case. The *Doe* court emphasized that CrRLJ 7.8 does not incorporate language from CR 60(c), which might permit independent actions to attack a judgment. 74 Wn. App. at 453. The court observed that the omission of the equivalent of CR 60(c) in the limited-jurisdiction rule "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." *Id.* (emphasis added). IRLJ 6.7 likewise incorporates only CRLJ 60(b), and not CR 60(c) or CRLJ 60(c) (which might otherwise permit an independent action to seek relief from judgment).

As in *Doe*, Mr. Boone and absent class members may seek a "refund" of their paid fines only through a motion to vacate filed under

IRLJ 6.7(a) or CRLJ 60(b), and only brought in Municipal Court.⁹

That relief would be only on an individual, not class-wide basis, does not alter that result. As the *Doe* court noted:

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.

Doe, 74 Wn. App. at 454-55. The *Doe* court further found its conclusion “is also buttressed by the strong policy reason that judicial resources are employed more efficiently if the party who asserts a judgment or order as being void, is first required to address its concerns to the court that issued the judgment or order.” *Id.* at 454. The same is true here. Judicial resources will be conserved if the Court that entered Boone’s judgment (here the Municipal Court) is first presented with a challenge to that order, as that court “will be in the best position to assess the merits of the movant’s argument.” *Id.*

Finally, requiring Boone and the absent class members to file

⁹ The City disputes that any grounds exist for Mr. Boone or any absent class members to vacate the judgments against them, but that is a decision solely in the province of the Municipal Court. Moreover, the trial court refused to certify Boone’s refund claims, and certified only his declaratory claims and the City’s defenses. As a result, Boone’s argument that *Doe* is distinguishable on the basis of class certification should be rejected. App. Br. at 9.

motions to vacate their judgments in Municipal Court instead of pursuing their claims via collateral attack in Superior Court is consistent with the purpose of the IRLJ, as set forth in IRLJ 1.1:

- (a) Scope of rules. These rules govern the procedure in courts of limited jurisdiction for **all cases involving “infractions”**. Infractions are noncriminal violations of law defined by statute.
- (b) Purpose. These rules shall be construed to secure the just, speedy, and inexpensive determination of **every infraction case**.

IRLJ 1.1 (emphasis added). There is no dispute that Boone’s case involves an “infraction” and seeks a refund of the fine he paid as a result of the infraction. Accordingly, under IRLJ 1.1, Boone’s case should be heard in Municipal Court. The *Doe* court relied on the nearly identical language of CrRLJ 1.1 to conclude that the corresponding criminal rules for courts of limited jurisdiction provided the exclusive mechanism by which the *Doe* plaintiffs could seek refunds of their illegally imposed court costs. *Id.* at 453-54 (“For example, CrRLJ 1.1 provides: ‘These rules govern the procedure in the courts of limited jurisdiction ... in *all* criminal proceedings.’...In addition, CrRLJ 1.2 provides: ‘These rules are intended to provide for the just determination of *every* criminal proceeding.’”) (emphasis in original).

Court rules are to be interpreted like statutes. *Id.* at 452 (citing

State v. Greenwood, 120 Wn.2d 585, 592, 845 P.2d 971 (1993)). Here, IRLJ 6.7(a) provides the exclusive means for seeking to invalidate a Municipal Court judgment. Because Appellants' claims for "restitution" arise directly from their Municipal Court judgments, they cannot be advanced in this Court or heard on a class basis. Where the Legislature has set forth a specific process for challenging a judgment, a plaintiff cannot circumvent it via the class action device. See *Lacey Nursing Ctr., Inc. v. Dep't of Revenue*, 128 Wn. 2d 40, 55, 905 P.2d 338 (1995) (excise tax refund lawsuit could not be maintained as a class action because absent class members could not comply with statutory requirements for seeking refund). The trial court's order dismissing the refund claims on this basis should be affirmed.

2. *Orwick and Nelson Are Inapposite.*

As in the trial court, Boone relies on two principal cases to argue that the Superior Court should have invalidated his speeding ticket and refunded his fine, the judgment of the Municipal Court notwithstanding. Neither *Orwick v. City of Seattle* nor *Nelson v. Appleway* supports his claims.

First, in *Orwick v. City of Seattle*, 103 Wn.2d 249, 692 P.2d 793 (1984), drivers whose speeding violations had been detected by radar filed a superior court action raising constitutional claims, and also seeking

injunctive relief relating to the procedures used by municipal courts to adjudicate traffic violations. Unlike here, the plaintiffs' citations had been dismissed prior to bringing the suit, leaving no judgments that could have preclusive effect or that could have been vacated. 103 Wn.2d at 250. As a result, neither res judicata nor claim preclusion is mentioned anywhere in *Orwick* because there were no prior judgments at issue. The legal issue in *Orwick* was, instead, whether or not the dispute rested within the exclusive jurisdiction of the Municipal Court. *Id.* at 251. The *Orwick* court held that it did not, because Superior Courts have original jurisdiction over "claims for equitable relief from alleged system-wide violations of mandatory statutory requirements by a municipal court and from alleged repetitious violations of constitutional rights by a municipality in the enforcement of municipal ordinances." *Id.* In the proceedings below, Judge Schapira expressly considered *Orwick* and found no similar claims existed in this case. Hrg. Tr. 86:1-22 ("That's not the case here. We don't have a system-wide set of violations. We don't have some unfair targeting. We have a mechanical approach and a question of these signs.").

In further contrast to *Orwick*, the issue here is not whether the Superior Court has jurisdiction to consider the merits of an injunctive or declaratory challenge to the validity of a municipal traffic ordinance. The issue is what remedies are (and are not) available to litigants who seek to

invalidate, and to obtain refunds of money paid to satisfy, existing Municipal Court judgments. *Orwick* does not speak to that issue.

Moreover, under RCW 7.80.010, a statute enacted three years after *Orwick*, “[i]nfraction jurisdiction resides exclusively in the district and municipal courts, i.e., courts of limited jurisdiction.” *Post v. Tacoma*, 167 Wn.2d 300, 311, 217 P.3d 1179 (2009) (emphasis added); Laws of 1987, ch. 456, § 9 (codified as RCW 7.80.010). Boone’s attempt to have this Court step in to decide the validity of his traffic infraction runs afoul of this restriction. Applying on point reasoning, in *City of Seattle v. McCready*, 123 Wn.2d 260, 276-77, 868 P.2d 134 (1994), the Washington Supreme Court held that a challenge to conduct that is “designed to enforce municipal ordinances” was subject to the exclusive jurisdiction of the municipal courts, and that the superior court lacked jurisdiction. The NOI issued to Boone was plainly “designed to enforce [a] municipal ordinance,” namely the prohibition against speeding in school zones. As such, *Orwick* does not undermine the trial court’s ruling.

Nelson v. Appleway, 160 Wn.2d 173 (2007) is similarly unhelpful to Boone. In *Nelson*, a plaintiff brought a taxpayer class action challenging the pass-through of B&O taxes to consumers under RCW 82.04.500. 160 Wn.2d at 178-79. The Court concluded the taxes were improper and ordered restitution. *Id.* at 187-88. But unlike here, the

Nelson plaintiffs did not seek to invalidate the prior judgment of another court, and therefore, the case does not speak to whether *res judicata* or court rule bars Appellants' refund claims here. *See id.*

In conclusion, the trial court properly ruled that statute, court rule and case law vest jurisdiction over Boone's Municipal Court judgment in the Municipal Court. Boone's efforts to sidestep that court and attack his judgment here have no support in the law. The trial court should be affirmed.

C. Appellants' Declaratory Judgment Claim is Not Dispositive of the Refund Claim.

Despite Boone's arguments to the contrary, adjudication of the declaratory claim is not necessary because it is not dispositive of the refund claims. Before this Court, Boone wrongly assumes that resolution of the declaratory claim in his favor would necessarily result in the wholesale invalidation of Appellants' infractions. *See App. Br.* at 1-3, 13-21, 30-31. This is not true.

The trial court ruled that by virtue of the pre-existing Municipal Court judgments, Appellants cannot seek to invalidate their citations on a class-wide basis in Superior Court. CP 779. The court recognized that Appellants would have to individually meet the standards of CRLJ 60(b) to invalidate their judgments to potentially secure a refund, if such relief

was warranted (which it is not). Hrg. Tr. 85:1-16. To invalidate a judgment under the potentially relevant prongs of CRLJ 60(b), a movant must show “Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order” or “Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b).” CRLJ 60(b)(1), (3). Both in the trial court and before this Court, Appellants have failed to offer any argument approaching this standard to explain why they did not timely contest their infractions in the first instance.

Moreover, in addition to meeting the standards of CRLJ 60(b) to re-open their judgments, Boone and the class members would have to establish substantive grounds for invalidating their infractions as well. Boone’s briefing to this Court confirms they are unable to do so. In their brief, Appellants argue repeatedly that the only ground on which they could invalidate their infractions is the Superior Court’s adjudication of the declaratory claim, i.e. that the signs were non-compliant with MUTCD. *See e.g.*, App. Br. at 8, 9, 29, 33. But they offer no argument as to why a declaration that the City’s former signs had two extra words, the alleged non-compliance, would warrant invalidating their infractions.

