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CLERK U.S. DISTRICT COURT  
DISTRICT OF ARIZONA  
BY \_\_\_\_\_ DEPUTY

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

David Normandeau,  
Plaintiff,

vs.

City of Phoenix; Jones, Skelton  
& Hochuli; Stacey K. Stanton,  
Division Director of the Motor  
Vehicle Department,  
Defendants.

No. CIV 03-0316-PHX-ROS

**OPINION**

Acting pro se, Plaintiff filed an action pursuant to 42 U.S.C. § 1983 against Defendants (Doc. # 1), alleging violations of his constitutional rights arising from numerous traffic citations he received in 1989 and 1990 which eventually resulted in suspension of his driver's license. On March 31, 2004, the Court entered an order (Doc. #40) granting Defendant Stacey K. Stanton's Motion to Dismiss (Doc. # 7), Motion for Judgment on the Pleadings by Defendant City of Phoenix (Doc. # 11), and Motion to Dismiss on Behalf of Defendant Jones, Skelton & Hochuli (Doc. # 12), which disposed of this action. In its March 31, 2004 Order the Court also denied as moot Plaintiff's Motion for Preliminary Injunction (Doc. #21), Plaintiff's Motion for Preliminary Injunction #2 (Doc. #32), Defendant City of Phoenix's Motion to Strike Plaintiff's "Supplement" to his Response to the City's Motion for Judgment on the Pleadings (Doc. #29), and Defendant City of Phoenix's Request for

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1 Summary Disposition of Defendant City of Phoenix's Motion for Judgment on the Pleadings  
2 (Doc. #19). The Court stated that a written opinion would follow. This is that opinion.

3 **I. BACKGROUND**

4 Plaintiff was stopped while driving his car in Phoenix, Arizona on July 7, 1989 and  
5 was cited for driving with an expired registration and without proof of insurance. [Doc. #  
6 1, ¶ 15]. After appearing in Phoenix Municipal Court ("City Court") and pleading guilty,  
7 Plaintiff was fined \$420.00 and he requested an extended payment plan. [Id.]. Plaintiff  
8 failed to make any payments, after which the City Court allowed him 30 days to pay the fine  
9 before his license would be revoked. [Id.]. Plaintiff was subjected to subsequent traffic  
10 stops on October 5, 8, 20, and 22, 1989 while driving either to or from work, and was cited  
11 each time for driving on an expired registration and without proof of insurance. [Id. ¶ 7].

12 After failing to appear in City Court with regard to the October 1989 citations,  
13 Plaintiff was fined an additional \$3,040.00, which he refused to pay. [Id. ¶¶ 12-13].  
14 Thereafter, default judgments were entered against him in City Court for failure to appear,  
15 and he was notified that if he did not remit the entire \$3,468.00 he then owed, the Motor  
16 Vehicle Division of the Arizona Department of Transportation ("MVD") would be asked to  
17 suspend Plaintiff's driver's license pursuant to A.R.S. § 28-1080 until the amount owing was  
18 paid. [Id.]. MVD subsequently suspended Plaintiff's license.

19 Plaintiff continued to drive and was stopped again in Phoenix on March 9, 1990, and  
20 was again cited for driving on a suspended license, with an expired registration and with no  
21 proof of insurance. [Id. ¶ 16]. This time, Plaintiff appeared in City Court where he was  
22 found guilty. [Id.]. He was fined \$1,102.00 on the charge of driving without proof of  
23 insurance, and \$600.00 for driving on a suspended license. [Id.]. Plaintiff served a seven-  
24 day jail term to satisfy the fine for driving on a suspended license. Plaintiff's license remains  
25 suspended today, more than 14 years later. [Id. ¶ 20].

26 Plaintiff, acting pro se, filed the instant Complaint on February 19, 2003 against the  
27 City of Phoenix, the Phoenix law firm of Jones, Skelton & Hochuli ("JSH"), and Stacey K.  
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1 Stanton, Division Director of the MVD, in her official capacity. Plaintiff alleges that he was  
2 fined and had his driver's license revoked without due process of law in violation of the  
3 Fourteenth Amendment, and was further subjected to unreasonable searches and seizures in  
4 violation of the Fourth Amendment. [Doc. # 1, ¶¶ 4, 10]. Plaintiff also alleges that Jones,  
5 Skelton & Hochuli were the "ringleaders" in a conspiracy with the City of Phoenix and MVD  
6 to initiate the traffic stops giving rise to Plaintiff's license revocation and traffic fines (*id.* ¶¶  
7 6-8); that A.R.S. § 28-1601 (formerly A.R.S. § 28-1080) is unconstitutional on its face and  
8 as applied to him (*id.* ¶ 23); that his fine of \$1,102.00 for lack of proof of insurance violated  
9 the protections of the Eighth Amendment against excessive fines and was cruel and unusual  
10 punishment (*id.* ¶ 29); that he was denied his right of access to the courts due to "harassment"  
11 by the City of Phoenix and JSH in the form of repeated traffic stops and citations (*id.* ¶¶ 33,  
12 37); and that MVD operates a "52-state" computer network pursuant to which Arizona and  
13 other states share outstanding traffic citation and license suspension information<sup>1</sup> which is  
14 not authorized by the Constitution (*id.* ¶¶ 40-41).

15 Plaintiff requests declaratory judgments declaring that: (1) his traffic stops and  
16 citations in October 1989 constituted harassment and abuse of power, and that the stops,  
17 citations, default judgments, and license suspensions were acts intended to further the alleged  
18 conspiracy to deprive Plaintiff of his Fourth Amendment right to remain free of unreasonable  
19 searches and seizures and of his due process rights under the Fourteenth Amendment; (2) his  
20 due process rights were denied regarding his citations dated July 7, 1989 and March 9, 1990;  
21 (3) that A.R.S. § 28-1601 is unconstitutional on its face and as applied to him; and (4) the  
22 Multi-State Highway Transportation Act notification program is unconstitutional. [Doc. #  
23 1, pp. 23-25].

24 Plaintiff further asks the Court to order that his October 1989 and March 1990  
25 citations be overturned, that he be refunded \$ 500.00 in fines paid, and that his driver's  
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27 <sup>1</sup> The pleadings reveal that Plaintiff refers to the Multi-State Highway Transportation  
28 Agreement codified in Arizona at A.R.S. § 28-1821, *et seq.*

1 license suspension be lifted. [Id.]. Additionally, Plaintiff requests a temporary restraining  
2 order and preliminary injunction enjoining Defendant Stacey K. Stanton from suspending his  
3 driver's license, and enjoining the MVD from notifying other states of Plaintiff's license  
4 suspensions, and from denying Plaintiff a license based on his license suspensions in other  
5 states. [Id.]. Finally, Plaintiff asks for compensatory damages of \$2,000,000.00 and punitive  
6 damages of \$5,000,000.00 against JSH. [Doc. # 1, p. 25].

