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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

ESTWICK, BICE, and
ROBBINS on Behalf of
Themselves and Those Similarly Situated,

Plaintiffs,

v.

MOUNTAINS RECREATION AND
CONSERVATION AUTHORITY, JOSEPH
EDMISTON (in his capacity as Executive
Director of the MRCA) and DOES 1 through
and including 100,

Defendants.

LASC Case No: BC434783

COURT'S RULING AND ORDER RE:
DEFENDANT MRCA'S DEMURRER TO,
AND MOTION TO STRIKE PORTIONS OF,
THE SECOND AMENDED COMPLAINT

Hearing Date: December 3, 2010

I.

BACKGROUND

Plaintiffs Estwick, Bice, and Robbins bring this putative class action
against Defendant Mountains Recreation and Conservation Authority ("MRCA") "on behalf of
all consumers who received an administrative citation ('Citation') issued by the [MRCA's] stop
sign photo enforcement program ('Enforcement Program') from the date of inception of the

1 Enforcement Program through the present.”¹ Plaintiffs allege that the MRCA, by implementing
2 this local ordinance and issuing citations thereunder, “subjected Plaintiffs and class members to
3 laws contrary to those set forth in the California Vehicle Code resulting in an actual controversy
4 between plaintiff and defendant concerning their respective rights and duties for which Plaintiffs
5 now seek declaratory relief.”²

6 On September 14, 2010, the Court heard the demurrer to the First Amended Complaint
7 (“FAC”) in this litigation. The Court sustained the demurrer to the claim for violation of 42
8 U.S.C. §1983, et seq., without leave to amend. The Court stated that Plaintiff did not allege
9 actionable violations of substantive or procedural due process. The Court determined that *Lone*
10 *Star Security & Video, Inc. v. City of Los Angeles* (9th Cir. 2009) 584 F.3d 1232 was controlling.

11 Notwithstanding the Court’s order sustaining the demurrer without leave as to the §1983
12 claim, the Court granted Plaintiffs leave to amend to allege a declaratory relief claim under CCP
13 §1060 or, alternatively, an appropriate writ proceeding challenging the conduct of the Joint
14 Powers Authority. Plaintiffs filed the SAC, alleging a sole cause of action for declaratory relief.
15 Defendant MRCA has again demurred to the SAC. MRCA has also moved to strike the request
16 for a refund of fines and attorney’s fees.

17 For the reasons discussed *infra*, the demurrer is overruled. The motion to strike is
18 granted: 1) to the extent that the SAC seeks attorneys’ fees pursuant to 42 U.S.C. §1983; and 2)
19 with respect to Plaintiffs’ request for monetary relief. The motion to strike is otherwise denied.
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24 ¹ Second Amended Complaint (“SAC”), ¶1.
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² SAC, ¶3.

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II.

REQUEST FOR JUDICIAL NOTICE

In conjunction with the demurrer and motion to strike, MRCA requests judicial notice of the following exhibits:

- A. California Senate Bill Number 949 (2009-2010 Regular Session) Ch. 616, Sections 1 through 6, amending California Vehicle Code §§21 and 21100;
- B. California Bill Analysis, Assembly Committee on Transportation, 2009-2010 Regular Session, Senate Bill 949, June 28, 2010;
- C. California Senate Rules Committee, Floor Analysis, SB 949;
- D. Senate Bill Analysis, SB949;
- E. MRCA's Joint Exercise of Powers Agreement;
- F. MRCA's Park Ordinance establishing park rules and regulations; and
- G. MRCA's Administrative Decision/Order dated May 5, 2009, in the matter of Robbins, for citation number MRS0024567.

The request is granted as to items A, B, C, and D pursuant to Evidence Code §452(c). The request is granted as to items E and F pursuant to Evidence Code §452(b). The request is denied as to item G. The MRCA's administrative decision/order in the Robbins matter does not constitute an "official act" of a state agency, and is not otherwise subject to judicial notice under §452(h).

III.

DEMURRER TO SAC

Defendant MRCA demurs to the sole cause of action in the SAC for declaratory relief. To state a claim for declaratory relief, a plaintiff must allege:

- 1. Person interested under a written instrument or a contract; or
- 2. a declaration of his or her rights or duties;
 - a. with respect to another; or

- 1 b. in respect to, in, over or upon property; and,
2 3. an actual controversy.

3 CCP §1060; *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal. App. 4th 592, 605-06;
4 *Bennett v. Hibernia Bank* (1956) 47 Cal. 2d 540, 549.

