

1 **BARRETT S. LITT**, SBN 45527
2 **PAUL J. ESTUAR**, SBN 167764
3 **LITT, ESTUAR & KITSON, LLP**
4 1055 Wilshire Boulevard, Suite 1880
5 Los Angeles, California 90017
6 Telephone: (213) 386-3114
7 Facsimile: (213) 380-4585
8 E-Mail: pestuar@littlaw.com

6 **ROBERT MANN**, CSB 48293
7 **DONALD W. COOK**, CSB 116666
8 ATTORNEYS AT LAW
9 3435 Wilshire Blvd., Suite 2900
10 Los Angeles, CA 90010
11 (213) 252-9444; (213) 252-0091 facsimile
12 E-Mail: manncook@earthlink.net

CYNTHIA ANDERSON-BARKER, CSB 175764
ATTORNEYS AT LAW
3435 Wilshire Blvd., Suite 2900
Los Angeles, CA 90010
(213) 381-3246
E-Mail: cablaw@hotmail.com

10 Attorneys for Plaintiffs

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

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

18 Plaintiffs,

19 vs.

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

Defendants.

Case No. CV08-3178 SJO
(VBKx)

**PLAINTIFFS' NOTICE OF
MOTION FOR LEAVE TO
FILE THIRD AMENDED
CLASS COMPLAINT FOR
DAMAGES AND
INJUNCTIVE RELIEF;
MEMORANDUM OF POINTS
AND AUTHORITIES;
PROPOSED THIRD
AMENDED COMPLAINT**

Date: 12/5/11
Time: 10:00 a.m.
Ctrm: 1


1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on Monday December 5, 2011, in Courtroom 1 of
3 the above entitled Court, located at 312 North Spring Street, Los Angeles, California, at
4 10:00 a.m., or as soon thereafter as counsel may be heard, before the Hon. S. James Otero,
5 United States District Judge, Plaintiffs will move the Court for an order granting leave
6 to file a Third Amended Class Action Complaint for Damages and Injunctive Relief. A
7 copy of the proposed amended complaint is attached hereto as **Exhibit A**.

8 This motion will be pursuant to Rule 15, Federal Rules of Civil Procedure, and will
9 based upon this Notice, the accompanying Memorandum of Points and Authorities and
10 Exhibit; all the papers and pleadings on file on this action; the Court's September 26,
11 2011 order regarding the filing of a class certification motion, and upon such other and
12 further evidence and argument as the Court deems necessary or convenient.

13 DATED: October 17, 2011

14
15 **ROBERT MANN**
16 **DONALD W. COOK**
Attorneys for Plaintiffs

17
18 by 
19 _____
Donald W. Cook

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1 **I. Case Background and Relief Requested.**

2 This proposed class action lawsuit is related to *Salazar v. Schwarzenegger*, CV07-
3 1854 SJO (VBKx) (now closed following remand to the state court of state law claims).
4 The three individual Plaintiffs in the operative Second Amended Complaint (“SAC”)
5 claim their cars were unlawfully seized and then impounded under Cal. Veh. Code §
6 14602.6:

7 –*Armando Miranda*: LAPD seized and impounded Mr. Miranda’s car because its
8 driver, Mr. Miranda’s wife, did not have a driver’s license. The SAC alleges that
9 neither the initial seizure nor subsequent 30 impound were lawful;

10 –*Eric Flores*: CHP seized and impounded Mr. Flores’ car because its driver, Mr.
11 Flores’ wife, did not have a driver’s license. The SAC alleges that neither the
12 initial seizure nor subsequent 30 impound were lawful;

13 –*Jorge Heredia*: Signal Hill PD seized and impounded Mr. Heredia’s car because
14 its driver, a friend of Mr. Heredia, did not have a driver’s license. The SAC alleges
15 that neither the initial seizure nor subsequent impound were lawful.
16

17 In connection with the class certification motion set for hearing the same day as the
18 instant motion, Plaintiffs seek leave to file a Third Amended Complaint (“TAC”). See
19 **Exhibit A** for a copy of the proposed amended complaint. As in the SAC, the TAC seeks
20 certification of both injunctive relief and damages classes, based on what Plaintiffs
21 contend are unlawful seizures and 30 day impoundments pursuant to § 14602.6. The TAC
22 adds one party, a plaintiff, while revising the class definitions in light of the Ninth
23 Circuit’s unpublished *Salazar* decision (414 Fed.Appx. 73, 2011 WL 477686 (2011)).
24 More specifically, the TAC:
25

- 26 ● Adds plaintiff Julia Giron. Ms. Giron is the registered and legal owner of a 2000
27 Toyota LAPD impounded for 30 days, beginning September 14, 2011, because the
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1 driver, Ms. Giron's son, had an expired California license. The car is presently
2 impounded. TAC ¶¶28-35;

3 ● Revises the injunctive relief and damages class definitions so that the definitions
4 conform to defendants' interpretation of Cal. Veh. Code § 14602.6, and defendants
5 actual practice for vehicle impounds as revealed over the last several years. TAC
6 ¶¶42-56.

7 The TAC addresses defendants' unlawful interpretation of § 14602.6 (treating an
8 expired or out-of-state driver's licenses as the equivalent of having never been licensed),
9 an interpretation that the Ninth Circuit rejected in *Salazar*. See *Salazar* memorandum at
10 page 5. The TAC also alleges that defendants' fail and/or refuse, as a matter of policy, to
11 provide a hearing for determining the lawfulness of a 30 day impound, as distinguished
12 from the lawfulness of a vehicle's removal from the street and storage, for community
13 caretaking purposes.

15 **II. Leave to Amend Should Be Granted.**

16 Under *Federal Rules of Civil Procedure*, Rule 15(a), leave to amend the complaint
17 should be granted "freely given when justice so requires." Thus, leave is granted unless
18 the amendment causes prejudice to the opposing party, is sought in bad faith, is futile, or
19 creates undue delay. *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th
20 Cir. 1989). As the Supreme Court explained:

21 If the underlying facts or circumstances relied upon by a plaintiff may be a
22 proper subject of relief, he ought to be afforded an opportunity to test his
23 claim on the merits. In the absence of any apparent or declared reason --
24 such as undue delay, bad faith or dilatory motive on the part of the movant,
25 repeated failure to cure deficiencies by amendments previously allowed,
26 undue prejudice to the opposing party by virtue of allowance of the
27 amendment, futility of amendment, etc. -- the leave sought should, as the
28

1 rules require, be “freely given.” Of course, the grant or denial of an
2 opportunity to amend is within the discretion of the District Court, but
3 outright refusal to grant the leave without any justifying reason appearing
4 for the denial is not an exercise of discretion; it is merely abuse of that
5 discretion and inconsistent with the spirit of the Federal Rules.

6 *Foman v. Davis*, 371 U.S. 178, 182 (1962).


7 There is no prejudice to defendants. Though this action was filed May 14, 2008,
8 the Court stayed it four months later (September 30, 2008) because of the then-pending
9 *Salazar* appeal. See 9/30/08 Order (doc. 73). The stay was just recently lifted, on July 18,
10 2011 (doc. 84). Thus, the case has been active for only about seven months.
11 Consequently, this case is still in the early litigation stage. Defendants will have ample
12 opportunity to respond to the amended complaint and to conduct discovery related on the
13 revised basis of liability.
14

15 **III. Conclusion.**

16 Because this amended complaint comes earlier in this lawsuit’s active litigation
17 stage while amending allegations and adding a party so as to more closely conform to
18 defendants’ actual practice in enforcing Cal. Veh. Code § 14602.6, there is no prejudice
19 to defendants. Plaintiffs should be granted leave to file their Proposed Third Amended
20 Class Action Complaint.