7 As noted, Defendants Stanton and JSH moved to dismiss the Complaint pursuant to  
8 Rule 12(b), Fed. R. Civ. P. [Docs. Nos. 7, 12]. The City of Phoenix moved for judgment on  
9 the pleadings pursuant to Rule 12(c), Fed. R. Civ. P.

## 10 II. MOTIONS TO DISMISS

### 11 A. Legal standard for dismissal under Rule 12(b)(6) and Rule 12(c)

12 A court may not dismiss a complaint for failure to state a claim “unless it appears  
13 beyond doubt that the plaintiff can prove no set of facts in support of his claims which would  
14 entitle him to relief.” Barnett v. Centoni, 31 F.3d 813, 813 (9th Cir. 1994) (citing Buckley v.  
15 Los Angeles, 957 F.2d 652, 654 (9th Cir. 1992)). “The federal rules require only a ‘short and  
16 plain statement of the claim showing that the pleader is entitled to relief.’” Gilligan v. Jamco  
17 Dev. Corp., 108 F.3d 246, 248 (9th Cir. 1997) (quoting Fed. R. Civ. P. 8(a)). “The Rule 8  
18 standard contains a powerful presumption against rejecting pleadings for failure to state a  
19 claim.” Id. at 249 (quotation marks omitted). “All that is required are sufficient allegations  
20 to put defendants fairly on notice of the claims against them.” McKeever v. Block, 932 F.2d  
21 795, 798 (9th Cir. 1991) (citing Conley, 355 U.S. at 47; 5 C. Wright & A. Miller, Federal  
22 Practice & Procedure § 1202 (2d ed. 1990)). Indeed, though “‘it may appear on the face of  
23 the pleadings that a recovery is very remote and unlikely[,] . . . that is not the test.’” Gilligan,  
24 108 F.3d at 249 (quoting Scheur v. Rhodes, 416 U.S. 232, 236 (1974)). “‘The issue is not  
25 whether the plaintiff will ultimately prevail but whether the claimant is entitled to offer  
26 evidence to support the claims.’” Id.

1           It is well established that pro se complaints, “however inartfully pleaded[,] are held  
2 to less stringent standards than formal pleadings drafted by lawyers[.]” Hughes v. Rowe, 449  
3 U.S. 5, 9 (1980) (quotation marks omitted); see Ortez v. Wash. County, 88 F.3d 804, 807 (9th  
4 Cir. 1996) (“Because Ortez is a pro se litigant, we must construe liberally his inartful  
5 pleading[.]”) (citation omitted). “In civil rights cases where the plaintiff appears pro se, the  
6 court must construe the pleading liberally and must afford plaintiff the benefit of any doubt.”  
7 Karim-Panahi v. L.A. Police Dep’t, 839 F.2d 621, 623 (9th Cir. 1988).

8           When analyzing a complaint for failure to state a claim, “[a]ll allegations of material  
9 fact are taken as true and construed in the light most favorable to the non-moving party.”  
10 Smith v. Jackson, 84 F.3d 1213, 1217 (9th Cir. 1996); see Miree v. DeKalb County, 433 U.S.  
11 25, 27 n.2 (1977). In addition, the district court must assume that all general allegations  
12 “embrace whatever specific facts might be necessary to support them.” Peloza v. Capistrano  
13 Unified Sch. Dist., 37 F.3d 517, 521 (9th Cir. 1994), cert. denied, 515 U.S. 1173 (1995)  
14 (citations omitted). The district court need not assume, however, that the plaintiff can prove  
15 facts different from those alleged in the complaint. See Associated Gen. Contractors of  
16 Cal. v. Cal. State Council of Carpenters, 459 U.S. 519, 526 (1983).

17           “Dismissal can be based on the lack of a cognizable legal theory or the absence of  
18 sufficient facts alleged under a cognizable legal theory.” Balistreri v. Pacifica Police Dept.,  
19 901 F.2d 696, 699 (9th Cir. 1988); see William W. Schwarzer et al., Federal Civil Procedure  
20 Before Trial § 9:187, at 9-46 (2002). Alternatively, dismissal may be appropriate when the  
21 plaintiff has included sufficient allegations disclosing some absolute defense or bar to  
22 recovery. See Weisbuch v. County of L.A., 119 F.3d 778, 783, n.1 (9th Cir. 1997) (“If the  
23 pleadings establish facts compelling a decision one way, that is as good as if depositions and  
24 other . . . evidence on summary judgment establishes the identical facts.”); see also Federal  
25 Civil Procedure Before Trial § 9:193, at 9-47.

26           In deciding a motion for judgment on the pleadings pursuant to Rule 12(c), all  
27 allegations of fact by the non-moving party are accepted as true. McGlinchy v. Shell Chem.  
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1 Co., 845 F.2d 802, 810 (1988). "A dismissal on the pleadings for failure to state a claim is  
2 proper only if 'the movant clearly establishes that no material issue of fact remains to be  
3 resolved and that he is entitled to judgment as a matter of law.'" Id. Where judgment on the  
4 pleadings is based on failure to state a claim, the motion faces the same test as a motion  
5 under Rule 12(b)(6). Id. Not only must the court accept the allegations of the complaint as  
6 true, but the allegations will be construed and doubts resolved in the light most favorable to  
7 the plaintiff. That said, "conclusory allegations without more are insufficient to defeat a  
8 motion to dismiss for failure to state a claim." Id.

9 **B. Stanton's Motion to Dismiss**

10 Defendant Stanton argues that the Complaint should be dismissed against her for the  
11 following reasons: (1) the Complaint names her in her official capacity, and official capacity  
12 suits are barred as a matter of law; (2) the Complaint is barred by the statute of limitations;  
13 (3) the Rooker-Feldman doctrine bars the Complaint; (4) all federal claims asserted are  
14 barred pursuant to the doctrine announced in Heck v. Humphrey, 512 U.S. 477 (1994); (5)  
15 the Complaint fails to state a claim against her on which relief can be granted; (6) any state  
16 law claims alleged against her are barred because Plaintiff failed to provide notice of claim  
17 as required by A.R.S. § 12-821.01(A); (7) Plaintiff did not properly serve Stanton; and (8)  
18 the Complaint fails to raise any valid constitutional issue implicating her. [Doc. # 7, p. 1].

