NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0204

GARY L. RING, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VERSUS

STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, AND THE DIVISION OF WEIGHTS AND STANDARDS

Judgment Rendered: SEP 2 1 2012

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On Appeal from the 19th Judicial District Court
In and for the Parish of East Baton Rouge, State of Louisiana
Docket No. 481,767, Division "J"

The Honorable Wilson E. Fields, Judge Presiding

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FJG - Gaidry, J - concurs
McDonald, J. concurs

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

HUGHES, J.

This is an appeal of a trial court judgment sustaining the defendants' peremptory exceptions pleading the objections of prescription, no right of action, and no cause of action. For the reasons that follow, we affirm in part, reverse in part, and remand.

FACTS AND PROCEDURAL HISTORY

The initial facts and procedural history of this case were set forth by the supreme court in **Ring v. State, Department of Transportation and Development**, 2002-1367 (La. 1/14/03), 835 So.2d 423, 425-26 ("**Ring I**"), as follows:

> On March 9, 2000, Gary Ring, an Illinois resident, was operating an eighteen wheel vehicle owned by Landstar/Ligon on the interstate highway near Toomey, Louisiana, in Calcasieu Parish when he was stopped by a Calcasieu Parish Deputy and subsequently ticketed by an employee of the Department of Transportation and Development, Division of Weights and Standards, for failing to stop at a stationary weight enforcement scale, a violation of LSA-R.S. 32:388. At the time of the offense, the violation carried a fine of $2,000.00. Pursuant to LSA-R.S. 32:389, Ring, as a non-Louisiana resident, was required to pay the fine or face impoundment of his truck and cargo until such time as the fine was paid. Ring paid the fine under protest and sought administrative review of the citation before the Department of Transportation and Development's Violation Ticket Review Committee ("VTRC"). His protest was denied by the VTRC on June 15, 2000.
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> On March 8, 2001, Ring instituted suit against the State of Louisiana, Department of Transportation and Development, and the Division of Weights and Standards ("W & S"). Ring's petition, styled a "Petition for Damages and Recognition as a Class Action," alleges that the enforcement and collection procedures set forth in LSA-R.S. 32:389 violate the constitutional rights of both resident and non-resident truck drivers who are issued citations by W & S personnel. In particular, Ring asserts that non-resident truck drivers are deprived of a substantive property right and liberty interest when, without notice or opportunity to be heard at a pre-deprivation hearing, they are required to pay fines "on the spot" or face impoundment of their vehicles. Ring alleges that because Louisiana truckers are not subject to these requirements, the State has placed an unfair burden upon non-residents in violation of the Equal Protection Clause of the United States Constitution and has impeded the free flow of

interstate commerce. Further, Ring alleges that the enforcement and collection procedures set forth in LSA-R.S. 32:389 fail to provide both resident and non-resident truck drivers a meaningful pre-deprivation or post-deprivation hearing prior to the collection of fines or the seizure of property and the suspension of driving privileges in violation of the Due Process guarantee of the Fourteenth Amendment to the United States Constitution. Such action, Ring alleges, constitutes state action in violation of 42 U.S.C. § 1983. Ring's petition seeks certification as a class action, a declaration of the illegality and/or unconstitutionality of LSA-R.S. 32:389 and damages.

The State responded to Ring's petition by filing exceptions of prescription and no cause of action. The prescription exception avers that Ring's suit was not filed within ninety days of payment of the assessed penalty as required by LSA-R.S. 32:389(C)(4)[(b)], and is therefore prescribed on its face. The no cause of action exception alleges that Ring's pleading fails to satisfy the requirements for class certification set forth in LSA-C.C.P. art. 591, and, in addition, challenges Ring's qualifications to represent the putative class.

On October 26, 2001, Ring filed a motion for partial summary judgment, seeking a declaration that LSA-R.S. 32:389 is unconstitutional. The motion came on for hearing on December 3, 2001, prior to resolution of the pending exceptions of prescription and no cause of action, prior to answer being filed by the State, and prior to class certification. At the close of argument, and over the State's objection, the district court granted Ring's motion and declared LSA-R.S. 32:389, in its form prior to its August 15, 2001 amendment, unconstitutional. In oral reasons, the court ruled that the statute violates the Equal Protection and Due Process guarantees and, in addition, violates the provisions of the Louisiana Administrative Procedure Act, specifically LSA-R.S. 49:955 et seq.

In the meantime, during the pendency of this proceeding, LSA-R.S. 32:389 was amended pursuant to Acts 2001, No. 1201, § 1, which became effective on August 15, 2001. The amended statute reduced the fine to $500.00 and set forth new procedures for the review of violations and payment of fines. On December 26, 2001, Ring filed a second motion for partial summary judgment[1] and, alternatively, for partial new trial seeking a declaration that the amended version of the statute is also unconstitutional. On February 21, 2002, the district court signed a judgment granting Ring's second motion for partial summary judgment and declaring LSA-R.S. 32:389, as amended, unconstitutional. The court found that the amendment did not cure the constitutional defects in the statute. The court certified the judgments on both motions for partial summary judgment as final and the State appealed.

[1] We note that neither Mr. Ring's first nor second motion for summary judgment appear in the record presented on appeal.

In **Ring I**, the supreme court ruled that the trial court had decided the issue of constitutionality prematurely and remanded the matter to the trial court for consideration of the State's peremptory exceptions pleading the objection of prescription (pursuant to LSA-R.S. 32:389's[2] requirement that a suit to recover a fine be filed within ninety days of payment of the assessed penalty) and the objection of no cause of action (alleging that Mr. Ring's pleading failed to satisfy the requirements for class certification under LSA-C.C.P. art. 591 and that Ring was not qualified to represent the putative class). **Ring I**, 835 So.2d at 425-26.

On remand to the trial court, the State filed a motion to have its exceptions of prescription and no cause of action set for hearing, and a hearing was set for May 5, 2003. A motion for leave of court to file an amended petition filed by Mr. Ring was also set for hearing on May 5, 2003. Following the May 2003 hearing, the State's exceptions were denied, and plaintiff was allowed to file a "First Amended and Supplemental Petition for Damages and Recognition as a Class Action." Although not mentioned in the signed judgment, the May 5, 2003 minute entry of the trial court stated that the court found the ninety-day prescriptive period to be "unreasonable." Presumably because no written ruling on the validity of the ninety-day prescriptive period appeared in the May 16, 2003 signed judgment of the trial court, the supreme court, on subsequent writ application by the State, issued the following action: "Writ granted. This court's appellate jurisdiction is not invoked. La. Const. Ann. Art. V, Section 5; La. Sup. Court Rule X, Section 5. Case transferred to the Court of Appeal, First

[2] Unless otherwise stated, all references to LSA-R.S. 32:389 herein are to the statute as it formerly read at the time the tickets were issued.

Circuit." **Ring v. State, Department of Transportation and Development**, 2003-1772 (La. 6/27/03), 847 So.2d 1281 ("**Ring II**").

Meanwhile, the first amended and supplemental petition was filed in the trial court on March 25, 2003 and named the following additional plaintiffs: Stephen Tassin, Carl D. Picklesimer,[3] and Mary Ellen Hoffman.

The March 25, 2003 amended and supplemental petition alleged that Mr. Tassin was ticketed on May 16, 2000 for bypassing a weigh station, while driving an eighteen-wheel tractor-trailer on I-10 in St. Tammany Parish, and fined $2,000.[4] Mr. Tassin, a domiciliary of St. Tammany Parish, was allegedly allowed to post his driver's license in lieu of immediately paying the fine, and he thereafter paid the fine under protest on June 11, 2000. Although Mr. Tassin filed a separate suit on August 11, 2000, within the ninety-day time period allowed under LSA-R.S. 32:389 to contest the fine,[5] he joined in the instant suit with Mr. Ring, alleging that the imposition of the fine and the "entire scheme of enforcement of violations ticketed at stationary truck scales by the Weights and Standards police of the DOTD" was violative of Louisiana and the U.S. Constitutions, as set forth in Mr. Ring's original petition, and that the ninety-day time period allowed by LSA-R.S. 32:389(C)(4) for filing suit was "far too short to conform with due process requirements" and thus "unconstitutional on its face and in both its application and enforcement." Mr. Tassin further alleged that he had suffered "the same or similar damages" as Mr. Ring.

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[3] This party's name is spelled in the record both as "Picklesimer" and "Picklesmeir," but a handwritten letter and an affidavit of Mr. Picklesimer, filed into evidence in the trial court, indicate that the correct spelling is "Picklesimer." Further the suit filed by the State against him in the 1st Judicial District Court used the spelling "Picklesimer."

[4] Mr. Tassin alleged that he was stopped by "PJC Seals" and ticketed by "Officer Williamson."

[5] Mr. Tassin's suit was originally filed in the 22nd Judicial District Court, under suit number 2000-13663, but he filed a motion to transfer the matter to the 19th Judicial District Court and consolidate his suit with that of Mr. Ring; the 22nd Judicial District Court judge granted his motion on April 17, 2003.

The March 25, 2003 amended and supplemental petition further alleged that Carl D. Picklesimer and Mary Ellen Hoffman, both out-of-state residents, were driving their respective trucks on I-20 in Caddo Parish on April 17, 2002, when they were both ticketed for bypassing a weigh station and fined $500;[6] however, they were not required to pay the fine at the scene. Both Mr. Picklesimer and Ms. Hoffman filed protests, which were denied.[7] In February of 2003 the State instituted suits to collect the fines imposed. Thereafter, Mr. Picklesimer and Ms. Hoffman joined the instant suit,[8] along with Mr. Ring and Mr. Tassin, alleging that they had been damaged by the State's constitutionally flawed statutory and regulatory scheme for weigh station ticketing, enforcement, and agency review.