RCW 46.61.050 establishes the standard for invalidation of an infraction on the basis of inadequate signage. That statute provides:

No provision of this chapter for which official traffic control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible or visible to be seen by an ordinarily observant person.

RCW 46.61.050.¹⁰ There are no claims in this case that the school zone signs were “not in a proper position” or were not “sufficiently legible or visible to be seen by an ordinarily observant person.” Moreover, Boone has never claimed that he personally could not see or understand the signage. Rather, Boone’s only claim is that the signs contained an additional two words. *See, e.g.*, App. Br. 14-15; 19-20; CP 3 (Complaint ¶ 25: “The City failed to comply with MUTCD Section 7B.15 when it used a sign stating, ‘WHEN LIGHTS ARE FLASHING’ instead of ‘WHEN FLASHING’.”).

Case law on improper signage further undermines Boone’s claim. It has long been the law in Washington that “a modest variation in a standard sign not sufficient to affect a reasonable [person’s] observation and perception of its command” is insufficient justification for avoiding the duty which would be created by a de jure sign. *Radosevich v. Cnty. Comm’rs of Whatcom Cnty.*, 3 Wn. App. 602, 607, 476 P.2d 705 (1970) (county not negligent even where yield sign non-confirming); *see also Mazon v. Druxman*, 68 Wn.2d 701, 704-05, 415 P.2d 86 (1966) (“In fact,

¹⁰ RCW 46.61.440 establishes the statewide speed limit for school zones at 20 mph and requires that school zones be marked with school zone speed limit signs.

many courts take the view that even if it is shown that the traffic signal was not properly authorized, it is still effective to control the question of the negligence or contributory negligence of a vehicle driver who disregards it.”) (collecting cases). Though the City maintains that the former school zone signs were compliant with all applicable laws and guidelines, even if they were not, this authority further provides that the slight variations here cannot form the basis for invalidation of Appellants’ infractions. *See Radosevich*, 3 Wn. App. at 607 (“We think, however, that the doctrine that a de facto sign should be given de jure effect is properly extended to include nonstandard signs where the form of the sign substantially complies with that prescribed by law.”).¹¹

In summary, the additional two words on the former signs had absolutely no impact on Boone’s ability to read, see or understand the speed limit. There are no claims (and no evidence) in this case that Boone, or any class member, was unable to read, see or comprehend the signage at issue as a result of the extra two words. CP 349 (Boone

¹¹ Boone’s claim that the alleged extra two words on the school zone signs results in automatic invalidation of his infraction is contrary to the role of the MUTCD. After tort reform took effect in 1985, courts have rejected the application of the strict liability standard Boone urges, holding instead that the MUTCD “provides at least some evidence of the appropriate duty” of a City or State in a tort action. *Owen v. Burlington N. & Santa Fe R.R. Co.*, 153 Wn.2d 780, 787, 108 P.3d 1220 (2005). If alleged non-compliance with the MUTCD is only “some evidence” of the City’s appropriate duty in a negligence case, it cannot also be the sole basis for strict liability in a declaratory judgment action seeking to invalidate 70,000 infractions.

declares he was unaware at the time of his infraction that the signs allegedly contained an extra two words). Similarly, there are no claims (and no evidence) that the signs were illegible, in an improper position or unable to be seen by an ordinarily observant person. As Appellants concede, they do not assert any facts or legal theories to support invalidation of their infractions, other than a court order stating the signs did not strictly comply with the MUTCD, which is insufficient as a matter of law.

A declaratory judgment stating that the signs in question formerly had an extra two words would not change that. If Appellants return to municipal court and make a motion under CRLJ 60(b), they will still have to meet the substantive standard for invalidating their infractions. They have admitted in their brief they cannot do it. If this Court rejects the trial court's res judicata analysis, it can also affirm the dismissal of the refund claims on this basis.

D. The Trial Court's Order Does Not Impair Appellants' Due Process Rights.

Despite this Court's limited grant of review to Boone's refund claim alone, Boone devotes over 10 pages of his brief to arguing the merits of the declaratory claim. App. Br. at 10-24; 29-31. Boone then argues that this Court's refusal to review the declaratory claim somehow

requires Appellants to return to Municipal Court before pursuing the merits of the declaratory claim, which violates their due process rights and a right to a jury. *See* App. Br. at 27-28 (“Boone and the Class are only entitled to obtain a judgment of liability on their UDJA after they individually seek to have their municipal court judgment vacated...”).

This argument is meritless.

As a threshold matter, Boone fails to articulate how the trial court’s order deprives him of due process.¹² The trial court’s order merely recognized that under governing Washington law, Appellants’ infractions cannot be invalidated on a class-wide basis in Superior Court. Judge Schapira ruled that to invalidate the infractions and award refunds in Superior Court would amount to a collateral attack on Appellants’ Municipal Court judgments, which is barred by *res judicata*. *See* CP 779. The court then ruled that if the Appellants were entitled to any relief (a possibility about which she expressed doubt), it would have to be achieved in Municipal Court under the governing court rules. CP 779. As a result, the order does not impair Boone’s due process rights. The process to

¹² Other than a cursory assertion pertaining to due process and right to a jury, Boone cites no authority and offers no legal argument as to how the trial court’s order prejudices his rights. This Court can reject his arguments for failure to present them adequately. *See Schmidt v. Cornerstone Investments, Inc.*, 115 Wn.2d 148, 160, 795 P.2d 1143 (1990) (“Without adequate, cogent argument and briefing, [courts] should not consider an issue on appeal.”). Moreover, Boone has previously argued that his refund claims are equitable and would be tried to the Court, not a jury. CP 135.

which Boone is due is the ability to contest an infraction in Municipal Court and appeal that decision to the Superior Court. Boone waived that process and admitted liability. There is no due process right to collaterally attack a prior judgment. *See e.g., Pederson*, 103 Wn. App. at 74 (“The Pedersons could have had their day in court, had they chosen to raise their claim during the settlement negotiations. It was their own choice not to pursue the claim.... Thus, they deprived themselves of their day in court. Application of res judicata to this claim does not deprive the Pedersons of their due process rights.”).

Moreover, there is no due process right to have the issue of compliance with the MUTCD determined in Superior Court as opposed to Municipal Court. The Municipal Court can decide that issue (assuming it is relevant, which is it not) as part of the refund hearing.

There is also no due process right to pursue a declaratory judgment act claim without a remedy. The Boone class did not seek injunctive relief, and as Boone has repeatedly argued to this Court, the purpose of the declaratory claim is to form the “only basis” for their desired refunds. The signs at issue have already been changed, however, and Boone conceded in the trial court that the new signs are proper. CP 21-22. Without the possibility for monetary relief and no request for an injunction, the declaratory claim in Superior Court is moot at this point. *See To-Ro Trade*

Shows v. Collins, 144 Wn.2d 403, 417, 27 P.3d 1149 (2001) (“An actual, immediate dispute [required for declaratory judgments] cannot be moot and must be ripe”); *see also Defenders of Wildlife v. Martin*, 454 F. Supp. 2d 1085, 1102 (E.D. Wash. 2006) (“[I]ssuing a declaratory judgment about the adequacy of a withdrawn biological opinion would have no [] effect and would be in the nature of an advisory opinion.”).

Though Boone knowingly waived his right to challenge his infraction when he paid his fine, the trial court ruled he may still seek further process via a motion to vacate in Municipal Court. Due process does not require more.

VI. CONCLUSION

Mr. Boone and the absent class members admittedly sped through school zones, and knowingly accepted judgment against them in the Municipal Court, either by paying their fines, or failing to respond to their notices of infraction. Months later, they brought a collateral attack in the Superior Court, attempting to invalidate their citations. Res judicata does not permit this. As a result, the trial court properly ruled that Appellants’ claims were barred by res judicata, and that their infractions could not be invalidated on a class-wide basis in the Superior Court. Rather, to the extent Appellants are entitled to any relief from their judgments, they must file a motion to vacate in Municipal Court. As the Superior Court

implicitly recognized, however, they are unlikely to succeed because the presence of an alleged two extra words on the City's former school zone signs is insufficient to invalidate their infractions as a matter of law.

Because Boone and the absent class members have conceded they have nothing more at stake in this case than \$189, the Court should dismiss this appeal for lack of jurisdiction. To the extent this Court finds jurisdiction exists, then for the reasons stated above, the trial court should be affirmed.

RESPECTFULLY SUBMITTED this 23rd day of December, 2015.

PACIFICA LAW GROUP LLP

By 
Paul J. Lawrence, WSBA # 13557
Kymberly K. Evanson, WSBA #39973

Attorneys for Respondent

CITY OF SEATTLE

By s/ Gregory C. Narver
Gregory C. Narver, WSBA #18127

Attorneys for Respondent

CERTIFICATE OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, and not a party to this action. On the 23rd day of December, 2015, I caused to be served a true copy of the foregoing document upon:

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scrane@cranedunham.com

Attorney for Petitioners

- via facsimile
- via overnight courier
- via first-class U.S. mail
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2015 DEC 23 PM 4:53
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- via electronic court filing
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Attorneys for Respondent

DATED this 23rd day of December, 2015.