21 DATED: October 17, 2011

22 **ROBERT MANN**
23 **DONALD W. COOK**
24 Attorneys for Plaintiffs

25 By 
26 _____
27 Donald W. Cook
28

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18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 **ARMANDO MIRANDA, ERIC**
21 **FLORES, JORGE HEREDIA and**
22 **JULIA GIRON, individually and as**
23 **class representatives,**

24 **Plaintiffs,**

25 **vs.**

26 **DALE E. BONNER, J.A. FARROW**
27 **AND SUNNE WRIGHT MCPEAK,**
28 **individually and in their official**
capacities; CITY OF LOS ANGELES;
LOS ANGELES POLICE
DEPARTMENT; CITY OF SIGNAL
HILL; SIGNAL HILL POLICE
DEPARTMENT; and DOES 1 through
10; all on their own behalf and as
representative of a class of Defendants,

Defendants.

No. CV-08-3178 SJO (VBKx)

THIRD AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

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. 42 U.S.C. § 1983/Cal Civil Code §52.1 – Procedural Due Process For Seizing Vehicles to Punish Owners for Violation of California Criminal Statutes
5. 42 U.S.C. § 1983/Cal Civil Code §52.1 for Failure to Comply with Vehicle Cod § 22850.5(2) and With Due Process Of Law

DEMAND FOR JURY TRIAL

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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. 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, 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.

CLASS PLAINTIFFS

6. As used throughout this Complaint, the phrase “Plaintiffs” refers to the individual Plaintiffs, and to the class that they seek to represent. The phrase

1 “Defendants” refers to the named Defendants, and in the case of injunctive relief, to
2 the class of Defendants that Plaintiffs seek to certify.

3 7. Plaintiff Armando Miranda is an individual and resides in Los Angeles
4 County, where the events alleged herein occurred.

5 8. Plaintiff Eric Flores is an individual and resides in Los Angeles County
6 where the events alleged herein occurred.

7 9. Plaintiff Jorge Heredia is an individual born in Torrance, California, and
8 resides in the County of Los Angeles, City of Long Beach.

9 10. Plaintiff Julia Giron is an individual. She resides in the County of Los
10 Angeles, City of Los Angeles.

11 11. Plaintiffs Miranda, Flores, Heredia and Giron (hereafter the “Named
12 Plaintiffs”) sue on their own behalf, and on behalf of a class of similarly situated
13 individuals throughout the State of California, for each class for which they act as a
14 class representative. These individuals had their cars vehicles seized, towed, and
15 impounded for up to 30 days under Cal. Veh. Code §14602.6 because the vehicles’
16 drivers did not hold a valid California driver’s license.

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

22 13. For purposes of standing to bring a injunctive relief claim, Plaintiffs
23 Miranda and Lopez’s vehicles were in impound as of the filing of the original
24 complaint; Plaintiff Heredia’s vehicle was in impound as of when he was first
25 named as a Plaintiff (First Amended Complaint), and Plaintiff Giron’s vehicle
26 presently is in impound.

27
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1 **CLASS DEFENDANTS**

2 14. Defendant Dale E. Bonner was, and at all times relevant hereto, the
3 Secretary of the State of California’s Business, Transportation and Housing Agency
4 (“BTH”) beginning about March 2007. Defendant Sunne Wright McPeak was the
5 Secretary of the State of California’s Business, Transportation and Housing Agency
6 (“BTH”) during the class period until approximately March 2007. The BTH is an
7 agency of the Executive Branch of the California government and oversees the
8 activities of the California Highway Patrol. The Secretary’s supervisory powers
9 over the BTH and the CHP can be found at Government Code §§13975, 13976,
10 13978, *et seq.* Defendant J.A. Farrow is, and at all times herein mentioned was, the
11 Commissioner of the CHP. The Commissioner’s supervisory powers over the CHP
12 can be found at Vehicle Code §§ 2108 and 2400. Each of the foregoing Defendants
13 is being sued herein in their individual official capacities and as representatives of a
14 Defendant Injunctive Relief Class, which is defined below, as it relates to the claims
15 of the Plaintiff Injunctive Relief Class, which is also defined below. Each of the
16 foregoing Defendants is also being sued herein in their individual capacities by the
17 CHP Damages Class, which is defined below.

18 15. Defendant City of Los Angeles (“Los Angeles”) is a political subdivision,
19 *i.e.*, a city duly organized under the laws of the State of California. Defendant Los
20 Angeles Police Department (“LAPD”) is an agency of Los Angeles. These
21 defendants routinely enforce California Code § 14602.6 by engaging in the conduct
22 alleged herein, *i.e.*, seizing and impounding vehicles on the basis that the driver
23 does not have a current, valid California driver’s license, including when the vehicle
24 was not presenting a hazard or a threat to public safety; keeping the vehicle for a
25 period longer than someone was available to pay the impound fee to date, usually
26 for the 30 day period specified by §14602.6; seizing and impounding vehicles even
27 when the driver has a valid license from another jurisdiction; and, on information
28 and belief, charging an above-cost administrative fee. Defendants Los Angeles and

1 LAPD are sued as representatives of the Defendant Injunctive Relief Class, which is
2 defined below, as well as in its own behalf. These defendants are also sued in their
3 own behalf by the City of Los Angeles Damages Class, which is defined below.

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

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

26 18. Defendants, and each of them, at all times relevant hereto were acting
27 under color of state law.
28

1 **THE SEIZURES AND IMPOUNDS OF THE VEHICLES OWNED BY THE**
2 **REPRESENTATIVE PLAINTIFFS**

3 *Armando Miranda*

4 19. On or about April 23, 2008, Mr. Miranda’s 1995 blue Honda Accord
5 station wagon was being driven by his wife. She was stopped in the driveway of
6 their residence by LAPD Officer Griffith, serial #34467, for failure to proceed on a
7 green light. The wife was cited for failure to have a driver’s license. To the extent
8 the car was blocking the driveway as a result of the LAPD stop, it could readily
9 have been moved a few feet away. Instead, the LAPD officer ordered the vehicle
10 towed to be seized and impounded for 30 days. Mr. Miranda is the registered owner
11 of the vehicle in question, has been a licensed California driver since 1997, and has
12 a currently valid California driver’s license. On April 24th, he went to both the Van
13 Nuys police station and the Foothill station to claim his vehicle. He presented his
14 ownership papers and his valid California driver’s license, and asked to speak with
15 someone in charge about reclaiming his station wagon. Mr. Miranda was not
16 allowed to speak with anyone in either police station except the secretary at the
17 front desk, and was told that there was no way he could claim his car before the 30
18 days was up. He was never told that he had a right to request a hearing, or that he
19 had any options except to wait out the 30 days. As of the time of the filing of the
20 original complaint, the car was still impounded on the 30-day hold. Plaintiff
21 Miranda sues in his own behalf and on behalf of the Plaintiff Injunctive Relief Class
22 and the LA Damages Class, as defined below.

22 *Eric Flores*

23 20. On or about April 23, 2008, Eric Flores’ wife was driving north on the 605
24 Freeway near Santa Fe Springs, California, when she was stopped by an officer of
25 the California Highway Patrol. She was told that she was stopped because the 2004
26 Cadillac Escalade she was driving had tinted windows and tinted taillights. The
27 officer then proceeded to order the vehicle towed on the ground that the driver
28

1 could not produce a driver’s license. The officer ordered the tow even though the
2 driver offered to contact a licensed driver, Mr. Flores, to come and drive the vehicle
3 away. Mr. Flores is the registered owner of the vehicle in question, has been a
4 licensed California driver for approximately 18 years, and has a currently valid
5 California driver’s license.