The March 25, 2003 amended and supplemental petition further asserted that, as to both resident and non-resident truck drivers, the enforcement scheme set forth in the pre-2001 amendment version of LSA-R.S. 32:389 and the pre-2002 revision of the La. Admin. Code 73:1201 denied truckers a meaningful pre-deprivation and/or post-deprivation review and thus did not afford them due process. With respect to the amended law,

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[6] It was alleged that these violations took place after an August 15, 2001 amendment to LSA-R.S. 32:389 and a March 20, 2002 amendment to the La. Admin. Code 73:1201, implementing a reduction of the previous $2,000 fine to $500 and changing the administrative review procedures.

[7] Mr. Picklesimer and Ms. Hoffman were traveling together, in separate trucks, at the time they were ticketed; Mr. Picklesimer was hauling government explosives and Ms. Hoffman was his escort. Both forwarded handwritten letters to the State stating the "ok to by-pass" indicator was activated at the time they passed the weigh station and contending they should not have been ticketed. Mr. Picklesimer's letter was dated April 22, 2002; the State's response letter, dated April 29, 2002, showed his protest letter had been received and notified him that his ticket was scheduled for review on June 11, 2002. Ms. Hoffman's letter was undated, but the State's response letter, dated May 3, 2002, showed her protest letter had been received and notified her that her ticket review was scheduled for June 25, 2002. Subsequent June 14, 2002 correspondence by the State to these parties indicated that both tickets were reviewed by the VTRC on June 11, 2002, and the protests were denied.

[8] The suits by the State against Mr. Picklesimer and Ms. Hoffman were originally filed in the 1st Judicial District Court, under suit numbers 473258-B and 473671-C, respectively, however both Mr. Picklesimer and Ms. Hoffman filed motions to transfer their cases to the 19th Judicial District Court and consolidate their suits with that of Mr. Ring; the 1st Judicial District Court granted their motions in May of 2003. The transferred cases were further ordered consolidated with the "**Ring** class action" by order of the 19th Judicial District Court, signed in September, 2003. The 1st JDC records indicated that Mr. Picklesimer's employer, Baggett Transportation, submitted payment for the $500 fine, in March, 2003, to the State, and the suit was dismissed, though the dismissal was set aside "as it pertain[ed] to Carl D. Picklesimer," by same judgment that granted Mr. Picklesimer's motion to transfer the suit to the 19th Judicial District Court. Further, it has been asserted that Ms. Hoffman's fine was also paid by her employer, who then deducted the amount of the fine from her payroll.

the plaintiffs maintain that procedures continue to "[fall] short of its objective to provide constitutionally adequate provisions to protect the procedural and substantive due process rights of ticketed truckers" citing, among other deficiencies, the failure of the administrative provisions to allow truckers an opportunity to cross-examine witnesses and/or rebut the evidence against them, and that the regulatory scheme was not in conformity with the Louisiana Administrative Procedure Act, LSA-R.S. 49:950 et seq. Further, the plaintiffs maintained that LSA-R.S. 32:389's ninety-day prescriptive period was unconstitutionally short. In contrast, the plaintiffs pointed out that the State had up to one year to file suit to collect a fine under LSA-R.S. 32:389(C)(6).

Plaintiffs requested that they be named class representatives and that the class be defined as follows:

> All of those truck drivers who have paid on-site fines or posted on-site bonds, or paid fines within 30 days of receiving their citations, or who have been cited for violations and demanded fines therefor at a later date, all such citations being issued by W&S personnel, under the threat of seizure/forfeiture/impoundment of their trucks, cargo, and/or their driver's licenses, or without such threat, and which drivers have not received adequate notice nor an adequate opportunity to contest the fines in an administrative review or other hearing conducted pursuant to the Louisiana Administrative [Procedure] Act.

A hearing on the issue of certification was held by the trial court on August 21, 2003, and the matter was taken under advisement. On September 11, 2003 written reasons were issued by the trial court, and a judgment was thereafter signed on September 24, 2003, certifying the matter as a class action, naming Gary L. Ring, Stephen Tassin, Carl D. Picklesimer, and Mary Ellen Hoffman as class representatives, and defining the class as prayed for by the plaintiffs.

Meanwhile, on November 17, 2003 this court issued an interim order to the trial court pursuant to the earlier transfer from the supreme court (see **Ring II**, *supra*), as follows:

> [T]he trial court is
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> **ORDERED** to make a specific finding as to whether the prescriptive period of La. R.S. 32:389 is unconstitutional under the criteria set forth in **Atchafalaya Land Co. v. F.B. Williams Cypress Co.**, 146 La. 1047, 1064, 84 So. 351 (1920), affirmed, 258 U.S. 190, 42 S.Ct. 284, 66 L.Ed. 559 (1922), cited in **Ring v. State, Dept. of Transp. and Development**, 2002-1367 p.8 fn. 3 (La. 1/14/03), 835 So.2d 423, 429 [**Ring I**]. Further action by this Court will be dependent on the findings of the trial court.

Ring v. State, Department of Transportation and Development, 2003-1331 (La. App. 1 Cir. 11/17/03) (unpublished). Thereafter, on December 11, 2003, the trial court issued a "Specific Finding by the Trial Court as to the Constitutionality of the Prescriptive Period of LSA-R.S. 32:389," which concluded that the ninety-day prescriptive period provided in LSA-R.S. 32:389(C)(4)(b) was unconstitutional because: (1) it did not allow a reasonable amount of time for the assertion of a nonresident complainant's right to due process of the law, and (2) it violated the equal protection clause of the United States and Louisiana Constitutions. Subsequently, the trial court signed a judgment declaring that "the 90-day prescriptive period contained in LSA-R.S. 32:389 is unconstitutional."

Upon the trial court's ruling, this court issued the following writ action:

> **WRIT DENIED**. This Court declines to exercise its supervisory jurisdiction. Once a judgment is signed in this matter declaring the prescriptive period of La. R.S. 32:389 unconstitutional in accordance with the trial court's findings, the matter is appealable to the Supreme Court. See La. Const. Art. 5, Sec. 5(d).

Ring v. State, Department of Transportation and Development, 2003-1331 (La. App. 1 Cir. 1/5/04) (unpublished). The State was then granted an appeal directly to the supreme court, which ruled as follows:

> Gary Ring, an Illinois resident, filed the instant suit against the State of Louisiana ("State"), arguing that La. R.S. 32:389 was unconstitutional, on the ground the statute deprived non-resident truck drivers of a substantive property right and liberty interest by requiring them to pay fines "on the spot" or face impoundment of their vehicles. The district court granted partial summary judgment in favor of Mr. Ring and found La. R.S. 32:389 unconstitutional. The State appealed that judgment to this court. In **Ring v. State, Dept. of Transp. and Development**, 02-1367 (La. 1/14/03), 835 So.2d 423 ("**Ring I**"), we vacated as premature the judgment of the district court which declared La. R.S. 32:389 unconstitutional. We remanded the case to the district court to resolve pending exceptions filed by the State of Louisiana, including an exception of prescription, in which the State argued Mr. Ring did not file his suit within ninety days of payment of the assessed penalty as required by La. R.S. 32:389(C)(4)(a).
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> On remand, the district court denied the State's exception, finding La. R.S. 32:389(C)(4)(a) was "unreasonable." The State appealed this ruling in this court. In **Ring v. State, Dept. of Transp. and Development**, 03-1772 (La. 6/27/03), 847 So.2d 1281 ("**Ring II**"), we determined the appellate jurisdiction of this court was not invoked and therefore remanded the case to the court of appeal. On remand, the court of appeal ordered the district court to make "a specific finding" as to whether La. R.S. 32:389(C)(4)(a) was unconstitutional. Pursuant to the court of appeal's directions, the district court, without the benefit of briefing and argument by the parties, declared the statute unconstitutional. Pursuant to La. Const. art. V, § 5(D), the State of Louisiana invokes the appellate jurisdiction of this court to review this judgment.
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> Based on our review of the record, we find the district court has not passed on the merits of the exception of prescription, as we directed in our opinion in **Ring I**.[FN1] Under these circumstances, it was premature for the district court to reach the constitutionality of La. R.S. 32:389(C)(4)(a). Accordingly, we must vacate the district court's judgment and remand the case to the district court to determine the merits of the State's exception of prescription and other pending exceptions, as directed in our opinion in Ring I.[FN2]
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> [FN1] Although the district court purportedly denied the State's exception, it is obvious from the record that the district court did not address the merits of the exception and instead went directly to the constitutional issue.

> [FN2] In the event the prescription issue is decided adversely to Mr. Ring, it may be appropriate for Mr. Ring to raise the constitutionality of the statute at that time.

The supreme court "vacate[d] and set aside" the judgment of the trial court, which had declared La. R.S. 32:389(C)(4)(a) unconstitutional, and remanded the case to the trial court for further proceedings. **Ring v. State, Department of Transportation and Development**, 2004-0671 (La. 4/30/04), 871 So.2d 1108, 1108-9 ("**Ring III**").