Sydney Henderson

APPENDIX A



Municipal Court of Seattle

"Community Involved Justice"



Court Public Information

Search Menu

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Citation Details

Citation Number: 1400094374
 Type: TC
 Status: P
 Violation Date/Time: 2/6/2014 15:52
 Filing Date: 2/19/2014
 Violation Location: 58 5TH AVE NE @ OLYMPIC VIEW E
 Date Issued: 2/19/2014
 Total Obligation Due: \$0.00

Case Number:
 Quoted Bail:
 Radar Pace:
 Vehicle: W1848A, WA
 Vehicle Speed: 27
 Zone Speed: 20
 Accident:
 Amount in Collection:

Charges

Obligations

Sequence #	Violation Desc.	Plea	Finding	Disposition Code	Dismissal Reason	Close Date
1	SPEED SCHOOL CROSSWALKS CAMERA VIOLATION			PD		Mar 03, 2014

Available at: <http://web1.seattle.gov/courts/cpi/>
 Search by citation number: 1400094374

APPENDIX B

**Compendium of Cases,
Statutes, and Rules**

425 Fed.Appx. 613

This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth Circuit Rule 36-3. (Find CTA9 Rule 36-3) United States Court of Appeals, Ninth Circuit.

Michael TODD; Gregory Stackhouse; Steve Blai; Vonda Sargent; Max Harrison; Zoann Chase–Billing; Ojnjen 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; 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; Jerry Knudtsen; Belinda Riba; Greig Fahlander; Steven Moody; Rich Newman; Donald Stave; Richard Merchant; David Roark; Timothy Morgan; Charles Gust; Casey Halverson; Richard Daiker, individually and on behalf of two classes of similarly situated persons, Plaintiffs—Appellants,

v.

CITY OF AUBURN; City of Bellevue; City of Bonney Lake; City of Bremerton; City of Burien; City of Federal Way; City of Fife; City of Issaquah; City of Lacey; City of Lake Forest Park; City of Lakewood; City of Lynnwood; City of Puyallup; City of Renton; City of Seatac; City of Seattle; City of Spokane; City of Tacoma; American Traffic Solutions, Inc., doing business as ATS; American Traffic Solutions, LLC, doing business as ATS Solutions; Redflex Traffic Systems, Inc., Defendants—Appellees.

No. 10–35222. | Argued and Submitted
March 11, 2011. | Filed March 31, 2011.

Synopsis

Background: Motorists filed putative class action against cities in state court alleging that fines they received for speeding infractions captured on automated traffic safety cameras exceeded amounts permitted under state law, and violated statutory restrictions on form of compensation. After removal, the United States District Court for the Western District of Washington, John C. Coughenour, J., 2010 WL 774135, dismissed, and motorists appealed.

Holdings: The Court of Appeals held that:

[1] fines did not exceed amounts permitted under state statute, and

[2] cities' contracts with automated traffic safety camera companies did not violate statutory directive.

Affirmed.

Attorneys and Law Firms

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Tacoma, WA, Joseph M. Svoboda, Assistant City, Lacey City Attorney's Office, Lacey, WA, Heidi Ann Wachter, Lakewood City Attorney, Lakewood, WA, Diana Blakney, Michael B. Tierney, Tierney Law Office, Mercer Island, WA, Cheryl F. Carlson, City of Puyallup, Puyallup, WA, Zanetta Lehua Fontes, Renton City Attorney, Renton, WA, Mary Mirante Bartolo, City of Seatac, Seatac, WA, Salvatore Faggiano, Rocco N. Treppiedi, Esquire, Office of the City Attorney, Spokane, WA, for Defendants–Appellees.

*615 Appeal from the United States District Court for the Western District of Washington, John C. Coughenour, District Judge, Presiding. D.C. No. 2:09–cv–01232–JCC.

Before: FISHER, GOULD and TALLMAN, Circuit Judges.

MEMORANDUM *

**1 The plaintiffs in this putative class action ran red lights or sped in school zones and were photographed by automated traffic safety cameras installed by the defendant cities and camera companies. The plaintiffs argue that the fines they received for these infractions exceed limits set by Revised Code of Washington section 46.63.170 and that payment provisions in the cities' contracts with the camera companies violate statutory restrictions on the form of compensation. They also contend the defendant cities should have had the Notices of Infraction (NOIs) used to issue the camera citations approved by the Washington Administrative Office of the Courts (AOC).

The plaintiffs sued in state court, and the defendants removed to federal court under the Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1332(d).¹ The district court granted the defendants' Rule 12(b)(6) motion to dismiss. We affirm.

I.

[1] The fines the defendant cities charge for infractions captured on traffic safety cameras do not exceed limits imposed by section 46.63.170. Under section 46.63.170(2), “the amount of the fine issued for an infraction generated through the use of an automated traffic safety camera shall not exceed the amount of a fine issued for other parking infractions within the jurisdiction.” Here, the camera fines plainly do not exceed the fines imposed for certain other parking infractions. *See, e.g.*, Wash. Rev.Code. §

46.16.381(7)–(9) (\$250 fine for disabled parking); Seattle, Wash., Mun.Code § 11.31.121 (same). They are therefore within statutory limits. Nothing in the statute limits camera fines to the amount charged for “standard” or “typical” parking infractions, or to the amount charged for infractions authorized solely by local law.

Because the plain language of section 46.63.170(2) unambiguously authorizes the fines the defendants impose, we are precluded from considering the plaintiffs' argument that the legislative history compels a contrary conclusion. *See State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n*, 140 Wash.2d 615, 999 P.2d 602, 611 (2000) (“When words in a statute are plain and unambiguous, this Court is required to assume the Legislature meant what it said and apply the statute as written.”).

II.

The district court also correctly rejected the plaintiffs' challenges to two types of *616 compensation provisions in the contracts between the defendant cities and camera companies.

[2] The plaintiffs first challenge the “stop-loss” or “cost neutrality” provisions that allow the cities to delay payment of any fees greater than the amount of revenues generated by citations that month until revenues exceed monthly fee obligations. The plaintiffs argue that these provisions violate the statutory directive that “the compensation paid ... must be based only upon the value of the equipment and services provided ..., and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.” Wash. Rev.Code. § 46.63.170(1)(i). We disagree. The cost neutrality provisions alter the timing of fee payments in accordance with monthly revenue fluctuations, but they do not base the amount of fees upon a *portion* of the revenue generated.

**2 We likewise reject the plaintiffs' contention that supplemental fee provisions in some of the defendants' contracts constitute fees improperly “based upon a portion of ... the revenue generated.” *Id.* The relevant provisions obligate certain cities to pay a \$5 service fee per citation issued above the first 800 citations per camera per month. These fees are permissible because they constitute “compensation ... based ... upon the value of the ... services provided or rendered in support of the system.” *Id.*

III.

The plaintiffs next argue the NOIs the cities issued to them violate statutory rules for approval of such notices. Under Revised Code of Washington section 46.63.060(2) and Infraction Rules for Courts of Limited Jurisdiction (IRLJ) 2.1(a), “the form used to file cases alleging the commission of a parking, standing or stopping infraction shall be approved by the Administrative Office of the Courts.” The plaintiffs argue that because section 46.63.170(2) requires that camera infractions “be processed in the same manner as parking infractions,” the NOIs generated for camera infractions must receive AOC approval in accordance with the IRLJ 2.1(a) command that NOIs “alleging the commission of a parking, standing or stopping infraction” be AOC-approved.

We reject this argument for two reasons. First, we agree with the district court that section 46.63.170(2)'s directive that camera infractions “be processed in the same manner as parking infractions” must be construed in light of the accompanying list of purposes for which camera infractions are processed like parking infractions. All of the provisions listed concern aspects of post-infraction procedure rather than initial notification. *See* Wash. Rev.Code §§ 46.63.170(2), 3.50.100, 35.20.220, 46.16.216, 46.20.270(3). Second, section 46.63.170(1)(e) explicitly addresses the form and content of camera infraction notices, suggesting that the legislature expressed relevant restrictions on camera NOIs in this provision alone.

Footnotes

- * This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36–3.
- 1 We do not consider the plaintiffs' argument, raised for the first time on appeal, that the district court should have remanded this case to state court under CAFA's local controversy exception, 28 U.S.C. § 1332(d)(4)(A). The plaintiffs forfeited this argument by not raising it in the district court, *see Hillis v. Heineman*, 626 F.3d 1014, 1019 (9th Cir.2010), and the potential applicability of the local controversy exception does not undermine the district court's jurisdiction. *See Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1022–24 (9th Cir.2007) (“Implicit in ... subsection[] [1332](d)(4) is that the court has jurisdiction, but the court ... must decline to exercise such jurisdiction.” (emphasis added)).

IV.

Finally, we decline to address the plaintiffs' challenge to the use of traffic cameras at three-arterial intersections or their claim that the defendants use “faulty traffic camera system technology.” These claims were not articulated in the briefing on the defendants' motion to dismiss and are therefore waived on appeal. *See Walsh v. Nev. Dep't of Human Res.*, 471 F.3d 1033, 1037 (9th Cir.2006).

