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2008 MAY 14 PM 1:12

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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 ARMANDO MIRANDA and ERIC
16 FLORES, individually and as class
17 representatives,

No. **CV08-03178**

GPS
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**COMPLAINT; DEMAND FOR
JURY TRIAL**

18 Plaintiffs,

19 vs.

20
21 DALE E. BONNER, J.A. FARROW AND
22 SUNNE WRIGHT MCPEAK, individually
23 and in their official capacities; CITY OF
24 LOS ANGELES; and DOES 1 through 10;
25 all on their own behalf and as representative
26 of a class of Defendants,

27 Defendants.

- 1. 42 U.S.C. §1983/Cal. Civil Code §52.1 – Unlawful Search & Seizure
- 2. 42 U.S.C. §1983/Cal Civil Code §52.1 – Uncompensated Taking
- 3. 42 U.S.C. §1983/Cal Civil Code §52.1 – Procedural Due Process
- 4. Cal Civil Code §52.1 – Interference With Federal Or State Rights By Threat, Intimidation Or Coercion
- 5. Inverse Condemnation

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INTRODUCTION, JURISDICTION AND VENUE

1. Plaintiffs present federal claims for relief that arise under 42 U.S.C. §1983, and supplemental state law claims actionable under *California Civil Code* §52.1. Plaintiffs seek declaratory, equitable and injunctive relief for unlawful seizures and impoundments of vehicles pursuant to the authority of California Vehicle Code §14602.6 by law enforcement agencies throughout the State of California. Plaintiffs seek certification of a statewide injunctive relief class of both Plaintiffs and Defendants. Plaintiffs also seek certification of a Plaintiffs' damages class against the named Defendants in this action.

2. For all state law claims asserted in this Complaint (except inverse condemnation, for which no administrative claim must be filed, *see* California Govt. Code §905.1), Plaintiffs filed timely (*i.e.*, within six months of the time of impound of the vehicle involved) administrative claims with the entity involved with the particular Plaintiff pursuant to the Government Code, including Govt. Code §910. Each such claim was filed on behalf of the individual Plaintiff and on behalf of all persons similarly situated.

3. Federal jurisdiction is conferred on this Court by 28 U.S.C. §§1331 and 1343. Plaintiffs' state law claims are so related to Plaintiffs' federal law claims that they form part of the same case or controversy. Accordingly, supplemental jurisdiction over those claims is conferred upon this Court by 28 U.S.C. §1367(a).

4. Venue is proper in this District because Plaintiffs reside in this District. The events of which Plaintiffs complain occurred in this District, as well as throughout the State.

5. As used throughout this Complaint, the phrase "Plaintiffs" refers to both individual Plaintiffs, and to the class that they seek to represent. The phrase "Defendants" refers to the named Defendants, and in the case of injunctive relief, to the class of Defendants that Plaintiffs seek to certify.

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COMMON ALLEGATIONS

6. Plaintiffs' claims arise out of a statewide policy, custom, pattern and practice of violating the constitutional rights of Plaintiffs based on California Vehicle Code §14602.6 (hereafter "§14602.6"). Section 14602.6 provides, among other things, that a peace officer may "cause the removal and seizure of" a vehicle if a person was 1) "driving a vehicle while his or her driving privilege was suspended or revoked" or, 2) was "driving a vehicle without ever having been issued a driver's license." §14602.6(a)(1). In such a situation, a "vehicle so impounded shall be impounded for 30 days." *Id.*

7. Under the statute, the registered and legal owner of such a vehicle is entitled to a "storage hearing" at which the hearing officer shall "determine the validity of, or consider any mitigating circumstances attendant to, the storage." *Id. sub-section (b)*. The impounding agency shall release the vehicle to the owner if A) it is a stolen vehicle, B) the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage, C) the driver's license was suspended for certain specified offenses, D) the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle, or E) the driver reinstates his or her driver's license or acquires a driver's license and proper insurance. *Id. sub-section (d)(1)*.

8. As mentioned in the previous paragraph, the registered and legal owner of a vehicle that is removed and seized under Vehicle Code §14602.6(a), or their agents, shall be provided the opportunity for a "storage hearing" to determine the validity of, or consider any "mitigating circumstances" attendant to the storage, in accordance with Vehicle Code §22852. Vehicle Code §14602.6(b).

9. Vehicle Code §22852, however, does not require that an owner be notified of his or her right to a hearing to determine whether "mitigating circumstances" justify or require the release of the vehicle.

1 10. Plaintiffs are informed and believe, and thereon allege, that, when
2 informing owners of their right to a “storage hearing,” Defendants assert to the
3 owners of seized vehicles that the only matter that Defendants will consider at
4 “storage hearings” is whether there was probable cause to seize the vehicle in the
5 first place and, in fact, that is the only matter that Defendants do consider at a
6 storage hearing. This constitutes a violation of the combined terms of Vehicle Code
7 §§14602.6(b) and 22852, which require consideration of “mitigating
8 circumstances,” and a violation of due process of law by failing to provide notice,
9 and indeed providing misleading notice, of the owner’s rights under the statutory
10 scheme.

11 11. Plaintiffs are informed and believe, and thereon allege, that Defendants
12 do not consider “mitigating circumstances” at storage hearings, and/or that
13 Defendants have either no or inadequate standards for determining what constitutes
14 “mitigating circumstances.” Plaintiffs are informed and believe that Defendants’
15 interpretations of what constitutes “mitigating circumstances” are so varied and
16 arbitrary that there is no clear guidance as to what constitutes “mitigating
17 circumstances.”