5 Plaintiffs allege that Defendant MRCA (a partnership between the Santa Monica
6 Mountains Conservancy, an agency established by the State Legislature, the Conejo Recreation
7 and Park District, and the Rancho Simi Recreation and Park District) manages several
8 parklands.³ The MRCA passed an ordinance (Ordinance No. 1-2005 (as amended)), which
9 provides certain regulations for traffic control within the parklands, as well as enforcement
10 mechanisms.⁴ Pursuant to these regulations, a means for automated enforcement of traffic
11 control was implemented, including a citation procedure (whereby park rangers or other
12 employees of MRCA are authorized to examine photographic or video equipment recordings
13 authorized under the ordinance to determine whether an offense has occurred; if the park ranger
14 or other employee of MRCA determines an offense has occurred, and the license plate number of
15 the offending vehicle can be established, the ranger or employee may issue an administrative
16 citation to the registered owner).⁵

17 The SAC alleges that prior to 2007, the operating Ordinance did not provide for the use
18 of photo enforcement, nor the use of administrative citations. Instead, traffic infractions such as
19 failing to completely stop at a stop sign were violations of the California Vehicle Code and were
20 prosecuted thereunder.⁶ The SAC alleges that amendments to the Ordinance were necessary

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22 ³ SAC, ¶¶16-17.

23 ⁴ See generally SAC, ¶19.

24 ⁵ SAC, ¶19(f).

25 ⁶ SAC, ¶20.

1 because on March 22, 2007, the MRCA entered into a contract with Redflex Traffic Systems,
2 Inc. to install, maintain, and provide services for a digital photo speed and stop sign enforcement
3 system, “ostensibly to be used pursuant to the freshly minted provision the MRCA passed to
4 allow itself to use a photo enforcement system.”⁷ As a result of the enforcement program, which
5 Plaintiffs allege is illegal, MRCA has allegedly collected millions of dollars worth of fees and
6 issued thousands of citations.⁸

7 Plaintiffs allege the amended Ordinance violates the California Vehicle Code in
8 numerous ways.⁹ Plaintiffs allege that the MRCA, however, “has no authority, in and of
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11 ⁷ SAC, ¶21.

12 ⁸ SAC, ¶24.

13 ⁹ In particular, the SAC alleges that the Ordinance violates the following provisions of the Vehicle Code:

14 a. CVC §21455.6(c): the authorization in Section 21455.5 to use automated enforcement systems
15 does not authorize the use of photo radar for speed enforcement purposes by any jurisdiction.

16 b. CVC §210: An “automated enforcement system” is any system operated by a governmental
17 agency, in cooperation with a law enforcement agency, that photographically records a driver’s
18 responses to a rail or rail transit signal or crossing gate, or both, or to an official traffic control
19 signal described in Section 21450, and is designed to obtain a clear photograph of a vehicle’s
20 license plate and the driver of the vehicle.

18 c. CVC §21455.5(g)(1): A contract between a governmental agency and a manufacturer or
19 supplier of automated enforcement equipment may not include provision for the payment or
20 compensation to the manufacturer or supplier based on the number of citations generated, or as a
21 percentage of the revenue generated....

21 d. CVC §21: Except as otherwise expressly provided, the provisions of this code are applicable
22 and uniform throughout the State and in all counties and municipalities therein, and no local
23 authority shall enact or enforce any ordinance on the matters covered by this code unless expressly
24 authorized herein.

23 e. CVC §21100.1: “Whenever any city or county, by ordinance or resolution, permits, redistricts,
24 or prohibits the use of public or private highways pursuant to this article, any traffic control device
25 erected by it on or after January 1, 1981, shall conform to the uniform standards and specifications
adopted by the Department of Transportation pursuant to Section 21400.

25 f. Use of improper signage inconsistent with CVC and the California Manual on Uniform Traffic Control
Devices for Streets and Highways.SAC, ¶¶25(a)-(f).

1 itself or through the Joint Powers Agreement to countermand any article of the California
2 Vehicle Code.”¹⁰

3 The named Plaintiffs in this case received a citation from MRCA issued pursuant to the
4 Amended Ordinance, “promulgated under the color of state law.”¹¹ Plaintiffs allege they were
5 cited for failing to come to a complete stop while driving through Temescal Canyon Gateway
6 Park (a park operated by MRCA).¹²

7 The claim for declaratory relief alleges that the claim “arises out of a conflict between the
8 MRCA’s Amended Ordinance and the California Vehicle Code.”¹³ Plaintiffs allege that the
9 California Legislature “enacted the California Vehicle Code as the means by which to regulate
10 the use of vehicles in this state.”¹⁴

11 The remainder of the declaratory relief claim alleges that the CVC “specifically and
12 exclusively addresses the use of automated enforcement systems including but not limited to
13 what kind of systems may be used and the procedural safeguards that must be employed
14 consistent with that use.”¹⁵ The declaratory relief claim alleges that among other things, “the
15 CVC prohibits automated enforcement systems to enforce speed (CVC §2145.6(c)) and requires
16 certain procedural safeguards to be employed such as photos of both the vehicle and its driver
17 (CVC §210) as well as warnings through the use of uniform signage (CVC 21100.1).”¹⁶

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19 ¹⁰ SAC, ¶31.

20 ¹¹ SAC, ¶¶11-12.

21 ¹² SAC, ¶¶11-12.