Because we affirm the district court's dismissal of the plaintiffs' claims on the merits, we do not address the defendants' *617 contention that the claims are barred by res judicata.

* * *

The district court correctly rejected the plaintiffs' challenges to the defendants' camera fine amounts, compensation arrangements and camera infraction NOIs.

The order granting the motion to dismiss is AFFIRMED. The defendants' motion for judicial notice is DENIED as moot.

**3 AFFIRMED.

All Citations

425 Fed.Appx. 613, 2011 WL 1189696

2010 WL 774135

Only the Westlaw citation is currently available.
United States District Court, W.D. 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 Knudtsen,
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.

No. C09–1232JCC. | March 2, 2010.

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for Defendants.

ORDER

JOHN C. COUGHENOUR, District Judge.

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

I. BACKGROUND

In 2005, the Washington State Legislature passed a law
granting municipalities the authority to issue citations to
owners of vehicles that were photographed violating red
lights or school speed zones. WASH. REV.CODE 46.63.170.
Several municipalities throughout the state adopted the traffic
camera program and contracted with either American Traffic
Solutions, LLC or Redflex Traffic Systems, Inc. to provide
equipment and services. (Mot. 4 (Dkt. No. 108).) Plaintiffs
are a group of vehicle owners who were issued a notice
of infraction (“NOI”) generated by a traffic camera. (Resp.
20 (Dkt. No. 118).) Plaintiffs are at different stages of the
proceedings that ensued from the issuance of the NOI, but
all have either paid or are subject to fines of \$101, \$104

or §124. (*Id.*) Defendants are a group of municipalities in Washington State (“Defendant Cities”) and two companies that contracted with Defendant Cities to operate and maintain the traffic cameras.

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

II. APPLICABLE LAW

Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a claim for “failure to state a claim upon which relief can be granted.” Although a complaint challenged by a Rule 12(b)(6) motion to dismiss need not provide detailed factual allegations, it must offer “more than labels and conclusions” and contain more than a “formulaic recitation of the elements of a cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). The complaint must indicate more than mere speculation of a right to relief. *See id.* When a complaint fails to adequately state a claim, such deficiency should be “exposed at the point of minimum expenditure of time and money by the parties and the court.” *Id.* at 558. A complaint may be lacking for one of two reasons: (1) absence of a cognizable legal theory or (2) insufficient facts under a cognizable legal claim. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir.1984). In ruling on a defendant’s motion to dismiss under Rule 12(b)(6), the Court assumes the truth of the plaintiff’s allegations and draws all reasonable inferences in the plaintiff’s favor. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir.1987).

III. ANALYSIS

A. Jurisdiction

*2 Defendants argue that the Court lacks jurisdiction to hear Plaintiffs’ claims. The Seattle Municipal Court has statutory jurisdiction over traffic cases. WASH. REV.CODE 35.20.010(1). Municipal courts in all other Defendant Cities have exclusive original jurisdiction over traffic infractions arising under city ordinances. WASH. REV.CODE 3.50.020. However, this does not mean that municipal courts have original jurisdiction over any case conceivably related to the enforcement of municipal ordinances; many such cases will be outside their purview. *Orwick v. City of Seattle*, 103 Wash.2d 249, 692 P.2d 793, 796 (Wash.1984). The Supreme Court of Washington has held that “superior courts have original jurisdiction over claims for equitable relief from alleged system-wide violations of mandatory statutory requirements by a municipal court and from alleged repetitious violations of constitutional rights by a municipality in the enforcement of municipal ordinances.” *Id.* at 795.

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

Defendants offer two more jurisdictional reasons why this Court should dismiss. First, Plaintiffs argue that municipal courts have jurisdiction over these claims and that where two tribunals have jurisdiction, the one first obtaining jurisdiction maintains it exclusively. *Yakima v. Int’l Ass’n of Fire Fighters, et al.*, 117 Wash.2d 655, 673–76, 818 P.2d 1076 (1991). Second, Defendants cite *Younger v. Harris*, 401 U.S. 37 (1971) for the position that a federal court must abstain in deference to state courts where: (1) there is an ongoing state proceeding; (2) the proceeding implicates important

state interests; and (3) the federal litigant is not barred from litigating federal constitutional issues in that proceeding.

However, as stated above, the Court finds that municipal courts do not have jurisdiction over claims that relate to system-wide violations of statutory requirements in the enforcement of municipal ordinances. The Court agrees with Plaintiffs that they could be barred from litigating federal constitutional issues, and, accordingly, will not abstain from hearing Plaintiffs' claims.

B. Res Judicata

*3 Defendants argue that res judicata bars Plaintiffs' claims. Res judicata prevents a party from re-litigating all claims that were raised, or could have been raised, in an earlier action. *Stevens County v. Futurewise*, 146 Wash.App. 493, 192 P.3d 1, 6 (Wash.Ct.App.2008). Defendants cite several cases in which Plaintiffs failed to bring possible claims in municipal courts or superior courts and were therefore prohibited from bringing these claims in federal court. *Idris v. City of Chicago*, 552 F.3d 564, 565 (7th Cir.2009); *McCarthy v. City of Cleveland*, 2009 WL 2424296 (N.D. Ohio Aug.6, 2009); *Kovach v. District of Columbia*, 805 A.2d 957 (D.C.Ct.App.2002); *Dajani v. Governor & General Assemble of the State of Md.*, 2001 WL 85181 (D.Md. Jan.24, 2001). The Court finds these cases to be unpersuasive.

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

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

C. Declaratory and Injunctive Relief Claims

Plaintiffs present three challenges to the traffic camera system. The first is that Defendant municipalities violated due-process requirements when they failed to get approval for the NOIs from the Administrative Office of the Courts. (Resp. 6-9 (Dkt. No. 118).) Rule 2.1 of the Infraction Rules for Courts of Limited Jurisdiction ("ILRJ") states:

"Infraction cases shall be filed on a form entitled 'Notice of Infraction' prescribed by the Administrative Office of the Courts; except that the form used to file cases alleging the commission of a parking, standing or stopping infraction shall be approved by the Administrative Office of the Courts."(emphasis added). WASH. REV.CODE 46.63.170(2) states: "infractions generated by the use of automated traffic safety cameras under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW 3.50.100, 35.20.220, 46.16.216, and 46.20.270(3)." (emphasis added). Plaintiffs argue that because traffic camera infractions should be processed in the same manner as parking infractions, and the form used to file cases alleging parking infractions requires AOC approval, then NOIs generated by traffic cameras must also require approval. Not so.

The Code does not require a traffic camera infraction to be treated like a parking infraction in every single respect. WASH. REV.CODE 46.63.170(2) states only that when an infraction is generated, is to be processed like a parking infraction. This refers to individual NOIs given to individual drivers and the legal steps and consequences that ensue. The four code sections that WASH. REV.CODE 46.63.170(2) specifies, WASH. REV.CODE 3.50 .100, 35.20.220, 46.16.216, and 46.20.270(3), confirm this interpretation in that they all concern aspects of post-infraction procedure: treatment of funds collected by an infraction, renewal of a driver's license following infractions, and withholding of driving privileges following traffic offenses. AOC approval is not a step contemplated in the processing of any infraction; it is a way of ensuring, before any processing of infractions begins, that a municipality is using legally sufficient forms. Although NOIs from traffic cameras are processed like parking tickets, the forms are to be drafted in compliance with rules for traffic tickets. And ILRJ 2 .1 states that NOIs for traffic tickets need only be on forms prescribed by the AOC, not approved by them. Plaintiffs have not alleged that the NOIs fail to meet any of the AOC's prescriptions.

*4 Plaintiffs' second challenge is that the fines generated by traffic cameras are excessive. WASH. REV.CODE 46.63.170(2) states that the fines "shall not exceed the amount of a fine issued for other parking infractions within the jurisdiction." Plaintiffs argue that the Washington State Legislature intended for the fines to be no higher than a normal parking ticket, i.e. twenty dollars. (Resp. 4 (Dkt. No. 118).) Defendants respond that in the intervening five years, the Legislature could have clarified its views on fine limits

if they felt they had been misinterpreted. (Mot. 23 (Dkt. No. 108).) A more plausible reading of the Code, Defendants argue, is that the municipalities may set fine amounts at or below those of the maximum fine allowed for parking infractions. (*Id.* at 22.) Traffic camera fines range from \$101 to \$124. (*Id.* at 23.) Fines for fire lane parking and disabled parking violations in each municipality range from \$175 to \$250. (*Id.*) While these fines are set by state law rather than municipal code (WASH. REV.CODE 46.16.381(7)-(9); WASH. REV.CODE 46.55.105(2)), Plaintiffs offer no reason to conclude that these fines are outside the jurisdiction of the city, and therefore an impermissible ceiling on fine amounts, given that WASH. REV.CODE 35A.12.140 allows municipalities to adopt state code by reference. The Court agrees that the Code grants municipalities flexibility in determining fine levels, and that the fines are not excessive.