18 12. Pursuant to California Vehicle Code §22852(c) the “hearing officer” at
19 a “storage hearing” may be an employee of the law enforcement agency that
20 authorized the impound. Plaintiffs are informed and believe, and thereon allege,
21 that Defendants utilize employees of the seizing agency as “hearing officers”,
22 including employees who are closely connected associates of the seizing officer.
23 Plaintiffs are informed and believe that the “hearing officers,” because they are
24 employees of the seizing agency as “hearing officers,” including employees who are
25 closely connected associates of the seizing officer, are not impartial.

26 13. Pursuant to the authority of Vehicle Code §14602.6, city and county
27 law enforcement agencies throughout the State of California seize and impound
28 vehicles, and keep them for 30 days, under the following circumstances:

1 a. If a person is driving a vehicle without any license, the vehicle is
2 seized and impounded on the authority of §14602.6 even though the
3 existence of probable cause to believe that the driver committed a traffic
4 violation is not a sufficient basis under the Fourth Amendment to make
5 the impoundment of the vehicle reasonable. The only constitutionally
6 permissible basis for such a seizure and impoundment is where the
7 vehicle jeopardizes public safety and the efficient movement of
8 vehicular traffic and, therefore, comes within the community caretaking
9 doctrine which allows a seizure of a vehicle. *See Miranda v. City of*
10 *Cornelius*, 429 F.3d 858, 864 (9th Cir. 2005). Vehicles are routinely
11 seized and impounded by Defendants when the requirements of the
12 community caretaking doctrine are not met.

13 b. If a person is driving a vehicle with a driver's license issued by
14 another state or a foreign country, the vehicle is seized and impounded
15 for thirty days on the authority of §14602.6 even though §14602.6 does
16 not authorize a thirty-day seizure/impound because the driver was not
17 "driving a vehicle without ever having been issued a driver's license."
18 This violates the Fourth Amendment.¹

19 c. Seizure and impoundment of a vehicle for 30 days routinely
20 occurs where the seizure and impoundment is initially justified by the
21 community caretaking doctrine, *e.g.*, where the driver does not have a

22 ¹ It appears that most members of the putative Defendant Class construe §14602.6
23 to authorize a 30-day seizure of anyone who has been living in the State for more
24 than 10 days, even if temporarily, and even if the person has a current and valid
25 driver's license from another jurisdiction. However, the statute only authorizes a
26 seizure if the person has **never** been issued a driver's license. The statute does not
27 require that that license must have been a California license, nor that that license be
28 currently valid. Plaintiffs contend that the statute does not authorize a 30-day
seizure if the driver has ever had a driver's license issued anywhere.

1 valid California license, but where there is no such justification to
2 continue to hold the vehicle when a person with a valid driver's license
3 is available to drive the vehicle away from impound; either the owner, or
4 someone with the owner's authorization. Under the authority of
5 §14602.6, the vehicle is nonetheless held for 30 days.

6 d. In connection with the seizure and impoundment of vehicles
7 pursuant to §14602.6, the impounding agencies impose additional fees to
8 the impound fee as an administrative fee, which fees, on information and
9 belief, are not cost based. Vehicle Code §22850.5(a) provides that a
10 "city, county, or city and county, or a state agency may adopt a
11 regulation, ordinance, or resolution establishing procedures for the
12 release of properly impounded vehicles and for the imposition of a
13 charge equal to its administrative costs relating to the removal, impound,
14 storage, or release of the vehicles." Thus, the fees routinely imposed by
15 Defendants violate §22850.5(a).

16 14. In addition to violation of the Fourth Amendment, the customs,
17 policies and practices described above deprive Plaintiffs of Procedural Due Process
18 of Law, the Fifth Amendment's takings clause, and the California analogues to each
19 of the foregoing, including the Fourth Amendment.

20 **CLASS PLAINTIFFS**

21 15. Plaintiff Armando Miranda resides in Los Angeles County, where the
22 events alleged herein occurred. On or about April 23, 2008, Mr. Miranda's 1995
23 blue Honda Accord station wagon was being driven by his wife. She was stopped
24 in the driveway of their residence by LAPD Officer Griffith, badge #34467, for
25 failure to proceed on a green light. The wife was cited for failure to have a driver's
26 license. To the extent the car was blocking the driveway as a result of the LAPD
27 stop, it could readily have been moved a few feet away. Instead, the LAPD officer
28 ordered the vehicle towed to impound. Mr. Miranda is the registered owner of the

1 vehicle in question, has been a licensed California driver since 1997, and has a
2 currently valid California driver's license. On April 24th, he went to both the Van
3 Nuys police station and the Foothill station to claim his vehicle. He presented his
4 ownership papers and his valid California driver's license, and asked to speak with
5 someone in charge about reclaiming his station wagon. Mr. Miranda was not
6 allowed to speak with anyone in either police station except the secretary at the
7 front desk, and was told that there was no way he could claim his car before the 30
8 days was up. He was never told that he had a right to request a hearing, or that he
9 had any options except to wait out the 30 days. As of the time of the filing of this
10 complaint, the car is still in impound on a 30-day hold. Plaintiff Miranda sues in his
11 own behalf and on behalf of the Plaintiff Injunctive Relief Class and the City of Los
12 Angeles Damages Class, each of which is defined below.

13 16. Plaintiff Eric Flores resides in Los Angeles County where the events
14 alleged herein occurred. On or about April 23, 2008, Eric Flores' wife was driving
15 north on the 605 Freeway near Santa Fe Springs, California, when she was stopped
16 by an officer of the California Highway Patrol. She was told that she was stopped
17 because the 2004 Cadillac Escalade she was driving had tinted windows and tinted
18 taillights. The officer then proceeded to order the vehicle towed on the ground that
19 the driver could not produce a driver's license. The officer ordered the tow even
20 though the driver offered to contact a licensed driver, Mr. Flores, to come and drive
21 the vehicle away. Mr. Flores is the registered owner of the vehicle in question, has
22 been a licensed California driver for approximately 18 years, and has a currently
23 valid California driver's license. On April 23rd, he went to the CHP office in
24 Whittier, to claim his vehicle. He was informed that the vehicle would remain in
25 tow for thirty days. He was never told that he had a right to request a hearing. As
26 of the time of the filing of this complaint, the car is still in impound on a 30-day
27 hold. Plaintiff Flores sues in his own behalf and on behalf of the Plaintiff Injunctive
28 Relief Class and the CHP Damages Class, each of which is defined below.