22 ¹³ SAC, ¶45.

23 ¹⁴ SAC, ¶46.

24 ¹⁵ SAC, ¶48.

25 ¹⁶ SAC, ¶49.

1 Paragraph 50 alleges that the portions of the Amended Ordinance relating to the use of
2 automated stop sign enforcement claim to operate outside the auspices of the California Vehicle
3 Code and impose upon park users legal obligations that are different and more onerous than that
4 imposed under the CVC.¹⁷

5 The Court's ruling on the demurrer depends on an assessment of whether there is an
6 "actual controversy" – the second element required to state a claim for declaratory relief. In
7 order to find whether the allegations, as set forth *supra*, plead an "actual controversy" between
8 the parties, the Court must examine the statutes at issue.¹⁸

9 Statutory interpretation is a legal question. *Creditors Collection Service v. Hanzell*
10 *Vineyards, Ltd.* (1992) 5 Cal.App.4th Supp. 1, 4. It is long settled that courts read the statute as a
11 whole to give the words their proper context, meaning, and effect. *Vasquez de Mercado v.*
12 *Superior Court (McClung)* (2007) 148 Cal.App.4th 711, 715 (“[t]he words of the statute should
13 be given their ordinary and usual meaning and should be construed in their statutory context.
14 These canons generally preclude judicial construction that renders part of the statute
15 ‘meaningless’ or ‘inoperative.’”)

16 **1. Is MRCA prohibited by the California Vehicle Code from enforcing Ordinance 1-2005 ?**

17 The initial issue is whether Defendant MRCA's photo enforcement program is prohibited
18 by the California Vehicle Code. The operative version of California Vehicle Code §21 states
19 that “no *local authority* shall enact or enforce any ordinance on the matters covered by this code
20 unless expressly authorized herein.” (Emphasis added.) As MRCA notes, however, §21 has been
21 amended by Senate Bill 949 (“SB949”) to now state as follows:

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23 ¹⁷ SAC, ¶50.

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25 ¹⁸ While the Court assumes the facts of a pleading are true for purposes of ruling on the demurrer, there does not, in any event, appear to be any dispute that the facts alleged in the SAC are true.

1 (a) Except as otherwise *expressly provided*, the provisions of this code are
2 *applicable and uniform throughout the State* and in all counties and municipalities
3 therein, and a local authority shall not enact or enforce any ordinance or
4 resolution on the matters covered by this code, including ordinances or resolutions
5 that establish regulations or procedures for, or assess a fine, penalty, assessment,
6 or fee for a violation of, matters covered by this code, unless expressly authorized
7 by this code.

8 (b) To the extent permitted by current state law, this section does not impair the
9 current lawful authority of the Mountains Recreation and Conservation Authority,
10 a joint powers authority, or any member agency constituted therein as of July 1,
11 2010, to enforce an ordinance or resolution relating to the management of public
12 lands within its jurisdiction.¹⁹

13 This new version of Vehicle Code §21 becomes operative in July, 2011.

14 Vehicle Code §385 defines “local authority” as “the legislative body of *every county or*
15 *municipality* having authority to adopt local police regulations.” (Emphasis added.)

16 California Vehicle Code §21455.5 sets forth the requirements for operating an automated
17 enforcement system by “a government agency, in cooperation with a law enforcement agency.”
18 Vehicle Code §21455.5(c). Critically, however, California Vehicle Code §21455.6(c) provides
19 that “[t]he authorization in Section 21455.5 to use automated enforcement systems does not
20 authorize the use of photo radar for *speed enforcement purposes by any jurisdiction.*” (Emphasis
21 added.) *If* MRCA qualifies as “any jurisdiction” under §21455.5, its use of photo radar for
22 “speed enforcement purposes” constitutes a violation of the statute.

23 Ultimately, the Court must reconcile the prohibition on “any jurisdiction” (referenced in
24 §21455.6(c)) from enforcing a photo radar for speed enforcement purposes, with the amended
25 version of §21(b) (exempting MRCA from its “current lawful authority” to enforce an ordinance
“relating to the management of public lands within its jurisdiction”, and whether it is “permitted
by current state law”), and Vehicle Code §385’s definition of “local authority” excerpted above.

In synthesizing these statutes and reading them in context, the Court is not persuaded by
MRCA’s position that it may, *carte blanche*, enforce its own ordinances where those ordinances

¹⁹ RJN, Exh. A (emphasis added).

1 would otherwise violate the California Vehicle Code. Part of the problem is that the amended
2 §21(b) does not further define the term “management of public lands.”