On August 9, 2004, this court ruled on the State's writ application complaining of the earlier September 24, 2003 trial court judgment, which had certified the matter as a class action, as follows:

> **WRIT DENIED WITH ORDER.** An interlocutory ruling certifying a class may create irreparable injury to defendants, thus justifying appellate review. See, e.g., **Car[r] v. GAF, Inc.**, 97-2325 (La. 11/14/97), 702 So.2d 1384, 1385. Therefore, it is hereby ordered that this case be remanded to the trial court with instructions to grant the relator an appeal pursuant to the October 15, 2003 pleading seeking, alternatively, a suspensive appeal or writs. See **In re Howard**, 541 So.2d 195 (La. 1989). A copy of this Court's action is to be included in the appellate record. Briefs are required in compliance with the Uniform Rules of Louisiana Courts of Appeal.

Ring v. State, Department of Transportation and Development, 2004-0543 (La. App. 1 Cir. 8/9/04) (unpublished), writ denied, 2004-2274 (La. 9/24/04), 882 So.2d 1135. In the ensuing appeal, a divided panel of this court affirmed the class action certification. **Ring v. State, Department of Transportation and Development**, 2005-1601, 2006WL3813683 (La. App. 1 Cir. 12/28/06) (unpublished), 947 So.2d 852 (table).[9] Subsequently, the supreme court granted the State's writ application and vacated the judgment of this court, stating:

[9] Judge McDonald disagreed with the majority opinion, maintaining that there had been no compliance by the trial court with **Ring I** and further expressing concern that the numerosity and commonality elements for class certification had not been satisfied.

> The judgment of the court of appeal is vacated and the matter is remanded to the trial court for a determination of whether the claims of the proposed class representatives have prescribed. *See* **Ring v. State, DOTD**, 02-1367 (La. 1/14/03), 835 So.2d 423 [**Ring I**]. Should the trial court find that the claims of the proposed class representatives are not prescribed, then it is instructed to reconsider plaintiffs' motion for class certification in light of the concerns raised in Judge McDonald's dissenting opinion in the court of appeal.

Ring v. State, Department of Transportation and Development, 2007-0179 (La. 4/27/07), 955 So.2d 671 ("**Ring IV**").

Upon remand to the trial court by the **Ring IV** court, the State filed a second exception of prescription, on July 20, 2007,[10] asserting that LSA-R.S. 32:389's ninety-day prescriptive period[11] also applied to the claims of Ms. Hoffman and Mr. Picklesimer, whose fines were assessed on April 17, 2002, but whose suits, the State contended, were not filed until March 25, 2003.[12] The State further asserted in its July 2007 exception of prescription that "[p]laintiffs did not file civil actions to protest and/or recover the statutory penalties within 90 days of the date [of] the violation," thus, the State contended that these plaintiffs' claims had also prescribed.

On November 30, 2007 the trial court issued written reasons, finding: (1) that Mr. Ring's suit was timely (apparently based on the court's acceptance of Mr. Ring's argument that his suit was timely because 42 U.S.C. § 1983 actions are accorded a one-year prescriptive period); (2) that Mr. Tassin's action had been timely filed (recognizing that the State

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[10] The State based its first exception of prescription, filed June 6, 2001, on LSA-R.S. 32:389(C)(4)(b), which allowed only a ninety-day prescriptive period within which to challenge the fines levied. The State further asserted in its first exception that since Mr. Ring had been fined on March 9, 2000, but his petition was not filed until March 8, 2001, that his claim had prescribed on its face.

[11] At the time that Mr. Picklesimer and Ms. Hoffman were ticketed in 2002, LSA-R.S. 32:389 had been amended by 2001 La. Acts, No. 1201, but the ninety-day prescriptive period was retained in LSA-R.S. 32:389(C)(4)(a), which stated in pertinent part: "Any owner or driver who pays an assessed penalty in accordance with the provisions of this Section shall have a period of ninety days after the date of payment to institute a civil suit against the department to recover the penalty so paid."

[12] The March 25, 2003 date references the date on which the petition in the instant suit was amended to add Mr. Tassin, Mr. Picklesimer, and Ms. Hoffman as plaintiffs.

conceded that Mr. Tassin filed his suit for administrative review within the statutorily-mandated ninety days following the payment of his fine under protest); and (3) that Ms. Hoffman's claim had not prescribed (since she had been given a defective notice of her protest hearing date, which stated the review would be on June 25, 2002 when it was actually held June 11, 2002).[13] The trial court further re-affirmed its prior September 24, 2003 judgment, which had granted class action certification as prayed for by the plaintiffs, stating: "Based upon the showings made there is no evidence in the record to make the determinations suggested by Judge [McDonald]." The record does not reflect that a judgment was ever signed in conjunction with these written reasons.

On February 11, 2008 the State filed exceptions of no right of action and no cause of action as to the 42 U.S.C. § 1983 claims originally asserted by Mr. Ring in his March 8, 2001 petition and thereafter asserted by Mr. Tassin, Mr. Picklesimer, and Ms. Hoffman in the March 25, 2003 first amended and supplemental petition. Following an April 7, 2008 hearing on the State's exceptions, the trial court signed a judgment on May 2, 2008 overruling the exception of no right of action, but sustaining the exception of no cause of action with respect to the 42 U.S.C. § 1983 claims; the "plaintiffs" were allowed thirty days to amend their petition to name "specific parties."

On May 9, 2008 Mr. Ring, as "class representative," filed an "Amended Pleading of the 'Ring Class' Pursuant to Order of the Court," stating that all previous allegations, as made in the original petition and subsequent amendments, were reiterated and adopted as if pled therein. The

[13] Mr. Picklesimer was mentioned in these written reasons, but no conclusion was stated as to the timeliness of his claim.

pleading further alleged, in pertinent part, that: (1) Mr. Ring was stopped by a Calcasieu Parish deputy sheriff, who was acting under color of the laws and regulations of the State; (2) in ordering Mr. Ring to return to the scale facility, the deputy effectively placed Mr. Ring "under arrest" as the deputy was controlling his actions; (3) Mr. Ring was ticketed by the scale house master, John Nelson Dottolo, a DOTD employee; (4) Mr. Dottolo later gave deposition testimony that he did not personally witness Mr. Ring's alleged violation, but rather relied upon the statement by the deputy to issue the ticket, even though Mr. Dottolo had the decision-making authority as to whether a ticket would be issued; (5) Mr. Dottolo admitted in his deposition testimony that he erroneously entered the name of "Landstar Ligon" as the owner of Mr. Ring's vehicle; (6) at the time of the alleged Ring offense DOTD policy required that two individuals witness the wrongful conduct, but that only one individual (the deputy sheriff) observed Mr. Ring's alleged offense; (7) Mr. Dottolo's issuance of a ticket was a violation of DOTD policy; (8) Mr. Dottolo ordered Mr. Ring to pay the $2,000 fine or his vehicle and cargo would be confiscated; and (9) Mr. Dottolo was the unnamed "scale master" named in Mr. Ring's original petition, who was at all relevant times a State employee.

Thereafter, a second amended and supplemental petition was filed by "class representatives" Mr. Tassin and Ms. Hoffman, on June 3, 2008, to add as defendants the following individual state officials: Dr. Kam Movassaaghi, Secretary of the Department of Transportation and Development ("DOTD") from October 12, 1998 to April 30, 2004; James B. Norman, Administrator of DOTD's Division of Weights and Standards ("W&S"); Major Marshall A. ("Mac") Linton, W&S Police Chief; and each member of the W&S Violation Ticket Review Committee ("VTRC"), from

the years 2000 to 2003, including Sherryl J. Tucker, Salvatore F. Faldetta, William H. Temple, Karl J. Finch, John Collins, Tom Harold, and Denny Silvio. All of these defendants were alleged to have participated in the deprivation of the plaintiffs' substantive and procedural due process rights and were sued in their individual and official capacities.

On May 27, 2009 the State filed its third exception of prescription, again asserting that LSA-R.S. 32:389's ninety-day period for challenging an assessed fine had expired before suit was filed by any of the four class representatives and therefore their claims had prescribed. The State further contended that Mr. Tassin's, Mr. Picklesimer's, and Ms. Hoffman's claims under 42 U.S.C. § 1983 had also prescribed (asserting that allegations in the amended petitions could not relate back to the original petition in this case). Further, the State again asserted exceptions of no right of action and no cause of action, contending that pursuant to **Ring I**, the plaintiffs were required to have "a valid right to recover the fine paid under protest," which the State maintained they did not have, as any actions the plaintiffs had were prescribed.[14]

Following a January 11, 2010 hearing, the trial court ruled in favor of the State, sustaining its exceptions of prescription, no right of action, and no cause of action. A judgment so ruling was signed on April 27, 2010; however, the judgment did not "dismiss" the defendants.[15] Thereafter, a motion for new trial was filed on behalf of Mr. Ring and Mr. Picklesimer on May 11, 2010, and a motion for new trial was filed on behalf of Mr. Tassin,

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[14] We note that the State also asserted in their exception that since the Mr. Ring failed to serve defendant John Nelson Dottolo within ninety days, any claim against him should be dismissed. In response, during the January 11, 2010 hearing, counsel for plaintiffs (Mr. Goodwin) asserted that counsel for defendants (Mr. Bolner) had accepted service for the unserved defendants. However, the trial court made no ruling on this issue, implicitly rejecting the defendants' argument.