1 17. Plaintiffs Miranda and Flores (hereafter the “Named Plaintiffs”) sue on
2 their own behalf, and on behalf of a class of similarly situated individuals
3 throughout the State of California, for each class for which they act as a class
4 representative. These individuals had their cars seized, towed, and impounded for
5 up to 30 days for driving without a valid driver’s license under the authority of
6 Vehicle Code §14602.6.

7 18. When the Named Plaintiffs’ vehicles were seized and impounded
8 pursuant to the authority of Vehicle Code §14602, in no instance was the driver
9 arrested. On information and belief it is the policy, custom and practice of law
10 enforcement agencies throughout the State of California, when citing for violation
11 of Vehicle Code §14602.6, to treat the matter as an infraction, and to not arrest the
12 driver.

13 19. For purposes of standing to bring a statewide injunctive relief claim,
14 each Named Plaintiff’s vehicle is currently in impound.

15 **CLASS DEFENDANTS**

16 20. Defendant Dale E. Bonner is, and at all times herein mentioned was,
17 the Secretary of the State of California’s Business, Transportation and Housing
18 Agency (“BTH”) from March 2007 to the present. Defendant Sunne Wright
19 McPeak was the Secretary of the State of California’s Business, Transportation and
20 Housing Agency (“BTH”) during the class period until approximately March 2007.
21 The BTH is an agency of the Executive Branch of the California government and
22 oversees the activities of the California Highway Patrol. The Secretary’s
23 supervisory powers over the BTH and the CHP can be found at Government Code
24 §§13975, 13976, 13978, *et seq.* Defendant J.A. Farrow is, and at all times herein
25 mentioned was, the Commissioner of the CHP. The Commissioner’s supervisory
26 powers over the CHP can be found at Vehicle Code §§2108 and 2400. Each of the
27 foregoing Defendants is being sued herein in their individual official capacities and
28 as representatives of a Defendant Injunctive Relief Class, which is defined below,

1 as it relates to the claims of the Plaintiff Injunctive Relief Class, which is also
2 defined below. Each of the foregoing Defendants is also being sued herein in their
3 individual capacities by the CHP Damages Class, which is defined below.

4 21. Defendant City of Los Angeles is a political subdivision, *i.e.*, a city
5 duly organized under the laws of the State of California. It routinely enforces
6 California Code §14602.6 by engaging in the conduct alleged herein, *i.e.*, seizing
7 and impounding vehicles on the basis that the driver does not have a current, valid
8 California driver's license, including when the vehicle was not presenting a hazard
9 or a threat to public safety; keeping the vehicle for a period longer than someone
10 was available to pay the impound fee to date, usually for the 30 day period specified
11 by §14602.6; seizing and impounding vehicles even when the driver has a valid
12 license from another jurisdiction; and, on information and belief, charging an
13 above-cost administrative fee. Defendant City of Los Angeles is sued as a
14 representative of the Defendant Injunctive Relief Class, which is defined below, as
15 well as in its own behalf. Defendant City of Los Angeles is also sued in its own
16 behalf by the City of Los Angeles Damages Class, which is defined below.

17 22. Plaintiffs are ignorant of the true names and capacities of Defendants
18 sued herein as DOES 1 through 10 inclusive, and therefore sue these Defendants by
19 such fictitious names. Plaintiffs sue Doe Defendants for two reasons: 1) to add, if
20 necessary, other class representative Defendants, and 2) to add, if necessary for any
21 state law claims, individual Defendants responsible to implement §14602.6 for a
22 particular Defendant, and who otherwise are appropriate and/or necessary to allow
23 Plaintiffs to fully pursue their claims.

24 **CLASS ACTION ALLEGATIONS – PLAINTIFF CLASS**

25 23. Plaintiffs bring this action on their own behalf, and on behalf of the
26 class of all other persons similarly situated, pursuant to Rule 23, Federal Rules of
27 Civil Procedure.
28

1 24. The "Plaintiff Injunctive Relief Class" is defined under Rule 23(b)(2)
2 as all persons in the State of California who have had cars seized/impounded for
3 thirty days pursuant to §14602.6, or may in the future have them so
4 seized/impounded. This class seeks relief against a statewide class of government
5 entities, defined further on in this Complaint. The class includes at least: A) those
6 whose cars were unlawfully seized/impounded under Fourth Amendment standards;
7 B) those whose vehicles were unlawfully seized/impounded for thirty days because
8 the driver did not have a currently valid California driver's license, even though
9 such seizures are not authorized by §14602.6 because the driver had previously
10 been issued a driver's license, though not a California driver's license; C) those
11 whose vehicles were seized and impounded, whether lawfully or not, but unlawfully
12 held pursuant to the 30 day provision of §14602.6; and D) those who were charged
13 a fee in excess of the costs associated with the administration of the seizure and
14 impound.

15 25. There are two Plaintiff Damages Classes, both brought under Rule
16 23(b)(3). The "CHP Damages Class" is defined as all persons in the State of
17 California who have had cars seized/impounded for thirty days by the CHP pursuant
18 to §14602.6. The class includes at least those set forth in sub-paragraphs A-D of ¶
19 24, *supra*, with the exception that the class does not include those who in the future
20 may have the conduct defined occur.

