IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

MILES BLACK, *et al.*,	)	CASE NO.: 2018 CV 01256
Plaintiffs,	)	JUDGE ANDREW D. LOGAN
v.	)	
CITY OF GIRARD, OHIO, *et al.*,	)	**DEFENDANT CITY OF GIRARD'S MOTION TO DISMISS**
Defendants.	)	

COMES NOW Defendant City of Girard, by and through counsel, and hereby moves, pursuant to Civ.R. 12(B)(6), for an order dismissing this suit because Plaintiffs' Complaint fails to state a claim upon which relief can be granted. A brief in support of this motion is attached.

Respectfully submitted,

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Plaintiffs,	)	JUDGE ANDREW D. LOGAN
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v.	)	
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CITY OF GIRARD, OHIO, *et al.*,	)	**DEFENDANT CITY OF GIRARD'S**
	)	**BRIEF IN SUPPORT OF MOTION TO**
Defendants.	)	**DISMISS**
	)	

I. INTRODUCTION

This matter arises from the City of Girard citing motorists on Interstate 80 for speeding pursuant to the posted speed limit of 55 m.p.h. when the speed limit allegedly should have returned to 65 m.p.h. after the completion of construction work on December 7, 2017. Plaintiffs allege that the City of Girard's enforcement of the posted speed limit of 55 m.p.h. from December 7, 2017 until the Ohio Department of Transportation ("ODOT") or its agents changed the posted speed limit to 65 m.p.h. on January 7, 2018 violated the Ohio Constitution's due course of law provision. Plaintiffs also assert claims for violation of the Consumer Sales Practices Act, negligent misrepresentation, and civil conspiracy and seek declaratory judgment and equitable restitution.

Plaintiffs' due process rights provided by Ohio's Constitution have not been violated. The enforced speed limit was posted giving Plaintiffs sufficient notice of the potential for a speeding citation if they traveled in excess of the posted speed. The City of Girard's duly-enacted speed ordinance provides that traveling in excess of a posted speed limit is a violation. The speeding citations Plaintiffs received from the City of Girard provided an opportunity for Plaintiffs to request an administrative hearing with the right of appeal to the municipal court in

order to contest the citations. The facts as alleged by Plaintiffs clearly establish that Plaintiffs were afforded due process.

Moreover, Plaintiffs' claim for violation of the Consumer Sales Practices Act fails because no consumer transaction took place. Similarly, Plaintiffs' claim for negligent misrepresentation fails because there was no business transaction. Plaintiffs' claims for declaratory judgment and civil conspiracy fail because the underlying claims upon which they are premised fail. Finally, equitable restitution is a remedy and Plaintiffs have no viable claims for which this remedy can be awarded.

This matter should be dismissed against the City of Girard in its entirety because Plaintiffs have failed to state a claim upon which relief can be granted.

II. PROCEDURAL HISTORY

Plaintiffs Miles Black, Melissa Black, and Lorraine Morris initially filed a similar suit in the United States District Court for the Northern District of Ohio on April 13, 2018 styled *Miles Black, et al. v. City of Girard, Ohio*, Case No. 4:18-cv-00844-BYP. In that matter, Plaintiffs asserted claims for a due process violation of the Fourteenth Amendment to the U.S. Constitution under 42 U.S.C. §1983, for declaratory judgment of a violation of the Ohio Constitution's "due course of law provision," and for equitable restitution. The City filed a motion to dismiss on June 8, 2018. After seeking an extension of time in which to respond to the City's motion to dismiss, the Plaintiffs voluntarily dismissed their suit without prejudice on July 12, 2018.

Four days later on July 16, 2018, Plaintiffs filed the instant suit in this Court. The re-filed Complaint in this matter adds Plaintiffs John Perfette, Samuel Rotz, and John Beal and Defendant Blue Line Solutions, LLC. Plaintiffs have changed some of the facts previously alleged and have eliminated the federal due process claim. Plaintiffs have also added claims for

a violation of the Consumer Sales Practices Act, Negligent Misrepresentation, and Civil Conspiracy.