[15] It should be noted that this was the first judgment rendered in this case by Judge Fields; all prior judgments were rendered by Judge Fields' predecessors.

Mr. Picklesimer, and Ms. Hoffman on May 12, 2010. The trial court signed a judgment on October 4, 2010, denying the May 11, 2010 motion for new trial filed by Mr. Ring and Mr. Picklesimer, which also stated: "This matter is dismissed with prejudice." However, no judgment was signed denying the May 12, 2010 motion for new trial. All of the named plaintiffs then appealed the April 27, 2010 judgment.[16]

After the lodging of the appeal, on March 25, 2011 this court, *ex proprio motu*, issued a rule to the parties to show cause why the appeal should not be dismissed for a deficiency in the decretal language of the judgment (noting that the April 27, 2010 judgment did not dismiss the parties and that the trial court had not ruled on the Tassin/Picklesimer/Hoffman motion for new trial). On June 23, 2011, another panel of this court issued an interim order to the trial court remanding the case for the limited purpose of having the trial court sign a final judgment with appropriate decretal language and to render judgment on the Tassin/Picklesimer/Hoffman motion for new trial. The trial court then supplemented the appellate record on July 25, 2011 with: (1) a revised judgment on the State's exceptions, signed on July 21, 2011, replacing and superseding its prior April 27, 2010 judgment, and sustaining the State's exceptions of prescription, no right of action, and no cause of action, and dismissing all defendants, with prejudice; and (2) revised judgments, signed on July 21, 2011, denying all plaintiffs' motions for new trial and clearly indicating that all filed motions for new trial had been denied.

On appeal, the State submitted to this court a motion seeking to supplement the appellate record. In this motion, the State urged that in order

[16] Mr. Ring and Mr. Picklesimer filed a joint motion for appeal on October 18, 2010, and Mr. Picklesimer also joined in an October 25, 2010 motion for appeal filed by Mr. Tassin and Ms. Hoffman.

to properly address arguments made by Mr. Ring and Mr. Picklesimer, on appeal, a supplement of the record with the following documents, not contained in the record on appeal, was necessary: (1) motion for findings of court and reasons for judgment; (2) motion to set status conference; (3) motion to compel submission of judgment with incorporated memorandum in support; (4) memorandum in opposition to motion to compel judgment; and (5) circulation of proposed judgment. The motion to supplement was referred to this panel for disposition by a June 23, 2011 order of this court.

Based on these alleged omissions from the record, as well as others noticed by this court *ex proprio motu*, we issued an interim order on April 24, 2012, ordering the trial court to supplement the appellate record, on or before May 15, 2012, with: the items missing from the appellate record as set forth in the State's motion to supplement; the transcript of the January 11, 2010 hearing, including a stipulation that the minutes of court reflect was made during that hearing,[17] a copy of any transcript previously made of the May 5, 2003, October 9, 2007, and April 7, 2008 hearings; the evidence introduced at the May 5, 2003 hearing; and a copy of any pleading filed in the matter but not previously included the appellate record, including but not limited to a second amended and supplemental petition filed by plaintiff Gary Ring on or about May 13, 2008.[18] In response to the interim order of this court, the trial court filed a supplement to the record on June 12, 2012, in substantial compliance with this court's April 24, 2012 order. Since the

[17] The trial court's January 11, 2010 minutes state in pertinent part: "[A] stipulation was entered into by and between counsel." However, as indicated hereinbelow, the appellate record was supplemented on June 12, 2012 and contained the January 11, 2010 hearing transcript, but no stipulation by the parties was contained in that transcript.

[18] The rationale of this court, in issuing the interim order, was based on LSA-C.C.P. art. 2128, which allows an appellant to "designate in a writing filed with the trial court such portions of the record which he desires to constitute the record on appeal," but which also states that "[w]hen no designation is made, the record shall be a transcript of all the proceedings as well as all documents filed in the trial court." The record presented on appeal did not reflect that any written designation of the record had been filed in this case pursuant to LSA-C.C.P. art. 2128. Therefore, the record on appeal should have contained all transcripts and documents filed in the trial court.

appellate record has now been supplemented with the items sought in the State's motion to supplement, we deny the motion to supplement as moot.

The plaintiffs/appellants assert on appeal that the trial court erred in: (1) sustaining the State's exception of prescription; (2) sustaining the State's exceptions of no right of action and no cause of action; (3) denying the plaintiffs'/appellants' motions for new trial; and (4) in failing to hold that both versions of LSA-R.S. 32:389, at issue, were unconstitutional.

LAW AND ANALYSIS

Constitutionality of LSA-R.S. 32:389

While Mr. Tassin paid his fine under protest and filed his suit in the trial court within the requisite ninety-day period, in accordance with the applicable version of LSA-R.S. 32:389, Mr. Ring, Mr. Picklesimer, and Ms. Hoffman all failed to comply with LSA-R.S. 32:389. Rather than filing within the ninety-day period, Mr. Ring, Mr. Picklesimer, and Ms. Hoffman filed their claims one year after the day they were each ticketed. As to these plaintiffs' claims, the State has asserted that the claims were prescribed, since they were not filed within the ninety-day period. The plaintiffs responded that the ninety-day period was unconstitutionally short.

In the judgment appealed, which sustained the State's exception of prescription, the trial court implicitly rejected the plaintiffs' assertions that the ninety-day prescriptive period, set forth in the applicable versions of LSA-R.S. 32:389, was unconstitutionally short. See **Junot v. Morgan**, 2001-0237 (La. App. 1 Cir. 2/20/02), 818 So.2d 152, 156 (holding that it is well-settled that silence in a judgment, as to any issue litigated, is construed as a rejection of that issue). See also **Bartlett v. Reese**, 569 So.2d 195, 198 n.4 (La. App. 1 Cir. 1990), writ denied, 572 So.2d 72 (La. 1991). Plaintiffs/appellants assert the trial court erred in rejecting their contention

that the ninety-day prescriptive period of former LSA-R.S. 32:389 was unconstitutional.

Statutes are presumed to be valid, and the burden of proving that an act is unconstitutional is upon the party attacking the act. **Lakeside Imports, Inc. v. State**, 94-0191 (La. 7/5/94), 639 So.2d 253, 255. See also **Oubre v. Louisiana Citizens Fair Plan**, 2011-0097 (La. 12/16/11), 79 So.3d 987, 995 n.5.

At the time Mr. Ring and Mr. Tassin were ticketed (March and May of 2000, respectively), LSA-R.S. 32:389 provided:

> A. The weights and standards police force and the state police shall have concurrent authority to enforce the provisions of R.S. 32:380 through 388.
>
> B. Any weights and standards police officer having reason to believe that any vehicle or combination of vehicles exceeds or is in violation of the provisions of R.S. 32:380 through R.S. 32:386 or the terms and conditions of a special permit issued under R.S. 32:387 or regulations of the department or secretary adopted pursuant to this Part is authorized to stop such vehicle or combination of vehicles and to inspect, measure, or weigh such vehicle, either by means of portable or stationary scales, or to require that such vehicle be driven to the nearest available location equipped with facilities to inspect, measure, or weigh such vehicle.
>
> (1) Any state policeman having reason to believe that any vehicle or combination of vehicles exceeds or is in violation of the provisions of R.S. 32:380 through 32:386 or the terms and conditions of a special permit issued under R.S. 32:387 or regulations of the department or secretary adopted pursuant to this Part is authorized to stop such vehicle or combination of vehicles and to inspect or measure such vehicle or to require that such vehicle be driven to the nearest available location equipped with facilities to inspect or measure such vehicle, provided that any state policeman having reason to believe that any vehicle or combination of vehicles exceeds or is in violation of the provisions of R.S. 32:386, any overweight special permit as provided in R.S. 32:387, or the department's regulations adopted pursuant thereto, may escort such vehicle to the nearest permanent or portable scale operated by the department's weights and standards police force, where a weights and standards police officer shall weigh such vehicle and if such vehicle is overweight, is in violation of an overweight special permit, or the department's or secretary's

regulations adopted pursuant thereto, shall issue a violation ticket in accordance with Subsection C of this Section.

C. (1) Whenever any vehicle or combination of vehicles is found in violation of any provision of this Part or any regulation of the department or secretary adopted pursuant thereto, the weights and standards police officer or any state policeman shall take the name and address of the owner and driver and the license number of the vehicle and shall issue a violation ticket assessing a penalty for such violation in accordance with R.S. 32:388.

(2) Upon issuance of the violation ticket, the owner or ***driver shall pay forthwith the penalty assessed*** with certified check, cashier's check, money order or department approved credit card to the weights and standard police officer or state policeman. The secretary may establish credit accounts for violators, if each violator provides the department a cash deposit in the minimum amount of five thousand dollars or any amount in excess thereof fixed by the secretary to guarantee payment of said account. However, ***any driver*** of any vehicle registered in Louisiana, who is lawfully ***possessed of a valid Louisiana driver's license***, as provided in Subsection A of R.S. 32:411, ***in lieu of immediate payment may deposit said license*** with the state policeman or the weights and standards police officer, who shall issue said driver a receipt for the license on a form approved or provided by the department. The receipt shall notify the owner and driver in writing to appear at a time and place to pay the penalty assessed and secure the return of the driver's license. This receipt shall be considered as a valid driver's license for a period not to exceed thirty days.