19 **C. JSH's Motion to Dismiss**

20 JSH contends that the Complaint is barred by the statute of limitations and by the  
21 Heck v. Humphrey doctrine. JSH further argues that the Complaint is barred under the  
22 doctrine of res judicata

23 **D. City of Phoenix's Motion for Judgment on the pleadings**

24 Arguing for judgment on the pleadings, the City of Phoenix also contends that the  
25 Complaint is barred by the statute of limitations, by the Heck v. Humphrey doctrine, and  
26 under the doctrine of res judicata. Additionally, the City of Phoenix asserts that Plaintiff has  
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1 failed to state a claim under 42 U.S.C. § 1983 and that the declaratory relief Plaintiff requests  
2 is not available to challenge a state court conviction.

### 3 **III. DISCUSSION**

#### 4 **A. Lack of jurisdiction - Rooker-Feldman Doctrine**

5 Defendant Stanton argues that this Court lacks jurisdiction to consider Plaintiff's  
6 Complaint under the Rooker-Feldman doctrine, which "bars parties from seeking a horizontal  
7 appeal from a state-court ruling by filing suit in a federal district court because federal  
8 district courts may only exercise original jurisdiction and may not exercise appellate  
9 jurisdiction over state court decisions. [Doc. # 7, pp. 3-4]. Stanton contends that to entertain  
10 Plaintiff's claims against the State defendants, this Court could not avoid reviewing the city  
11 court decisions convicting Plaintiff, which Plaintiff could have appealed to Maricopa County  
12 Superior Court, but did not. [Id., p. 4].

13 "Disappointed state court litigants sometimes attempt to overturn state court rulings  
14 in federal court § 1983 actions." 1 Martin A. Schwartz, Section 1983 Litigation § 1.07[B]  
15 (4th ed. 2003). "This endeavor is frequently doomed to failure." Id. Under the Rooker-  
16 Feldman doctrine, lower federal courts do not have subject matter jurisdiction to conduct  
17 appellate review of state court proceedings. Rooker v. Fidelity Trust Co., 263 U.S. 413, 416  
18 (1923); D.C. Ct. App. v. Feldman, 460 U.S. 462, 482 (1983). The doctrine applies not only  
19 to claims that were actually raised before the state court, but pursuant to res judicata and  
20 collateral estoppel, also to claims that are "inextricably intertwined" with state court  
21 determinations. Feldman, 460 U.S. at 483 n.16; see also Noel v. Hall, 341 F.3d 1148 (9th  
22 Cir. 2003). Rooker-Feldman requires a party seeking review of a state court judgment to  
23 pursue relief through the state court system and ultimately to the United States Supreme  
24 Court.<sup>2</sup> See 28 U.S.C. § 1257; Rooker, 263 U.S. at 416; Feldman, 460 U.S. at 476. The

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26 <sup>2</sup>There are two "notable statutory exceptions" to this rule. Noel, 341 F.3d at 1155.  
27 "First, a federal district court has original jurisdiction to entertain petitions for habeas corpus  
28 Id. (citing 28 U.S.C. § 2254). "Second, a federal bankruptcy court has original jurisdiction

1 doctrine stems in part from a recognition of the fact that "a decision by a state court, however  
2 erroneous, is not itself a violation of the Constitution actionable in federal court." Homola  
3 v. McNamara, 59 F.3d 647, 650 (7th Cir. 1996).

4 In assessing whether the Rooker-Feldman doctrine applies, "the fundamental and  
5 appropriate question to ask is whether the injury alleged by the federal plaintiff resulted from  
6 the state court judgment itself or is distinct from that judgment." Garry v. Geils, 82 F.3d  
7 1362, 1365 (7th Cir. 1996). "If the injury alleged resulted from the state court judgment  
8 itself, the Rooker-Feldman doctrine dictates that the federal courts lack subject matter  
9 jurisdiction, even if the state court judgment was erroneous or unconstitutional." Centres,  
10 Inc. v. Town of Brookfield, 148 F.3d 699, 702 (7th Cir. 1998). "By contrast, if the alleged  
11 injury is distinct from the state court judgment and not inextricably intertwined with it, the  
12 Rooker-Feldman doctrine does not apply[.]" (Id.) The central inquiry is "whether the federal  
13 plaintiff seeks to set aside a state court judgment or whether he is, in fact, presenting an  
14 independent claim." Kamilewicz v. Bank of Boston Corp., 92 F.3d 506, 510 (7th Cir. 1996).

15 As the Ninth Circuit put it, "[w]here the only redress [sought] is an undoing of the  
16 prior state court judgment," subject matter jurisdiction is "clearly barred under Rooker-  
17 Feldman." Bianchi v. Rylaarsdam, 334 F.3d 895, 900 (9th Cir. 2003) (quotations omitted).  
18 The court "'cannot simply compare the issues involved in the state-court proceeding to those  
19 raised in the federal-court plaintiff's complaint.'" Id. (quoting Kenmen Eng'g v. City of  
20 Union, 314 F.3d 468, 476 (10th Cir. 2002)) (emphasis in original). Rather, "[it] must pay  
21 close attention to the relief sought by the federal-court plaintiff." Id. (citing Kenmen Eng'g,  
22 314 F.3d at 476) (emphasis in original). When the plaintiff asserts "as legal wrongs the  
23 allegedly erroneous legal rulings of the state court and seeks to vacate or set aside the  
24 judgment of that court, the federal suit is a forbidden de facto appeal." Noel, 341 F.3d at  
25 1156. The federal district court "must refuse to hear the forbidden appeal." Id. at 1158. "As

26 \_\_\_\_\_  
27 under which it is empowered to avoid state judgments; to modify them; and to discharge  
28 them." Id. (citations and quotations omitted).

1 part of that refusal, it must also refuse to decide any issue raised in the suit that is  
2 'inextricably intertwined' with an issue resolved by the state court in its judicial decision."

3 Id.

4 Plaintiff believes the Rooker-Feldman Doctrine does not apply, arguing he never had  
5 the chance to raise his constitutional claims in State court. [Doc. # 14 ¶ 4]. He asserts that,  
6 with regard to traffic citations, he could only appeal his traffic citations to County Superior  
7 Court, not to Arizona appellate courts, and that in any event, the only post-suspension  
8 process available to him was to pay the fines. [Id.].

9 Plaintiff's Complaint on its face demonstrates that this Court lacks jurisdiction under  
10 the Rooker-Feldman doctrine to review Plaintiff's claims regarding his traffic citations and  
11 license suspensions. First, Plaintiff asks the Court to enter declaratory judgment that his  
12 October 1989 traffic citations, on which the municipal court ordered default judgment for  
13 Plaintiff's failure to appear, were unconstitutional. [Doc. # 1, p. 23]. Plaintiff requests  
14 similar relief concerning his citations dated July 7, 1989 and March 9, 1990. [Id., p. 24].  
15 Second, Plaintiff requests this Court to "overturn the convictions" entered regarding those  
16 citations, "[throw] the tickets out of court," and lift the driver's license suspensions. [Id., pp.  
17 23-24]. Third, Plaintiff asks for declaratory judgment that A.R.S. § 28-1601 (former § 1080)  
18 is unconstitutional as applied to him, and on its face. [Id., p. 24].