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

First, the contracts contain "stop-loss" provisions. These provisions allow the municipalities to defer payment until the cameras generate enough revenue to cover their expense. (Mot. 18 (Dkt. No. 108).) But they do not change the amount that the municipalities must eventually pay the camera companies. (*Id.*) Plaintiffs insist that these provisions run counter to the prohibition on any system of compensation based on a portion of the revenue generated. (Resp. 6 (Dkt. No. 118).) The Court does not agree. Under this system, it is the payment schedule, not the amount of compensation, that is based on a portion of revenue generated. The stop-loss provisions have allowed the municipalities to purchase traffic enforcement on a layaway plan, but not to change the price.

Footnotes

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

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

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

D. Additional Claims.

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

IV. CONCLUSION

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

All Citations

Not Reported in F.Supp.2d, 2010 WL 774135

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Declined to Follow by Lycan v. Cleveland, Ohio App. 8 Dist.,
January 23, 2014

522 Fed.Appx. 299

This case was not selected for
publication in the Federal Reporter.
Not for Publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1
generally governing citation of judicial decisions
issued on or after Jan. 1, 2007. See also
Sixth Circuit Rule 28. (Find CTA6 Rule 28)
United States Court of Appeals,
Sixth Circuit.

Colleen CARROLL, individually and on
behalf of all others similarly situated; Sheila
M. McCarthy and Patrick J. McCarthy,
Executors of the Estate of Daniel R.
McCarthy, Deceased, Plaintiffs–Appellants,
v.
CITY OF CLEVELAND, Defendant–Appellee.

No. 11–4025. | April 5, 2013.

Synopsis

Background: Plaintiffs brought putative class action in Ohio state court, asserting due process challenge, under § 1983, to city ordinance that authorized placement of automated cameras that were used to issue traffic citations, and city removed suit. The United States District Court for the Northern District of Ohio, James S. Gwin, J., 2011 WL 4383206, dismissed on claim-preclusion grounds. Plaintiffs appealed.

[Holding:] The Court of Appeals, Boggs, Circuit Judge, held that claim preclusion barred plaintiffs' claims.

Affirmed.

Helene N. White, Circuit Judge, filed opinion concurring in part and dissenting in part.

*300 On Appeal from the United States District Court for the Northern District of Ohio.

Before: BOGGS and WHITE, Circuit Judges; and BLACK, *
District Judge.

Opinion

BOGGS, Circuit Judge.

**1 Daniel McCarthy and Colleen Carroll received traffic citations from automated cameras that the City of Cleveland put in place, pursuant to a newly passed ordinance. Both paid their fines, admitting liability for their offenses. Both, however, had leased their cars. They were not vehicle owners and thus, as an Ohio appellate court later determined, they could not be fined under the ordinance. McCarthy and Carroll filed this class-action lawsuit in state court. The fines that the City collected, they alleged, were unconstitutional takings under state and federal law. The City removed to federal court. After a set of adverse decisions on their federal takings claims, in district court and on appeal, McCarthy and Carroll returned to state court and amended their pleadings, adding federal and state due-process claims. Again, the city removed to federal court. This time, the district court dismissed on claim-preclusion grounds. It reasoned *301 that, because Appellants paid their fines without asserting their current claims, this subsequent suit is barred. For the reasons that follow, we affirm.

I

In 2005, the City of Cleveland began using automated cameras to photograph vehicles that were speeding or running a red light. The owner of the vehicle photographed would receive a notice of liability,¹ and could choose either to pay a fine or to file an appeal. Paying the fine constituted an admission of liability. Likewise, failure to indicate an intent to appeal within twenty-one days “constitute[d] a waiver of the right to contest the ticket and [was] considered an admission [of liability].” CCO 413.031(k). The ordinance provided that appeals would “be heard by the Parking Violations Bureau through an administrative process established by the Clerk of the Cleveland Municipal Court.” *Ibid.* An owner unsatisfied with the outcome could pursue the matter further in the Court of Common Pleas. Ohio Rev.Code 2506.01(A). When reviewing an administrative decision under § 2506, that court has the power to “determine[] whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable,

and probative evidence.” *Dickson & Campbell, L.L.C. v. City of Cleveland*, 181 Ohio App.3d 238, 908 N.E.2d 964, 966 (2009) (quoting *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 735 N.E.2d 433, 438 (2000)).

In February 2009, a panel of the Ohio Court of Appeals held that the City could not issue a notice of liability to a lessee, as the ordinance dealt only with vehicle owners. *Id.* at 968–71. Three months later, Appellants Daniel McCarthy and Colleen Carroll filed this class-action lawsuit in state court. Like the *Dickson & Campbell* plaintiffs, McCarthy and Carroll had both received notices of liability from the City for traffic violations photographed by an automated camera.² Like the *Dickson & Campbell* plaintiffs, McCarthy and Carroll were lessees, not owners, of their vehicles. But unlike the *Dickson & Campbell* plaintiffs, McCarthy and Carroll paid their fines, rather than contesting their citations through the appellate process that the ordinance provided.

****2** Appellants' state-court complaint alleged that the fines levied against them, and all other vehicle lessees who paid citations for traffic offenses captured by the automated cameras, violated the Takings Clause of the United States and Ohio Constitutions, U.S. Const. amend. V.; Ohio Const. art. I, § 19, and constituted unjust enrichment under Ohio law. Appellants also sought a writ of mandamus for a hearing in front of an administrative officer and a judgment declaring enforcement of the ordinance against lessees unconstitutional. The City removed the case to the United States District Court for the Northern District of Ohio. The district court dismissed, reasoning that Appellants could not state a takings ***302** claim because they paid their fines voluntarily, after being afforded due process. *McCarthy v. City of Cleveland*, No. 1:09–CV–1298, 2009 WL 2424296, at *4 (N.D. Ohio Aug. 6, 2009). We affirmed the district court's dismissal of Appellants' federal claims because the money allegedly taken did not come from an identifiable fund. *McCarthy v. City of Cleveland*, 626 F.3d 280, 286 (6th Cir.2010). We remanded for further consideration of Appellants' state-law claims, however, because the Ohio Takings Clause is not necessarily coextensive with the federal Takings Clause. *Id.* at 287. Judge McKeague concurred separately, agreeing with the majority opinion in its entirety, but adding that Appellants' federal takings claims also failed because Appellants “did not exhaust the process available to them and did not obtain a final decision on any appeal.” *Id.* at 288.

On remand, the district court declined to exercise supplemental jurisdiction and remanded to Ohio state court. There, Appellants amended their complaint, adding federal and state substantive-due-process and procedural-due-process claims. The City again removed. This time, the district court ordered preliminary briefing on “Rooker–Feldman, Res Judicata, Exhaustion and all other jurisdictional issues.” After receiving the parties' submissions, the district court “determine[d] that [Appellants'] claims are precluded by *res judicata*.” *McCarthy v. City of Cleveland*, No. 1:11–CV–1122, 2011 WL 4383206, at *1 (N.D. Ohio Sept. 20, 2011). Had Appellants contested their citations, rather than paying their fines, the district court reasoned, they eventually could have presented all of the arguments that they pressed below. *Id.* at *2–*5. Because Appellants did not appeal through the administrative process that the ordinance offered, they lost the opportunity to make their claims.

II

At the outset, it is not clear which provision of the Federal Rules of Civil Procedure the district court used to dismiss Appellants' claim. The parties appear to suggest that we should treat the decision below as a Rule 12(b)(6) dismissal. See Appellants' Br. 11; Appellee's Br. 10. Appellees, though, never moved to dismiss under Rule 12(b)(6), and the district court did not rely on Rule 12(b)(6) in reaching its decision.³ Under these circumstances, the analytically better approach is to treat the decision as a dismissal under Rule 12(c), which allows a party to move for judgment on the pleadings, “[a]fter the pleadings are closed—but early enough not to delay trial.” Fed.R.Civ.P. 12(c). The difference, however, is purely aesthetic: “We review *de novo* a district court's application of the doctrine of *res judicata*,” *Buck v. Thomas M. Cooley Law Sch.*, 597 F.3d 812, 816 (6th Cir.2010) (quoting *Bragg v. Flint Bd. of Educ.*, 570 F.3d 775, 776 (6th Cir.2009)), and apply “the same *de novo* standard applicable to a motion to dismiss under Rule 12(b)(6)” to a Rule 12(c) motion for judgment on the pleadings. *Keymarket of Ohio, LLC v. Keller*, No. 10–3294, 2012 WL 2086939, at *3 (6th Cir. Jun. 8, 2012).

****3** Thus, we apply our familiar motion-to-dismiss standard, construing the record in the light most favorable to the non-moving party and accepting as true all well-pleaded allegations in the complaint. *Robert N. Clemens Trust v. Morgan Stanley DW, Inc.*, 485 F.3d 840, 845 (6th Cir.2007). In this examination, we need not credit “a legal conclusion couched as a factual allegation.” ***303** *Papasan*

v. *Allain*, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief, requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (internal alterations omitted). Instead, “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). If the facts of the complaint do not meet this threshold, dismissal is proper.