(3) Whoever violates his promise to appear and pay a penalty assessed under this Part shall be punished as provided in R.S. 32:57, and the driver's license shall be forwarded to the Department of Public Safety for suspension, revocation, and cancellation and the weights and standards police force or the state policeman shall locate and remove the owner's license plate(s) from said vehicle(s) until any penalty assessed is paid in accordance with this Part.

(4)(a) ***Any owner or driver resisting the payment*** of the penalty found due, or the enforcement of any provision of this Part in relation thereto, ***shall pay the amount of the penalty assessed*** to the weights and standards police officer, state policeman or other person designated in a license receipt ***and shall give this officer***, state policeman or person ***notice at the time of payment of his intention to file suit for the recovery of such penalty***.

(b) Any owner or driver who pays an assessed penalty under protest in accordance with the provisions of this Section shall have a period of ***ninety days after the date of payment to***

institute a civil suit against the department ***to recover the penalty so paid***.

(c) The right to sue for recovery of a penalty paid under protest shall afford a legal remedy and right of action in any state district court for a full and complete adjudication of any questions arising in the enforcement of a penalty respecting the legality of any penalty assessed or the method of enforcement thereof. Any such suit may be instituted either in the parish in which the violation occurred, the domicile of vehicles, provided the domicile is within the state of Louisiana, or in East Baton Rouge Parish. In any such suit, service of process shall be made on the department, through the secretary. The department shall be a necessary and proper party defendant in any such suit.

(5) No court of this state shall issue any process whatsoever to restrain the collection of any penalty assessed by the department pursuant to this Part.

(6) If upon expiration of the ninety day period provided in Subparagraph (b) of Paragraph (4) of this Subsection any penalty assessed remains unpaid, the department may institute a civil suit in the parish in which the violation occurred or in the domicile of the owner or driver to collect any penalty assessed but unpaid. The ***department shall have one year*** from the date of expiration of the ninety day period ***to institute such a suit***.

(7) Notwithstanding the above provisions, any member of the armed forces, who is in uniform or presents an order for duty and who is operating a military vehicle in the line of duty in violation of any provision of R.S. 32:380 through R.S. 32:387 or any regulation of the department or secretary adopted pursuant thereto shall not be required to pay the penalty assessed, nor shall he be required to surrender his Louisiana driver's license. However, the owner of the vehicle or the federal government shall pay the penalty within thirty days.

(8) Failure of any vehicle or combination of vehicles to stop at a weigh facility may be excused if stopping the vehicle or combination of vehicles would create a serious traffic hazard. The Department of Transportation and Development shall promulgate rules under the provisions of the Administrative Procedure Act for the implementation of this Paragraph. Such rules shall define "serious traffic hazard" and shall authorize the use of green traffic signal lights to allow vehicles to pass the weigh facility at such times as vehicles have accumulated on the entrance ramp to the weigh facility to the extent that the vehicles present a traffic hazard. Rules adopted hereunder shall be subject to oversight by the House and Senate Committees on Transportation, Highways and Public Works.

D. The secretary shall establish a procedure for the administrative review of citations issued by weights and

standards police. The secretary may take appropriate actions based on the findings of any administrative review held under the provisions of this Subsection. The secretary shall adopt rules to govern administrative review and any actions taken based on the findings of an administrative review. All rules shall be adopted in accordance with the Administrative Procedure Act.

[Emphasis added.]

The changes made to the provisions of LSA-R.S. 32:389(C)(2), (C)(3), (C)(4), (C)(6), and (D), by 2001 La. Acts, No. 1201, applicable to the 2002 ticketing of Mr. Picklesimer and Ms. Hoffman, are reflected in the text of Act 1201, showing the additions ("<<+ text +>>") and the deletions ("<<- text ->>"), as follows:

(C)(2) Upon issuance of the violation ticket, <<-the owner or driver shall->> <<+an owner or driver who is a ***resident of Louisiana or who has a domicile in Louisiana*** shall receive notification from the weights and standards stationary scale police officer that the ***penalty shall be paid within thirty days*** of issuance of the violation ticket or that the owner or driver may request an agency review of the penalty within thirty days of issuance of the violation ticket. An owner or driver who is ***not a resident of Louisiana*** or who does not have a domicile in Louisiana shall receive notification from the weights and standards stationary scale police officer that the ***penalty shall either be paid at the time*** the violation ticket is issued ***or he shall post a bond*** equal to the amount of the penalty, which bond shall be forfeited if, within thirty days of issuance of the violation ticket, the penalty has not been paid or an agency review has not been requested. The owner or driver shall+>> pay <<-forthwith->> the penalty assessed with certified check, cashier's check, money order or department approved credit card <<-to the weights and standard police officer or state policeman->>. The secretary may establish credit accounts for violators, if each violator provides the department a cash deposit in the minimum amount of five thousand dollars or any amount in excess thereof fixed by the secretary to guarantee payment of said account. <<-However, any driver of any vehicle registered in Louisiana, who is lawfully possessed of a valid Louisiana driver's license, as provided in Subsection A of R.S. 32:411, in lieu of immediate payment may deposit said license with the state policeman or the weights and standards police officer, who shall issue said driver a receipt for the license on a form approved or provided by the department. The receipt shall notify the owner and driver in writing to appear at a time and place to pay the penalty assessed and secure the return of the driver's license. This

receipt shall be considered as a valid driver's license for a period not to exceed thirty days.->> <<+The department shall not detain or impound any vehicle issued a violation ticket for any violation of the provisions of R.S. 32:380 through 387 prior to the final disposition of the violation ticket if the owner or driver is a resident of Louisiana or has a domicile in Louisiana, or has paid the penalty or posted the bond in accordance with this Section. For purposes of this Section, "final disposition" shall be defined as a final conviction, not capable of appeal or review.+>>

(3) <<-Whoever violates his promise to appear and pay a penalty assessed under this Part shall be punished as provided in R.S. 32:57, and the driver's license shall be forwarded to the Department of Public Safety for suspension, revocation, and cancellation and the weights and standards police force or the state policeman shall locate and remove the owner's license plate(s) from said vehicle(s) until any penalty assessed is paid in accordance with this Part.->> <<+Upon passage of sixty days without receipt of payment of the penalty or receipt of a request for an agency review by a driver who is a resident of Louisiana or who has a domicile in Louisiana, the Department of Transportation and Development may order that the driver's license of the operator of the vehicle issued the violation ticket be suspended or renewal or reissuance of the driver's license be denied, or both. Upon receipt of the payment of the penalty, the Department of Transportation and Development shall direct that the driver's license of the operator of the vehicle be reinstated.+>>

(4)<<-(a) Any owner or driver resisting the payment of the penalty found due, or the enforcement of any provision of this Part in relation thereto, shall pay the amount of the penalty assessed to the weights and standards police officer, state policeman or other person designated in a license receipt and shall give this officer, state policeman or person notice at the time of payment of his intention to file suit for the recovery of such penalty.->>

<<-(b)->><<+(a)+>> Any owner or ***driver who pays an assessed penalty*** <<-under protest->> in accordance with the provisions of this Section ***shall have a period of ninety days*** after the date of payment ***to institute a civil suit*** against the department to recover the penalty so paid. <<+However, the ***ninety-day time period*** to institute a civil suit against the department shall be ***suspended for any owner or driver who timely requests an agency review*** in accordance with the provisions of this Section, in which case the owner or driver shall have a period of ninety days after the final disposition of the agency review to institute a civil suit against the department to recover the penalty so paid.+>>

<<-(c)->><<+(b)+>> The right to sue for recovery of a penalty paid <<-under protest->> shall afford a legal remedy and right of action in any state district court for a full and complete adjudication of any questions arising in the enforcement of a penalty respecting the legality of any penalty assessed or the method of enforcement thereof. Any such suit may be instituted either in the parish in which the violation occurred, the domicile of vehicles, provided the domicile is within the state of Louisiana, or in East Baton Rouge Parish. In any such suit, service of process shall be made on the department, through the secretary. The department shall be a necessary and proper party defendant in any such suit.

* * *

(6) If upon expiration of the ninety-day period provided in Subparagraph <<- (b)->> <<+(a)+>> of Paragraph (4) of this Subsection any penalty assessed remains unpaid, the department may institute a civil suit in the parish in which the violation occurred or in the domicile of the owner or driver to collect any penalty assessed but unpaid. The ***department shall have one year*** from the date of expiration of the ninety-day period ***to institute such a suit***.

* * *

D. <<+(1)+>> The secretary shall establish a procedure for <<-the administrative->> <<+agency+>> review of <<-citations->> <<+ violation tickets+>> issued by weights and standards <<+stationary scale+>> police <<-The secretary->> <<+officers and+>> may take appropriate actions based on the findings of <<-any administrative->> <<+ the agency's+>> review <<-held under the provisions of this Subsection->>. The secretary shall adopt rules <<+in accordance with the Administrative Procedure Act+>> to govern <<-administrative->> <<+ agency+>> review and any actions taken based on the findings of <<-an administrative review->> <<+the agency+>>. <<-All rules shall be adopted in accordance with the Administrative Procedure Act.->>

<<+(2) Following conclusion of the agency's review, the operator or responsible party issued the violation ticket by the weights and standards stationary scale police officer may request a hearing conducted by a review panel comprised of five members. One member of the review panel shall be appointed by the secretary of the Department of Transportation and Development, two members shall be appointed by the Louisiana Motor Transport Association, one member shall be appointed by the chairman of the House Transportation, Highways and Public Works Committee, and one member shall be appointed by the chairman of the Senate Transportation, Highways and Public Works Committee. Decisions of the review panel shall be binding upon the Department of

> Transportation and Development. The secretary shall adopt rules and regulations in accordance with the Administrative Procedure Act regarding the hearing conducted by the review panel including but not limited to rules and regulations regarding the notification and procedure for requesting a hearing by the review panel and deadlines for request for a hearing before the review panel.+>>

[Emphasis added.]