19 The requested relief by this Court would violate the Rooker-Feldman doctrine. Most  
20 obviously, because Plaintiff asks the Court to find a specific Arizona statute unconstitutional  
21 as state courts have applied it to him, to comply with Plaintiff's request would require this  
22 Court to find that the state courts erred. Moreover, although Plaintiff did not raise his  
23 constitutional claims in state court, he could have and should have. The relevant state rules  
24 of procedure provided Plaintiff with the right to appeal to the Superior Court his final order  
25 or judgment in his civil traffic case. Rule 29, Arizona Rules of Procedure in Civil Traffic  
26 Violation Cases (17B, A.R.S.). See also A.R.S. § 22-425 (either party may appeal from a  
27 municipal court to the superior court). While Plaintiff contends, without any legal authority,  
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1 that Arizona Superior Courts lack jurisdiction to hear constitutional questions, that is not the  
2 case. See, e.g., State v. Martin, 174 Ariz. 118, 120-21, 847 P.2d 619, 621-22 (Ct. App.  
3 1992). Further, although Arizona law provided plaintiff no "explicit further right of appellate  
4 review" beyond state superior court regarding his traffic citations, see State v. Poli, 776 P.2d  
5 1077, 1079, 161 Ariz. 151, 153 (Ct. App. 1989), this does not permit jurisdiction in federal  
6 district court to review and hold unconstitutional a state court's decision. Plaintiff's  
7 complaint that he "never had a realistic opportunity to fully and fairly litigate [his] claims"  
8 in state court is incorrect. He had that opportunity, but declined to take it.

9 Accordingly, pursuant to Rooker-Feldman, the Court lacks jurisdiction to review  
10 Plaintiff's claims arising from his various traffic citations adjudicated in City Court or to  
11 issue declaratory judgment. This jurisdictional bar applies to all of Plaintiff's claims with the  
12 exception of his allegations regarding MVD's participation in the "52-state" computer  
13 network, because they are based on events subsequent to Plaintiff's license suspension, and  
14 Plaintiff could not have raised these claims in the state court proceedings adjudicating his  
15 citations. Because the Court lacks jurisdiction to review Plaintiff's claims with the one  
16 exception noted,<sup>3</sup> the Court will grant Defendants' motions to dismiss on all other claims.

17 The Court will, however, address Defendants' remaining arguments for dismissal on  
18 the merits.

19 **B. The Statute of Limitations bars Plaintiff's Complaint**

20 Defendants point out that the traffic citations giving rise to the Complaint occurred  
21 in 1989 and 1990, no fewer than 14 years ago. Accordingly, they argue that the statute of  
22 limitations on all of Plaintiff's federal and state law claims has long since expired, and that  
23 the Complaint is time-barred. Plaintiff counters by arguing that because his driver's license  
24 remains suspended, Defendants continue to commit daily "overt acts" in furtherance of a  
25 conspiracy. [Doc. # 14, pp. 3-4]. Additionally, Plaintiff asserts that the revocation of his  
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27 <sup>3</sup> As discussed below, the Court holds that Plaintiff's claim regarding the Multi-State  
28 Highway Transportation Act is subject to dismissal on statute of limitations grounds, and for  
failure to state a claim.

1 license falls within the "continuing wrong doctrine," citing Nesovic v. United States, 71 F.3d  
2 776, 778 (9<sup>th</sup> Cir. 1995).

3 "[T]he statute of limitations defense . . . may be raised by a motion to dismiss . . . [i]f  
4 the running of the statute is apparent on the face of the complaint." Jablon v. Dean Witter  
5 & Co., 614 F.2d 677, 682 (9th Cir. 1980) (citing Graham v. Taubman, 610 F.2d 821 (9th Cir.  
6 1979)). However, even if the relevant dates alleged in the complaint are beyond the statutory  
7 period, the "complaint cannot be dismissed unless it appears beyond doubt that the plaintiff  
8 can prove no set of facts that would establish the timeliness of the claim." Hernandez v.  
9 City of El Monte, 138 F.3d 393, 402 (9th Cir. 1998) (quoting Supermail Cargo, Inc. v. United  
10 States, 68 F.3d 1204, 1206 (9th Cir. 1995)). Indeed, "[d]ismissal on statute of limitations  
11 grounds can be granted pursuant to Fed. R. Civ. P. 12(b)(6) 'only if the assertions of the  
12 complaint, read with the required liberality, would not permit the plaintiff to prove that the  
13 statute was tolled.'" TwoRivers v. Lewis, 174 F.3d 987, 991 (9th Cir. 1999) (citing  
14 Vaughan v. Grijalva, 927 F.2d 476, 478 (9th Cir. 1991) (quoting Jablon, 614 F.2d at 682)).  
15 "Because the applicability of the equitable tolling doctrine often depends on matters outside  
16 the pleadings, it is not generally amenable to resolution on a Rule 12(b)(6) motion."  
17 Hernandez, 138 F.3d at 402 (quoting Supermail Cargo, 68 F.3d at 1206); see also Federal  
18 Civil Procedure Before Trial § 9:194, at 9-48, §9:214.1, at 9-57.

19 Section 1983 does not contain a specific statute of limitations. Wilson v. Garcia, 471  
20 U.S. 261, 266 (1985); TwoRivers v. Lewis, 174 F.3d 987, 991 (9<sup>th</sup> Cir. 1999). The Supreme  
21 Court has determined that the relevant statute of limitations for all § 1983 claims, regardless  
22 of the facts or legal theory of the particular case, is the forum state's statute of limitations for  
23 personal injury actions. Wilson, 471 U.S. at 274-76. The Court reasoned that, "among the  
24 potential analogies, Congress unquestionably would have considered the remedies  
25 established in the Civil Rights Act to be more analogous to tort claims for personal injury  
26 than, for example, to claims for damages to property or breach of contract," Id. at 277. In  
27 Arizona, the statute of limitations for personal injury actions is two years, as is set forth in  
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1 A.R.S. § 12-542. TwoRivers, 174 F.3d at 991 (citing Marks v. Parra, 785 F.2d 1419, 1420  
2 (9<sup>th</sup> Cir. 1986)).