21 26. The "City of LA Damages Class" is defined as all persons in the State
22 of California who have had cars seized/impounded for thirty days by the City Los
23 Angeles pursuant to §14602.6. The class includes at least those set forth in sub-
24 paragraphs A-D of ¶ 24, *supra*, with the exception that the class does not include
25 those who in the future may have the conduct defined occur.²

26 ² Plaintiffs also assert for all the classes pled herein Rule 23(b)(1) as a basis for
27 class certification but, to make clear the distinction between the injunctive relief and
28 damages classes have referred to the different classes as (b)(2) and (b)(3) classes.

1 27. On information and belief, each class defined herein numbers at least
2 in the thousands, and, for the Plaintiff Injunctive Relief Class, tens of thousands.
3 The members of the class are so numerous that joinder is impracticable.

4 28. Questions of law and fact common to each class include:

5 a. Whether the provisions of §14602.6 at issue herein are
6 constitutional, under either and/or both United States or California law,
7 including under the Fourth Amendment, the Eighth Amendment, the
8 Fifth Amendment and the Fourteenth Amendment, or their California
9 analogues.

10 b. Whether it is lawful under the Fourth Amendment and its
11 California analogue to seize and impound a vehicle for thirty days on the
12 basis that the driver did not have a valid California driver's license,
13 where such seizures are not authorized by §14602.6, because the driver
14 had previously been issued a driver's license from another jurisdiction.

15 c. Whether, even if could be valid to seize and impound a vehicle
16 on the ground stated in the foregoing sub-section, it is lawful under the
17 Fourth Amendment or its California analogue to do so where the vehicle
18 1) could be left without posing a hazard to public safety, or 2) could be
19 so left by moving the vehicle to a nearby location (such as a legal
20 parking spot) and allowing the driver to contact a person to come and get
21 the vehicle.

22 d. Whether, even if the seizure and impoundment of the vehicle
23 under the circumstances was legal under the Fourth Amendment or its
24 California analogue, it violates the Fourth Amendment, the Eighth
25 Amendment, the Fifth Amendment, the Fourteenth Amendment, or their
26 California analogues to keep the vehicle for any period longer than that

27 Thus, (b)(1) is sought as an alternative basis for any of the alleged classes to the
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1 needed for a person with a valid driver's license (or alternatively a valid
2 California driver's license) to drive the vehicle away and to pay the
3 impound fee accrued to that date.

4 e. Whether, even if the seizure and impoundment of the vehicle
5 under the circumstances was legal under the Fourth Amendment or its
6 California analogue, it violates the Fourth Amendment, or the Fifth
7 Amendment or their California analogues to automatically keep the
8 vehicle for 30 days and to charge a 30 day impound fee.

9 f. Whether the provisions of §14602.6 at issue in this Complaint
10 (*i.e.*, seizure and impoundment of a vehicle being driven by a person
11 without a California license , and continuing impoundment for 30 days)
12 are unconstitutional on their face pursuant to any of the constitutional
13 provisions cited above.

14 g. Whether, if the relevant provisions of Vehicle Code
15 §14602.6 are not unconstitutional on the face of the statute, they are
16 unconstitutional as applied, specifically regarding 1) seizures and
17 impoundments in violation of the community caretaking doctrine, 2)
18 keeping seized and impounded vehicles for 30 days, and 3) failing to
19 provide hearings that comport with due process.

20 h. Whether it is permissible under Vehicle Code §22850.5(a) to
21 charge an administrative fee greater than the costs associated with
22 administration of the impound.

23 i. Whether the Defendants engage in the conduct challenged in this
24 complaint and, if so, which Defendants engage in which conduct.

25 29. The claims of the Named Plaintiffs are typical of the claims of
26 members of each class on whose behalf they are acting as a class representative.

27 extent the Court deems it appropriate.

28

1 30. The Named Plaintiffs will fairly and adequately protect the interests of
2 each class on whose behalf they are acting as a class representative. The Named
3 Plaintiffs have no interest which is now or may be potentially antagonistic to the
4 interests of each class on whose behalf they are acting as a class representative. The
5 attorneys representing the Plaintiffs are experienced civil rights attorneys, and are
6 considered able practitioners in federal constitutional and statutory adjudications.

7 31. In accordance with Fed.R.Civ.P. Rule 23(b)(1)(A), prosecutions of
8 separate actions by individual members of each class would create a risk that
9 inconsistent or varying adjudications with respect to individual members of the
10 class would establish incompatible standards of conduct for the parties opposing the
11 class.

12 32. In accordance with Fed.R.Civ.P. Rule 23(b)(1)(B), prosecutions of
13 separate actions by individual members of the class would create a risk of
14 adjudications with respect to individual members of the class which would, as a
15 practical matter, substantially impair or impede the interests of the other members
16 of the class to protect their interests.

17 33. In accordance with Fed.R.Civ.P. Rule 23(b)(2), Plaintiffs are informed
18 and believe and thereon allege that the Defendants have acted, threaten to act, and
19 will continue to act on grounds generally applicable to the class, thereby making
20 appropriate final injunctive relief or declaratory relief with respect to the class as a
21 whole.

22 34. Plaintiffs seek not only injunctive and declaratory relief, but equitable
23 relief in the form of restitution to the Plaintiffs for the fees and costs paid, and
24 property lost, as a result of the unlawful conduct alleged herein.

25 35. Even if said fees and costs are not considered equitable restitution, or
26 ancillary or incidental damages pursuant to the provisions of Fed.R.Civ.P. Rule
27 23(b)(1) or (b)(2), the class qualifies for certification pursuant to the provisions of
28 Fed.R.Civ.P. Rule 23(b)(3) in that 1) the questions of law or fact common to the

1 members of the class predominate over any questions affecting only individual
2 members, and 2) this class action is superior to other available methods for the fair
3 and efficient adjudication of the controversy between the parties.