In support of their argument that the ninety-day prescriptive period contained in LSA-R.S. 32:389(C)(4) was unconstitutionally short, the plaintiffs filed into evidence the April 20, 2003 affidavit of Carl Picklesimer and the May 2, 2003 affidavit of Gary Ring.

In his affidavit, Mr. Picklesimer stated that: he was a domiciliary of New Mexico; he owned the eighteen-wheeler he was driving in Louisiana when ticketed in April of 2002; he was under contract to Baggett Transportation at the time and was transporting explosives for the Department of Defense; because of the nature of his cargo, he was required to have an escort, which was the vehicle driven by Mary Ellen Hoffman; both his vehicle and that of Ms. Hoffman were under the weight limit on that date; and he is home in New Mexico only four to six weeks per year because of his interstate trucking schedule.

In his affidavit Mr. Ring stated that: he is a resident and domiciliary of Illinois; he owned the eighteen-wheeler he was driving in Louisiana when ticketed in March of 2000; he was under contract to Landstar/Ligon at the time; Landstar/Ligon paid his $2,000 fine and required him to reimburse the company, which withheld $250 per week from his pay checks until the fine was paid; he averages only three to four weeks at home per year as he is on the road "making a living" the remainder of the year; and he is seldom at home more than one week at a time.

In sum, on the issue of the brevity of the ninety-day period, the affidavits of Mr. Ring and Mr. Picklesimer stated only that they were away from their homes for most of the year, driving their trucks to earn a living, and were only at home several weeks during the year. However, it does not necessarily follow that the plaintiffs were thereby prevented from filing suit, and Mr. Ring and Mr. Picklesimer failed to state how they were prevented from filing an appeal of the fine imposed against them within the ninety-day prescriptive period. Neither Mr. Tassin nor Ms. Hoffman submitted any evidence on the issue, and the record reveals that Mr. Tassin did, in fact, timely file suit within ninety days of the payment of his fine under protest. We conclude that the plaintiffs/appellants simply failed to make a *prima facie* showing that the ninety-day prescriptive period was insufficient to allow them to timely file for judicial review of the penalties imposed. Because the plaintiffs/appellants failed in their burden of proof, we are unable to say the trial court erred in rejecting their contention that the prescriptive period provided in former LSA-R.S. 32:389 was unconstitutionally short.

Mr. Tassin's Claims

With respect to Mr. Tassin's suit to recover the $2,000 fine that he paid under protest on June 11, 2000, LSA-R.S. 32:389(C)(4)(b) accorded him ninety days from June 11, 2000 to file an action to recover the fine. Mr. Tassin filed his suit to recover the fine in the 22nd Judicial District Court on August 11, 2000, well within the ninety-day prescriptive period.[19]

[19] At the time that Mr. Tassin filed his suit, there was no requirement that he first present his protest to an administrative tribunal. Revised Statute 32:389(C)(4)(b) provided at that time: "Any owner or driver who pays an assessed penalty under protest in accordance with the provisions of this Section shall have a period of ninety days after the date of payment ***to institute a civil suit against the department*** to recover the penalty so paid." (Emphasis added.)

Therefore, Mr. Tassin's action to recover the fine was not prescribed at the time that he filed suit.

On March 25, 2003 Mr. Tassin joined in the amended and supplemental petition filed by Mr. Ring in the instant suit, along with Mr. Picklesimer and Ms. Hoffman. On April 17, 2003 the 22nd JDC ordered Mr. Tassin's suit transferred to the 19th JDC, where it was consolidated with the **Ring** suit by order of the 19th JDC.

The consolidation of actions is a procedural convenience designed to avoid multiplicity of actions and does not cause a case to lose its status as a procedural entity. The filing of a pleading or motion in one of several consolidated cases does not procedurally affect the others. The mere fact that a pleading, a discovery response, or correspondence bears the suit captions of the consolidated actions does not render the pleading or document applicable to all of the consolidated actions. The substance and purpose of such a pleading, the cause of action to which it relates, the parties actually affected, and the particular suit record or records in which it was filed must be considered to determine if it applies to only one or more of the consolidated actions. Consolidation does not render the procedural or substantive rights peculiar to one case applicable to a companion case, and in no way enlarges or decreases the rights of the litigants. Despite an order of consolidation, each case must stand on its own merits. The consolidation of actions does not merge the two cases, *unless the records clearly reflect an intention to do so*. **Ricks v. Kentwood Oil Co., Inc.**, 2009-0677 (La. App. 1 Cir. 2/23/10), 38 So.3d 363, 366-67, writ denied, 2010-1733 (La. 10/15/10), 45 So.3d 1112 (citing LSA-C.C.P. art. 1561; **In re Miller**, 95-1051 (La. App. 1 Cir. 12/15/95), 665 So.2d 774, 776, writ denied, 96-0166 (La. 2/9/96), 667 So.2d 541; **Dendy v. City National Bank**, 2006-2436 (La.

App. 1 Cir. 10/17/07), 977 So.2d 8, 11; **Johnson v. Shafor**, 2008-2145 (La. App. 1 Cir. 7/29/09), 22 So.3d 935, 941).

In the instant case, Mr. Tassin's consolidated case (the "**Tassin** case"), which had been transferred from the 22nd JDC was attached to this case (the "**Ring** class action") and denominated a "rider" case. Further, all pleadings were thereafter filed in the suit record of the instant case (the "**Ring** class action"), without copies being filed in either the **Tassin** case (or the other two consolidated cases, **State v. Picklesimer** or **State v. Hoffman**).[20] Considering these facts, it appears there was an intent to merge the consolidated action with the **Ring** class action. Regardless, there has been no showing that claims made in the **Tassin** case were otherwise disposed of. Therefore, we conclude that Mr. Tassin's individual claim for judicial review of the administrative ruling denying him relief from the fine imposed, as made in the **Tassin** case, has been subsumed in the instant action and was inappropriately dismissed, as it was timely filed in the **Tassin** case when the original petition therein was filed on August 11, 2000.

Mr. Tassin's original 22nd JDC suit interrupted prescription on his claims, pursuant to LSA-C.C. art. 3462,[21] and further, the application of LSA-C.C.P. art. 1153 allows an amendment to this suit to add any plaintiffs or defendants "[w]hen the action or defense asserted in the amended petition or answer arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of filing the original pleading." Therefore, we cannot say

[20] The only pleading thereafter directly filed in the **Tassin** case was a motion to withdraw by one of the class action plaintiffs' counsel.

[21] Article 3462 provides: "Prescription is interrupted . . . when the obligee commences action against the obligor, in a court of competent jurisdiction and venue. If action is commenced in an incompetent court, or in an improper venue, prescription is interrupted only as to a defendant served by process within the prescriptive period."

the additional claims Mr. Tassin raised when he joined the **Ring** suit on March 25, 2003 were prescribed.

We reject the State's assertion that, because the three plaintiffs who were added by the March 25, 2003 first amended and supplemental petition received their tickets in different geographical locations from Mr. Ring, their claims cannot arise out of the same "conduct, transaction, or occurrence" as Mr. Ring's claims. The focus of this class action is not the fact that each individual plaintiff received a ticket, but rather on the alleged absence of constitutionally guaranteed protections that the plaintiffs claim should have been adhered to prior to and subsequent to the forfeitures in the ticketing, collection, enforcement, and review authorized by the statutory scheme at issue. Therefore, we conclude that Mr. Tassin's claims, as well as those of Mr. Picklesimer and Ms. Hoffman, arose out of the conduct of State officials seeking to enforce the applicable statutory and administrative laws, rules, and regulations, which Mr. Tassin and the other plaintiffs assert were violative of constitutional provisions.

Mr. Tassin, Mr. Picklesimer, and Ms. Hoffman ostensibly fall within the previously certified class,[22] which was defined as including, in pertinent

[22] The parties disagree as to whether there remains a valid class certification in this court, citing the supreme court's decision in **Ring IV**, which vacated this court's affirmance of the trial court's September 24, 2003 class certification judgment and remanded the matter to the trial court for a determination of whether the claims of the proposed class representatives were prescribed, as previously directed in **Ring I**. In **Ring IV** the supreme court further directed: "Should the trial court find that the claims of the proposed class representatives are not prescribed, then it is instructed to reconsider plaintiffs' motion for class certification in light of the concerns raised in Judge McDonald's dissenting opinion in the court of appeal." Although this supreme court decision vacated the appellate affirmance of class certification and instructed the trial court to reconsider the motion for certification, it did not expressly vacate the trial court's class certification. On remand, a predecessor of the current trial court judge, assigned to this case, attempted to comply with the supreme court's order, issuing written reasons on November 30, 2007 and ruling that the action had not prescribed and that "[b]ased upon the showings made there [was] no evidence in the record to make the determinations suggested by Judge [McDonald]." The trial court further stated that it "adopt[ed] its judgment signed on September 24, 2003." The September 24, 2003 judgment was the trial court's judgment in which class certification was originally ordered. Nevertheless, LSA-C.C.P. art. 592(A)(3)(c) provides that "[i]n the process of class certification, or at any time thereafter before a decision on the merits of the common issues, the court may alter, amend, or recall its initial ruling on certification and may enlarge, restrict, or otherwise redefine the constituency of the class or the issues to be maintained in the class action." When a trial court certifies a class certification, the trial judge retains control of the proceeding and he can modify or even withdraw certification as the case develops. The class is always subject to modification should later developments during the course of the proceedings require it. See **Richardson v. American Cyanamid Company**, 99-675 (La. App. 5 Cir. 2/29/00), 757 So.2d 135, 138, writ denied, 2000-0921 (La. 5/12/00), 761 So.2d 1291; **Johnson v. E.I. Dupont deNemours & Company,**

part: "All of those truck drivers who have paid on-site fines or posted on-site bonds, or paid fines within 30 days of receiving their citations, . . . all such citations being issued by W&S personnel, under the threat of seizure/forfeiture/impoundment of their trucks, cargo, and/or their driver's licenses, . . . and which drivers have not received adequate notice nor an adequate opportunity to contest the fines in an administrative review or other hearing conducted pursuant to the Louisiana Administrative [Procedure] Act."