III. FACTS AS ALLEGED BY PLAINTIFFS IN THE COMPLAINT

Plaintiffs allege that construction work on a portion of I-80 in the City of Girard ended on December 7, 2017. Complaint, ¶ 21. Plaintiffs contend that the legal speed limit should have returned to 65 m.p.h. on that portion of I-80 for the period from December 7, 2017 through January 7, 2018. Complaint, ¶ 25 and *passim*. Plaintiffs allege that between December 7, 2017 and January 7, 2018, the posted speed remained 55 m.p.h. Complaint, *passim,* and Exhibits A, C, E, G, I, and K.

Plaintiff Miles Black was issued a citation on December 27, 2017 for traveling 66 m.p.h. on December 20, 2017 in a non-construction zone on I-80 with a posted speed of 55 m.p.h. in violation of Girard City Ordinance 333.03. Complaint, Exhibit A.

Plaintiff Melissa Black, a.k.a. Melissa Hyde, was issued a citation on January 9, 2018 for traveling 75 m.p.h. on January 2, 2018 in a non-construction zone on I-80 with a posted speed of 55 m.p.h. in violation of Ordinance 8069-16, which is a pre-codified reference to Girard codified Ordinance 333.03. Complaint, Exhibit C.

Plaintiff Lorraine Morris was issued a citation on December 25, 2017 for traveling 67 m.p.h. on December 19, 2017 in a construction zone on I-80 with a posted speed of 55 m.p.h. in violation of Girard City Ordinance 333.03. Complaint, Exhibit E.

The citations issued to Plaintiffs provided notice of their rights to contest the citations via an administrative hearing. The citations provide in relevant part as follows:

> Under the Girard Ordinance, the violation is considered a civil penalty mandating a fine starting at $100.00. This civil violation will not be reported to the state, nor will insurance notifications be made....If you choose, you may attend an Administrative Hearing

> as authorized by ORC to contest the charge. Ohio Revised Code states that the designated party who is issued the ticket may contest the ticket by filing a written request for an administrative hearing to review the ticket no later than 30 days after receipt of the ticket. A request form can be downloaded at www.violationpayment.net. If you have any questions, please call 855-252-0086.

Complaint, Exhibits E and G, pg. 2. Plaintiffs Miles Black, Melissa Black, and Lorraine Morris did not request an administrative hearing.

Plaintiff John Perfette was issued a citation on January 12, 2018 for traveling 65 m.p.h. on January 6, 2018 in a non-construction zone on I-80 with a posted speed of 55 m.p.h. in violation of Girard City Ordinance 333.03. Complaint, Exhibit G. On April 3, 2018, Plaintiff Perfette untimely requested an administrative hearing to contest his citation after having already paid it. Complaint, Exhibit H, pg. 5. Plaintiff Perfette's request for an administrative hearing was denied. *Id.*, pgs. 5-7.

Plaintiff Samuel Rotz was issued a citation on December 19, 2017 for traveling 67 m.p.h. on December 15, 2017 in a non-construction zone on I-80 with a posted speed of 55 m.p.h. in violation of Girard City Ordinance 333.03. Complaint, Exhibit I. Plaintiff Rotz requested an administrative hearing, which was held on January 17, 2018 in front of Hearing Officer Ronald A. Marks. Complaint, Exhibit J. Plaintiff Rotz appeared without counsel and presented evidence. *Id.* While Plaintiff Rotz's citation was upheld, the fine was reduced from $100 to $25. Complaint, Exhibits I and J.

Plaintiff John Beal was issued a citation on December 27, 2017 for traveling 66 m.p.h. on December 20, 2017 in a construction zone on I-80 with a posted speed of 55 m.p.h. in violation of Girard City Ordinance 333.03. Complaint, Exhibit K. Plaintiff Beal requested an administrative hearing, which was held on February 7, 2018 in front of Hearing Officer Ronald A. Marks. Complaint, Exhibit L. Plaintiff Beal appeared without counsel and presented

evidence. *Id.* While Plaintiff Beal's citation was upheld, the fine was reduced from $150 to $25. Complaint, Exhibits K and L.