6 21. On April 23rd, Eric Flores went to the CHP office in Whittier, to claim
7 his vehicle. He was informed that the vehicle would remain in tow for thirty days.
8 He was never told that he had a right to request a hearing. As of the filing of the
9 original complaint, the car was still impounded on the 30-day hold. Plaintiff Flores
10 sues in his own behalf and on behalf of the Plaintiff Injunctive Relief Class and the
11 CHP Damages Class, each of which is defined below.

12 *Jorge Heredia*

13 22. Four days a week Mr. Heredia works as a delivery driver for Republic
14 Master Chiefs. Five days a week he is also responsible for the care of his one and
15 one-half year old son. Mr. Heredia and his father Jose Tirado are co-registered
16 owners of one 2005 Chevrolet Monte Carlo, license no. 5HMZ365 (“Monte
17 Carlo”). They purchased the car in 2005. Mr. Heredia is the principal driver and
18 user of the Monte Carlo since it is the sole vehicle he has for work and, when
19 needed, the care of his son.

20 23. Early Sunday morning, July 6, 2008, Mr. Heredia and friends left a club
21 in Signal Hill in Mr. Heredia’s Monte Carlo. Because Mr. Heredia had consumed
22 alcohol and believed it was not safe for him to drive, Mr. Heredia allowed his
23 companion Alfonso to drive the Monte Carlo (Alfonso had not consumed any
24 alcohol). At about 2:00 a.m., a Signal Hill police officer stopped the Monte Carlo
25 because, he claimed, the license plate light was not functioning. Additional Signal
26 Hill officers responded to the scene. Upon learning that the driver Alfonso was not a
27 licensed driver, the officers proceeded to removes the care from the public
28 thoroughfare, and impound the car for 30 days under Cal. Veh. Code §14602.6(a).

1 24. Mr. Heredia identified himself as a licensed California driver and a
2 registered owner of the Monte Carlo. Mr. Heredia sought permission to call his
3 father Jose Tirado, a licensed California driver, so that his father could drive the car
4 home. After being initially denied permission, Mr. Heredia was finally permitted to
5 call his father. Mr. Heredia’s father and mother, who is also a licensed California
6 driver, arrived together in about 15 minutes. The Monte Carlo was still at the scene,
7 not yet having been towed. Even though Mr. Heredia explained to the officers that
8 his father was the Monte Carlo’s co-registered owner and could drive the car, the
9 officers refused to release the car. Instead, they removed the car and had it
10 impounded for 30 days under §14602.6(a).

11 25. Using the CHP form 180 (see **Exhibit A**) Signal Hill officials informed
12 Mr. Heredia he had a right to a hearing to contest the legality of the decision to
13 seize and remove from the public roadway; officials did not, however, inform him
14 he had any right to present mitigating circumstances to secure release of the car.
15 Nor did the CHP form 180 or Cal. Veh. Code § 22852. Nevertheless, on Tuesday,
16 July 8, 2008, at about 9:30 a.m., Mr. Heredia appeared at the Signal Hill police
17 department, requesting a hearing. (He had been told that the first available date for
18 the hearing was that day.) The hearing commenced at about 10:00 a.m. Mr. Heredia
19 explained his need for the Monte Carlo, why he was not driving it Sunday morning
20 (because he felt it was not safe for him to drive given his consumption of alcohol),
21 and the hardship he faced if he could not secure immediate release of the car. The
22 Signal Hill hearing official denied Mr. Heredia’s request, informing him that the car
23 would have to be held for 30 days. The official told Mr. Heredia that “Sometimes,
24 life is hard.”

25 26. The 30 day impound of Mr. Heredia’s Monte Carlo imposes an
26 immediate hardship on Mr. Heredia. As of the filing of the First Amended
27 Complaint, he faced the possible loss of his job and the inability to provide care for
28 his one and one-year old son should the need arise where he needs to transport his

1 son for medical care. He may also be unable to afford the accumulated impound
2 fees that will have accrued after 30 days. Attached as **Exhibits A** and **B** are copies
3 of the post-impound hearing notices that Mr. Heredia received from Signal Hill.

4 27. Plaintiff Heredia sues in his own behalf and on behalf of the Plaintiff
5 Injunctive Relief Class and the SHPD Damages Class which are defined below.

6 *Julia Giron*

7 28. Plaintiff Julia Giron is the registered and legal owner of a 2000 Toyota
8 Corolla. On September 14, 2011, Ms. Giron’s son David Giron was driving the
9 vehicle in the City of Los Angeles, on Vermont Avenue near Slauson, when an
10 LAPD officer stopped him, in a grocery market’s parking lot. The officer claimed
11 Mr. Giron made an unlawful turn into the parking lot. Mr. Giron had an expired
12 California driver’s license, and a driver’s license issued by the Republic of
13 Guatemala. Mr. Giron showed the LAPD officer both licenses. The officer stated
14 that having an expired California license would be treated as if he had no license
15 and that the car would be impounded for 30 days.

16 29. Mr. Giron repeatedly advised the officer that his mother, the car’s
17 registered owner, is nearby and that if he could call her she would be there in about
18 10 minutes to take possession of the car. The officer rejected the offer, at one point
19 stating he would arrest Mr. Giron if he persisted in seeking to have his mother pick
20 up the car.

21 30. The officer seized and impounded the car under the authority of Cal. Veh.
22 Code §14602.6. At the time the car was seized, the car was lawfully parked in the
23 market’s parking lot. The car was not blocking traffic.

24 31. On September 14, 15 and 19 Ms. Giron went to the tow yard where the
25 car was held and attempted to retrieve it. Tow yard personnel informed her that the
26 car was impounded for 30 days, that the police had to release the car.

27 32. On October 5, 2011, Ms. Giron appeared at the LAPD’s 77th Division,
28 seeking to have her car released. She showed an LAPD officer her valid California

1 driver’s license, and she asked for an impound hearing. The officer informed her the
2 car was on a 30 day hold, that she had no right to an impound hearing.

3 33. Ms. Giron returned to the tow yard seeking to have her car released. Tow
4 yard personnel stated the car would not be released for 30 days. Personnel also
5 stated that if Ms. Giron did not pay the impound fee the car would be sold at a lien
6 sale and that her credit may be ruined if the lien sale did not satisfy the total amount
7 owed for the impound charges.

8 34. Plaintiff Ms. Giron is informed and believes and based thereon alleges
9 that she can not retrieve the car during the 30 day impound because under official
10 and written LAPD policy, she had to “wait until the 30-day period is over prior to
11 requesting a release.” Moreover, the “storage” hearing under Cal. Veh. Code
12 §22852 was limited, per LAPD official written policy, to determining whether the
13 “officer [was] authorized to legally remove [the] vehicle” from the street.

14 35. Plaintiff Ms. Giron sues in her own behalf and on behalf of the Plaintiff
15 Injunctive Relief Class and the LA Damages Class which are defined below.

16 **COMMON ALLEGATIONS**

17 36. When the Named Plaintiffs’ vehicles were seized and impounded
18 pursuant to the authority of Cal. Veh. Code § 14602, in no instance was the driver
19 arrested. On information and belief it is the policy, custom and practice of law
20 enforcement agencies throughout the State of California, when citing for violation
21 of Cal. Veh. Code § 14602.6, to treat the matter as an infraction, and to not arrest
the driver.