4 36. Plaintiffs are informed and believe, and thereon allege, that the
5 interests of members of each class in individually controlling the prosecution of a
6 separate action are low. Most class members would be unable to individually
7 prosecute any action at all. Plaintiffs are informed and believe, and thereon allege,
8 that the amounts at stake for individuals are so small that separate suits would be
9 impracticable. Plaintiffs are informed and believe, and thereon allege, that most
10 members of the class will not be able to find counsel to represent them.

11 37. Plaintiffs are informed and believe, and thereon allege, that it is
12 desirable to concentrate all litigation in one forum because §14602.6 is a California-
13 wide statute presumptively enforced by law enforcement agencies throughout the
14 state. It would consume undue and unnecessary resources to litigate the identical
15 issues in forums throughout the state.

16 38. Plaintiffs do not know the identities of the class members. Plaintiffs are
17 informed and believe, and thereon allege, that the identities of the class members
18 may be ascertained from the records of the various law enforcement entities who act
19 for the Defendants, and from the towing companies who contract with the
20 Defendants. Plaintiffs are informed and believe, and thereon allege, that these
21 records will contain the identities, including addresses and telephone numbers, of
22 the persons whose vehicles have been seized, and that these records will likely be
23 computerized in most cases. Accordingly, the membership of the Plaintiff Class is
24 readily ascertainable. Plaintiffs believe the size of each class is at least in the
thousands, and, for the Injunctive Relief Class, more likely in the tens of thousands.

25 39. Plaintiffs know of no difficulty that will be encountered in the
26 management of this litigation that would preclude its maintenance as a class action.
27 The class action is superior to any other available means to resolve the issues raised
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1 in this action. The class action will be manageable because the issues are discrete,
2 and the law enforcement and towing company records will allow a determination of
3 class members, or potential class members, from the records of these entities, and
4 the amount of any restitution due to the class.

5 40. Liability can be determined on a class-wide basis regarding what
6 provisions of §14602.6, and what policies, practices and customs adopted to enforce
7 it, are lawful. There are available methods to determine which Defendants engaged
8 in one or more of the prohibited acts alleged herein, which issues will mostly be
9 determinable from the available records, and which will likely lead to resolution
10 through summary judgment.

11 41. To the extent it is determined that notice is required for the Plaintiff
12 Class, then, class members will be identified by the records of Defendants.

13 **CLASS ACTION ALLEGATIONS – DEFENDANT CLASS**
14 **INJUNCTIVE RELIEF ONLY**

15 42. Plaintiffs seek certification of a Defendant Class pursuant to F. R. Civ.
16 P. 23(b)(2) as a class action composed of all local governmental entities, or, in the
17 case of the State, governmental officials, that have the authority to enforce
18 §14602.6, to wit, each political subdivision within the State of California, including
19 any state or municipal agency, or any other political subdivision or governmental
20 instrumentality in the State of California.³

21 43. The Named Defendants are cities, counties, and governmental officials,
22 that are responsible to enforce and implement the provisions of §14602.6, or
23 supervise and control the agencies that do so, and thereby violate the constitutional
24 and other rights of the Plaintiffs.

25
26
27 ³ Plaintiffs incorporate Fn. 2 regarding an alternative basis for certification of a
28 Defendant Class under Rule 23(b)(1).

1 44. Defendants are so numerous that joinder is impracticable. Upon
2 information and belief, the number of Defendants, including local governmental
3 entities, and their law enforcement agencies, numbers at least several hundred.

4 45. The defenses of the representative parties are typical of the defenses of
5 the class.

6 46. The members of the Defendant Class are readily ascertainable, as they
7 are matters of public record.

8 47. On information and belief, Plaintiffs allege that the Named Defendants
9 will fairly and adequately protect the interests of the class. Defendants have no
10 interest which is now or may be potentially antagonistic to the interests of the
11 Defendant Class and have an interest in retaining attorneys with sufficient
12 experience and ability in federal constitutional and statutory adjudications to
13 represent the interests of a Defendant Class. In particular, Named Defendants are
14 the City of Los Angeles, with the largest City population in California, and
15 representatives of the State of California. These Defendants, as well as the others
16 named, have the resources and experience to fully litigate the issues herein.

17 48. Adjudications with respect to individual class members would, as a
18 practical matter, be dispositive of the interests of the other members not parties to
19 the adjudications or substantially impair or impede their ability to protect their
20 interests.

21 49. The Defendant Class members have acted or refused to act on grounds
22 generally applicable to the Plaintiff Class, specifically in enforcing the terms of the
23 §14602.6, thereby making appropriate final injunctive relief or corresponding
24 declaratory relief with respect to the Defendant Class as a whole.

25 50. Plaintiffs presume that early notice will be appropriate for the
26 Defendant Class to allow the class members to participate in the litigation should
27 they so choose. Such notice is relatively simple, as, by class size standards, the
28 Defendants Class is relatively small.

1 Constitution, and Article I, §13 of the California Constitution, whether the initial
2 seizure was constitutionally valid or not.

3 56. The seizure and impoundment of Plaintiffs' vehicles for 30 days
4 pursuant to the provisions of §14602.6, even when the driver had previously been
5 issued a driver's license by another state and/or foreign country, even if that license
6 was not valid or no longer valid in California, violated the Fourth Amendment to
7 the United States Constitution, and Article I, §13 of the California Constitution
8 because §14602.6 does not authorize seizures for thirty days under such
9 circumstances.

10 57. The acts alleged herein were the product of a custom, practice and/or
11 policy of the Defendants, which custom, practice and/or policy caused the
12 constitutional violation alleged herein.