IV. THE STANDARD FOR A MOTION TO DISMISS

"Like a battlefield surgeon sorting the hopeful from the hopeless, a motion to dismiss invokes a form of legal triage, a paring of viable claims from those doomed by law." *Iacampo v. Hasbro, Inc.*, 929 F.Supp. 562, 567 (D.R.I.1996). A claim is doomed by law when, taking the factual allegations in the complaint as true and disregarding unsupported conclusions, it appears that the plaintiff can prove no set of facts that would justify a court granting relief. *State ex rel. Hickman v. Capots,* 45 Ohio St.3d 324, 324, 544 NE.2d 639 (1989); *O'Brien v. Univ. Comm. Tenants Union, Inc.,* 42 Ohio St.2d 242, 245, 327 N.E.2d 753 (1975).

"The ease of entry into the judicial arena introduced by 'notice pleading' was never intended to eliminate the need for a properly researched and factually supported cause of action." *Tuleta v. Med. Mutual of Ohio,* 2014-Ohio-396, 6 N.E.3d 106, ¶ 28 (8th Dist.) (citation omitted). Thus, where, as here, the Complaint includes exhibits, the Court should review those exhibits, *Andrews v. Nationwide Mut. Ins. Co.,* 8th Dist. Cuyahoga No. 97981, 2012-Ohio-4935, ¶ 13, and "may disregard allegations contradicted by facts established by" those exhibits. *Girgis v. Countrywide Home Loans, Inc.,* 733 F.Supp.2d 835, 843 (N.D. Ohio 2010), quoting *HMS Property Mgmt. Group Inc. v. Miller,* 6th Cir. Nos. 94-3668, 94-3669, 1995 WL 641308, at *3 (Oct. 31, 1995). The Court may similarly consider documents referenced in the Complaint even though not attached. *Lisboa v. Lisboa,* 8th Dist. Cuyahoga No. 95673, 2011-Ohio-351, ¶¶ 38-39 (holding that trial court appropriately considered materials that were referenced, quoted, and attacked – though not attached – to the complaint in granting a 12(B)(6) motion); *Maries v.*

Reliable Title Agency, Inc., 7th Dist. Mahoning No. 11 MA 22, 2012-Ohio-3006, ¶ 9 ("Courts will look only to the complaint and, where appropriate, any written instruments upon which a claim is predicated, to determine whether the allegations are legally sufficient to state a claim."). After disregarding unsupported conclusions and allegations contradicted by the exhibits attached to the Complaint, a claim should be dismissed if the remaining allegations cannot support the claim.

V. LAW AND ARGUMENT

Applying the relevant standard for a motion to dismiss and assuming that Plaintiffs' factual allegations are true, Plaintiffs fail to state a claim upon which relief can be granted and this case against the City should be dismissed in its entirety.

A. Plaintiffs' Claim for Violation of Ohio Constitution, Article I, Section 16 Must Be Dismissed Because Plaintiffs Cannot Establish that the City Violated the Due Course of Law Provision

In Count One of the Complaint, Plaintiffs allege that the City of Girard violated the Ohio Constitution's right to "due course of law" provision by issuing speeding citations pursuant to the posted speed limit, which was allegedly 10 miles m.p.h. slower than it should have been, and by failing to provide Plaintiffs an adequate opportunity to contest the citations after they were issued. Complaint, ¶¶ 68, 69, and 70. Even assuming that Plaintiffs' factual allegations are true, Plaintiffs are unable to establish a claim for a violation of the Ohio Constitution's due course of law provision and Count One of the Complaint must be dismissed.

Ohio Constitution, Article 1, Section 16 provides that "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

From the facts alleged by Plaintiffs, it is clear that there was no due course of law violation of Ohio's Constitution and that a sufficient remedy is provided for any alleged injury the Plaintiffs may have suffered. A 55 m.p.h. speed limit was posted for all drivers, including Plaintiffs, giving them adequate notice of the potential for a speeding citation if they traveled in excess of the posted speed. Complaint, *passim,* and Exhibits A, C, E, G, I, and K. Plaintiffs Miles Black, Melissa Black, Lorraine Morris, Samuel Rotz, and John Beal were all traveling in excess of not only the posted speed of 55 m.p.h. but also in excess of the 65 m.p.h. speed they allege should have been enforced. Complaint, Exhibits A, C, E, I, and K.