3 Under the amended version of §21, MRCA’s argument is not persuasive. If the
4 Legislature had expressly defined the term “management of public lands” and/or expressly
5 authorized the MRCA (or any other joint powers authority) to utilize photo radar for speed
6 enforcement purposes under §21455.6(c), the result may be different. There is no express
7 exemption under §21455.6(c) which permits the MRCA or joint powers authorities to use photo
8 radar for speed enforcement purposes. As an entity that qualifies as “any jurisdiction” under
9 Vehicle Code §21455.6(c), “current state law” (under the revised §21(b)) must be read to
10 prohibit MRCA from utilizing photo radar for speed enforcement purposes. The reasonable,
11 plain-meaning interpretation is that the amended version of §21(b) only allows MRCA to enforce
12 its ordinances relating to the management of public lands if MRCA’s authority is already
13 permitted by current state law. Absent an express exemption (as required under §21(a)) to use
14 photo radar for speed enforcement purposes, the Vehicle Code is applicable and uniform
15 throughout California.

16 Further, even if the Court could not discern the statutory language from the excerpted
17 statutes themselves, the legislative history supports Plaintiffs’ interpretation. Importantly,
18 SB949 specifically states that “1) a local authority *may not* enact or enforce an ordinance that
19 establishes a violation *that is already covered by the Vehicle Code* and 2) a local authority *may*
20 *not* enact or enforce an ordinance that establishes a fine or penalty that is already established by
21 the Vehicle Code.” (Emphasis added.) Here, the enforcement of a photo radar for speed
22 enforcement purposes is covered by the Vehicle Code (under §21455.6(c)). This provides an
23 additional basis for finding that MRCA may not enforce an ordinance which is otherwise
24 prohibited and “already covered” under the California Vehicle Code.

1 The Court also is not persuaded by the MRCA's argument that it is not a "local authority"
2 under Vehicle Code §21 (and that this section does not apply to it) because it is not a county or
3 municipality. MRCA's proffered interpretation still does not reconcile the introductory clause of
4 §21(a); to wit, that "the provisions of this code are *applicable and uniform throughout the State*
5 and in all counties and municipalities therein[.]" Even assuming the MRCA is not a "local
6 authority" under Vehicle Code §21(a) (pursuant to Vehicle Code §385), the Vehicle Code is
7 clear that its provisions are "applicable and uniform" throughout California. It could not have
8 been the Legislature's intent to permit the MRCA to establish a whole new scheme of traffic
9 regulations, inconsistent with the Vehicle Code's express prohibition on photo radar for speed
10 enforcement purposes.

11 Accordingly, the Court finds that, on the face of the pleading, Plaintiffs have alleged a
12 violation of the Vehicle Code as a basis for the declaratory relief claim.

13 **2. Is MRCA permitted to enforce Ordinance 1-2005 by the Public Resources Code and/or**
14 **the Government Code?**

15 Alternatively, MRCA claims that the Public Resources Code and the Government Code
16 permit MRCA to enforce the Ordinance. As MRCA notes (and as alleged in the SAC), it is a
17 "joint powers agency." A joint powers agency "shall possess the common power specified in the
18 [joint powers] agreement *and may exercise it in the manner or according to the method provided*
19 *in the agreement.*" Government Code §6508 (emphasis added). However, under the "common
20 powers rule," "powers that may be exercised by a joint powers agency can be *no greater* than the
21 powers *shared* by *each* of the agency's constituent members." *Robins v. Santa Monica Mountain*
22 *Conservancy* (2010) 188 Cal.App.4th 952, 962 (emphasis added).

23 Exhibit E to MRCA's Request for Judicial Notice is the "Mountains Recreation and
24 Conservation Authority Joint Exercise of Powers Agreement," entered into by the Santa Monica
25 Mountains Conservancy (the "Conservancy"), Conejo Recreation and Park District ("The Conejo

1 District”) and Rancho Simi Recreation and Park District (“The Rancho Simi District”)
2 (collectively, “the Park Districts”). Section 4 is entitled “Powers of Authority,” and provides in
3 pertinent part:

4 4.0. The Authority shall have all powers *common* to the parties to this
5 Agreement, and such other powers as may be provided by statute applicable to
6 local park agencies which relate to park and open space real property, the
7 management and operation of associated personal property, and the management,
8 fiscal affairs, and operation of a local agency....

9 4.1 The Authority is hereby empowered to do *all acts necessary for the exercise*
10 *of such powers*, and this agreement shall be *liberally construed* to effectuate its
11 purposes.²⁰

12 The parties do not disagree that the Conejo and Rancho Simi Recreation and Park
13 Districts are established and governed by Chapter 4, Div. 5 of the Public Resources Code
14 (“PRC”), §5780, et seq.²¹ PRC §5786(a) declares that a district may “[o]rganize, promote,
15 conduct, and advertise programs of community recreation, including but not limited to, parks and
16 open space, parking, *transportation*, and other related services that improve the community’s
17 quality of life.” PRC §5786(a) (emphasis added).

18 Further, PRC §5786.1 states:

19 A district shall have and may exercise all rights and powers, express or implied,
20 necessary to carry out the purposes and intent of this chapter, including, but not
21 limited to, the following powers....

22 (i) To adopt ordinances...