13 58. All acts of Defendants alleged herein – including those alleged in
14 subsequent counts in this complaint – occurred under color of state law.

15 59. The conduct alleged herein deprived Plaintiffs and the classes they
16 represent, via threats, intimidation and/or coercion, of the protections afforded by
17 provisions of federal constitutional and state constitutional and statutory law,
18 including but not limited to rights protected under the Fourth and Fourteenth
19 Amendments to the United States Constitution; and Article I, §13 of the California
20 Constitution. Therefore, Plaintiffs and the class members they represent are entitled
21 to bring suit and obtain equitable relief and damages pursuant to Cal. Civ. Code
22 §52.1(b).

23 60. As to the state law aspects of this claim, the entities are liable for the
24 actions of their employees pursuant to the doctrine of *respondeat superior*.

25 61. The aforementioned acts of Defendants directly and proximately
26 caused Plaintiffs to be deprived of their rights as stated above, thereby entitling
27 Plaintiffs to injunctive relief and restitution of losses to property and/or damages
28 proximately caused by Defendants' wrongful acts, including but not limited to, 1)

1 payment of unlawful impound fees and administrative fees, 2) loss of their vehicles
2 through sale by Defendants by virtue of their inability to pay the unlawful impound
3 and/or administrative fees, and 3) interest on said payments or losses.

4 **COUNT TWO**
5 **UNCOMPENSATED TAKINGS CLAIM AGAINST ALL DEFENDANTS**
6 **(42 U.S.C. §1983/CAL. CIVIL CODE § 52.1/ARTICLE 1 §19 OF THE**
7 **CALIFORNIA CONSTITUTION/INVERSE CONDEMNATION)**

7 62. By this reference, Plaintiffs re-allege and incorporate all previous and
8 following paragraphs as if fully set forth herein.

9 63. The seizure/impoundment of Plaintiffs' vehicles when the conditions
10 leading up to the seizure did not meet the requirements of the community caretaking
11 doctrine, *i.e.*, the vehicle did not present a threat to public safety, violated the
12 Takings Clause of the Fifth Amendment to the United States Constitution, Article I,
13 §19 of the California Constitution, and constituted an inverse condemnation under
14 California law.

15 64. The seizure/impoundment of Plaintiffs' vehicles for 30 days pursuant
16 to §14602.6, even when there was an available driver with a valid driver's license to
17 drive the car away from impound and the owner was prepared to pay the accrued
18 fees, violated the Takings Clause of the Fifth Amendment to the United States
19 Constitution, Article I, §19 of the California Constitution, and constituted an inverse
20 condemnation under California law.

21 65. The seizure/impoundment of Plaintiffs' vehicles for 30 days pursuant
22 to §14602.6, when the driver had previously been issued a driver's license by
23 another state and/or foreign country, even if that license was not valid or no longer
24 valid in California, violated the Takings Clause of the Fifth Amendment to the
25 United States Constitution, Article I, §19 of the California Constitution, and
26 constituted an inverse condemnation under California law, because §14602.6 does
27 not authorize seizures for thirty days under such circumstances.
28

1 66. The acts alleged herein were the product of a policy or custom of the
2 Defendants, which policy or custom caused the constitutional violation alleged
3 herein.

4 67. The acts alleged herein occurred under color of state law.

5 68. The conduct alleged herein deprived Plaintiffs and the classes they
6 represent, via threats, intimidation and/or coercion, of the protections afforded by
7 provisions of federal constitutional and state constitutional and statutory law,
8 including but not limited to rights protected under the Fourth, Fifth, and Fourteenth
9 Amendments to the United States Constitution; and Article I, § 19 of the California
10 Constitution. Therefore, Plaintiffs and the class members they represent are entitled
11 to bring suit and obtain equitable relief and damages pursuant to Cal. Civ. Code
12 §52.1(b).

13 69. As to the state law aspect of this claim, the entities are liable for the
14 actions of their employees pursuant to the doctrine of *respondeat superior*.

15 70. The aforementioned acts of Defendants directly and proximately
16 caused the Plaintiffs to be deprived of their rights as stated above, thereby entitling
17 Plaintiffs to injunctive and declaratory relief and restitution of losses to property
18 and/or damages proximately caused by Defendants' wrongful acts, including but not
19 limited to, 1) payment of unlawful impound fees and administrative fees, 2) loss of
20 their vehicles through sale by Defendants by virtue of their inability to pay the
21 unlawful impound fees, and 3) interest on said payments or losses.

22 **COUNT THREE**

23 **Against All Defendants for Violation of Procedural Due Process For 24 Misleading Hearing Notices and Inadequacy of Hearing Officers, Standards 25 and Procedures**

26 **(42 U.S.C. §1983/Cal. Civil Code §52.1)**

27 71. By this reference, Plaintiffs re-allege and incorporate all previous and
28 following paragraphs as if fully set forth herein.

1 72. Pursuant to California Vehicle Code §14602.6(b), the registered and
2 legal owners of a vehicle that is seized/impounded pursuant to Vehicle Code
3 §14602.6(a), or their agents, shall be provided the opportunity for a “storage
4 hearing” to determine the validity of, or to consider any "mitigating circumstances"
5 attendant to the storage, in accordance with Vehicle Code §22852.

6 73. Plaintiffs are informed and believe and thereon allege that, when
7 informing owners of their right to a “storage hearing,” Defendants and the
8 Defendant Classes represent to the owners of seized/impounded vehicles that the
9 only matters that they will consider at “storage hearings” is whether there was
10 probable cause to seize the vehicle in the first place. However, the statute requires
11 that “mitigating circumstances” be considered. Accordingly, such limited
12 representations constitute a misleading statement to class members.