Ordinance 333.03(h), Girard's duly enacted speed ordinance, provides that:

> Whenever, in accordance with Ohio R.C. 4511.21 or this section, the speed limitations as established herein have been altered, either higher or lower, and the appropriate signs giving notice have been erected as required, operators of motor vehicles shall be governed by the speed limitations set forth on such signs. It is prima-facie unlawful for any person to exceed the speed limits posted upon such signs.

Plaintiffs' Complaint clearly establishes that the posted speed limit was 55 m.p.h. and the City of Girard enforced the posted speed limit in accordance with Ordinance 333.03(h). Complaint, *passim,* and Exhibits A, C, E, G, I, and K.

R.C. 4511.21(H)(4) provides that "Nothing in this section shall be construed to limit the authority of the director to establish speed limits within a construction zone as authorized under section 4511.98 of the Revised Code." R.C. 4511.98 provides in relevant part that "The director of transportation may establish speed limits within construction zones that vary based on the type of work being conducted, the time of day, or any other criteria the director may consider appropriate."

Plaintiffs have alleged that construction work was taking place on a portion of Interstate 80 in Girard until December 7, 2017 and that the reduced speed signs of 55 m.p.h. remained posted until January 7, 2018. Complaint, ¶¶ 21, *passim,* and Exhibits A, C, E, G, I, and K. The reduced speed zone was mandated by the director of Ohio's Department of Transportation ("ODOT") in accordance with R.C. 4511.21(H)(4) and R.C. 4511.98 for the construction work performed on Interstate 80. Ordinance 333.03(h) permits the City of Girard to enforce the speed limits posted by ODOT whether they are "higher or lower" than the typical speed limit on I-80.

Moreover, the speeding citations Plaintiffs received were civil, not criminal. Complaint, Exhibits E and G, pg. 2. The citations were not reported to the State nor were they reported to Plaintiffs' insurers. Complaint, Exhibits E and G, pg. 2. Plaintiffs were afforded an opportunity to request an administrative hearing to contest the speeding citations. Complaint, Exhibits E and G, pg. 2. Plaintiffs Miles Black, Melissa Black, and Lorraine Morris, however, chose not to do so.

Plaintiff John Perfette, who was issued his citation on January 12, 2018, requested an administrative hearing on April 3, 2018. Exhibits G and H, pg. 5. Plaintiff Perfette's request for an administrative hearing was denied. Exhibit H, pgs. 5-7. The citation issued to Plaintiff Perfett, as well as those issued to all Plaintiffs, provided that "Ohio Revised Code states that the designated party who is issued the ticket may contest the ticket by filing a written request for an administrative hearing to review the ticket no later than 30 days after receipt of the ticket." Exhibit H, pg. 4. The 30 day time in which to request a hearing for Plaintiff Perfett expired on February 11, 2018. R.C. 4511.098(A)(5) provides that a party is entitled to an administrative hearing if the party files a written request within thirty days of the receipt of the ticket. "The failure to request a hearing within this time period constitutes a waiver of the right to contest the

violation and ticket, and is deemed to constitute an admission of liability and waiver of the opportunity to contest the violation." R.C. 4511.098(A)(5). As Plaintiff Perfett did not request an administrative hearing until April 3, 2018, which was 51 days after R.C. 4511.098(A)(5)'s deadline to request a hearing, his request was untimely and properly denied.

Plaintiff Samuel Rotz requested an administrative hearing, which was held on January 17, 2018 in front of Hearing Officer Ronald A. Marks, who has served as a Social Security Administration administrative law judge for years. Complaint, Exhibit J. Plaintiff Rotz appeared without counsel and presented evidence. *Id.* While Plaintiff Rotz's citation was upheld, the fine was reduced from $100 to $25. Complaint, Exhibits I and J.

Plaintiff John Beal requested an administrative hearing, which was held on February 7, 2018 in front of Hearing Officer Ronald A. Marks. Complaint, Exhibit L. Plaintiff Beal appeared without counsel and presented evidence. *Id.* While Plaintiff Beal's citation was upheld, the fine was reduced from $150 to $25. Complaint, Exhibits K and L.