23 (j) *To adopt and enforce rules and regulations for the administration, operation,*
24 *use, and maintenance of the recreation facilities*, programs and services listed in
25 Section 5786....

(m) To perform any acts necessary to carry out the provisions of this chapter.
(Emphasis added.)

²⁰ MRCA’s RJN, Exh. E at 3 (emphasis added).

²¹ RJN, Exh. E at 1.

1 SMMC is established and governed by PRC §§33000, et seq. Public Resources §33211.5

2 provides:

3 (a) The following conditions of use apply to property owned or subject to the
4 management of the conservancy....

5 (3) Vehicles shall park only in designated areas and may not be operated
6 off of roads or other areas designated for vehicle use. *All vehicle use,*
7 including bicycles, *shall conform to posted signs.*

8 (b) Trails, campsites, and *other public use areas* on property owned or subject to
9 the management of the conservancy *shall be designated and posted with*
10 *prohibited activities and use restrictions* clearly indicated, including, but not
11 limited to, the prohibition or restriction of smoking, fires, fireworks, animals,
12 possession of dangerous weapons, *or other activities that affect the safety of*
13 visitors, campers, trail users, or the natural or historic resources of the property.
14 (Emphasis added.)

15 Further, SMMC may “[d]o any and all other things necessary to carry out the broad
16 purposes of this division.” PRC §33211(c). (Emphasis added.)

17 With respect to the two Park Districts, the first question is whether the enforcement
18 powers granted by the PRC extend to traffic regulations. Ultimately, resolution of this issue
19 turns on how broadly the Court interprets the term “transportation” under PRC §5786(a), when
20 read in conjunction with the Park District’s authority under §5786.1 “[t]o adopt and enforce
21 rules and regulations for the administration, operation, use, and maintenance of the recreation
22 facilities, programs and services listed in Section 5786....

23 In the Court’s view, MRCA is reading too much into the word “transportation.” To adopt
24 MRCA’s broad interpretation would require the Court to ignore the provisions of the Vehicle
25 Code excerpted *supra*. In the Court’s view, this was not the Legislature’s intent.

As to SMMC’s authority under §33211.5, the clause “other activities that affect the safety
of visitors” cannot be broadly read to permit SMMC to promulgate an ordinance which is
otherwise prohibited under state law. Even if the Court were to find that §33211.5 permitted
SMMC to regulate traffic by installing the photo radar for speed enforcement purposes, this

1 would not change the result. As noted *supra*, under the common powers rule, the powers that
2 may be exercised by MRCA (the *combined* joint powers agency between the Park Districts and
3 SMMC) can be *no greater* than the powers shared by each of the agency's constituent members,
4 per *Robins v. Santa Monica Mountain Conservancy, supra*, 188 Cal.App.4th at 962. Since the
5 Park Districts do not have authority, on their own, to permit photo radar enforcement, and since
6 SMMC's power could be no greater than that shared by the Park Districts and SMMC, the
7 combined joint power, MRCA, does not have authority to promulgate the Ordinance permitting
8 photo radar enforcement that is inconsistent with the Vehicle Code. As such, neither the
9 Government Code nor the Public Resources Code allows MRCA to promulgate an ordinance
10 establishing a system of photo radar for speed enforcement purposes.

11 **Conclusion on Demurrer**

12 For all of these reasons, the Court finds that Plaintiffs have adequately pleaded an "actual
13 controversy" between the parties for purposes of stating a declaratory relief claim. The demurrer
14 is therefore overruled.

15
16 **IV.**

17 **MOTION TO STRIKE**

18 CCP §436(a) allows a court to "[s]trike out any irrelevant, false, or improper matter
19 inserted in any pleading." *City of Rancho Cucamonga v. Reg'l. Water Quality Control Bd. –*
20 *Santa Ana Region* (2006) 135 Cal.App.4th 1377, 1386. CCP §431.10(b) defines an "immaterial"
21 allegation as: an allegation that is not essential to the statement of a claim or defense; an
22 allegation that is neither pertinent nor supported by an otherwise sufficient claim or defense; or a
23 demand for judgment requesting relief not supported by the allegations of the complaint or cross-
24 complaint. An "immaterial allegation" is defined as "irrelevant matter" as that term is used
25 under CCP §436. CCP §431.10(c).

1 With these standards in mind, MRCA has moved for an order striking the monetary
2 portions of the Plaintiffs' claim for declaratory relief on grounds that Plaintiffs failed to comply
3 with the claim presentation requirement under the Tort Claims Act, and alternatively, failed to
4 comply with the administrative exhaustion requirement. Plaintiffs also seek an order striking the
5 request for attorneys' fees. The Court takes these issues in turn.

6 1. Claim presentation

7 The first issue presented by the motion to strike is whether Plaintiffs were required to
8 present their claims to the MRCA pursuant to the Tort Claims Act. It is not disputed that on the
9 face of the SAC, MRCA issued the citation to Plaintiffs Estwick and Bice on September 24,
10 2008, and that Plaintiffs received the citation before October 29, 2008. However, Plaintiffs
11 allege they submitted their claim on October 29, 2009. According to MRCA, this was a year
12 after the citation was issued, and thus, Estwick and Bice's cases are time-barred.