22 37. Plaintiffs’ claims arise out of a statewide policy, custom, pattern and
23 practice of violating the constitutional rights of Plaintiffs based on Cal. Veh. Code §
24 14602.6 (hereafter “§ 14602.6”). Section 14602.6 provides, among other things, that
25 a peace officer may “cause the removal and seizure of” a vehicle if a person was 1)
26 “driving a vehicle while his or her driving privilege was suspended or revoked” or,
27 2) was “driving a vehicle without ever having been issued a driver’s license.”
28

1 §14602.6(a)(1). In such a situation, a “vehicle so impounded shall be impounded for
2 30 days.” *Id.*

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

13 39. As mentioned in the previous paragraph, the registered and legal owner
14 of a vehicle that is removed and seized under Vehicle Code §14602.6(a), or their
15 agents, shall be provided the opportunity for a “*storage hearing*” to determine the
16 validity of, or consider any “mitigating circumstances” attendant to the “*storage,*” in
17 accordance with Cal. Veh. Code §22852. See Cal. Veh. Code §14602.6(b).

18 40. By its terms Cal. Veh. Code §22852 does not require that an owner be
19 notified of his or her right to a hearing to determine whether “mitigating
20 circumstances” justify or require the release of the vehicle. By its terms Vehicle
21 Code §22852 does not require a hearing to determine justification for a *30*
22 *impoundment* of the vehicle, as distinguished from justification for the vehicle’s
23 *storage, i.e.,* removal of the vehicle from the public thoroughfare.

24 41. Plaintiffs are informed and believe, and thereon allege, that, when
25 informing owners of their right to a “storage hearing,” Defendants represent to the
26 owners of seized vehicles that the only matter that Defendants will consider at
27 “storage hearings” is whether there was justification to seize the vehicle in the first
28 place and remove the vehicle from the street. This constitutes a violation of the

1 combined terms of Vehicle Code §§14602.6(b) and 22852, which require
2 consideration of “mitigating circumstances.” This is also a violation of due process
3 of law by failing to provide notice, and indeed providing misleading notice, of the
4 owner’s rights under the statutory scheme, by not providing notice of, and an
5 opportunity to contest, the justification for a *30 day impoundment*.

6 42. Plaintiffs are informed and believe, and thereon allege, that
7 Defendants, or at least some of them, may now contend that the seizures of vehicles
8 under Cal. Veh. Code §14602.6 is *not* based on the community caretaking doctrine
9 but instead is “punishment” for violation of California’s “criminal laws.” If made,
10 Plaintiffs contend that seizures and impoundments of Plaintiffs’ vehicles for the
11 purpose of punishing Plaintiffs, the vehicles’ owners, for alleged violations of
12 California’s criminal laws, violates Plaintiffs’ Due Process protections, under both
13 state and federal constitutions, for the following reasons:

14 A. California lawmakers have not authorized Defendants to punish
15 owners by seizing their vehicles for alleged violations of California’s
16 criminal statutes.

17 B. Plaintiffs are entitled to a pre-seizure hearing, at least to the extent
18 that the seizure is based on the contention that the seizure is a punishment for
19 violation of criminal law, or constitutes a penalty.

20 C. Plaintiffs were not provided any and/or adequate notice that they
21 were subject to loss of their vehicles under §14602.6 as a punishment for
22 violation of California’s criminal statutes.

23 D. Defendants did not provide any and/or adequate notice to Plaintiffs
24 that Defendants seized Plaintiffs’ vehicles for the purpose of punishing
25 Plaintiffs for the violation of criminal statutes.

26 E. Defendants did not provide any and/or adequate notice to Plaintiffs
27 of what criminal statutes Plaintiffs were accused of violating.
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F. Defendants wrongly presumed Plaintiffs were guilty of violating California’s criminal statutes.

G. Defendants failed to inform and/or wrongly informed Plaintiffs that Defendants presumed Plaintiffs guilty of violating California’s criminal statutes.

H. Defendants’ wrongly placed on Plaintiffs the burden of proving Plaintiffs were not guilty of violating California’s criminal statutes.

I. Defendants punished Plaintiffs for a violation of California’s criminal statutes by seizing Plaintiffs’ vehicles without providing Plaintiffs a prior opportunity to be heard.

J. Defendants did not provide any and/or inadequate notice to Plaintiffs that Plaintiffs were entitled to a hearing to contest defendants’ punishing Plaintiffs for the violation of criminal statutes.

K. Defendants did not provide any and/or inadequate notice to Plaintiffs of what defendants considered to be “mitigating circumstances.”

L. “Mitigating circumstances” are nowhere defined.

M. The post-seizure hearings are *not* conducted according to any standardized rules or procedures, but instead rely on the subjective, *ad hoc* attitude of the hearing officer.

N. Many if not most agencies made no record of evidence considered and/or rejected by the hearing officer.

O. Often times, the owner is not informed of the basis of the hearing officer’s decision.

P. The owner is not informed of any review process for challenging the hearing officer’s decision.

Q. The hearing officer’s decision is “final,” *i.e.*, there is no review process for challenging his or her decision.

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R. The hearing officer is an employee of the agency that seized the vehicle, and that agency has a financial interest in favor of both seizing and holding the vehicle for a 30 day impound.

S. The 30 day impound frequently results in the owner losing the car because he or she is unable to afford the storage and administrative fees which, plaintiffs are informed, usually amount to about \$1,000 and more.

T. The 30 day impound often imposes great hardship on the owner and his or her family, because the vehicle is the only family vehicle for work and for attending to the other necessities of life (*e.g.*, attending medical appointments, etc.).

U. The hearing procedure provides fewer safeguards and is more likely to lead to erroneous decisions than the administrative procedure for contesting parking tickets.

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

44. Pursuant to Cal. Veh. Code § 22852(c) the “hearing officer” at a “storage hearing” may be an employee of the law enforcement agency that authorized the impound. Plaintiffs are informed and believe, and thereon allege, that Defendants utilize employees of the seizing agency as “hearing officers,” including employees who are closely connected associates of the seizing officer. Plaintiffs are informed and believe that the “hearing officers,” because they are employees of the seizing agency as “hearing officers,” including employees who are closely connected associates of the seizing officer, are not impartial.

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

A. If a person is driving a vehicle without any license, the vehicle is impounded for 30 days on the authority of § 14602.6 even though the existence of probable cause to believe that the driver committed a traffic violation is not a sufficient basis under the Fourth Amendment to make the 30 day vehicle impoundment reasonable. The only constitutionally permissible basis for such impoundment is where the vehicle jeopardizes public safety and the efficient movement of vehicular traffic and, therefore, comes within the community caretaking doctrine which allows a seizure of a vehicle. *See Miranda v. City of Cornelius*, 429 F.3d 858, 864 (9th Cir. 2005). Defendants routinely impound vehicles for 30 days when the requirements of the community caretaking doctrine are not met.

B. Seizure and impoundment of a vehicle for 30 days also routinely occurs where the seizure and removal of the vehicle from the public thoroughfare is justified by the community caretaking doctrine, *e.g.*, where the driver did not have a valid driver’s license and the vehicle could not be safely left where it was stopped, but the seizing agency then continues to hold the vehicle for 30 days (the 30 day impoundment) even though a person with a valid driver’s license is available to drive the vehicle away from impound, either the owner, or someone with the owner’s authorization.