3 To determine the timeliness of a claim, a court must establish whether a plaintiff has  
4 alleged "discrete acts" that would be unconstitutional occurring within the limitations period.  
5 RK Ventures, Inc. v. City of Seattle, 307 F.3d 1045, 1058 (9<sup>th</sup> Cir. 2002) (citing National  
6 R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 113-14 (2002)). When borrowing a state  
7 statute of limitations for a federal cause of action, "we borrow no more than necessary."  
8 West v. Conrail, 481 U.S. 35, 39-40 (1987). Consistent with this principle is the idea that  
9 federal law, not state law, determines when a civil rights action arises. See Elliot v. City of  
10 Union City, 25 F.3d 800, 801-802 (9<sup>th</sup> Cir. 1994). Under federal law, a §1983 claim accrues  
11 when the plaintiff knows or has reason to know of the injury which is the basis of his action.  
12 Cabrera v. City of Huntington Park, 159 F.3d 374, 379 (9<sup>th</sup> Cir. 1998)).

13 1. Continuing conspiracy

14 Plaintiff believes that the continued suspension of this driver's license constitutes an  
15 "overt act[] causing damage in furtherance of the alleged conspiracy" to violate his  
16 constitutional rights, resulting in a continuing wrong. [Doc. # 14 ¶ 3]. This argument has  
17 no merit. The continuation of a conspiracy beyond the date when injury occurs does not  
18 alone extend the statute of limitations. Compton v. Ide, 732 F.2d 1429, 1432 (9<sup>th</sup> Cir. 1984),  
19 abrogated on other grounds by Agency Holding Corp. v. Malley-Duff & Assocs., Inc., 483  
20 U.S. 143 (1987); Gibson v. United States, 781 F.2d 1334, 1340 (9<sup>th</sup> Cir. 1986) ("[i]njury and  
21 damage in a civil conspiracy action flow from the overt acts, not from 'the mere continuance  
22 of a conspiracy.'" (citations omitted). The Ninth Circuit has applied the "last overt act"  
23 doctrine in determining the point of accrual for civil conspiracies, requiring that "the cause  
24 of action runs separately from each overt act that is alleged to cause damage to the plaintiff."  
25 Gibson, 781 F.2d at 1340 (citing Venegas v. Wagner, 704 F.2d 1144, 1146 (9<sup>th</sup> Cir. 1983);  
26 Lawrence v. Acree, 665 F.2d 1319, 1324 (D.C. Cir. 1981)). Plaintiff mistakenly construes

1 the continuing, "daily" *impact* of the suspension of his driver's license and unpaid fines as  
2 reoccurring overt *acts* in furtherance of the alleged conspiracy.

3           2.       Continuing violation doctrine

4           Plaintiff also urges a variation on his argument that a continuing conspiracy tolls the  
5 statute of limitations applicable to his claims; that is, that the ongoing suspension and unpaid  
6 fines represent a "continuing violation" of his constitutional rights. The "continuing  
7 violation" theory applies to § 1983 claims. Knox v. Davis, 260 F.3d 1009, 1013 (9<sup>th</sup> Cir.  
8 2001) (citing Gutowsky v. County of Placer, 108 F.3d 256, 259 (9<sup>th</sup> Cir. 1997)). The Supreme  
9 Court recently addressed the continuing violations doctrine in the context of Title VII  
10 violations in National R.R. Passenger Corp. v. Morgan, 536 U.S. 101 (2002). Reviewing a  
11 Ninth Circuit decision, the Court noted that the Ninth Circuit recognized two ways to  
12 demonstrate a continuing violation under the doctrine "allowing courts to consider conduct  
13 that would ordinarily be time barred 'as long as the untimely incidents represent an ongoing  
14 unlawful employment practice.'" 536 U.S. at 107 (quoting National R.R. Passenger Corp. v.  
15 Morgan, 232 F.3d 1008, 1014 (9<sup>th</sup> Cir. 2000)). The Supreme Court observed that Ninth  
16 Circuit jurisprudence permitted a plaintiff to establish a continuing violation either by  
17 showing: (1) a "serial violation," where the alleged acts of discrimination outside the  
18 limitations period are demonstrated to be sufficiently related to similar acts within the  
19 limitations period; or (2) a "systemic violation" resulting from a "systemic policy or practice  
20 of discrimination that operated, in part, within the limitations period . . . ." Id. (quoting 232  
21 F.3d at 1015-16). The Court rejected the "serial violation" basis for a continuing violation  
22 claim, holding that "discrete discriminatory acts are not actionable if time barred, even when  
23 they are related to acts alleged in timely filed charges. Each discrete discriminatory act starts  
24 a new clock for filing charges alleging that act." 536 U.S. at 113. The Ninth Circuit in RK  
25 Ventures, Inc. v. City of Seattle, 307 F.3d 1045 (9<sup>th</sup> Cir. 2002) applied Morgan to a § 1983  
26 claim based on discrete time-barred acts.

1           In arguing that Defendants' actions fall within the limitations period, Plaintiff does  
2 not allege that Defendants have committed discrete illegal actions after 1990. Instead, the  
3 gravamen of his claim is that the impacts on him from his license suspension and the  
4 assessment of fines, such as the inability to drive and maintain his employment, are  
5 themselves discrete illegal acts. As set forth above, discrete illegal acts do not escape the  
6 statute of limitations challenge. Moreover, the continuing *impacts* from past violations of §  
7 1983 are not actionable. Knox, 260 F.3d at 1013 (citing Abramson v. University of Hawaii,  
8 594 F.2d 202, 209 (9<sup>th</sup> Cir. 1979)). See also Ward v. Caulk, 650 F.2d 1144, 1147 (9<sup>th</sup> Cir.  
9 1981) ("[a] continuing violation is occasioned by unlawful acts, not by continual ill effects  
10 from an original violation. . . . Continuing non-employment resulting from an original action  
11 is not a continuing violation.").

12           Plaintiff has not alleged that since suspending his license, MVD has refused to accept  
13 his payment or has otherwise rebuffed his attempts to have the suspension lifted. Instead, it  
14 is plain that Plaintiff knew of his alleged injury no later than 1991. In fact, as is discussed  
15 below, Plaintiff filed a complaint in 1991 with this Court alleging most of the claims reasserted  
16 here. Regarding Plaintiff's claims addressing MVD's participation in the Multi-State Highway  
17 Transportation Agreement, the Complaint indicates that Plaintiff was aware of his alleged  
18 injury no later than 1995, which would mean that the two-year limitations period ran several  
19 years prior to Plaintiff's filing of this Complaint. Accordingly, the Court finds that each claim  
20 alleged in the Complaint is time-barred.

21       **C.     Res Judicata**

22           Defendants City of Phoenix and JSH argue that because Plaintiff filed a lawsuit in this  
23 Court in 1991 raising the same issues he now raises, his claims are barred by the doctrine of  
24 res judicata.