13 74. Plaintiffs are informed and believe and thereon allege that it is the
14 custom, policy, and practice of most if not all members of the Defendant Class not
15 to consider “mitigating circumstances” at “storage hearings.”

16 75. Plaintiffs are informed and believe and thereon allege that it is the
17 custom, policy and practice of those members of the Defendant Class who do
18 consider "mitigating circumstances" at “storage hearings” to have no standards or
19 guidelines and/or inadequate standards or guidelines for determining what
20 constitutes “mitigating circumstances.” Plaintiffs are informed and believe that
21 Defendants’ interpretations of what constitutes “mitigating circumstances” are so
22 varied and arbitrary that there is no clear guidance as to what constitutes “mitigating
23 circumstances.”

24 76. Pursuant to California Vehicle Code §22852(c) the “hearing officer” at
25 a “storage hearing” may be an employee of the law enforcement agency that
26 authorized the seizure. Plaintiffs are informed and believe, and thereon allege, that
27 Defendants utilize employees of the seizing agency as “hearing officers”, including
28 employees who are closely connected associates of the seizing officer. Plaintiffs are

1 informed and believe that the “hearing officers”, because they are employees of the
2 seizing agency as “hearing officers”, including employees who are closely
3 connected associates of the seizing officer, are not impartial.

4 77. Defendants’ wrongful customs, practices and policies caused Plaintiffs
5 and the class members they represent not to request “storage hearings,” and/or not
6 to present potentially valid claims for the return of Plaintiffs’ vehicles, and/or for
7 Defendants to reject Plaintiffs’ valid claims for the return of Plaintiffs’ vehicles.
8 The conduct of 1) misleading class members regarding the issues that may be raised
9 at a “storage hearing”, 2) failing to consider mitigating circumstances at a “storage
10 hearing”, 3) having no or no adequate guidelines or standards where mitigating
11 circumstances are considered at a “storage hearing”, and 4) using employees of, or
12 individuals closely associated with, the seizing and impounding entity each
13 constitutes violations of due process of law under the Fifth and Fourteenth
14 Amendments to the United States Constitution and Article I, § 7 of the California
15 Constitution.

16 78. The conduct alleged herein deprived Plaintiffs and the classes they
17 represent, via threats, intimidation and/or coercion, of the protections afforded by
18 provisions of federal constitutional and state constitutional and statutory law,
19 including but not limited to rights protected under the Fifth, and Fourteenth
20 Amendments to the United States Constitution; and Article I, § 7 of the California
21 Constitution. Therefore, Plaintiffs and the class members they represent are entitled
22 to bring suit and obtain equitable relief and damages pursuant to Cal. Civ. Code
23 §52.1(b).

24 79. As to the state law aspect of this claim, the entities are liable for the
25 actions of their employees pursuant to the doctrine of *respondeat superior*.

26 80. The aforementioned acts of Defendants directly and proximately
27 caused the Plaintiffs and the class they represent to be deprived of their rights as
28 stated above, thereby entitling Plaintiffs and the class they represent to injunctive

1 and declaratory relief and restitution of losses to property and/or damages
2 proximately caused by Defendants' wrongful acts including, but not limited to, 1)
3 payment of unlawful impound fees and administrative fees, 2) loss of their vehicles
4 through sale by Defendants by virtue of their inability to pay the unlawful impound
5 and/or administrative fees, and 3) interest on said payments or losses.

6 **COUNT FOUR**
7 **Against All Defendants for Failure to Comply with Veh. Code**
8 **§22850.5(2) and With Due Process Of Law**
9 **42 U.S.C. § 1983/CAL. CIVIL CODE §52.1)**

10 81. By this reference, Plaintiffs re-allege and incorporate all previous and
11 following paragraphs as if fully set forth herein.

12 82. Plaintiffs are informed and believe and thereon allege that it is the
13 custom, policy and practice of the Defendant Class, or some of its members, to
14 impose a fee on vehicles seized and impounded pursuant to Vehicle Code §14602.6
15 in excess of the administrative costs associated with the seizure and impound.

16 83. The imposition of a fee separate from the impound fee that exceeds the
17 administrative costs is expressly prohibited by Vehicle Code §22850.5(a) and,
18 therefore, is unlawful under California law. (It therefore also constitutes a violation
19 of due process of law.)

20 84. Because the initial or continuing seizure of Plaintiffs' vehicles
21 occurred via threats, intimidation and/or coercion, and Defendants have the power
22 to prevent Plaintiffs from recouping their property, thus continuing the seizure via
23 coercion, the conduct alleged herein deprived Plaintiffs and the class they represent,
24 via threats, intimidation and/or coercion, of the protections afforded by provisions
25 of federal constitutional and state constitutional and statutory law, including but not
26 limited to rights protected under the Fifth and Fourteenth Amendments to the
27 United States Constitution, and Article I, §7 of the California Constitution, and
28 Vehicle Code §14602.6. Therefore, Plaintiffs and the class members they represent

1 are entitled to bring suit and obtain equitable relief and damages pursuant to Cal.
2 Civ. Code §52.1(b).

3 85. As to the state law aspect of this claim, the entities are liable for the
4 actions of their employees pursuant to the doctrine of *respondeat superior*.

5 86. The aforementioned acts of Defendants proximately caused Plaintiffs
6 to be deprived of their rights as stated above, thereby entitling Plaintiffs to
7 injunctive and declaratory relief and restitution of losses to property and/or damages
8 proximately caused by Defendants' wrongful acts, including but not limited to, 1)
9 payment of unlawful impound fees and administrative fees, 2) loss of their vehicles
10 through sale by Defendants by virtue of their inability to pay the unlawful impound
11 fees, and 3) interest on said payments or losses.