C. In connection with the seizure and 30 day impoundment of vehicles pursuant to § 14602.6, the impounding agencies impose additional fees to the impound fee as an administrative fee, which fees, on information and belief, are not cost based. Vehicle Code § 22850.5(a) provides that a “city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution establishing procedures for the release of properly impounded

1 vehicles and for the imposition of a charge equal to its administrative costs
2 relating to the removal, impound, storage, or release of the vehicles.” Thus,
3 the fees routinely imposed by Defendants violate § 22850.5(a).

4 46. In addition to violation of the Fourth Amendment, the customs, policies
5 and practices described above deprive Plaintiffs of Procedural Due Process of Law,
6 the Fifth Amendment’s takings clause, and the California analogues to each of the
7 foregoing, including the Fourth Amendment.

8 47. For purposes of standing to bring a statewide injunctive relief claim, each
9 Named Plaintiff’s vehicle was in impound as of the date of filing the original
10 complaint, except as to Plaintiff Heredia and Plaintiff Lopez. As to Mr. Heredia, his
11 car was impounded as of the date of filing the First Amended Complaint wherein he
12 was added as a party.

13 **CLASS ACTION ALLEGATIONS – PLAINTIFFS’ CLASSES**

14 48. Plaintiffs bring this action on their own behalf, and on behalf of the class
15 of all other persons similarly situated, pursuant to Rule 23, Federal Rules of Civil
16 Procedure.

17 49. The “Plaintiff Injunctive Relief Class” is defined under Rule 23(b)(2) as
18 all persons in the State of California who have had cars seized/impounded for thirty
19 days pursuant to § 14602.6, or may in the future have them so seized/impounded.
20 This class seeks relief against a statewide class of government entities, defined
21 further on in this Complaint. The class includes at least: A) those whose vehicles
22 were impounded for thirty days because the driver did not have a currently valid
23 California driver’s license, even though the driver had previously been issued a
24 driver’s license from a jurisdiction other than California; and B) those whose
25 vehicles were impounded for 30 days pursuant to § 14602.6 because the driver had
26 an expired California license.
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1 50. There are six Plaintiff Damages Classes, all brought under Rule 23(b)(3).¹

2 51. The “LA Damages Class” is defined as (a) as those vehicle owners whose
3 vehicles were seized and stored even though, at the time of the vehicles’ seizure,
4 justification for seizure pursuant to the community caretaking doctrine did not exist,
5 and/or (b) those vehicle owners who had cars impounded for thirty days by the
6 LAPD pursuant to §14602.6 where the purpose of the 30 day impound was
7 *punishment* for alleged crimes.

8 52. The LA Impoundment Class includes at least the following subclasses:

9 A. Vehicle owners who were being punished, via a 30 day impound,
10 for allegedly violating Cal. Veh. Code §14604 (allowing an unlicensed driver
11 to drive one’s vehicle),

12 B. Vehicle driver/owners who were being punished, via a 30 day
13 impound, for allegedly violating Cal. Veh. Code §12500 (driving without a
14 valid license).

15 C. Vehicle owners who were never given notice that their vehicles
16 were impounded for 30 days for alleged violations of Cal. Veh. Code
17 §§14604 and/or 12500;

18 D. Vehicle owners who were never given notice of a hearing to contest
19 the claim that they had violated Cal. Veh. Code §§14604 and/or 12500;

20 E. Vehicle owners who were never given notice of a hearing to contest
21 the lawfulness of the 30 day vehicle impoundment, as distinguished from a
22 hearing to contest lawfulness of the decision to remove the vehicle from the
23 public thoroughfare for storage;

24
25 ¹ Plaintiffs also assert for all the classes pled herein Rule 23(b)(1) as a basis for
26 class certification but, to make clear the distinction between the injunctive relief and
27 damages classes have referred to the different classes as (b)(2) and (b)(3) classes.
28 Thus, (b)(1) is sought as an alternative basis for any of the alleged classes to the
extent the Court deems it appropriate.

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F. Vehicle owners who were only provided a hearing to contest “the validity of the storage,” *i.e.*, the decision to remove the vehicle from the public thoroughfare and store, and *not* the decision to impound the vehicle for 30 days.

53. The “CHP Damages Class” is defined as two classes, as follows:

A. “CHP Seizure/Storage Class” defined as those vehicle owners whose vehicles were seized and stored even though, at the time of the vehicles’ seizure, justification for seizure pursuant to the community caretaking doctrine did not exist;

B. “CHP Impoundment Class” defined as those vehicle owners whose cars were impounded for thirty days by the CHP pursuant to § 14602.6 where the purpose of the 30 day impound was *punishment* for alleged crimes and the vehicles’ drivers held either an expired California driver’s license or a license from a jurisdiction other than California.

54. The CHP Impoundment Class includes at least the subclasses defined above at ¶53.

55. The “Signal Hill Damages Class” is defined as two classes, as follows:

A. “SHPD Seizure/Storage Class” defined as those vehicle owners whose vehicles were seized and stored even though, at the time of the vehicles’ seizure, justification for seizure pursuant to the community caretaking doctrine did not exist;

B. “SHPD Impoundment Class” defined as those vehicle owners who had cars impounded for thirty days by the SHPD pursuant to § 14602.6 where the purpose of the 30 day impound was *punishment* for alleged crimes.

56. The SHPD Impoundment Class includes at least the subclasses defined above at ¶55.

1 57. On information and belief, the damages class numbers at least in the
2 hundreds, and, for the Plaintiff Injunctive Relief Class, thousands. The members of
3 the classes are so numerous that joinder is impracticable.

4 58. 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 Fifth
8 Amendment and the Fourteenth Amendment, or their California analogues.

9 B. Whether, even if it is valid to seize and impound a vehicle for thirty
10 days under the authority of § 14602.6 because the driver has never been
11 issued a California license (but had been issued a license from another
12 jurisdiction), it is lawful under the Fourth Amendment or its California
13 analogue to do so where the vehicle 1) could be left without posing a hazard
14 to public safety, or 2) could be so left by moving the vehicle to a nearby
15 location (such as a legal parking spot) and allowing the driver to contact a
16 person to come and get the vehicle.

17 C. Whether, even if the seizure and impoundment of the vehicle under
18 the circumstances was legal under the Fourth Amendment or its California
19 analogue, it violates the Fourth Amendment, the Eighth Amendment, the
20 Fifth Amendment, the Fourteenth Amendment, or their California analogues
21 to keep the vehicle for any period longer than that needed for a person with a
22 valid driver's license (or alternatively a valid California driver's license) to
23 drive the vehicle away and to pay the impound fee accrued to that date.

24 D. Whether, even if the seizure and impoundment of the vehicle under
25 the circumstances was legal under the Fourth Amendment or its California
26 analogue, it violates the Fourth Amendment, or the Fifth Amendment or their
27 California analogues to automatically keep the vehicle for 30 days and to
28 charge a 30-day impound fee.

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

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

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

H. Whether the Defendants engage in the conduct challenged in this complaint and, if so, which Defendants engage in which conduct.

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

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

61. In accordance with Fed.R.Civ.P. Rule 23(b)(1)(A), prosecutions of separate actions by individual members of each class would create a risk that inconsistent or varying adjudications with respect to individual members of the

1 class would establish incompatible standards of conduct for the parties opposing the
2 class.

3 62. In accordance with Fed.R.Civ.P. Rule 23(b)(1)(B), prosecutions of
4 separate actions by individual members of the class would create a risk of
5 adjudications with respect to individual members of the class which would, as a
6 practical matter, substantially impair or impede the interests of the other members
7 of the class to protect their interests.

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

13 64. Plaintiffs seek not only injunctive and declaratory relief, but equitable
14 relief in the form of restitution to the Plaintiffs for the fees and costs paid, and
15 property lost, as a result of the unlawful conduct alleged herein.