25           The doctrine of res judicata, or claim preclusion, bars relitigation of claims in a  
26 subsequent action between the same parties or their privies of a final judgment that has been  
27 entered on the merits. In re Schimmels, 127 F.3d 875, 881 (9<sup>th</sup> Cir. 1997) (citing Montana v.  
28

1 United States, 440 U.S. 147, 153-54 (1979)). Res judicata will apply when there is "(1) an  
2 identity of claims, (2) a final judgment on the merits, and (3) identity or privity between  
3 parties." Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 713 (9<sup>th</sup> Cir. 2001)  
4 (quoting Western Radio Servs. Co. v. Glickman, 123 F.3d 1189, 1192 (9<sup>th</sup> Cir. 1997)).

5 Plaintiff counters that res judicata does not apply because he did not have a full and  
6 fair opportunity to litigate his prior case as he was under "enormous" distress and "didn't know  
7 what to do or how to do it." [Doc. # 15]. Plaintiff further explains that he "developed serious  
8 drinking and gambling problem[s] in an attempt to relieve the stress" he experienced.<sup>4</sup> [Doc.  
9 # 22 ¶ 4]. As a result, Plaintiff explains, the issues in his prior action were never litigated.  
10 [Id.].

11 1. Plaintiff's Complaint in CIV 91-1989-PHX-RGS

12 On December 13, 1991, Plaintiff filed a complaint in the United States District Court,  
13 District of Arizona alleging various claims under 42 U.S.C. §§ 1983 and 1985. [Doc. # 20,  
14 Att.]. Plaintiff named as defendants the State of Arizona, the MVD, a past MVD Director,  
15 the then-present MVD Director, the City of Phoenix, the City of Phoenix Municipal Court,  
16 the "Tolleson D.P.S." and the Phoenix Police Department. [Id.]. Plaintiff alleged he was  
17 denied due process by the City of Phoenix and MVD, among others, when MVD suspended  
18 his driver's license without either a pre-suspension or post-suspension hearing, in violation  
19 of the Fifth and Fourteenth Amendments. [Doc. # 20, Att.]. Plaintiff further alleged this  
20 violated his right to equal protection under the Fourteenth Amendment, and constituted an  
21 excessive fine or cruel and unusual punishment in violation of the Eighth Amendment. [Id.].  
22 These claims were based on Plaintiff's citations dated July 7, 1989, and October 5, 8, 20, and  
23 22, 1989, which citations are also at issue here. [Id.]. Included in a lengthy list of injuries,

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24  
25 <sup>4</sup> Plaintiff states in his Reply that the City of Phoenix "chased [him] out of town in  
26 1993 with a set of 5 traffic tickets on 8/30/1993 for two alleged violations of driving on a  
27 suspended driver's license, a registration violation, an insurance violation, and a license plate  
28 violation." [Doc. # 22 ¶ 4]. He alleges that the City of Phoenix ticketed him because it knew  
he was attempting to prosecute his action in federal court, and that he eventually "couldn't  
take it anymore," so he migrated to Nevada. [Id.].

1 Plaintiff complained of the loss of a property right in his driver's license. Plaintiff requested  
2 declaratory relief, asking, among other relief, that the Court declare A.R.S. § 28-1080  
3 unconstitutional on its face and as applied to him. [Id.]. Additionally, Plaintiff requested  
4 \$200,000.00 in actual damages, \$200,000.00 in compensatory damages, and \$10,000,000.00  
5 in punitive damages. [Id.].

6 In an Order filed on January 21, 1992, Judge Strand initially dismissed a number of  
7 Plaintiff's claims, as follows: (1) any claims under § 1985 because Plaintiff failed to allege  
8 membership in a class afforded federal assistance in protecting its civil rights; (2) claims  
9 against the State of Arizona, the Arizona Department of Transportation, and the Arizona  
10 Department of Public Safety, reasoning that a state or state agency may not be sued in federal  
11 court without its consent, and that a state or its agencies are not "persons" under § 1983; (3)  
12 claims against the City of Phoenix and the Phoenix Police Department, finding that Plaintiff  
13 had not alleged that an established policy or custom caused him to suffer the deprivation of  
14 a constitutional right; and (4) the Phoenix Municipal Court, noting that a court is not a  
15 "person" as that term is used in § 1983. [CIV 91-1989-PHX-RGS, Doc. # 6]. The Court  
16 further noted that an answer was required from the individual former director and then-present  
17 director of the MVD "based on the standard for 'frivolousness' in civil rights cases discussed"  
18 in Neitzke v. Williams, 490 U.S. 319 (1989) and Jackson v. State of Arizona, 885 F.2d 639  
19 (9<sup>th</sup> Cir. 1989). [Id.].

20 Plaintiff moved to reopen the case so that he could add a large number of new  
21 defendants, delete defendants, amend his pleadings and "add new pleadings." [CIV 91-1989-  
22 PHX-RGS, Doc. # 8]. Contemporaneously, Petitioner filed a Motion for Injunctive Relief  
23 Setting Aside Alleged Convictions and Other Injunctive Relief and Declaratory Judgements.  
24 [CIV 91-1989-PHX-RGS, Doc. # 9]. The Magistrate Judge ordered the above two pleadings  
25 stricken for violation of the pleading requirements of the Federal Rules of Civil Procedure and  
26 the Rules of Practice of the United States District Court for the District of Arizona. [CIV 91-  
27 1989-PHX-RGS, Doc. # 12]. Further, the Magistrate Judge reminded Plaintiff that failure to  
28

1 properly serve his complaint by May 10, 1992 without showing good cause would be grounds  
2 for dismissal of the action. [Id.]. The record reflects that service of the complaint against the  
3 two individual defendants remaining in the action went unexecuted. [CIV 91-1989-PHX-  
4 RGS, Docs. # 13, # 14]. The Court held a Show Cause Hearing on January 3, 1994, at which  
5 the Plaintiff appeared telephonically. [CIV 91-1989-PHX-RGS, Doc. # 16]. The Court  
6 allowed Plaintiff to file an amended complaint within 30 days, but warned him that the case  
7 would be dismissed without further notice if Plaintiff failed to do so. [Id.]. When Plaintiff  
8 failed to file an amended complaint, the Court ordered the matter dismissed and Judgment was  
9 entered. [CIV 91-1989-PHX-RGS, Docs. # 17, # 18].

10                   2.     Identity of claims

11                   "The central criterion in determining whether there is an identity of claims between  
12 the first and second adjudications is 'whether the two suits arise out of the same transactional  
13 nucleus of facts.'" Owens, 244 F.3d at 714 (quoting Frank v. United Airlines, Inc., 216 F.3d  
14 845, 851 (9<sup>th</sup> Cir. 2000)). New claims may be barred as subject to res judicata if they are  
15 based on the same nucleus of facts and such claims could have been raised in the earlier  
16 action. The Ninth Circuit has instructed;

17                   Res judicata bars relitigation of all grounds of recovery that were asserted, or  
18 could have been asserted, in a previous action between the parties, where the  
19 previous action was resolved on the merits. It is immaterial whether the  
20 claims asserted subsequent to the judgment were actually pursued in the action  
21 that led to the judgment; rather, the relevant inquiry is whether they could  
22 have been brought.