12 **APPROPRIATENESS OF EQUITABLE RELIEF**

13 87. Plaintiffs do not have an adequate remedy at law for the injuries
14 alleged herein. The continuing enforcement of §14602.6 as outlined herein violates
15 Plaintiffs' constitutional rights, and causes continuing, sweeping and irreparable
16 harm to Plaintiffs by the constant threat to their property, and their livelihood, from
17 the policies and practices challenged in this complaint.

18 88. Plaintiffs are also entitled to declaratory relief with respect to the
19 constitutionality of the provisions of §14602.6, and an injunction preventing the
20 enforcement of those aspects determined to be unconstitutional. Such relief is
21 necessary in that an actual and substantial controversy exists between Plaintiffs,
22 who contend that §14602.6 is unconstitutional, and Defendants, who deny such
23 contention and enforce its provisions. Without such a declaration and injunction,
24 Plaintiffs will face the ongoing threat of its enforcement.

25 89. Plaintiffs seek injunctive relief under both federal and state law.

26 **REQUEST FOR RELIEF**

27 WHEREFORE, Plaintiffs respectfully request that this court grant the
28 following relief:

1 1. That the Court certify this case pursuant to F. R. Civ. P. 23(b)(2) as a
2 class action on behalf of a class of Plaintiffs composed of all persons in the State of
3 California who have had, or are subject to having in the future, cars seized and
4 impounded pursuant to the authority of §14602.6 on the ground that they did not
5 have a valid driver's license, including at least those set forth in sub-paragraphs A-
6 D of ¶24, *supra*.

7 2. That this court certify a Defendant Class pursuant to F. R. Civ. P.
8 23(b)(2) as a class action composed of all local governmental entities, or, in the case
9 of the State, governmental officials, that have the authority to enforce §14602.6, to
10 wit, each political subdivision within the State of California, including any state or
11 municipal agency, or any other political subdivision or governmental
12 instrumentality in the State of California.

13 3. That the court certify this case pursuant to F. R. Civ. P. 23(b)(3) as a
14 class action on behalf of a class of Plaintiffs composed of all persons in the State of
15 California who have had, or will have had up through the judgment in this case,
16 cars seized and impounded by the CHP pursuant to the authority of §14602.6 on the
17 ground that they did not have a valid driver's license, including at least those set
18 forth in sub-paragraphs A-D of ¶24, *supra*.

19 4. That the court certify this case pursuant to F. R. Civ. P. 23(b)(3) as a
20 class action on behalf of a class of Plaintiffs composed of all persons in the State of
21 California who have had, or will have had up through the judgment in this case,
22 cars seized and impounded by the City of Los Angeles pursuant to the authority of
23 §14602.6 on the ground that they did not have a valid driver's license, including at
24 least those set forth in sub-paragraphs A-D of ¶24, *supra*.

25 5. That the court issue a declaration that §14602.6, in the respects set
26 forth herein, is unconstitutional on its face and of no force or effect. Specifically,
27 that this court declare that §14602.6 is facially unconstitutional (a) to the extent that
28 it permits or authorizes the seizure and impoundment of a vehicle on the ground that

1 the person driving the vehicle does not have a valid driver's license where the
2 criteria of the community caretaking doctrine are not met, (b) to the extent that it
3 mandates or allows a vehicle to be held longer than the time for a person with a
4 valid driver's license to pick up the vehicle with the owner's consent and,
5 specifically, that its 30 day impoundment provision is unconstitutional, and (c) to
6 the extent that it fails to require adequate notice that "mitigating circumstances"
7 may be used at a storage hearing, to establish clear standards regarding what
8 constitutes "mitigating circumstances", and to authorize use of members of the
9 seizing agency as hearing officers at a storage hearing.

10 6. That the court issue a declaration that §14602.6, in the respects set
11 forth herein, is unconstitutional as applied. Specifically, that this court declare that it
12 is an unconstitutional application of §14602.6, (a) to seize or impound a vehicle on
13 the ground that the person driving the vehicle does not have a valid driver's license
14 where the criteria of the community caretaking doctrine are not met, (b) to hold a
15 vehicle seized and impounded under the authority of §14602.6 longer than the time
16 for a person with a valid driver's license to pick up the vehicle with the owner's
17 consent, and (c) to fail to give adequate notice that "mitigating circumstances" may
18 be used at a storage hearing, to fail to have established and clear standards regarding
19 what constitutes "mitigating circumstances", and to use members of the seizing
20 agency as hearing officers at a storage hearing.

21 7. That, after hearing, this court issue a Preliminary Injunction against
22 Defendants enjoining them from implementing and enforcing the sections of
23 §14602.6 challenged herein, or in the manner challenged herein, and from engaging
24 in the unlawful conduct described herein, as elaborated in the preceding paragraphs
25 of this Request for Relief.

26 8. That this court issue a Judgment permanently and forever enjoining
27 Defendants from implementing and enforcing the sections of §14602.6 challenged
28

1 herein, and from engaging in the unlawful conduct described herein, as elaborated
2 in the preceding paragraphs of this Request for Relief.

3 9. That this court order equitable relief in the form of restitution to the
4 Plaintiff Class or alternatively a monetary award in the form of damages.

5 10. That this court award Plaintiffs, on their individual claims only,
6 individually determined compensatory and statutory damages, according to proof;

7 11. That this court award Plaintiffs, on their individual claims only and as
8 against individual Defendants only, punitive damages according to proof;

9 12. That this court award attorneys fees and costs incurred in this action
10 under 42 U.S.C. §1988, California CCP §1021.5, California Civil Code §52.1, and
11 any other appropriate statute.

12 13. That this court grant such other and further relief as may be just and
13 proper.

14 DATED: May 14, 2008

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