16 65. Even if the fees and costs are not considered equitable restitution, or
17 ancillary or incidental damages pursuant to the provisions of Fed.R.Civ.P. Rule
18 23(b)(1) or (b)(2), the class qualifies for certification pursuant to the provisions of
19 Fed.R.Civ.P. Rule 23(b)(3) in that 1) the questions of law or fact common to the
20 members of the class predominate over any questions affecting only individual
21 members, and 2) this class action is superior to other available methods for the fair
22 and efficient adjudication of the controversy between the parties.

23 66. Plaintiffs are informed and believe, and thereon allege, that the interests
24 of members of each class in individually controlling the prosecution of a separate
25 action are low. Most class members would be unable to individually prosecute any
26 action at all. Plaintiffs are informed and believe, and thereon allege, that the
27 amounts at stake for individuals are so small that separate suits would be
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1 impracticable. Plaintiffs are informed and believe, and thereon allege, that most
2 members of the class will not be able to find counsel to represent them.

3 67. Plaintiffs are informed and believe, and thereon allege, that it is desirable
4 to concentrate all litigation in one forum because § 14602.6 is a California-wide
5 statute presumptively enforced by law enforcement agencies throughout the state. It
6 would consume undue and unnecessary resources to litigate the identical issues in
7 forums throughout the state.

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

18 69. Plaintiffs know of no difficulty that will be encountered in the
19 management of this litigation that would preclude its maintenance as a class action.
20 The class action is superior to any other available means to resolve the issues raised
21 in this action. The class action will be manageable because the issues are discrete,
22 and the law enforcement and towing company records will allow a determination of
23 class members, or potential class members, from the records of these entities, and
24 the amount of any restitution due to the class.

25 70. Liability can be determined on a class-wide basis regarding what
26 provisions of § 14602.6, and what policies, practices and customs adopted to
27 enforce it, are lawful. There are available methods to determine which Defendants
28 engaged in one or more of the prohibited acts alleged herein, which issues will

1 mostly be determinable from the available records, and which will likely lead to
2 resolution through summary judgment.

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

5 **CLASS ACTION ALLEGATIONS – DEFENDANT CLASS**
6 **INJUNCTIVE RELIEF ONLY**

7 72. Plaintiffs seek certification of 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.²

13 73. The Named Defendants are cities, counties, and governmental officials,
14 that are responsible to enforce and implement the provisions of § 14602.6, or
15 supervise and control the agencies that do so, and thereby violate the constitutional
16 and other rights of the Plaintiffs.

17 74. Defendants are so numerous that joinder is impracticable. Upon
18 information and belief, the number of Defendants, including local governmental
19 entities, and their law enforcement agencies, numbers at least several hundred.

20 75. The defenses of the representative parties are typical of the defenses of
21 the class.

22 76. The members of the Defendant Class are readily ascertainable, as they are
23 matters of public record.

24 77. On information and belief, Plaintiffs allege that the Named Defendants
25 will fairly and adequately protect the interests of the class. Defendants have no
26 interest which is now or may be potentially antagonistic to the interests of the

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

1 Defendant Class and have an interest in retaining attorneys with sufficient
2 experience and ability in federal constitutional and statutory adjudications to
3 represent the interests of a Defendant Class. In particular, Named Defendants
4 include Los Angeles, the largest City population in California, Signal Hill, and
5 representatives of the State of California. These Defendants, as well as the others
6 named, have the resources and experience to fully litigate the issues herein.

7 78. Adjudications with respect to individual class members would, as a
8 practical matter, be dispositive of the interests of the other members not parties to
9 the adjudications or substantially impair or impede their ability to protect their
10 interests.

11 79. The Defendant Class members have acted or refused to act on grounds
12 generally applicable to the Plaintiff Class, specifically in enforcing the terms of the
13 § 14602.6, thereby making appropriate final injunctive relief or corresponding
14 declaratory relief with respect to the Defendant Class as a whole.

15 80. Plaintiffs presume that early notice will be appropriate for the Defendant
16 Class to allow the class members to participate in the litigation should they so
17 choose. Such notice is relatively simple, as, by class size standards, the Defendants
18 Class is relatively small.

19 81. If it is determined that notice is required for the Defendant Class, their
20 identities are readily available and determinable.

21 **COUNT ONE**
22 **Unlawful Search and Seizure Against All Defendants for Wrongful**
23 **Seizure/Impoundment**
24 **(42 U.S.C. §1983/Cal. Civil Code §52.1)**

25 82. By this reference, Plaintiffs re-allege and incorporate all previous and
26 following paragraphs as if fully set forth herein.

27 83. The seizure and storage of Plaintiffs' vehicles when the conditions
28 leading up to the seizure did not meet the requirements of the community caretaking
doctrine, *i.e.*, the vehicle did not present a threat to public safety, violated the Fourth

1 Amendment to the United States Constitution, and Article I, §13 of the California
2 Constitution. Specifically, the seized vehicles owed by the Named Plaintiffs (except
3 as to Plaintiff Lopez), and the class they seek to represent, were seized in
4 circumstances where the car did not “impede traffic, threaten public safety, or
5 be[come] subject to vandalism,” *see, United States v. Jensen*, 425 F.3d 698, 706
6 (9th Cir.2005), or where the car readily could have been parked in a manner in
7 which the car did not present such a hazard. This included circumstances in which a
8 licensed driver associated with the unlicensed driver was reasonably available at the
9 time of the seizure, and was capable and willing to drive the car away.

10 84. The impoundment for 30 days of Plaintiffs’ vehicles pursuant to the
11 provisions of §14602.6, even when there was an available driver with a valid
12 driver’s license to drive the car away from the storage yard and the owner was
13 prepared to pay the accrued storage fee, violated the Fourth Amendment to the
14 United States Constitution, and Article I, §13 of the California Constitution,
15 whether the initial seizure and removal of the vehicle was constitutionally valid or
16 not.

17 85. The acts alleged herein were the product of a custom, practice and/or
18 policy of the Defendants, which custom, practice and/or policy caused the
19 constitutional violation alleged herein.

20 86. All acts of Defendants alleged herein – including those alleged in
21 subsequent counts in this complaint – occurred under color of state law.

22 87. The conduct alleged herein deprived Plaintiffs and the classes they
23 represent, via threats, intimidation and/or coercion, of the protections afforded by
24 provisions of federal constitutional and state constitutional and statutory law,
25 including but not limited to rights protected under the Fourth and Fourteenth
26 Amendments to the United States Constitution; and Article I, § 13 of the California
27 Constitution. Therefore, Plaintiffs and the class members they represent are entitled
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1 to bring suit and obtain equitable relief and damages pursuant to Cal. Civ. Code §
2 52.1(b).

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

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

12 **COUNT TWO**
13 **Uncompensated Takings Claim Against All Defendants**
14 **(42 U.S.C. §1983/Cal. Civil Code § 52.1/Article 1 §19**
of the California Constitution/Inverse Condemnation)

15 90. By this reference, Plaintiffs re-allege and incorporate all previous and
16 following paragraphs as if fully set forth herein.

17 91. The seizure/impoundment of Plaintiffs' vehicles when the conditions
18 leading up to the seizure did not meet the requirements of the community caretaking
19 doctrine, *i.e.*, the vehicle did not present a threat to public safety, violated the
20 Takings Clause of the Fifth Amendment to the United States Constitution, Article I,
21 §19 of the California Constitution, and constituted an inverse condemnation under
22 California law.