The administrative hearings for Plaintiffs Rotz and Beal were governed by R.C. 4511.099, which provides the procedure for adjudicative hearings and a right of appeal. If either Plaintiffs Rotz or Beal were unsatisfied with the reduction in their fines, they could have appealed the decision to the municipal court pursuant to R.C. 4511.099(G).

In *Deer Park Inn v. Ohio Dep't of Health*, 185 Ohio App.3d 524, 2009-Ohio-6836 (10th Dist.), a bar challenged an administrative hearing's finding that it did not comply with Ohio's Smoke Free Act and appealed the Court of Common Pleas' decision affirming the same. The Court of Appeals held that:

> "Before the state may deprive a person of a property interest, it must provide procedural due process consisting of notice and a meaningful opportunity to be heard." *Ohio Assn. of Pub. School Employees, AFSCME, AFL-CIO v. Lakewood City School Dist. Bd.*

> *of Edn.*, 68 Ohio St.3d 175, 176, 1994 Ohio 354, citing *Cleveland Bd. of Edn. v. Loudermill* (1985), 470 U.S. 532, 105 S.Ct. 1487, 84 L. Ed. 2d 494."

Deer Park at ¶9. In partially affirming the judgment, the Court further held "weighing all aspects of the proposed violation, the possible consequences, and the procedure imposed by statute and regulation, the procedure set forth in Ohio Adm.Code 3701-52-08(D) is commensurate with the nature of the violation and the severity of the penalty." *Deer Park* at ¶14.

The same analysis applies in this matter. The procedure provided for contesting the speeding citation is commensurate with the nature of the violation and the severity of the penalty because 1. Plaintiffs were only cited with civil, not criminal, violations, 2. Neither the State nor Plaintiffs' insurers were notified of their infractions, 3. Plaintiffs had the opportunity to request an administrative hearing, governed by R.C. 4511.099, to contest their speeding citations, and 4. Plaintiffs had the right to appeal an adverse administrative ruling to the municipal court pursuant to R.C. 4511.099(G).

Moreover, in *Fields v. Strange*, 10th Dist. Franklin No. 03AP-48, 2004-Ohio-1134, the Court held that the appellant's due process rights were not violated where "he was given notice and the opportunity to be heard under the rules and simply failed to [follow] the procedure to avail himself of this opportunity." *Fields* at ¶15 quoting *State ex rel. Fuller v. Mengel*, 100 Ohio St.3d 352, 354, 2003-Ohio-6448, 800 N.E.2d 25. Similarly, in this matter, Plaintiffs Miles Black, Melissa Black, Lorraine Morris, and John Perfette's due process rights were not violated when they failed entirely and/or timely to avail themselves of the opportunity to contest their speeding citations at an administrative hearing.

Based on Plaintiff's allegations and the exhibits attached to the Complaint, it is clear that Plaintiffs were afforded due process under Ohio's Constitution. The speed limit under which

they were cited was posted. Plaintiffs were cited for speeding in accordance with Girard's duly-enacted speeding ordinance. Plaintiffs then had an opportunity to request an administrative hearing to make any and all arguments as to why the citation was improper and/or inflated with the right of appeal to the municipal court. Quite simply, in order to succeed on this claim, Plaintiffs would have to establish that the procedure and right of appeal provided in R.C. 4511.099 violate Ohio Constitution, Article 1, Section 16. Plaintiffs have neither alleged this nor sought a declaration that R.C. 4511.099 is unconstitutional and Count One of Plaintiffs' Complaint must be dismissed.

B. Plaintiffs Cannot Establish their Claim for Declaratory Judgment

In Count Two of the Complaint, Plaintiffs seek declaratory judgment that the speeding citations issued "for traveling in excess of 55 m.p.h. between December 7, 2017 and January 7, 2018 are invalid and unenforceable." Complaint, ¶ 73. Plaintiffs have not alleged a legal basis for why the speeding citations are allegedly invalid and unenforceable in Count Two of the Complaint. Complaint, ¶ 72-77. Plaintiffs did, however, incorporate the preceding allegations from the Complaint (Complaint, ¶ 71) and, as such, the legal basis upon which Plaintiffs seek a declaration that the speeding citations are invalid and unenforceable must be the alleged violation of the due course of law provision of Article 1, Section 16 of the Ohio Constitution set forth in Count One of the Complaint.