III

We give a state-court judgment or decree the same preclusive effect that it would have in the rendering state’s courts. *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81, 104 S.Ct. 892, 79 L.Ed.2d 56 (1984); *Ohio ex rel. Boggs v. City of Cleveland*, 655 F.3d 516, 519 (6th Cir.2011); *Hapgood v. City of Warren*, 127 F.3d 490, 493 (6th Cir.1997). This, of course, is a question of state law. We therefore examine Ohio law to determine whether *res judicata* bars Appellants’ action. *Migra*, 465 U.S. at 81, 104 S.Ct. 892 (“[T]he preclusive effect in federal court of petitioner’s state-court judgment is determined by Ohio law.”).

In Ohio, *res judicata* comprises two discrete doctrines: claim preclusion and issue preclusion. *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 653 N.E.2d 226, 228 (1995). The former makes “an existing final judgment or decree between the parties to litigation ... conclusive as to all claims which were or might have been litigated in a first lawsuit,” *Nat’l. Amusements, Inc. v. City of Springdale*, 53 Ohio St.3d 60, 558 N.E.2d 1178, 1180 (1990) (internal quotation omitted); the latter “precludes the relitigation, in a second action, of an issue that has been actually and necessarily litigated and determined in a prior action which was based on a different cause of action.” *Whitehead v. Gen. Tel. Co.*, 20 Ohio St.2d 108, 254 N.E.2d 10, 13 (1969).

Although the parties discuss both species of *res judicata*, claim preclusion is the linchpin of this case. Under Ohio law, “a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *Grava*, 653 N.E.2d at 229. From this holding, we have distilled four elements:

- (1) a prior final, valid decision on the merits by a court of competent jurisdiction;
- (2) a second action involving the same parties, or their privies, as the first;
- (3) a second action raising claims that were or could have been litigated in the first action; and
- (4) a second action arising out of the transaction or occurrence that was the subject matter of the previous action.

****4** *Hapgood*, 127 F.3d at 493. If a case meets each of these criteria, claim preclusion “extinguishes the plaintiff’s claim ... the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all, or any part of the transaction or series of connected transactions, out of which the action arose.” *Grava*, 653 N.E.2d at 229. “The party asserting [claim preclusion] bears the burden of proof.” *Boggs*, 655 F.3d at 520.

At the threshold, and contrary to Appellants’ argument, claim preclusion “is ... applicable to actions which have been reviewed before an administrative body, in which there has been no appeal made pursuant to R.C. 2506.01.” ***304** *Wade v. City of Cleveland*, 8 Ohio App.3d 176, 456 N.E.2d 829, 831–32 (1982). As Appellants note, there was never an administrative hearing in this case. But, as discussed below, the reason that Appellants did not receive a hearing is that they admitted their offenses by paying their fines. Just as claim preclusion applies to a party who settles a civil case and later attempts to litigate claims that she could have pursued in the case that she settled, so too does it apply to Appellants who, instead of contesting their citations, conceded civil liability by paying their fines. See CCO 413.031(a) (defining automated-camera system as “civil enforcement system”). Thus, if the City carries its burden to show that it meets the four elements of claim preclusion, Appellants’ suit may not proceed.

We move, therefore, to the four-part analysis outlined above. Our first question is whether there is a final judgment when a litigant admits liability by paying his traffic fine, and the City accepts his payment. There is: “Generally, a consent judgment operates as *res adjudicata* to the same extent as a judgment on the merits.” *Horne v. Woolever*, 170 Ohio St. 178, 163 N.E.2d 378, 382 (1959). The preclusive effect of a final judgment, in other words, “does not change simply because the parties resolved the claim without vigorously controverted proceedings.” *Scott v. City of East Cleveland*, 16 Ohio App.3d 429, 476 N.E.2d 710, 713 (1984). This is so

both when the prior proceeding was in court, *see generally Woolever*, 163 N.E.2d 378, and when the prior proceeding was a quasi-judicial administrative process, *see generally Scott*, 476 N.E.2d at 713.

[1] The citations that Appellants received clearly indicated that paying the fine, rather than contesting the citation, was an admission of liability. Thus, by paying, each Appellant admitted that he or she committed the alleged traffic violation, without asserting any defenses. Like a settlement decree in a civil case, this qualifies as a final disposition. Appellees satisfy the first prerequisite for the application of claim preclusion.

Appellants urge a contrary conclusion. They argue that, “because there was no hearing, no evidence present [sic] and no factual findings made, there was no valid decision by a court of competent jurisdiction.” Appellants’ Br. 19. This argument ignores the nature of Appellants’ admission. Had they chosen to contest the citations, Appellants would have received ample opportunity to develop the facts surrounding their citations and to present their arguments about the statute’s constitutionality, first in an administrative proceeding, then in the Ohio court system. Instead of chancing litigation, Appellants admitted liability and paid their fines. They may not escape claim preclusion now “simply because the[y] ... resolved the claim without vigorously controverted proceedings.” *Scott*, 476 N.E.2d at 713. Payment of the fines, and acceptance of that payment by the City, qualifies as a final judgment.

**5 [2] Without question, this action involves the same parties as the earlier traffic-citation action. We therefore proceed to the third element of the claim-preclusion analysis: whether this case raises claims that were, or could have been, litigated earlier. In Ohio, an administrative-hearing officer has somewhat limited powers. *See Evans v. Bd. of Educ. Southwestern City Sch. Dist.*, 425 Fed.Appx. 432, 439 (6th Cir.2011) (“[T]he ... hearing officer was not empowered to consider L.E.’s constitutional or statutory claims.”). Under § 2506.01, however, a party may appeal a quasi-judicial administrative determination to the court of common pleas, as a matter of right. That court, during the course of its review, “determines whether the administrative order [was] unconstitutional, *305 illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.” *Dickson & Campbell, L.L.C.*, 908 N.E.2d at 966 (internal quotation marks omitted).

Appellants allege that the City’s fining lessees violates: (1) the Ohio Constitution’s Takings Clause; (2) the Ohio Constitution’s guarantee of substantive due process; (3) the Ohio Constitution’s guarantee of procedural due process; (4) the right to substantive due process secured by the United States Constitution; and (5) the right to procedural due process secured by the United States Constitution. Although the administrative-hearing officer, under Ohio law, does not have the authority to resolve these constitutional claims, the court of common pleas certainly could, on review of the administrative decision. *Dickson & Campbell, L.L.C.*, 908 N.E.2d at 966. Thus, had Appellants taken advantage of the opportunity for judicial review that the ordinance offered, they could have asserted each of the claims they raise here.

Appellants’ counter-argument has some intuitive appeal, but withers under close scrutiny. Claim preclusion does not apply, they reason, because they could have brought neither a claim for damages nor a facial challenge to the ordinance’s constitutionality when appealing a (hypothetical) adverse administrative decision in the court of common pleas. Appellants are correct on both points. “Section 2506.01 does not empower state courts to award damages for injuries suffered as a result of erroneous administrative decisions,” *Negin v. City of Mentor*, 601 F.Supp. 1502, 1505 (N.D. Ohio 1985), and a facial constitutional challenge to an ordinance is “inappropriate in an appeal brought pursuant to R.C. Chapter 2506.” *Grossman v. City of Cleveland Heights*, 120 Ohio App.3d 435, 698 N.E.2d 76, 80 (1997).

Neither of these principles, however, changes the outcome here. First, the only damages that Appellants seek are the fines that they paid. Had they successfully contested their citations in the first instance, they would not have owed anything. Had they failed, they would have owed precisely what they paid. The administrative process, in other words, could have afforded Appellants the very monetary relief they demand, had they taken advantage of it. *Compare Negin*, 601 F.Supp. at 1505 (allowing § 1983 claim to proceed because plaintiff sought “damages for *injuries suffered as a result* of erroneous administrative decisions” (emphasis added)), *with* Second Amended Com pl. 7–11 (seeking, under counts one through five, “a return of the funds [paid], plus interest, to the Plaintiffs and the Class, plus reasonable attorney fees”), *and id.* at 12 (seeking disgorgement based on principles of restitution). True, Appellants hope to proceed as a class, and therefore seek the return of *many* motorists’ money. But aggregation changes only the scope, not the

nature, of Appellants' claims. At bottom, Appellants could have obtained precisely the "damages" they request had they availed themselves of the ordinance's appellate procedure.