Further, Mr. Tassin stated both a cause of action and a right of action, regardless of whether the action had or had not prescribed. A petition which on its face states a *prescribed* cause of action is not the equivalent of stating *no* cause of action.[23] **Dixon v. Louisiana State University Medical Center**, 33,036 (La. App. 2 Cir. 1/26/00), 750 So.2d 408, 412-13, writ denied, 2000-0627 (La. 4/20/00), 760 So.2d 350. Prescription may be waived and is a defense that must be pled. Further, LSA-C.C.P. art. 931 allows evidence on the issue of prescription, but an exception of no cause of action is decided on the face of the petition. See **Hoffpauir v. Bankers Life & Casualty Company**, 328 So.2d 409, 411 (La. App. 3 Cir. 1976) (citing **Succession of Thompson**, 191 La. 480, 186 So. 1 (1938), and **White v. Davis**, 169 La. 101, 124 So. 186 (1929)). See also **Gonzales v. St. Bernard Parish**, 490 So.2d 509 (La. App. 4 Cir. 1986). Furthermore, the exceptions of no cause of action and no right of action are often confused, but are separate and distinct. One of the primary differences between the two

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Inc., 98-229 (La. App. 5 Cir. 10/14/98), 721 So.2d 41, 44. Therefore, we conclude that there is currently a standing ruling of class certification in this case, which is subject to the provisions of LSA-C.C.P. art. 592(A)(3)(c), at the trial court's discretion.

[23] In contrast, prior to the amendment of LSA-C.C.P. art. 927 by Acts 2008, No. 824, § 1, effective January 1, 2009, which added "peremption" as an objection that may be raised by the peremptory exception, the proper procedural vehicle to bring an exception relating to peremption was, as a general rule, the exception of no cause of action. See **Naghi v. Brener**, 2008-2527 (La. 6/26/09), 17 So.3d 919, 920 n.2.

exceptions lies in the fact that the focus in an exception of no cause of action is on whether the law provides a remedy against a particular defendant, while the focus in an exception of no right of action is on whether the particular plaintiff has a right to bring the suit. The function of the exception urging no right of action is to determine whether the plaintiff belongs to the class of persons to whom the law grants the cause of action asserted in the suit. The exception of no right of action assumes that the petition states a valid cause of action for some person and questions whether the plaintiff in the particular case is a member of the class that has a legal interest in the subject matter of the litigation. **Robertson v. Sun Life Financial**, 2009-2275 (La. App. 1 Cir. 6/11/10), 40 So.3d 507, 511.

In this case, Mr. Tassin's pleadings stated a cause of action (i.e., for return of the fine paid, pursuant to LSA-R.S. 32:389(C)(4)(b), and for 42 U.S.C. § 1983 damages for the enforcement of an allegedly unconstitutional ticketing and regulatory scheme) and showed that Mr. Tassin had a right of action (i.e., Mr. Tassin alleged that he was the person who paid the fine and that he was the person subjected to the allegedly unconstitutional state actions).

Thus, we conclude that the defendants failed to establish either prescription, or that Mr. Tassin's claims failed to state a cause of action or a right of action. Accordingly, we find that all of the State's exceptions were improperly sustained as to Mr. Tassin, and we reverse the trial court judgment dismissing his suit.

Mr. Ring's Claims

Mr. Ring was ticketed and paid a $2,000 fine under protest on March 9, 2000; he sought administrative review of that fine, which resulted in a denial of relief on June 15, 2000. Mr. Ring then had ninety days, under

former LSA-R.S. 32:389(C)(4)(b), to file a civil suit to contest the imposition of this fine. Mr. Ring did not file his suit for review of the administrative decision until March 8, 2001, which was within one year of the ticketing and payment of his fine, but more than eight months beyond the LSA-R.S. 32:389(C)(4)(b) ninety-day prescriptive period. Therefore, his action to recover the fine paid was prescribed on the face of his petition.

Ordinarily, the exceptor bears the burden of proof at the trial of the peremptory exception; however, if prescription is evident on the face of the pleadings, the burden shifts to the plaintiff to show his action has not prescribed. **SS v. State ex rel. Department of Social Services**, 2002-0831 (La. 12/4/02), 831 So.2d 926, 931 (citing **Spott v. Otis Elevator Company**, 601 So.2d 1355, 1361 (La. 1992), and **Campo v. Correa**, 2001-2707 (La. 6/21/02), 828 So.2d 502). Based on our review of the record, we cannot conclude that Mr. Ring sustained his burden to show that his action to recover the fine had not prescribed; therefore, we find no error in the trial court's sustaining of the State's exception of prescription as to Mr. Ring's claim to recover the fine he paid,[24] and affirm the trial court judgment, in part, as to that ruling.

However, Mr. Ring also asserted the unconstitutionality of LSA-R.S. 32:389, as violative of federal and state constitutional provisions, and alleged his entitlement to damages under 42 U.S.C. § 1983.[25] A damage claim under 42 U.S.C. § 1983 is accorded a one-year prescriptive period in

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[24] We express no opinion as to whether a possible damage award, in conjunction with an ultimately successful prosecution of Mr. Ring's other claims, could result in the inclusion of the fine amount in such an award.

[25] The United States Code, Title 42, Section 1983 provides, in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

Louisiana. See **SS v. State ex rel. Department of Social Services**, 831 So.2d at 931. The assertion of the substantive unconstitutionality of LSA-R.S. 32:389 is part and parcel of Mr. Ring's 42 U.S.C. § 1983 claim, since he asserts the State's allegedly unconstitutional ticketing, enforcement, collection, and review procedures were "under color" of state law and deprived him of his "rights, privileges, or immunities secured by the Constitution," thus allegedly entitling him to the damages authorized by 42 U.S.C. § 1983. Because Mr. Ring's suit, filed March 8, 2001, was brought within one year of the date of the allegedly unconstitutional actions by the State employee(s) on March 9, 2000, it was timely filed.[26] Further, for the reasons stated hereinabove with respect to Mr. Tassin's claim, Mr. Ring also stated a cause of action and demonstrated a right of action as to the claims asserted. Therefore, we reverse the trial court judgment insofar as it sustained the exceptions of prescription, no cause of action, and no right of action and dismissed the claims made by Mr. Ring (other than his claim for return of the fine paid).

Claims by Mr. Picklesimer and Ms. Hoffman

Mr. Picklesimer and Ms. Hoffman were ticketed on April 7, 2002 and thereafter sought administrative review, which resulted in a denial of relief

[26] Although the naming of individuals as defendants, who were alleged to have been the state actors for purposes of the 1983 action, was made an issue in a prior hearing before the trial court, the issue was not raised in connection with the hearing that produced the judgment currently on appeal. However, we note that state officials "acting in their official capacities" are generally outside the class of "persons" subject to liability under 42 U.S.C. § 1983 (as "official-capacity suits" generally represent only another way of pleading an action against an entity of which an officer is an agent), thus whether the state employee defendants have immunity may be an issue left to be determined in this case; other considerations may also include whether the state entity itself was a "moving force" behind the alleged deprivation, or whether the state officials can be subject to liability under 42 U.S.C. § 1983 in their "individual capacities." See **Hafer v. Melo**, 502 U.S. 21, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991); **Will v. Michigan Department of State Police**, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989); **Kentucky v. Graham**, 473 U.S. 159, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985); **Monell v. New York City Department of Social Services**, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); **Imbler v. Pachtman**, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976).

in June of 2002.[27] Mr. Picklesimer and Ms. Hoffman would have had ninety days under former LSA-R.S. 32:389(C)(4)(a) to file a civil suit to contest the assessment of the fine if they had paid the fine; however, neither paid the fine.[28] It was not until the State instituted the February 2003 individual suits against Mr. Picklesimer and Ms. Hoffman, in the 1st Judicial District Court, that the fines assessed against Mr. Picklesimer and Ms. Hoffman were paid by their employer and thereafter recouped from them.[29]

The State contends that since these fines were not paid in accordance with the procedure set forth in former LSA-R.S. 32:389, Mr. Picklesimer and Ms. Hoffman lost the right to contest the imposition of the fines pursuant to the statutory scheme. We note that the State did not ask either Mr. Picklesimer or Ms. Hoffman to pay their fines until after the denial of the administrative review. Regardless, neither Mr. Picklesimer nor Ms. Hoffman sought any judicial review of the imposition of the fines against them until they joined the **Ring** class action on March 25, 2003, more than ninety days[30] after their administrative protests were denied in June of

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[27] Neither Mr. Picklesimer nor Ms. Hoffman were asked to pay the fine or post a bond at the time the tickets were issued, despite such a requirement by former LSA-R.S. 32:389(C)(4)(b) (as amended by 2001 La. Acts, No. 1201); however, a demand was made for payment of the fines upon denial of the administrative protest.