13 In general, no suit for money or damages may be maintained against a governmental
14 entity unless a formal claim has been presented to such entity, and has been rejected (or is
15 deemed rejected by the passage of time). Weil & Brown, California Practice Guide, Civil
16 Procedure Before Trial, The Rutter Group, ¶1:646 (2010) (citing Government Code §§945.4,
17 912.4; *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776). The purpose of the
18 claims statutes is "to provide the public entity sufficient information to enable it to adequately
19 investigate claims and to settle them, if appropriate, without the expense of litigation." Weil &
20 Brown, California Practice Guide, Civil Procedure Before Trial, The Rutter Group, ¶1:647
21 (2010) (citing *City of San Jose v. Sup. Ct. (Lands Unlimited)* (1974) 12 Cal.3d 447, 455). It also
22 enables the public entity to engage in fiscal planning for potential liabilities, and to avoid similar
23 liabilities in the future. Weil & Brown, California Practice Guide, Civil Procedure Before Trial,
24 The Rutter Group, ¶1:647 (2010) (citing *Lozada v. City & County of San Francisco* (2006) 145
25 Cal.App.4th 1139, 1151).

1 With few exceptions, the claims filing statutes apply to claims against every public entity
2 in the State. This includes the State and every political subdivision, every agency and
3 department thereof, and every special purpose district. Gov. Code §§900, et seq. Failure to
4 allege facts in the complaint demonstrating compliance with the prelitigation governmental
5 claims presentation requirements subjects the complaint to a general demurrer. Weil & Brown,
6 California Practice Guide, Civil Procedure Before Trial, The Rutter Group, ¶1:652 (2010) (citing
7 *State of Calif. v. Sup. Ct. (Bodde)* (2004) 32 Cal.4th 1234, 1239). Failure to comply with the
8 claims statute bars the claim against the public entity. Weil & Brown, California Practice Guide,
9 Civil Procedure Before Trial, The Rutter Group, ¶1:653 (2010) (citing *Bodde, supra*, 32 Cal.4th
10 at 1239, fn.7).

11 Importantly, the statutory requirements for presentation of a claim apply to claims for
12 “money or damages.” Weil & Brown, California Practice Guide, Civil Procedure Before Trial,
13 The Rutter Group, ¶1:657.10 (2010) (citing Gov’t. Code §905 and *City of Los Angeles v. Sup. Ct.*
14 (*Collins*) (2008) 168 Cal.App.4th 422, 430). The statutes do not apply to *nonpecuniary* actions,
15 “such as those seeking injunctive, specific or declaratory relief.” Weil & Brown, California
16 Practice Guide, Civil Procedure Before Trial, The Rutter Group, ¶1:657.11 (2010) (citing
17 *Canova v. Trustees of Imperial Irrig. Dist. Employee Pension Plan* (2007) 150 Cal.App.4th 1487,
18 1493). Declaratory relief is distinguished from “coercive” relief (such as damages, specific
19 performance, or an injunction). See *Mycogen Corp. v. Monsanto Corp.* (2002) 28 Cal.4th 888,
20 898.

21 There is a split of authority on whether the statutory claim requirements apply where
22 money damages are “incidental” to a claim for equitable relief. Weil & Brown, California
23 Practice Guide, Civil Procedure Before Trial, The Rutter Group, ¶1:657.25 (2010) (citing *Lozada*
24 *v. City & County of San Francisco* (2006) 145 Cal.App.4th 1139, 1163-1164 and
25 *TrafficSchoolOnline, Inc. v. Clarke* (2003) 112 Cal.App.4th 736, 742); but see *Eureka Teacher’s*

1 *Ass'n. v. Board of Ed.* (1988) 202 Cal.App.3d 469, 476). In this regard, the Court finds the
2 decision in *Traffic School Online, Inc. v. Clarke* controlling.

3 With these standards in mind, and as noted *supra*, the sole claim alleged in this litigation
4 is for declaratory relief pursuant to the Declaratory Judgment Act (CCP §1060). Since this case
5 was brought as a class action seeking recovery of ostensibly millions of dollars in fines, such
6 substantial monetary relief cannot be viewed as “ancillary” to the declaratory relief sought in the
7 SAC. As such, insofar as Plaintiffs seek monetary relief, the motion to strike is well-taken and is
8 granted.

9 Despite the Court’s finding that a claim presentation requirement exists with respect to
10 the monetary portion of the Plaintiffs’ declaratory relief claim, Plaintiffs were not required to file
11 a claim as to the portion of the claim seeking solely a declaration that Ordinance 1-2005 is
12 contrary to the Vehicle Code. As such, the motion to strike the non-monetary component of the
13 declaratory relief claim is denied.