23 92. The 30 day impoundment of Plaintiffs' vehicles because, according to
24 defendants, §14602.6 applies to vehicles who's drivers hold an expired California
25 license or an expired license from another jurisdiction, or where the driver only
26 holds a valid driver's license from another jurisdiction and defendants claim the
27 driver is suppose to have a valid California license, violated the express terms of
28 §14602.6. The 30 day impoundment thus also violates the Takings Clause of the

1 Fifth Amendment to the United States Constitution, Article I, § 19 of the California
2 Constitution, and constituted an inverse condemnation under California law.

3 93. The acts alleged herein were the product of a policy or custom of the
4 Defendants, which policy or custom caused the constitutional violation alleged
5 herein.

6 94. The acts alleged herein occurred under color of state law.

7 95. The conduct alleged herein deprived Plaintiffs and the classes they
8 represent, via threats, intimidation and/or coercion, of the protections afforded by
9 provisions of federal constitutional and state constitutional and statutory law,
10 including but not limited to rights protected under the Fourth, Fifth, and Fourteenth
11 Amendments to the United States Constitution; and Article I, §19 of the California
12 Constitution. Therefore, Plaintiffs and the class members they represent are entitled
13 to bring suit and obtain equitable relief and damages pursuant to Cal. Civ. Code
14 §52.1(b).

15 96. As to the state law aspect of this claim, the entities are liable for the
16 actions of their employees pursuant to the doctrine of *respondeat superior*.

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

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COUNT THREE

**Against All Defendants for Violation of Procedural Due Process For
Misleading Hearing Notices and Inadequacy of Hearing Officers, Standards
and Procedures
(42 U.S.C. §1983/Cal. Civil Code §52.1)**

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

99. Pursuant to Cal. Veh. Code § 14602.6(b), the registered and legal owners of a vehicle that is seized/stored and then impounded for 30 days pursuant to Cal. Veh. Code §14602.6(a), shall be provided the opportunity for a “storage hearing” to determine the validity of, or to consider any "mitigating circumstances" attendant to the “storage,” in accordance with Vehicle Code §22852.

100. Plaintiffs are informed and believe and thereon allege that, when informing owners of their right to a “storage hearing,” Defendants and the Defendant Classes represent to the owners of seized/impounded vehicles that the only matters that they will consider at “storage hearings” is whether there was legal justification for the officer to “legally remove” the vehicle; defendants will NOT consider whether justification for a 30 day impound exist. However, the statute requires that “mitigating circumstances” be considered. Accordingly, such limited representations constitute a misleading statement to class members.

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

102. Plaintiffs are informed and believe and thereon allege that it is the custom, policy and practice of those members of the Defendant Class who do consider "mitigating circumstances" at “storage hearings” to have no standards or guidelines and/or inadequate standards or guidelines for determining what constitutes “mitigating circumstances.” Plaintiffs are informed and believe that Defendants’ interpretations of what constitutes “mitigating circumstances” are so

1 varied and arbitrary that there is no clear guidance as to what constitutes “mitigating
2 circumstances.”

3 103. Pursuant to California Vehicle Code §22852(c) the “hearing officer” at
4 a “storage hearing” may be an employee of the law enforcement agency that
5 authorized the seizure. Plaintiffs are informed and believe, and thereon allege, that
6 Defendants utilize employees of the seizing agency as “hearing officers”, including
7 employees who are closely connected associates of the seizing officer. Plaintiffs are
8 informed and believe that the “hearing officers”, because they are employees of the
9 seizing agency as “hearing officers”, including employees who are closely
10 connected associates of the seizing officer, are not impartial.

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

23 105. The conduct alleged herein deprived Plaintiffs and the classes they
24 represent, via threats, intimidation and/or coercion, of the protections afforded by
25 provisions of federal constitutional and state constitutional and statutory law,
26 including but not limited to rights protected under the Fifth, and Fourteenth
27 Amendments to the United States Constitution; and Article I, §7 of the California
28 Constitution. Therefore, Plaintiffs and the class members they represent are entitled

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

3 106. 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*.

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

13 **COUNT FOUR**

14 **Against All Defendants for Violation of Procedural Due Process For Seizing**
15 **Vehicles to Punish Owners for Violation of California Criminal Statutes**
16 **(42 U.S.C. §1983/Cal. Civil Code §52.1)**

17 108. By this reference, Plaintiffs re-allege and incorporate all previous and
18 following paragraphs as if fully set forth herein.

19 109. Defendants' 30 day impound of Plaintiffs' vehicles for the purpose of
20 punishing Plaintiffs for alleged violations of California's criminal laws, whether the
21 violation was supposedly committed by Plaintiffs (Cal. Veh. Code §14604) or the
22 vehicles' drivers (Cal. Veh. Code §12500) violates Plaintiffs' Due Process
23 protections, under both state and federal constitutions, for the following reasons:

24 A. California lawmakers have not authorized defendants to punish
25 Plaintiffs by impounding their vehicles for 30 days for alleged violations of
26 California's criminal statutes.

27 B. Plaintiffs are entitled to a pre-impoundment hearing, at least to the
28 extent that the impoundment is based on the contention that the impoundment
is punishment for violation of criminal law, or constitutes a penalty.

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C. Plaintiffs were not provided any and/or adequate notice that they were subject to a 30 day impoundment of their vehicles under §14602.6 as punishment for Plaintiffs’ violation of criminal statutes.

D. Defendants did not provide any and/or adequate notice to Plaintiffs that Defendants impounded Plaintiffs’ vehicles for 30 days for the purpose of punishing Plaintiffs for the violation of criminal statutes.

E. Defendants did not provide any and/or adequate notice to Plaintiffs of what criminal statutes Plaintiffs were accused of violating.

F. Defendants wrongly presumed Plaintiffs were guilty of violating California’s criminal statutes.

G. Defendants failed to inform and/or wrongly informed Plaintiffs that Defendants presumed Plaintiffs guilty of violating California’s criminal statutes.

H. Defendants’ wrongly placed on Plaintiffs the burden of proving Plaintiffs were not guilty of violating California’s criminal statutes.

I. Defendants punished Plaintiffs for a violation of California’s criminal statutes by impounding Plaintiffs’ vehicles for 30 days without providing Plaintiffs an opportunity to be heard before imposing punishment.

J. Defendants did not provide any and/or adequate notice to Plaintiffs that Plaintiffs were entitled to a hearing to contest defendants’ punishing Plaintiffs for the violation of criminal statutes.

K. Defendants did not provide any and/or adequate notice to Plaintiffs of what defendants considered to be “mitigating circumstances.”

L. “Mitigating circumstances” are nowhere defined.

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COUNT FIVE
Against All Defendants for Failure to Comply with Vehicle Code §22850.5(2)
and With Due Process Of Law
42 U.S.C. §1983/Cal. Civil Code §52.1)

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

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

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

113. Because the initial or continuing seizure of Plaintiffs' vehicles occurred via threats, intimidation and/or coercion, and Defendants have the power to prevent Plaintiffs from recouping their property, thus continuing the seizure via coercion, the conduct alleged herein deprived Plaintiffs and the class they represent, via threats, intimidation and/or coercion, of the protections afforded by provisions of federal constitutional and state constitutional and statutory law, including but not limited to rights protected under the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, §7 of the California Constitution, and Vehicle Code § 14602.6. Therefore, Plaintiffs and the class members they represent are entitled to bring suit and obtain equitable relief and damages pursuant to Cal. Civ. Code §52.1(b).

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

115. The aforementioned acts of Defendants proximately caused Plaintiffs to be deprived of their rights as stated above, thereby entitling Plaintiffs to

1 injunctive 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 fees, and 3) interest on said payments or losses.