[28] In 2002 former LSA-R.S. 32:389(C)(4)(a) only allowed a non-resident driver "who pays an assessed penalty" ninety days "after the date of payment" to institute a civil suit against the department to recover the penalty "so ***paid***." (Emphasis added.) Further, the ninety-day period to file suit was suspended until ninety days after the final disposition of the agency review, pursuant to former LSA-R.S. 32:389(C)(4)(a), also to recover the penalty "so ***paid***." (Emphasis added.)

[29] These were the 1st JDC suits that were later transferred to the 19th JDC and consolidated with the instant suit.

[30] At the time that Mr. Picklesimer and Ms. Hoffman were ticketed in 2002, LSA-R.S. 32:389 had been amended by 2001 La. Acts, No. 1201, but the ninety-day prescriptive period was retained in LSA-R.S. 32:389(C)(4)(a), which stated: "Any owner or driver who pays an assessed penalty in accordance with the provisions of this Section shall have a period of ninety days after the date of payment to institute a civil suit against the department to recover the penalty so paid. However, the ninety-day time period to institute a civil suit against the department shall be suspended for any owner or driver who timely requests an agency review in accordance with the provisions of this Section, in which case the owner or driver shall have a period of ninety days after the final disposition of the agency review to institute a civil suit against the department to recover the penalty so paid."

2002.[31] The alleged unconstitutionality of the ninety-day prescriptive period was litigated in the trial court in the instant case and, as indicated hereinabove, the plaintiffs failed to bear their burden to prove the ninety-day prescriptive period was unconstitutionally short. Therefore, Mr. Picklesimer's and Ms. Hoffman's claims that these fines were wrongfully imposed were prescribed by the time they asserted them in the instant suit. Accordingly, we affirm that portion of the trial court judgment that sustained the exception of prescription as to the claims of Mr. Picklesimer and Ms. Hoffman to recover the fines paid on their behalf.

However, Mr. Picklesimer's and Ms. Hoffman's March 25, 2003 amended and supplemental petition also alleged the substantive unconstitutionality of the Louisiana's ticketing, enforcement, collection, and review laws and a cause of action under 42 U.S.C. § 1983, along with Mr. Ring and Mr. Tassin. The March 25, 2003 amended and supplemental petition was filed within the one-year prescriptive period, if counted from the date Mr. Picklesimer and Ms. Hoffman were ticketed, April 17, 2002, and there was, in that sense, no need for Mr. Picklesimer's and Ms. Hoffman's claims, asserted in the March 25, 2003 amended and supplemental petition, to tack onto Mr. Ring's suit in order to be timely filed. Therefore the arguments made concerning whether or not the amending petition "relate[d] back" to Mr. Ring's original petition, under LSA-C.C.P. art. 1153, were irrelevant. All that was required to allow the amendment adding Mr. Picklesimer and Ms. Hoffman to the **Ring** class action was "leave of court," pursuant to LSA-C.C.P. art. 1151, which was

[31] In the two consolidated cases, **State v. Picklesimer** and **State v. Hoffman**, there is no indication that either Mr. Picklesimer or Ms. Hoffman filed any answer or responsive pleading in their respective cases prior to their motions to transfer the matter to the 19th JDC for consolidation with the **Ring** class action.

granted by the trial court's May 16, 2003 judgment.[32] There is no indication that the State ever sought review of the decision made by the trial court to grant the plaintiffs' motion to file the March 25, 2003 amended and supplemental petition.[33] Therefore, we conclude that the trial court erred in sustaining the defendants' exception of prescription, as to the claims Mr. Picklesimer and Ms. Hoffman asserted in their March 25, 2003 amended and supplemental petition (other than their claims for return of the fines paid on their behalf), and we reverse that portion of the trial court judgment. Further, for the reasons stated hereinabove, with respect to Mr. Tassin's and Mr. Ring's claims, the trial court erred in sustaining the exceptions of no cause of action and no right of action as to the claims asserted.

Additionally, we note that while our review of the record indicates that the judgment appealed dismissed the actions of the plaintiffs on the basis of prescription (even though the trial court sustained the exceptions of no cause of action and no right of action, it appears these exceptions were sustained based on the State's argument that since the plaintiffs' actions had prescribed they had no "standing" to bring the actions at issue in this case), the State pointed out both to the trial court and to this court that Mr. Picklesimer failed to amend his petition as directed by the trial court in its May 2, 2008 judgment (which had sustained a prior exception of no cause of action urged by the State, based on the State's contention that, for purposes

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[32] Article 1151 provides, in pertinent part:

> A plaintiff may amend his petition without leave of court at any time before the answer thereto is served. He may be ordered to amend his petition under Articles 932 through 934. A defendant may amend his answer once without leave of court at any time within ten days after it has been served. Otherwise, the petition and answer may be amended only by leave of court or by written consent of the adverse party.

[33] Where leave of court is required, the decision to allow the filing of an amended pleading is within the sound discretion of the trial court. **East Tangipahoa Development Company, LLC v. Bedico Junction, LLC**, 2008-1262 (La. App. 1 Cir. 12/23/08), 5 So.3d 238, 249, writ denied, 2009-0166 (La. 3/27/09), 5 So.3d 146; **Stockstill v. C.F. Industries, Inc.**, 94-2072 (La. App. 1 Cir. 12/15/95), 665 So.2d 802, 810, writ denied, 96-0149 (La. 3/15/96), 669 So.2d 428.

of the plaintiffs' 42 U.S.C. § 1983 action, individual State actors were required to be named, and ordered the parties to amend their petitions to name "specific parties" as defendants). Although an amended petition for Mr. Ring was filed on May 9, 2008, and a separate amended petition for Mr. Tassin and Ms. Hoffman was filed on June 2, 2008 (as indicated hereinabove), no amendment was made at that time on behalf of Mr. Picklesimer. We further note that the record during this period of time supports the conclusion that several of the plaintiffs' attorneys, who had previously made joint filings on behalf of all plaintiffs, collectively, seemingly reached an insurmountable point of contention and thereafter parted ways, with one attorney retaining Mr. Ring as a client and another representing the other plaintiffs. It is apparent from the record that there was some confusion as to who represented Mr. Picklesimer, as reflected by the fact that the May 11, 2010 motion for new trial, filed in the trial court by one attorney, was filed on behalf of both Mr. Ring and Mr. Picklesimer, while a May 12, 2010 motion for new trial, filed in the trial court by another attorney, was filed on behalf of Mr. Tassin, Ms. Hoffman, *and* Mr. Picklesimer. Thus, Mr. Picklesimer's amendment may have been overlooked during this division of responsibilities.

Nevertheless, upon review of the pleadings filed, it must be concluded that Mr. Picklesimer has stated a cause of action against "specific persons." In the "Second Amended and Supplemental Petition for Damages and Recognition as a Class Action" filed by Mr. Tassin and Ms. Hoffman on June 3, 2008, additional facts were set forth by "the members of the plaintiff-class, by and through the class representatives, Stephen Tassin and

Mary Ellen Hoffman." These allegations included the naming of specific persons as defendants: then Secretary of DOTD Kam Movassaghi; DOTD W&S Police Chief Major Marshall A. ("Mac") Linton; then DOTD W&S Administrator James B. Norman; and then VTRC members Sherryl J. Tucker, Salvatore F. Faldetta, William H. Temple, Karl J. Finch, John Collins, Tom Harold, and Denny Silvio. The allegations made by Mr. Tassin and Ms. Hoffman were not limited to their own particular ticketing incidents, but were broadly alleged to apply to the entire "plaintiff-class," and, as such, applied to Mr. Picklesimer's action as well. Therefore, we conclude the trial court erred if it relied on the failure of Mr. Picklesimer to amend his petition to name specific persons as defendants in dismissing Mr. Picklesimer's action.

Having decided the issues raised on appeal on the bases stated, we find it unnecessary to address the plaintiffs'/appellants' remaining assignment of error.

CONCLUSION

For the reasons assigned herein, the State's motion to supplement the record is denied as moot. We further: affirm in part the judgment of the trial court sustaining the exception of prescription as to Gary Ring's, Carl D. Picklesimer's, and Mary Ellen Hoffman's claims for the return of the fine paid pursuant to LSA-R.S. 32:389; reverse in part the judgment of the trial court sustaining the exception of prescription as to Stephen Tassin's claim for the return of the fine paid pursuant to LSA-R.S. 32:389; and reverse in part the judgment of the trial court sustaining the exceptions of prescription, no cause of action, and no right of action as to all of the plaintiffs' remaining claims. This matter is remanded to the trial court for further proceedings consistent with the foregoing. All costs of this appeal in the amount of

$3,628.82 are to be borne by the State of Louisiana, Department of Transportation and Development, Division of Weights and Standards.

MOTION TO SUPPLEMENT DENIED AS MOOT; JUDGMENT AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.