14 For these reasons, the motion to strike the monetary portion of the claims of Plaintiffs
15 Estwick and Bice is granted, on grounds that they failed to comply with the Tort Claims Act.
16 The motion to strike the claim, insofar as it seeks pure declaratory relief, is denied.
17 Notwithstanding the Court’s order striking the monetary component of the named Plaintiffs’
18 claim, the Court will consider, at a subsequent stage, the right of Plaintiffs to add one or more
19 class representatives seeking a return of funds paid to the MRCA who have complied with the
20 Tort Claims Act filing requirements.

21 **2. Exhaustion of administrative remedies**

22 The next issue is whether Plaintiffs were required to exhaust administrative remedies
23 prior to filing suit.

24 “Where the administrative tribunal is created by law to adjudicate the issue sought to be
25 presented to the court, claimants must exhaust the administrative remedy before seeking judicial

1 relief: ‘In brief, the rule is that where an administrative remedy is provided by statute, relief must
2 be sought from the administrative body and this remedy exhausted before the courts will act.’”

3 Weil & Brown, California Practice Guide, Civil Procedure Before Trial, The Rutter Group,
4 ¶1:906.1 (2010) (citing *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292 and
5 *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 70). Where an adequate administrative
6 remedy is provided by statute, resort to that forum is a “jurisdictional” prerequisite to judicial
7 consideration of the claim. Weil & Brown, California Practice Guide, Civil Procedure Before
8 Trial, The Rutter Group, ¶1:906.2 (2010) (citing *Styne v. Stevens* (2001) 26 Cal.4th 42, 56).

9 However, the failure to pursue administrative remedies does not bar judicial relief where
10 the administrative remedy is *inadequate* or *unavailable*, or where it would be *futile to pursue* the
11 remedy. Weil & Brown, California Practice Guide, Civil Procedure Before Trial, The Rutter
12 Group, ¶1:906.26 (2010) (citing *Jonathan Neil & Assocs., Inc. v. Jones* (2004) 33 Cal.4th 917,
13 935; *Joel v. Valley Surgical Ct.* (1998) 68 Cal.App.4th 360, 365-366). However, “futility” is a
14 narrow exception to the general rule requiring exhaustion of administrative remedies. It requires
15 that the party invoking the exception “can positively state that the (agency) *has declared what its*
16 *ruling will be* on a particular case.” *Jonathan Neil & Assocs., Inc.*, 33 Cal.4th at 935. An
17 adequate administrative remedy may be deemed “inadequate” if it fails to provide basic due
18 process protections, including notice and opportunity to be heard. *Glendale City Employees’*
19 *Ass’n., Inc. v. City of Glendale* (1975) 15 Cal.3d 328, 342-343.

20 Critically, “[a] party is excused from exhausting the administrative remedy where the
21 challenge is to the *constitutionality* of the administrative body itself or to its *procedures*.” Weil
22 & Brown, California Practice Guide, Civil Procedure Before Trial, The Rutter Group, ¶1:906.27
23 (2010) (citing *Unnamed Physician v. Board of Trustees of St. Agnes Med. Ctr.* (2001) 93
24 Cal.App.4th 607, 621).

1 In this case, and as discussed *supra*, Plaintiffs are challenging the right of the MRCA to
2 promulgate and enforce Ordinance 1-2005. Any administrative proceeding before the MRCA
3 would not remedy, or address, the gravamen of the declaratory relief Plaintiffs seek here. There
4 is nothing to suggest that MRCA assesses the legality of its own ordinances at administrative
5 hearings, or the legality of its own procedures.

6 To illustrate this point, the MRCA ordinance itself sets forth the administrative hearing
7 mechanism. Section 4.2.3 provides:

8 §4.2.3. Administrative appeal. (a) At an administrative appeal hearing, a copy of
9 the citation alleging the violation along with a copy of the image that served as a
10 basis of the citation shall be prima facie evidence of the facts contained therein
11 and shall be admissible in a proceeding alleging a violation under this section.

(b) If a prima facie case has been established, the hearing officer may consider the
12 following affirmative defenses, as to which the registered owner identified in the
13 citation will have the burden of proof.

(1) That the automated motor vehicle enforcement system was not operating
14 properly at the time of the offense.

(2) That the license plate number or other source of identification of the vehicle
15 cannot be determined.

(3) That the motor vehicle or registration plates of the motor vehicle were stolen
16 before the violation occurred.

(4) That the vehicle was operated without the consent of the registered vehicle
17 owner.

(5) That other extenuating circumstances were present during the incident which,
18 in the interest of justice, requires dismissal.

19 It is evident that nothing in the MRCA Ordinance allows the administrative board to review
20 anything other than the “facts” of the citation. The hearing officer, under §4.2.3(b), is limited to
21 considering only the five identified “affirmative defenses” to the citation – none of which deals
22 with the legality of Ordinance 1-2005 itself.