For the reasons set forth above in section III(A), Plaintiffs' claim for a violation of the Ohio Constitution's due course of law provision fails as a matter of law. As such, Plaintiffs' request for declaratory judgment must too be dismissed. *Jenkins v. Eberhart,* 71 Ohio App.3d 351, 358, 594 N.E.2d 29 (4th Dist. 1991) (stating that when an underlying cause of action fails so, too, must a claim for declaratory judgment). Count Two of the Complaint must be dismissed.

C. Plaintiffs Seek the Remedy of Equitable Restitution, But Cannot Establish a Cause of Action for which this Remedy Would Apply

In Count Three of the Complaint, Plaintiffs seek equitable restitution for the alleged overpayments made to the City of Girard for speeding citations. Complaint, ¶¶ 79-87. Equitable restitution, however, is a remedy, not a cause of action and Plaintiffs have failed to allege any cause of action upon which they are entitled to relief.

In *Lycan v. City of Cleveland*, 8th Dist. Cuyahoga No. 94353, 2010-Ohio-6021, 2010 Ohio App. Lexis 5062, the Court of Appeals held that equitable restitution is not a cause of action. "Restitution is a remedy, not a cause of action." *Lycan* at *4-5. Because Plaintiffs cannot establish any cause of action upon which the remedy of equitable restitution could be based, Count Three of the Complaint must be dismissed.

D. Plaintiffs' Claim for a Violation of the Consumer Sales Practices Act Fails as a Matter of Law Because There Was No Consumer Transaction

In what appears to be an implicit acknowledgment of the infirmity of their other claims, Plaintiffs, in Count Four of the Complaint, make the dubious attempt to classify the speeding citations issued to Plaintiffs as consumer transactions by alleging a violation of Ohio's Consumer Sales Practices Act ("CSPA"). As a matter of law, however, Plaintiffs' claim fails because speeding citations are not consumer transactions and Count Four of Plaintiffs' Complaint must be dismissed.

Pursuant to R.C. 1345.01(A) a "'consumer transaction' means a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things." No part of this definition is satisfied in this instance. First, there was no sale, lease, assignment, award by chance or other transfer. Rather, Plaintiffs were issued

speeding citations. Second, no good, service, franchise, or intangible is involved. A speeding citation clearly does not fit into any of the four enumerated categories. Third, the primary purpose of the speeding citations is not personal, familial, or household in nature, but rather to make the roadways safer. Complaint, Exhibits E and G, pg. 2. By simply reviewing the definition of a consumer transaction, it is abundantly clear that Plaintiffs' CSPA claim is completely devoid of merit.

The definitions of "supplier" ("a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer") and "consumer" ("a person who engages in a consumer transaction with a supplier") further support the inescapable conclusion of the utter futility of Plaintiff's CSPA claim. R.C. 1345.01(C) and (D).

It is axiomatic that without a "consumer transaction" between a "consumer" and "supplier," there cannot be an unfair or deceptive consumer sales practice. R.C. 1345.02(A).

Given the clear definitions of the CSPA, the undersigned have, not surprisingly, been unable to find a single Ohio case in which a speeding citation was alleged to result in a violation of the CSPA. Federal courts, however, have addressed whether municipal fines can create the basis for a violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§1692-1692(p).

In *Gulley v. Markoff & Krasny*, 664 F.3d 1073 (7th Cir. 2011), the Court of Appeals summarized the uniform holdings of district courts that a municipal fine is not a consensual transaction and, therefore, not a debt under the FDCPA:

> Apparently the question whether fines are "debts" under the FDCPA has never arisen in a court of appeals (at least not in a precedential decision). Yet that issue has come up frequently in the district courts, which have concluded uniformly that a fine does