23                   Barajas v. Northrop Corp., 147 F.3d 905, 909 (9<sup>th</sup> Cir. 1998) (citations omitted).

24                   Both this Complaint and Plaintiff's 1991 Complaint are based on his traffic citations  
25 in 1989 and resulting suspension of his driver's license. Overlapping claims in the complaints  
26 include Plaintiff's allegations of denial of due process when his driver's license was suspended  
27 without a hearing, his claim that the fines were excessive and violated the Eighth Amendment,  
28 and that A.R.S. § 28-1601 (former § 28-1080) is unconstitutional on its face and as applied  
to him. Plaintiff's additional claims in the instant Complaint alleging an unreasonable search  
and seizure, and denial of access to the courts, are each based on the same transaction and

1 events that were known to Plaintiff when he filed his 1991 Complaint and could have been  
2 raised in such Complaint. Thus, each is a "ground[]" for recovery which could have been  
3 asserted, whether they were or not . . . on the same cause of action." Owens, 244 F.3d at 714  
4 (quoting Gregory v. Widnall, 153 F.3d 1071, 1074 (9<sup>th</sup> Cir. 1998)).

5                   3.     Final judgment on the merits

6             Plaintiff contends that dismissal of his 1991 federal action was not a final judgment  
7 on the merits because he did not have the opportunity to litigate his claims. Plaintiff's  
8 argument is meritless. The 1991 Complaint was dismissed for failure to prosecute. Unless  
9 specified otherwise, a dismissal for failure to prosecute "operates as an adjudication on the  
10 merits." Fed. R. Civ. P. 41(b). Accordingly, "involuntary dismissal generally acts as a  
11 judgment on the merits for the purposes of *res judicata*, regardless of whether the dismissal  
12 results from procedural error or from the court's considered examination of the plaintiff's  
13 substantive claims." In re Schimmels, 127 F.3d at 884. See also Owens, 244 F.3d at 714  
14 (citing Johnson v. United States Dep't of Treasury, 939 F.2d 820, 825 (9<sup>th</sup> Cir. 1991))  
15 (dismissal for want of prosecution is "treated as an adjudication on the 'merits' for purposes  
16 of preclusion").

17                   4.     Identity or privity between the parties

18             The concept of privity in the *res judicata* context is "a legal conclusion 'designating  
19 a person so identified in interest with a party to former litigations that he represents precisely  
20 the same right in respect to the subject matter involved.'" In re Schimmels, 127 F.3d at 881  
21 (quoting Southwest Airlines Co. v. Texas Int'l Airlines, Inc., 546 F.2d 84, 94 (5<sup>th</sup> Cir. 1977)).  
22 Relationships deemed by federal courts to be sufficiently close to support a finding of privity  
23 and preclusion under *res judicata* include: a non-party who has succeeded to a party's interest  
24 in property; a non-party who controlled the original suit; a non-party whose interests were  
25 represented adequately by a party in the original suit; parties between which there is a  
26 "substantial identity"; a relationship where the interests of the party and non-party are "so  
27 closely aligned as to be virtually representative"; and "when there is an express or implied  
28

1 legal relationship by which parties to the first suit are accountable to non-parties who file a  
2 subsequent suit with identical issues." In re Schimmels, 127 F.3d at 881. See also Tahoe-  
3 Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 322 F.3d 1064, 1081-82 (9<sup>th</sup> Cir.  
4 2003) ("We made clear, in In re Schimmels, that privity is a flexible concept dependent on the  
5 particular relationship between the parties in each individual set of cases[.]") (also citing  
6 Richards v Jefferson County, 517 U.S. 793, 798 (1996) ("Moreover, although there are clearly  
7 constitutional limits on the 'privity' exception, the term 'privity' is now used to describe various  
8 relationships between litigants that would not have come within the traditional definition of  
9 that term.") and United States v. ITT Rayonier, Inc., 627 F.2d 996, 1003 (9<sup>th</sup> Cir. 1980)  
10 ("Courts are no longer bound by rigid definitions of parties or their privies for purposes of  
11 applying collateral estoppel or res judicata.")).

12 Defendants JSH and Stacey K. Stanton were not named as defendants in Plaintiff's  
13 1991 Complaint. Ms. Stanton, whom Plaintiff sued in her official capacity as Director of  
14 MVD, is in privity with the MVD, which was a defendant in the 1991 Complaint. An action  
15 against a government officer in her official capacity is ordinarily equivalent to an action  
16 against the government entity itself. Larez v. City of Los Angeles, 946 F.2d 630, 646 (1991);  
17 McRorie v. Shimoda, 795 F.2d 780, 783 (9<sup>th</sup> Cir. 1985). Here, Plaintiff has not alleged any  
18 actions by Ms. Stanton that are separate and distinct from the alleged actions of the MVD.  
19 Plaintiff is barred by res judicata from prosecuting his complaint against Ms. Stanton.

20 As for JSH, the record does not establish the relationship between JSH and the  
21 defendants named in Plaintiff's 1991 Complaint. JSH speculates that it has been named  
22 because it frequently represents the City of Phoenix. However, there is insufficient evidence  
23 to establish privity between JSH and the City of Phoenix. JSH argues that while it was not  
24 a party to the 1991 Complaint, it may still raise the affirmative defense of res judicata  
25 pursuant to Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S.  
26 313, 333 (1971), which JSH explains recognized that "in certain circumstances, [the]  
27 mutuality requirement need not be satisfied to assert [the] affirmative defense of res judicata."  
28

1 [Doc. # 16, p. 2]. JSH does not, however, explain how the mutuality requirement need not  
2 be satisfied in these circumstances. The Court concludes that Plaintiff's claims against JSH  
3 are not barred under the doctrine of res judicata. Those claims, however, are otherwise  
4 dismissed for lack of jurisdiction under the Rooker-Feldman doctrine and as time-barred, as  
5 is explained above.

6 **D. Plaintiff's claim regarding his conviction is barred by Heck v. Humphrey**

7 Each Defendant argues that Plaintiff's Complaint is barred by the rule announced in  
8 Heck v. Humphrey, 512 U.S. 477 (1994). JSH and the City of Phoenix argue that the  
9 Complaint is barred under Heck to the extent that the Complaint, if successful, would imply  
10 the invalidity of Plaintiff's traffic stops and state court convictions. Ms. Stanton also contends  
11 that Plaintiff does not have a cognizable cause of action for damages under § 1983.