****6** Even so, Appellants might retort, the complaint sought attorney's fees and declaratory and injunctive relief, none of which is available in a § 2506 appeal. The trouble with this argument is twofold. First, a plaintiff pursuing an administrative appeal in Ohio need not limit herself to administrative claims. Rather, she may seek relief under *both* § 2506 *and* federal statutory law, as long as she follows the proper procedures. *See, e.g., Krol v. Seven Hills City Council*, No. 88695, 2007 WL 2269465, at *2 (Ohio Ct.App. August 9, 2007) ("On April 27, 2005, appellants filed an appeal of the board's decision in the ***306** Cuyahoga County Court of Common Pleas pursuant to R.C. 2605.01. Appellants sought and were granted leave to amend their complaint to raise claims under the American with Disabilities Act, and the Rehabilitation Act of 1973." (internal citations omitted)); *Siemon v. Bailey*, No. 2002-CA-10, 2002 WL 1438678, at *8 (Ohio Ct.App. July 5, 2002) (noting that plaintiff's "complaint raises due process and equal protection violations, a violation of Section 1983, Title 42, U.S.Code, a request for injunctive relief, and an R.C. Chap. 2506 appeal from an administrative decision."). Second, "[t]he action authorized by R.C. 2506.01 is in the nature of an action for declaratory judgment." *Concerned Citizens of Spring Valley v. Spring Valley Twp. Bd. of Zoning Appeals*, No. 01 CA 0059, 2002 WL 191575, at *9 (Ohio Ct.App. Feb. 8, 2002); *see also State ex rel. Pilarczyk v. Riverside*, No. Civ.A. 20706, 2005 WL 1714206, at *7 (Ohio Ct.App. July 22, 2005) ("The constitutionality of [an administrative decision] may be attacked and injunctive relief ... obtained in a declaratory judgment action brought pursuant to R.C. Chapter 2506."). Appellants, therefore, could have obtained all of the relief that they seek here during the course of the § 2506 appeal that they chose not to pursue.

Second, while Appellants correctly note that a facial constitutional challenge is not available in a § 2506 proceeding, they do not, and cannot, maintain such a challenge here. "A facial challenge alleges that a statute, ordinance, or administrative rule, on its face and under all circumstances, has no rational relationship to a legitimate governmental purpose." *Wymyslo v. Bartec, Inc.*, 132 Ohio St.3d 167, 970 N.E.2d 898, 907 (2012); *see also Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449, 128 S.Ct. 1184, 170 L.Ed.2d 151 (2008) ("[A] plaintiff can only succeed in a facial challenge by establishing that no set of circumstances exists under which the Act would

be valid, i.e., that the law is unconstitutional in all of its applications." (internal quotation marks omitted)). An as-applied challenge, by contrast, "alleges that the application of the statute in the particular context in which he has acted ... would be unconstitutional. The practical effect of holding a statute unconstitutional 'as applied' is to prevent its future application in a similar context, but not to render it utterly inoperative." *Wymyslo*, 970 N.E.2d at 907.

****7** The claims here fall cleanly in the "as-applied" category. Appellants do not ask us to hold the entire ordinance unconstitutional in its every application. Rather, they seek return of *their* money, Second Amended Compl. 7-12, a writ of mandamus ordering the administrative hearing that *they* earlier waived, *id.* at 12, and a declaration that the City "had no legal authority to demand, collect or retain payment of fines *from citizens of non-owners of vehicles* [sic] under CCO 413.031." *Id.* at 13 (emphasis added). These arguments deal uniformly with the ordinance as applied to lessees, not its facial validity. Appellants could have pursued the arguments that they raise here in the appellate process that they waived. *See Grossman*, 698 N.E.2d at 78-79 (explaining that a litigant need not "separately file an appeal of the administrative decision and a declaratory judgment challenging the constitutionality as applied of the ordinance at issue."); *see also Dickson & Campbell, L.L.C.*, 908 N.E.2d at 969-71 (holding that vehicle lessee could not be liable under CCO 413.031 on review of § 2506 decision by district court). The City meets the third prerequisite for the application of claim preclusion.

[3] Finally, claim preclusion applies only if the "second action aris[es] out of the transaction or occurrence that was the ***307** subject matter of the previous action." *Hapgood*, 127 F.3d at 493. A "transaction," under Ohio law, is "a common nucleus of operative facts." *Grava*, 653 N.E.2d at 229 (internal quotation marks omitted).

That a number of different legal theories casting liability on an actor may apply to a given episode does not create multiple transactions and hence multiple claims. This remains true although the several legal theories depend on different shadings of the facts ... or would call for different measures of liability or different kinds of relief.

Ibid. (quoting Restatement (Second) of Judgments § 24 cmt. c (1982)).

Appellants' complaint alleges that the City's collecting automated-traffic-enforcement fines from lessees is unconstitutional. Their allegations begin and end with the issuance of a traffic citation. *Cf. Portage Cnty. Bd. of Comms. v. Akron*, 109 Ohio St.3d 106, 846 N.E.2d 478, 495 (2006) ("Several developments followed construction of Lake Rockwell that render res judicata inappropriate."); *Evans*, 425 Fed.Appx. at 439 ("claim preclusion does not apply because the 'transaction' that was the subject matter of the suspension hearing was Smathers's suspension of L.E., and did not incorporate the entire course of conduct on which L.E. premised her § 1983 due process claims."). It is true that some of Appellants' claims rest on "evidence or grounds or theories of the case not presented in the first action, or ... seek remedies or forms of relief not demanded in the first action." *Grava*, 653 N.E.2d at 229. These differences, though, are irrelevant, as a matter of Ohio law. The facts that underlie this suit—the issuance of traffic citations to lessees, rather than owners, of vehicles—are identical to the facts that confronted the plaintiffs when they received their notices of liability. The City satisfies the fourth prerequisite for the application of claim preclusion.

****8** Because payment of the fines levied in Appellants' citations, and acceptance of that payment by the City, was a final decision, the parties here are the same as the parties to the original citation, Appellants could have litigated all of the claims they raise here in an appeal to the Court of Common Pleas, and this suit arises out of the same common nucleus of operative fact as the traffic citations, the district court's decision to dismiss was correct.⁴ Because we resolve the appeal on claim-preclusion grounds, we need not assess whether issue preclusion would also bar Appellants' claims.

IV

Appellants could have litigated all of the claims that they now press through the ordinance's appeals process. Instead, they chose to settle with the City by paying their fines. The district court correctly concluded that claim preclusion bars Appellants' claims. We AFFIRM.

HELENE N. WHITE, Circuit Judge, concurring in part and dissenting in part.

There are many reasons why Plaintiffs' federal claims should fail, but I am not convinced that claim preclusion under Ohio law is one of them. The procedural due process claim attacks the procedures through which Cleveland determines liability under the ordinance. A defendant in a civil infraction proceeding challenging the *308 adequacy of the procedures used to obtain the judgment of responsibility challenges the procedures, not the alleged infraction. That Plaintiffs had the opportunity to contest their liability goes to the merits of the procedural due process claim rather than the question of its merger or bar. Nevertheless, although not reached by the district court, it is clear beyond peradventure that Plaintiffs were provided with constitutionally sufficient procedural process. As the majority observes, they had ample opportunity to contest whether the ordinance applied to them as lessees.

As to the substantive due process claim, the allegation is that Cleveland arbitrarily and capriciously implemented a custom or policy to ignore the plain language of its ordinance and issue citations to individuals who leased, not owned, their vehicles. This too is based on a different nucleus of operative facts. However, this court previously affirmed the dismissal of Plaintiffs' claims based on the Fifth Amendment's Takings Clause. With that underpinning removed, all that remains is the general allegation that Cleveland violated Plaintiffs' substantive due process rights by their arbitrary and capricious policy of enforcing the ordinance against them. But, in the context of "abusive executive action" "only the most egregious official conduct can be said to be 'arbitrary in the constitutional sense.'" *City of Cuyahoga Falls, Ohio v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 198, 123 S.Ct. 1389, 155 L.Ed.2d 349 (2003) (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998)). Here, Cleveland did no more than apply an ordinance to a group of persons who were not included within its scope as determined by the Ohio court. This is hardly egregious official conduct given that Cleveland Codified Ordinance 413.031(p)(3) defines "vehicle owner" as "the person or entity identified by the Ohio Bureau of Motor Vehicles ... as the registered owner of the vehicle," and the BMV lists at least some lessees, as in *Dickson & Campbell, L.L. C. v. City of Cleveland*, as additional owners. 181 Ohio App.3d 238, 908 N.E.2d 964, 971 (2009) (Cooney, J., dissenting).

**9 Thus, I concur in the dismissal of Plaintiffs' federal due process claims, albeit for different reasons.

I would, however, remand the state claims so that the district court can remand them to state court under the circumstance that an Ohio court has permitted similar plaintiffs to pursue unjust enrichment claims. Although the majority accurately observes that *Lycan v. Cleveland* did not consider a res judicata defense, it did state that the question whether the plaintiffs claims to equitable relief were waived depended on the circumstances:

While we recognize that the appellants had the opportunity to challenge the imposition of the fines before they paid them, this opportunity does not necessarily foreclose any right to

equitable relief. The law governing restitution allows the court to consider myriad factors in determining whether the retention of a benefit is unjust. *See* Restatement of the Law, Restitution (1937).

Lycan, No. 94353, 2010 WL 5075520, at *2 (Ohio Ct.App. Dec. 9, 2010). Because Plaintiffs' unjust enrichment claims are clearly a matter of state law, it is not clear that the Ohio court would consider them barred, and the federal claims have been resolved, I think it prudent to remand the state claims so that the district court can again remand them to state court.