> not stem from a consensual transaction and thus is not a debt under the FDCPA. See *Reid v. Am. Traffic Solutions, Inc.*, Nos. 10-cv-204-JPG-DGW & 10-cv-269-JPG, 2010 U.S. Dist. LEXIS 134518, 2010 WL 5289108, at *4-5 (S.D. Ill. Dec. 20, 2010) (**concluding that fines for traffic violations are not debts under FDCPA**); *Mills v. City of Springfield, Mo.*, No. 2:10-CV-04036-NKL, 2010 U.S. Dist. LEXIS 92031, 2010 WL 3526208, at *15-16 (W.D. Mo. Sept. 3, 2010) (same); *Durso v. Summer Brook Preserve Homeowners Ass'n*, 641 F. Supp. 2d 1256, 1264-65 (M.D. Fla. 2008) (concluding that fines assessed against homeowner by homeowners association did not create debts under FDCPA); *Shannon v. ACS State & Local Solutions, Inc.*, No. 08-594(DSD/SRN), 2008 U.S. Dist. LEXIS 43368, 2008 WL 2277814, at *1 (D. Minn. May 30, 2008) (holding that fines levied by county for parking violation and failure to register vehicle did not meet criteria for FDCPA debts); *Williams v. Redflex Traffic Sys., Inc.*, No. 3:06-cv-400, 2008 U.S. Dist. LEXIS 22723, 2008 WL 782540, at *5 (E.D. Tenn. Mar. 20, 2008) (**holding that unpaid traffic fine is not debt under FDCPA**), aff'd on other grounds, 582 F.3d 617 (6th Cir. 2009); *Yon v. Alliance One Receivables Mgmt., Inc.*, No. 07-61362-Civ, 2007 U.S. Dist. LEXIS 89492, 2007 WL 4287628, at *1 (S.D. Fla. Dec. 5, 2007) (**same**); *Harper v. Collection Bureau of Walla Walla, Inc.*, No. C06-1605-JCC, 2007 U.S. Dist. LEXIS 88993, 2007 WL 4287293, at *7 (W.D. Wash. Dec. 4, 2007) (**same**); *Graham v. ACS State & Local Solutions, Inc.*, No. 0:06-cv-2708-JNE/JJG, 2006 U.S. Dist. LEXIS 73973, 2006 WL 2911780, at *2 (D. Minn. Oct. 10, 2006) (concluding that unpaid parking tickets do not qualify as debts under FDCPA); *Riebe v. Juergensmeyer & Assocs.*, 979 F. Supp. 1218, 1221-22 (N.D. Ill. 1997) (concluding that unpaid fine imposed for overdue library book is not debt under FDCPA). We agree with these decisions and, as did the district court, conclude that the municipal fines levied against Gulley cannot reasonably be understood as "debts" arising from consensual consumer transactions for goods and services. Accordingly, the allegations in his amended complaint state no claim under the FDCPA and were properly dismissed under Rule 12(b)(6).

Gulley at 1075; emphasis added.

The holdings of federal courts interpreting the FDCPA further support the conclusion that the speeding citations issued to Plaintiffs are not consumer transactions. As no consumer transaction was involved in the issuance of speeding citations to Plaintiffs, Count Four of Plaintiffs' Complaint must be dismissed.

E. Plaintiffs' Negligent Misrepresentation Claim Fails as a Matter of Law

Similar to their CSPA Claim, Plaintiffs' Negligent Misrepresentation Claim set forth in Count Five of their Complaint has no applicability to a speeding citation and fails as a matter of law. As such, Count Five of Plaintiffs' Complaint must be dismissed.

Plaintiffs have alleged that the City negligently communicated false information to Plaintiffs "by stating that they allegedly violated a 55 m.p.h. speed limit in the I-80 Non-Construction Zone." Complaint, ¶ 112. In *Delman v. City of Cleveland Heights*, 41 Ohio St. 3d 1, 4, 534 N.E.2d 835 (1989), the Court held that:

> The elements of negligent misrepresentation are as follows: "One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their *justifiable reliance* upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information." (Emphasis added.) *3 Restatement of the Law 2d, Torts* (1965) 126-127, Section 552(1), applied by this court in *Gutter v. Dow Jones, Inc.* (1986), 22 Ohio St. 3d 286, 22 OBR 457, 490 N.E. 2d 898, and *Haddon View Investment Co. v. Coopers & Lybrand* (1982), 70 Ohio St. 2d 154, 24 O.O. 3d 268, 436 N.E. 2d 212.