6 **APPROPRIATENESS OF EQUITABLE RELIEF**

7 116. Plaintiffs do not have an adequate remedy at law for the injuries
8 alleged herein. The continuing enforcement of §14602.6 as outlined herein violates
9 Plaintiffs' constitutional rights, and causes continuing, sweeping and irreparable
10 harm to Plaintiffs by the constant threat to their property, and their livelihood, from
11 the policies and practices challenged in this complaint.

12 117. Plaintiffs are also entitled to declaratory relief with respect to the
13 constitutionality of the provisions of §14602.6, and an injunction preventing the
14 enforcement of those aspects determined to be unconstitutional. Such relief is
15 necessary in that an actual and substantial controversy exists between Plaintiffs,
16 who contend that §14602.6 is unconstitutional, and Defendants, who deny such
17 contention and enforce its provisions. Without such a declaration and injunction,
18 Plaintiffs will face the ongoing threat of its enforcement.

19 118. Injunctive relief does not raise any mootness issues where: A)
20 Plaintiffs presently have standing because their cars are still impounded, and B) the
21 harm alleged may be revisited on the class where it is capable of repetition, yet
22 evading review due to the transitory nature of Plaintiffs' claims. *County of Riverside*
23 *v. McLaughlin*, 500 U.S. 44, 51-52 (1991).

24 119. Plaintiffs seek injunctive relief under both federal and state law.

25 **REQUEST FOR RELIEF**

26 WHEREFORE, Plaintiffs respectfully request that this court grant the
27 following relief:
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1 1. That the Court certify this case pursuant to F. R. Civ. P. 23(b)(2) as a class
2 action on behalf of a class of Plaintiffs composed of persons who have had, or are
3 subject to having in the future, cars seized and impounded pursuant to the authority
4 of §14602.6 on the ground that they did not have a valid California driver’s license,
5 as set forth in ¶49.

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

12 3. That the court certify this case pursuant to F. R. Civ. P. 23(b)(3) as a class
13 action on behalf of a class of Plaintiffs composed of all persons in the State of
14 California who have had, or will have had up through the judgment in this case,
15 cars seized and impounded by the CHP pursuant to the authority of § 14602.6 on
16 the ground that they did not have a valid California driver’s license, including at
17 least those set forth in ¶53, *supra*.

18 4. That the court certify this case pursuant to F. R. Civ. P. 23(b)(3) as a class
19 action on behalf of a class of Plaintiffs composed of persons who have had, or will
20 have had up through the judgment in this case, cars seized and impounded by the
21 City of Los Angeles pursuant to the authority of §14602.6 on the ground that they
22 did not have a valid California driver’s license, as set forth in ¶51, *supra*.

23 5. That the court certify this case pursuant to F. R. Civ. P. 23(b)(3) as a class
24 action on behalf of persons who have had, or will have had up through the
25 judgment in this case, cars seized and impounded by the City of Signal Hill
26 pursuant to the authority of §14602.6 on the ground that they did not have a valid
27 driver’s license, including at least those set forth in ¶55, *supra*.

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1 6. That the Court issue a declaration that §14602.6, in the respects set forth
2 herein, is unconstitutional on its face and of no force or effect. Specifically, that this
3 court declare that §14602.6 is facially unconstitutional (a) to the extent that it
4 permits or authorizes the seizure and impoundment of a vehicle on the ground that
5 the person driving the vehicle does not have a valid California driver’s license
6 where the criteria of the community caretaking doctrine are not met, (b) to the
7 extent that it mandates or allows a vehicle to be held longer than the time for a
8 person with a valid driver’s license to pick up the vehicle with the owner’s consent
9 and, specifically, that its 30 day impoundment provision is unconstitutional, and (c)
10 to the extent that it fails to require adequate notice that “mitigating circumstances”
11 may be used at a storage hearing, to establish clear standards regarding what
12 constitutes “mitigating circumstances”, and to authorize use of members of the
13 seizing agency as hearing officers at a storage hearing.

14 7. That the Court issue a declaration that §14602.6, in the respects set forth
15 herein, is unconstitutional on its face and of no force or effect. Specifically, that this
16 court declare that §14602.6 is facially unconstitutional to the extent that it permits
17 or authorizes the 30 day impoundment of a vehicle for the purpose of punishing the
18 owner for alleged violations of California’s criminal laws violates Plaintiffs’ Due
19 Process protections, under both state and federal constitutions, for the reasons state
20 above.

21 8. That the Court issue a declaration that §14602.6, in the respects set forth
22 herein, is unconstitutional as applied. Specifically, that this court declare that it is an
23 unconstitutional application of §14602.6, (a) to seize or impound a vehicle on the
24 ground that the person driving the vehicle does not have a valid California driver’s
25 even though the driver has a valid license from another jurisdiction; (b) to impound
26 the vehicle for 30 days because the driver held an expired license whether from
27 California or another jurisdiction; (c) to impound the vehicle for 30 days under the
28 authority of § 14602.6 even though the owner is lawfully able to take custody of his

1 vehicle and pay the attendant storage fees; and (d) to fail to give adequate notice
2 that (i) Plaintiffs have a right to contest the validity of the 30 day impoundment as
3 distinguished from the decision to seize and store the vehicle, (ii) the 30 day
4 impoundment is for the purpose of punishing Plaintiffs for allegedly having
5 committed one or more crimes, including notice of the specific crime(s) for which
6 Plaintiffs stand accused, and (iii) what constitutes “mitigating circumstances” under
7 §14602.6.

8 9. That the Court issue a declaration that §14602.6, in the respects set forth
9 herein, is unconstitutional as applied. Specifically, that this court declare that
10 §14602.6 is facially unconstitutional to the extent that it permits or authorizes the
11 seizure and 30 day impoundment of a vehicle in order to punish the owner for
12 alleged violations of California’s criminal laws, violates Plaintiffs’ Due Process
13 protections, under both state and federal constitutions, for the reasons stated above.

14 10. That, after hearing, this Court issue a Temporary Restraining Order and a
15 Preliminary Injunction against Defendants enjoining them from implementing and
16 enforcing the sections of §14602.6 challenged herein, or in the manner challenged
17 herein, and from engaging in the unlawful conduct described herein, as elaborated
18 in the preceding paragraphs of this Request for Relief, and ordering the return of
19 any vehicle seized under §1402.6 to the registered owner.

20 11. That this Court issue a Judgment permanently and forever enjoining
21 Defendants from implementing and enforcing the sections of §14602.6 challenged
22 herein, and from engaging in the unlawful conduct described herein, as elaborated
23 in the preceding paragraphs of this Request for Relief.

24 12. That this Court order equitable relief in the form of restitution to the
25 Plaintiff Class or alternatively a monetary award in the form of damages.

26 13. That this Court award Plaintiffs, on their individual claims only,
27 individually determined compensatory and statutory damages, according to proof;
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14. That this Court award Plaintiffs, on their individual claims only and as against individual Defendants only, punitive damages according to proof;

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

16. That this Court grant such other and further relief as may be just and proper.

DATED: October 17, 2011

**LITT, ESTUAR & KITSON, LLP
ROBERT MANN & DONALD W. COOK
LAW OFFICES OF CYNTHIA ANDERSON-BARKER**

By _____
Donald W. Cook
Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: October 17, 2011

**LITT, ESTUAR & KITSON, LLP
ROBERT MANN & DONALD W. COOK
LAW OFFICES OF CYNTHIA ANDERSON-BARKER**

By _____
Donald W. Cook
Attorneys for Plaintiffs