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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EVE DEL CASTELLO,	)	
	)	
Plaintiff(s),	)	No. C08-3012 BZ
	)	
v.	)	<b>ORDER GRANTING MOTION TO</b>
	)	<b>DISMISS</b>
ALAMEDA COUNTY TRANSIT	)	
PARKING ENFORCEMENT CENTER,	)	
	)	
Defendant(s).	)	
_____	)	

Plaintiff, appearing pro se, challenges the constitutionality of the California statute which applied to a parking ticket she received. Defendant, Alameda County Transit Parking Enforcement Center, has moved to dismiss the complaint pursuant to Fed. R. Civ. Proc. 12(b)(1) and 12(b)(6).<sup>1</sup>

On December 1, 2008, the Court held a Case Management Conference. Both parties were present. During the Case

<sup>1</sup> All parties have consented to my jurisdiction for all proceedings including entry of final judgment, pursuant to 28 U.S.C. § 636(c).

1 Management Conference, plaintiff stated that she no longer  
2 wanted her case to be heard before this Court but she wanted  
3 instead to be heard on appeal before the Ninth Circuit.  
4 Plaintiff was given until December 8, 2008 to file an  
5 opposition to defendant's motion. No opposition has been  
6 filed. I have nonetheless independently reviewed defendant's  
7 motion, and have concluded it should be granted.

8 In its motion, defendant argues that plaintiff's  
9 complaint should be dismissed because the issues she presents  
10 are precluded by the doctrines of collateral estoppel and *res*  
11 *judicata*.<sup>2</sup> Defendant also argues that plaintiff's complaint  
12 should be dismissed pursuant to Fed. R. Civ. Proc. 12(b)(1) as  
13 moot.

14 To determine the preclusive effect of a California state  
15 court decision, I must apply California law. Migra v. Warren  
16 City Sch. Dist. Bd. of Educ., 465 U.S. 75, 81 (1984) ("[A]  
17 federal court must give to a state-court judgment the same  
18 preclusive effect as would be given that judgment under the  
19 law of the State in which the judgment was rendered.").

20 "The application of claim preclusion in California  
21 focuses on three questions: (1) was the previous adjudication  
22 on the merits, (2) was it final, and (3) does the current  
23 dispute involve the same 'claim' or 'cause of action'?" Robi

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24  
25 <sup>2</sup> The doctrine of *res judicata* "treats a judgment, once  
26 rendered, as the full measure of relief to be accorded between  
27 the same parties on the same 'claim' or 'cause of action.'" Kaspar Wire Works, Inc. v. Leco Eng'g & Mach., Inc., 575 F.2d  
28 530, 535 (5th Cir. 1978); see also McClain v. Apodaca, 793 F.2d  
1031, 1033 (9th Cir. 1986). *Res judicata* encompasses two  
subsidiary doctrines, "claim preclusion" and "issue  
preclusion."

1 v. Five Platters, Inc., 838 F.2d 318, 324 (9th Cir. 1988)  
2 (citing Slater v. Blackwood, 15 Cal.3d 791, 795 (1975)).  
3 Claim preclusion also "prevents litigation of all grounds for,  
4 or defenses to, recovery that were previously available to the  
5 parties, regardless of whether they were asserted or  
6 determined in the prior proceeding." Brown v. Felsen, 442  
7 U.S. 127, 131 (1979); quoted in Americana Fabrics, Inc. v. L &  
8 L Textiles, Inc., 754 F.2d 1524, 1529 (9th Cir. 1985).

9 The related doctrine of issue preclusion, or collateral  
10 estoppel, bars relitigation, even in an action on a different  
11 claim, of all "issues of fact or law that were actually  
12 litigated and necessarily decided" in the prior proceeding.  
13 Segal v. American Tel. & Tel. Co., 606 F.2d 842, 845 (9th Cir.  
14 1979); see also Dodd v. Hood River County, 59 F.3d 852, 863  
15 (9th Cir. 1995). "Under both California and federal law,  
16 collateral estoppel applies only where it is established that  
17 (1) the issue necessarily decided at the previous proceeding  
18 is identical to the one which is sought to be relitigated; (2)  
19 the first proceeding ended with a final judgment on the  
20 merits; and (3) the party against whom collateral estoppel is  
21 asserted was a party or in privity with a party at the first  
22 proceeding." Hydranautics v. FilmTec Corp., 204 F.3d 880, 885  
23 (9th Cir. 2000) (citing Younan v. Caruso, 51 Cal. App. 4th  
24 401, 406-07 (1996)).

25 Plaintiff's complaint, filed with this Court on June 18,  
26 2008, challenges the constitutionality of section 40215 of the  
27 California Vehicle Code ("CVC") pursuant to the Fourth, Fifth,  
28 Eighth, and Fourteenth Amendments to the U.S. Constitution.