Plaintiffs cannot establish the elements of a claim for negligent misrepresentation. Even assuming that the speed limit information supplied in the citations was false (which it wasn't since the citations reflected the posted speed limit), the information provided was clearly not supplied to Plaintiffs for "guidance ... in their business transactions." As the 11th District Court of Appeals has held "Given the elements of negligent misrepresentation, this court has concluded that such a claim is considered a business tort that is not meant to have extensive application. *The Middlefield Banking Co. v. Deeb*, 11th Dist. Geauga No. 2011-G-3007, 2012-Ohio-3191, ¶31-33." *Li-Conrad v. Curran*, 2016-Ohio-1496, 50 N.E.3d 573, ¶ 26 (11th Dist.). The issuance of

speeding citations is not a business transaction nor was the information provided for the business purposes of Plaintiffs. Nothing about the issuance of speeding citations can be considered a business tort.

Moreover, it strains credulity to believe that the information contained in the speeding citations could be justifiably relied upon by Plaintiffs when the citation itself informed Plaintiffs of their ability to challenge the citation in an administrative hearing. Complaint, Exhibits E and G, pg. 2. At a minimum, Plaintiffs cannot establish two of the three elements necessary for their negligent misrepresentation claim and Count Five of the Complaint must be dismissed.

F. Plaintiffs Claim for Civil Conspiracy Fails as a Matter of Law

Plaintiffs have failed to allege a viable independent unlawful act and their claim for civil conspiracy fails as a matter of law. As such, Count Six of Plaintiffs' Complaint must be dismissed.

Plaintiff have alleged that the City and Defendant Blue Line Solutions "engaged in unlawful acts independent from the conspiracy by issuing the Citations to Plaintiffs and Class members, misrepresenting that the speed limit after December 7, 2017, in the I-80 Non-Construction Zone was 55 m.p.h., and collecting money from Plaintiffs." Complaint, ¶ 120.

In Ohio, civil conspiracy is "a malicious combination of two or more persons to injure another person or property, in a way not competent for one alone, resulting in actual damages." *Williams v. Aetna Fin. Co.,* 83 Ohio St. 3d 464, 475, 700 N.E.2d 859 (1998) (internal quotations omitted). Moreover, a claim for conspiracy requires an underlying unlawful act. *Id.* at 475, citing *Gosden v. Louis,* 116 Ohio App.3d 195, 219, 687 N.E.2d 481 (9th Dist.1996).

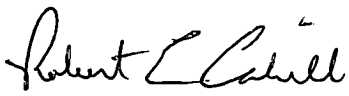
The only underlying unlawful act alleged by Plaintiff is misrepresenting that the speed limit was 55 m.p.h. Complaint, ¶ 120. For the reasons set forth in Section III(E), Plaintiffs'

claim for negligent misrepresentation fails as a matter of law. Thus, misrepresentation cannot serve as the underlying unlawful act. *Williams v. U.S. Bank Shaker Square,* 8th Dist. Cuyahoga No. 89760, 2008-Ohio-1414, ¶ 17 (dismissing conspiracy claim after finding plaintiff failed to state a claim for fraud where fraud was alleged as underlying unlawful act). Because Plaintiffs cannot establish a viable underlying unlawful act, their civil conspiracy claim fails. Count Six of the Complaint must be dismissed.

VI. CONCLUSION

For all the foregoing reasons, Defendant City of Girard respectfully requests that the Court dismiss this action against the City in its entirety because Plaintiffs have failed to state a claim upon which relief can be granted. A proposed order is attached.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on August 13th, 2018, the foregoing Defendant City of Girard's Motion to Dismiss was served via e-mail upon the following:

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IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

MILES BLACK, *et al.*,	)	CASE NO.: 2018 CV 01256
	)	
Plaintiffs,	)	JUDGE ANDREW D. LOGAN
	)	
v.	)	
	)	
CITY OF GIRARD, OHIO, *et al.*,	)	**PROPOSED ORDER GRANTING**
	)	**DEFENDANT CITY OF GIRARD'S**
Defendants.	)	**MOTION TO DISMISS**
	)	

For the reasons set forth in Defendant City of Girard's Motion to Dismiss, the City of Girard's motion is granted and it is hereby dismissed from this matter.

IT IS SO ORDERED.

Dated: _____

_____
JUDGE ANDREW D. LOGAN