23 Under these circumstances, Plaintiffs Estwick and Bice are excused from exhausting any
24 administrative remedy before the MRCA. *Unnamed Physician v. Board of Trustees of St. Agnes*
25 *Med. Ctr., supra*, 93 Cal.App.4th at 621. The motion to strike on grounds that Plaintiffs Estwick
and Bice have not exhausted their administrative remedy is therefore denied.

1 Plaintiff Robbins alleges that he had a hearing before MRCA and that the hearing officer
2 affirmed the citation.²² He was required, pursuant to Government Code §53069.4(b)(1) to file an
3 appeal “within 20 days after service” of the hearing officer’s decision. Nothing on the face of
4 the SAC reveals that he did so. Thus, the motion to strike is also well-taken as to Plaintiff
5 Robbins with respect to his request for a monetary refund, and the motion is granted as to
6 Plaintiff Robbins. The motion is denied as to Plaintiff Robbins’s claim seeking only declaratory
7 relief.

8 3. “Unclean Hands”

9 MRCA alternatively moves to strike the request for the allegedly unlawfully collected
10 fines because Plaintiffs have “unclean hands” (in that Plaintiffs ran through the stop signs, and
11 do not deny this anywhere in the SAC).

12 The Court is not persuaded by the “unclean hands” argument advanced by MRCA at this
13 time. Such a determination would be premature at the pleading stage, without any factual
14 development. Even so, successful assertion of an “unclean hands” defense requires a showing
15 that to not apply the doctrine would “prejudicially affect the rights of the person against whom
16 the relief is sought so that it would be inequitable to grant such relief.” *Wiley v. Wiley* (1943) 59
17 Cal.App.2d 840, 842. Here, there has been no showing by MRCA in the motion to strike that
18 such prejudice would result by requiring compliance with the Vehicle Code. As such, the
19 motion to strike is denied on “unclean hands” grounds.

20 4. Motion to strike prayer for attorneys’ fees

21 Finally, MRCA moves to strike the prayer for attorneys’ fees, insofar as the alleged
22 entitlement to fees stems from 42 U.S.C. §1983. As discussed *supra*, the Court had earlier
23
24

25 ²² SAC, ¶12.

1 sustained MRCA's demurrer to the §1983 claim, without leave to amend. The fee request under
2 §1983 within the prayer is therefore inappropriate.

3 Plaintiffs acknowledge as much, and claim that the fee request under §1983 was due to
4 "scrivener's error." However, the real issue presented is whether Plaintiffs are entitled, at the
5 pleading stage, to seek attorneys' fees for their declaratory relief claim pursuant to the
6 Declaratory Judgment Act, codified at CCP §1060. Plaintiffs seek fees under the "common
7 benefit" or "substantial benefit" doctrine.

8 CCP §1021.5 provides in pertinent part:

9 Upon motion, a court may award attorneys' fees to a successful party against one
10 or more opposing parties in any action which has resulted in the enforcement of
11 an important right affecting the public interest if: (a) a *significant benefit*, whether
12 pecuniary or nonpecuniary, has been conferred on the general public or a large
13 class of persons, (b) the necessity and financial burden of private enforcement, or
14 of enforcement by one public entity against another public entity, are such as to
15 make the award appropriate, and (c) such fees should not in the interest of justice
16 be paid out of the recovery, if any. With respect to actions involving public
17 entities, *this section applies to allowances against*, but not in favor of, public
18 entities, and no claim shall be required to be filed therefor, unless one or more
19 successful parties and one or more opposing parties are public entities, in which
20 case no claim shall be required to be filed therefore.... (Emphasis added.)

21 The Court determines that CCP §1021.5 provides a basis, at the pleading stage, for
22 recovery of attorneys' fees. If successful in this litigation and if, in fact, what the MRCA is
23 doing is unlawful, it is possible that the lawsuit may confer a significant benefit on the general
24 public or a large class of persons. The necessity and financial burden of private enforcement
25 may prove to be such as to make a fee award appropriate in this case. Moreover, in the interest
of justice, it may be inappropriate for any fees to come out of the recovery, if any. Under these
circumstances, Plaintiffs may ultimately have a claim for attorneys' fees. At the pleading stage it
is premature to strike the request for fees, insofar as those fees may be recoverable on a
"significant benefit" analysis. The motion to strike is therefore granted with respect to the fees


1 sought under 42 U.S.C. §1983, but denied insofar as fees are sought under a “substantial benefit”
2 theory.

3
4 V.

5 **RULING AND ORDER**

6 For the foregoing reasons, the demurrer is overruled. The motion to strike is granted: 1)
7 to the extent that the SAC seeks attorneys’ fees pursuant to 42 U.S.C. §1983; and 2) with respect
8 to Plaintiffs’ request for monetary relief. The motion to strike is otherwise denied. Defendant
9 shall answer within twenty (20) days.

10
11 Dated: December 14, 2010

12 
13 Carl J. West
14 Judge of the Superior Court