1 Plaintiff's Petition for Writ of Mandate, filed with the  
2 California Superior Court of the County of Alameda on August  
3 10, 2006, challenged the same section of the CVC pursuant to  
4 the same Amendments to the U.S. Constitution.<sup>3</sup> On March 14,  
5 2007, the Superior Court issued an Amended Order granting in  
6 part and denying in part plaintiff's Petition for Writ of  
7 Mandate.<sup>4</sup> On April 27, 2007, the Superior Court issued a  
8 further Order stating that implicit in its earlier ruling was  
9 the determination that section 40125 of the CVC is  
10 constitutional. The Superior Court cited to Tyler v. County  
11 of Alameda, 34 Cal.App.4th 777 (1995) ("On balance, we  
12 conclude that the statutory scheme for contesting parking  
13 tickets does not violate due process requirements.").

14 Plaintiff appealed the Superior Court's ruling to the  
15 California Court of Appeal, which issued a decision on March  
16 2, 2008, affirming the constitutionality of section 40125 of  
17 the CVC and dismissing the appeal as moot. Plaintiff filed a  
18 Petition for Review of the Court of Appeal's ruling with the  
19 California Supreme Court, which was denied on May 14, 2008.  
20 From the record before me, it does not appear plaintiff

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23 <sup>3</sup> On a motion to dismiss, I may take judicial notice of  
24 matters of public record outside the pleadings. Mack v. South  
25 Bay Beer Distributors, 798 F.2d 1279 (9th Cir. 1986); Sears,  
Roebuck & Co. v. Metropolitan Engravers, Ltd., 245 F.2d 67, 70  
(9th Cir. 1956).

26 <sup>4</sup> Following a hearing held on March 8, 2007, the court  
27 initially granted plaintiff's petition without qualification;  
28 however, in response to a query by Alameda County regarding the  
breadth of the initial ruling, the court filed an amended order  
on March 14, 2007.

1 sought review in the U.S. Supreme Court.<sup>5</sup>

2 In light of this procedural background, I agree with  
3 defendant that plaintiff's complaint is barred by the  
4 doctrines of claim and issue preclusion. Plaintiff's  
5 constitutional challenge of section 40125 of the CVC was an  
6 issue necessarily decided at the previous proceeding and is  
7 identical to the one which is sought to be relitigated by  
8 plaintiff in federal court; the first proceeding ended with a  
9 final judgment on the merits; and, the party against whom  
10 collateral estoppel is asserted was a party at the first  
11 proceeding.<sup>6</sup>

12 For these reasons, defendant's motion to dismiss is

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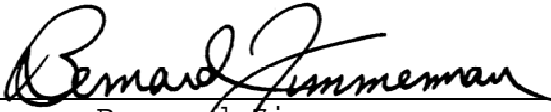
15 <sup>5</sup> Plaintiff may not understand that a federal district  
16 court does not ordinarily have jurisdiction to review or alter  
17 a ruling of a state-court judge. See Exxon Mobil Corp. v.  
18 Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005) (approving  
19 dismissal of "cases brought by state-court losers complaining  
20 of injuries caused by state-court judgments rendered before the  
21 district court proceedings commenced and inviting district  
22 court review and rejection of those judgments."); Worldwide  
23 Church of God v. McNair, 805 F.2d 888, 890-91 (9th Cir. 1986)  
(forbidding the filing of suits seeking de facto review of  
state-court decisions). If plaintiff is dissatisfied with a  
state-court ruling, her remedy is to seek timely and  
appropriate review through the state court system, which she  
did, and then review from the United States Supreme Court, to  
the extent it is available.

24 <sup>6</sup> To the extent that plaintiff's complaint raises any  
25 new legal arguments regarding section 40125 of the CVC that  
26 could have been raised at the earlier proceedings, those  
27 arguments are also barred. See Chicot County Drainage Dist. v.  
28 Baxter State Bank, 308 U.S. 371, 378 (1940) ("*res judicata* may  
be pleaded as a bar, not only as respects matters actually  
presented to sustain or defeat the right asserted in the  
earlier proceeding, 'but also as respects any other available  
matter which might have been presented to that end.'"  
(citations omitted)).

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**GRANTED.**<sup>7</sup>

Dated: December 22, 2008

  
Bernard Zimmerman  
United States Magistrate Judge

G:\BZALL\BZCASES\DEL CASTELLO V. ALAMEDA CTY\ORDER ON MOTION TO DISMISSv.2.wpd

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<sup>7</sup> Because I find that plaintiff's claims are barred by the doctrines of claim and issue preclusion, I need not reach the issue of whether plaintiff's claim is moot. I note, however, that the "capable of repetition, but evading review" exception to the mootness doctrine may apply to some of plaintiff's claims. The exception applies where (1) the duration of the challenged action is too short to allow full litigation before it ceases, and (2) there is a reasonable expectation that the plaintiffs will be subjected to it again. Biodiversity Legal Found v. Badgley, 309 F.3d 1166, 1173 (9th Cir. 2002).