12 The Supreme Court in Heck v. Humphrey directed lower courts to consider whether  
13 or not a judgment in favor of a plaintiff in a § 1983 action "would necessarily imply the  
14 invalidity of his conviction or sentence." 512 U.S. at 487. If it would, the § 1983 action must  
15 be dismissed unless the plaintiff can prove

16 that the conviction or sentence has been reversed on direct appeal, expunged  
17 by executive order, declared invalid by a state tribunal authorized to make  
18 such determination, or called into question by a federal court's issuance of a  
19 writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that  
20 relationship to a conviction nor sentence that has not been so invalidated is not  
21 cognizable under § 1983.

22 Id., 512 U.S. at 486-87. On the other hand, if a judgment in favor of the plaintiff would not  
23 necessarily imply the invalidity of the plaintiff's conviction or sentence, then the action should  
24 be allowed to proceed unless there exists some other bar to the suit. Id., 512 U.S. at 487.  
25 Where a Plaintiff has been convicted, and where a constitutional issue which is inextricably  
26 interrelated to the Plaintiff's issue would resolve the matter had it been appealed and reversed  
27 by the appellate court, then no basis exists for a civil cause of action under Heck. This  
28 determination is made without reference to whether the constitutional issue was actually  
raised by the defendant in his criminal trial, as the existing outcome of Plaintiff's state appeals  
process is not an element of the test for determining whether a claim is cognizable under

1 Heck. Rather, the Court looks to what the state court would or could have held if it had been  
2 presented with the constitutional issue. If a judgment in favor of Plaintiff would "necessarily  
3 imply the invalidity of his conviction," then he may not bring his claim under § 1983;  
4 conversely, §1983 claims should be allowed to proceed if success on them would not  
5 necessarily imply the invalidity of an outstanding criminal judgment against Plaintiff. Id., 512  
6 U.S. at 487.

7 Because Plaintiff's complaint seeks to invalidate his criminal conviction relating to  
8 his March 9, 1990 citation for driving with a suspended license, and that conviction has not  
9 otherwise been ruled invalid, that claim is barred by Heck. As is otherwise noted, this claim  
10 is also time-barred and subject to dismissal under the Rooker-Feldman doctrine.

#### 11 **E. Other motions to dismiss**

12 Defendants Stanton and City of Phoenix have asserted a number of other cumulative  
13 grounds for dismissal, which in light of the above-discussed rulings, need not be addressed  
14 further: (1) Stanton may not be sued in her official capacity [Doc. #7, pp. 2-3]; (2) the  
15 Complaint fails to state a claim against Stanton [Id., pp. 5-6]; (3) Plaintiff failed to submit a  
16 notice of claim pursuant to A.R.S. §12-821.01(A) [Id., p. 6]; (4) Plaintiff failed to properly  
17 serve Stanton [Id., pp. 8]; (5) Plaintiff did not raise a constitutional claim regarding legislative  
18 enactments [Id., pp. 6-8]; (6) the Complaint fails to state a §1983 claim against the City of  
19 Phoenix [Doc. #11, p. 3]; (7) the Court lacks jurisdiction over Plaintiff's claim for declaratory  
20 relief [Id., p. 4].

### 21 **IV. OTHER MOTIONS**

#### 22 **A. Plaintiff's Motions for Preliminary Injunction**

23 Plaintiff filed two motions for preliminary injunction requesting injunctive relief  
24 enjoining MVD and Defendant Stanton from: (1) enforcing A.R.S. § 28-1601 driver's license  
25 suspensions against Plaintiff regarding his citations dated July 7, 1989; October 8, 20, and 22,  
26 1989; and March 9, 1990; and (2) denying Plaintiff an Arizona driver's license based on  
27 Plaintiff's driver's license suspensions in California and Nevada. [Doc. # 21, p. 14; Doc. #32,  
28

1 pp. 2, 10]. Because the Court finds that Plaintiff's claims underlying his motion for injunctive  
2 relief are barred and otherwise lack merit, it will deny the motions as moot.

3 **B. City of Phoenix's Motion to Strike**

4 On July 3, 2003, Plaintiff filed a Supplement fo Plaintiff's Responce (sic) to Defendant  
5 City of Phoenix's Motion for Judgment on the Pleadings. [Doc. # 28]. The purpose of this  
6 motion was to file in the record a "Notice of Claim" Plaintiff was "delivering" to the City of  
7 Phoenix "in the event at a latter (sic) date this Court allows plaintiff to amend his complaint  
8 to include pendant state causes of action." [Id., p. 1]. In response, Defendant City of Phoenix  
9 filed a Motion to Strike Plaintiff's "Supplement" to His Response to the City's Motion for  
10 Judgment on the Pleadings (Doc. # 29) arguing that the notice of claim was untimely by a  
11 decade or more, that Plaintiff's Complaint is legally defícient, and that Plaintiff had failed to  
12 raise any state claims or moved the Court to amend his Complaint. Because the Complaint  
13 will be denied for the reasons given above, Defendant City of Phoenix's Motion to Strike is  
14 moot and will be denied.

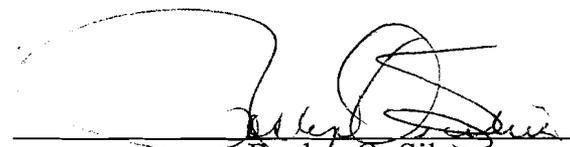
15 **V. CONCLUSION**

16 The Court holds that it lacks jurisdiction under the Rooker-Feldman doctrine to review  
17 Plaintiff's claims that Plaintiff previously raised in state court or were inextricably intertwined  
18 with the state court determinations. All claims asserted in the Complaint are affected by this  
19 jurisdictional bar except the claim alleging the unconstitutionality of MVD's participation in  
20 the Multi-State Highway Transportation Act. That claim, however, is time-barred, as are all  
21 other claims alleged in the Complaint. Moreover, Plaintiff's claims against the City of  
22 Phoenix and Ms. Stanton are subject to dismissal under the doctrine of res judicata. Further,  
23 Plaintiff's claim regarding his conviction arising from his March 9, 1990 citation is barred  
24 under the rule announced in Heck v. Humphrey.

25 For these reasons, Defendants' motions to dismiss have been granted. Additionally,  
26 Plaintiff's Motion for Preliminary Injunction, and Defendant City of Phoenix's Motion to  
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1 Strike Plaintiff's "Supplement" to His Response to the City's Motion for Judgment on the  
2 Pleadings have each been denied as moot.

3  
4 DATED: 4/4, 2005.

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8 Roslyn O. Silver  
9 United States District Judge  
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