All Citations

522 Fed.Appx. 299, 2013 WL 1395900

Footnotes

- * The Hon. Timothy S. Black, United States District Judge for the Southern District of Ohio, sitting by designation.
- 1 The implementing ordinance provided: "This civil enforcement system imposes monetary liability." CLEVELAND CODIFIED ORDINANCE 413.031(a) [hereinafter CCO]. By its terms, liability for a traffic violation under the ordinance "shall not be deemed a conviction for any purpose and shall not be made part of the operating record of any person on whom the liability is imposed." *Id.* at 413.031(d).
- 2 McCarthy received notices of liability for traffic violations on February 23, 2009, and March 3, 2009. Carroll received notices of liability for traffic violations on March 23, 2007, and August 15, 2007.
- 3 Instead, the district court's "Legal Standard" section dealt only with the elements of *res judicata*.
- 4 *Lycan v. Cleveland*, No. 94353, 2010 WL 5075520, at *2 (Ohio Ct.App. Dec. 9, 2010), does not alter our analysis. There, the Ohio Court of Appeals held that vehicle lessees in circumstances identical to Appellants' were not "necessarily foreclose[d] [from] any right to equitable relief." *Ibid.* *Lycan*, though, does not discuss whether claim preclusion would apply. It is, therefore, inapposite.

RCW 2.06.030

General powers and authority—Transfers of cases—Appellate jurisdiction, exceptions—Appeals.

The administration and procedures of the court shall be as provided by rules of the supreme court. The court shall be vested with all power and authority, not inconsistent with said rules, necessary to carry into complete execution all of its judgments, decrees and determinations in all matters within its jurisdiction, according to the rules and principles of the common law and the Constitution and laws of this state.

For the prompt and orderly administration of justice, the supreme court may (1) transfer to the appropriate division of the court for decision a case or appeal pending before the supreme court; or (2) transfer to the supreme court for decision a case or appeal pending in a division of the court.

Subject to the provisions of this section, the court shall have exclusive appellate jurisdiction in all cases except:

- (a) cases of quo warranto, prohibition, injunction or mandamus directed to state officials;
 - (b) criminal cases where the death penalty has been decreed;
 - (c) cases where the validity of all or any portion of a statute, ordinance, tax, impost, assessment or toll is drawn into question on the grounds of repugnancy to the Constitution of the United States or of the state of Washington, or to a statute or treaty of the United States, and the superior court has held against its validity;
 - (d) cases involving fundamental and urgent issues of broad public import requiring prompt and ultimate determination; and
 - (e) cases involving substantive issues on which there is a direct conflict among prevailing decisions of panels of the court or between decisions of the supreme court;
- all of which shall be appealed directly to the supreme court: PROVIDED, That whenever a majority of the court before which an appeal is pending, but before a hearing thereon, is in doubt as to whether such appeal is within the categories set forth in subsection (d) or (e) of this section, the cause shall be certified to the supreme court for such determination.

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.

The court shall have appellate jurisdiction over review of final decisions of administrative agencies certified by the superior court pursuant to RCW 34.05.518.

Appeals from the court to the supreme court shall be only at the discretion of the supreme court upon the filing of a petition for review. No case, appeal or petition for a writ filed in the supreme court or the court shall be dismissed for the reason that it was not filed in the proper court, but it shall be transferred to the proper court.

[1980 c 76 § 3; 1979 c 102 § 1; 1969 ex.s. c 221 § 3.]

NOTES:

Rules of court: *Cf. Titles 1 and 4 RAP, RAP 18.22.*

Severability—1979 c 102: See note following RCW 3.66.020.

RCW 7.80.010

Jurisdiction of courts.

(1) All violations of state law, local law, ordinance, regulation, or resolution designated as civil infractions may be heard and determined by a district court, except as otherwise provided in this section.

(2) Any municipal court has the authority to hear and determine pursuant to this chapter civil infractions that are established by municipal ordinance or by local law or resolution of a transit agency authorized to issue civil infractions, and that are committed within the jurisdiction of the municipality.

(3) Any city or town with a municipal court under chapter **3.50** RCW may contract with the county to have civil infractions that are established by city or town ordinance and that are committed within the city or town adjudicated by a district court.

(4) District court commissioners have the authority to hear and determine civil infractions pursuant to this chapter.

(5) Nothing in this chapter prevents any city, town, or county from hearing and determining civil infractions pursuant to its own system established by ordinance.

[2009 c 279 § 2; 1987 c 456 § 9.]

RCW 46.61.050

Obedience to and required traffic control devices.

(1) The driver of any vehicle, every bicyclist, and every pedestrian shall obey the instructions of any official traffic control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exception granted the driver of an authorized emergency vehicle in this chapter.

(2) No provision of this chapter for which official traffic control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible or visible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic control devices are required, such section shall be effective even though no devices are erected or in place.

(3) Whenever official traffic control devices are placed in position approximately conforming to the requirements of this chapter, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.

(4) Any official traffic control device placed pursuant to the provisions of this chapter and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this chapter, unless the contrary shall be established by competent evidence.

[1975 c 62 § 18; 1965 ex.s. c 155 § 7.]

NOTES:

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

Bicycle awareness program: RCW 43.43.390.

RULE 1.1
SCOPE AND PURPOSE OF RULES

(a) Scope of Rules. These rules govern the procedure in courts of limited jurisdiction for all cases involving "infractions". Infractions are noncriminal violations of law defined by statute.

(b) Purpose. These rules shall be construed to secure the just, speedy, and inexpensive determination of every infraction case.

(c) Effect of Other Law. These rules supersede all conflicting rules and statutes covering procedure for infractions unless a rule indicates a statute or rule controls. Provisions of statute or rule not inconsistent with these rules shall remain in effect.

RULE IRLJ 2.4
RESPONSE TO NOTICE

(a) Generally. A person who has been served with a notice of infraction must respond to the notice within 15 days of the date the notice is personally served or, if the notice is served by mail, within 18 days of the date the notice is mailed.

(b) Alternatives. A person may respond to a notice of infraction by:

(1) Paying the amount of the monetary penalty in accordance with applicable law, in which case the court shall enter a judgment that the defendant has committed the infraction;

(2) Contesting the determination that an infraction occurred by requesting a hearing in accordance with applicable law;

(3) Requesting a hearing to explain mitigating circumstances surrounding the commission of the infraction in accordance with applicable law; or

(4) Submitting a written statement either contesting the infraction or explaining mitigating circumstances, if this alternative is authorized by local court rule. The statement shall contain the person's promise to pay the monetary penalty authorized by law if the infraction is found to be committed. For contested hearing the statement shall be executed in substantially the following form:

I hereby state as follows:

I promise that if it is determined that I committed the infraction for which I was cited, I will pay the monetary penalty authorized by law and assessed by the court. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

(Date and Place)

(Signature)

I understand that if this form is submitted by e-mail, my typed name on the signature line will qualify as my signature for purposes of the above certification.)

For mitigation hearings, the statement shall be executed in substantially the following form:

I hereby state as follows:

I promise to pay the monetary penalty authorized by law or, at the discretion of the court, any reduced penalty that may be set.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

(Date and Place)

(Signature)

I understand that if this form is submitted by e-mail, my typed name on the signature line will qualify as my signature for purposes of the above certification.

(c) Method of Response. A person may respond to a notice of infraction either personally, or if allowed by local rule by mail or by e-mail. If the response is mailed or e-mailed, it must be postmarked or e-mailed not later than midnight of the day the response is due.

[Adopted effective September 1, 1992; amended effective January 3, 2006.]

RULE IRLJ 6.7
IDENTITY CHALLENGES AND RELIEF FROM JUDGMENT

(a) Relief from Judgment. A motion to waive or suspend a fine, or to convert a penalty to community restitution, or to vacate a judgment is governed by CRLJ 60(R).

(b) Identity Challenge.

(1) Right Granted. In addition to the rights granted defendants pursuant to rule 6.7(a), a defendant may move to vacate a judgment that was entered after a failure to respond to a notice of infraction on the basis that he or she was mistakenly identified as the person who allegedly committed the infraction.

(2) Identity Affidavit. A defendant moving to vacate a judgment for mistaken identification shall file an affidavit or certification under RCW 9A.72.065 with the court in which the infraction was found committed and with the office of the prosecuting authority assigned to the court stating that he or she could not be the person identified by the citing officer as having committed the infraction, citing a factual basis for the assertion and stating that he or she was not served with the notice of infraction.

(3) Adjudication Pending Hearing. The court may, at its discretion, set aside the default judgment pending the hearing.

(4) Scheduling of Hearings. An identification hearing shall be scheduled for not less than 14 days and not more than 120 days from the date an identity affidavit is filed unless otherwise agreed by the defendant. The court shall send the defendant written notice of the time, place and date of the hearing within 28 days of the receipt of the request for hearing.

(5) Hearing Procedure. The court may require the presence of the defendant at the scheduled hearing. At the hearing, identification may be established by methods other than direct identification in court.

(6) Disposition. If the court determines that the named defendant was the person identified by the citing officer as the person who committed the infraction or was served with the notice of infraction, the infraction shall remain committed or be re-adjudicated as committed.

[Adopted effective September 1, 1994; amended effective January 3, 2006; amended effective February 26, 2006.]

RULE 60
RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RALJ 4.1(b).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. 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.

(d) Writs Abolished--Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court

shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.
