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14 *Attorneys for Petitioner Joseph Safuto*

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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF LOS ANGELES, CENTRAL DISTRICT
18

19 JOSEPH SAFUTO, an individual
20 Petitioner and Plaintiff,
21 vs.
22 CITY OF LOS ANGELES, a municipal
corporation
23 Respondent and Defendant
24

Case No. 19STCP03110

*Assigned to the Honorable Mitchell L. Beckloff
Dept. 86*

**FIRST AMENDED VERIFIED PETITION
FOR WRIT OF MANDATE (Code of Civil
Procedure §§ 1085; 1094.5; 1094.6); AND
TAXPAYER COMPLAINT (Code of Civil
Procedure § 526a)**

Petition Filed: July 22, 2019

1 **INTRODUCTION**

2 1. This petition challenges the City of Los Angeles’s practice of towing
3 vehicles with lapsed registration where there is no public safety justification to do so. This practice
4 violates state law and is unconstitutional. Petitioner Joseph Safuto also challenges the
5 constitutionality of the City’s seizure of his own vehicle, as well as the lack of due process he was
6 afforded in his administrative hearing to contest the seizure.

7 2. Mr. Safuto is homeless and lives in the San Fernando Valley. He has
8 disabilities stemming from an accident two years ago. Prior to May 2019, he owned a 2000 Honda
9 CR-V, which he used to transport himself to medical appointment and run errands, as well as help
10 take care of his nine-year-old daughter.

11 3. On April 11, 2019, officers with the Los Angeles Police Department
12 (LAPD) ordered his vehicle towed, even though the car was parked in a lawful parking space on
13 the street, along with a number of other vehicles, and it was not obstructing traffic in any way.
14 The stated justification for the tow was that the car’s registration had expired.

15 4. At the time his vehicle was towed, Mr. Safuto had paid his registration fees
16 and had submitted all necessary proof to register his vehicle, including proof of compliance with
17 the state smog testing requirement and proof of insurance.

18 5. Mr. Safuto’s registration renewal was held up solely because the City of
19 Los Angeles had placed a hold on his registration, based on two outstanding parking tickets, which
20 prevented him from receiving proof of registration from the Department of Motor Vehicles. At the
21 time his vehicle was towed, Mr. Safuto was enrolled in the Community Assistance Parking
22 Program (“CAPP”), a community service program offered by the City of Los Angeles to allow
23 homeless residents to work off the cost of their parking tickets. He was scheduled to do his
24 community service on the very day his vehicle was towed.

25 6. When Mr. Safuto attempted to challenge the tow through the LAPD’s
26 hearing process, the LAPD conducted a biased and legally insufficient hearing, made legal errors,
27 and refused to consider Mr. Safuto’s evidence, mitigating circumstances, or the constitutionality of
28 the tow. The LAPD upheld the towing of the vehicle, leaving Mr. Safuto to pay the thousands of

1 dollars in fines and fees resulting from the tow and that had accrued while his car was impounded
2 (including towing fees, a vehicle release fee, \$41.50 per day storage fees, and a lien processing
3 fee). When he could not afford to pay these fees, the car was sold at a lien sale.

4 **PARTIES**

5 7. Petitioner Joseph Safuto is a homeless resident of the City of Los Angeles.
6 At the time of the events relevant to this petition, he was the owner of a 2000 Honda CR-V.
7 Within the past year, Mr. Safuto has paid a tax within and to the City of Los Angeles.

8 8. Respondent City of Los Angeles (“City”) is a municipal entity with the
9 capacity to sue and be sued. It is a Charter City under the laws of the State of California. The
10 departments of the City include the Los Angeles Police Department and the Los Angeles
11 Department of Transportation. Employees of the City have engaged in the acts complained of
12 herein pursuant to the policies, practices, and customs of the City.

13 **STATEMENT OF FACTS**

14 **A. The Towing of Mr. Safuto’s Vehicle**

15 9. Joseph Safuto lives in the Woodland Hills area of the San Fernando Valley
16 in the City of Los Angeles. Mr. Safuto has shared custody of his nine-year-old daughter. He has
17 mobility disabilities stemming from a crash two years ago, when he was hit by a car while he was
18 in a crosswalk, crossing the street. As a result of his disabilities, he has been unable to work. His
19 sole source of income is government benefits. Without a significant source of income, he has been
20 unable to afford housing. He lives in a recreational vehicle on a side street where it is permissible
21 to park and live in one’s vehicle.

22 10. At the time of the events relevant to this petition, Mr. Safuto owned a 2000
23 Honda CR-V. The car was in good running condition and had passed the required smog
24 certification. The car was also insured. He relied on the vehicle to run errands, transport his
25 daughter, and attend medical appointments. Because of his mobility disabilities, these errands are
26 particularly difficult without a vehicle.

1 11. In November 2017, shortly after Mr. Safuto’s accident and not long after he
2 became homeless, he parked too long at a parking meter and received a parking ticket. In July
3 2018, he mistakenly parked in a preferential parking space, and received another parking ticket.

4 12. When he did not pay these tickets, the late fees and increased fines
5 increased dramatically, and the cost of the two parking tickets ballooned into a \$374.00 debt to the
6 City of Los Angeles.

7 13. In 2018, Mr. Safuto attempted to re-register his vehicle, but he was unable
8 to do so; the City of Los Angeles had placed a DMV hold on his registration because of the debt
9 he owed on the two parking tickets. As a result, he could not receive registration tags unless he
10 paid the \$374.00 in parking fines and fees. Coupled with the fees for his registration, including
11 late fees that had compounded based on the delays caused by the parking tickets, he owed a total
12 of \$558.00 to register his vehicle, in addition to the cost to conduct the smog test. Mr. Safuto paid
13 the registration fees, got the car smog tested, and made sure the car was insured. However,
14 because he did not pay the additional \$374.00, the vehicle registration renewal was not completed.

15 14. In early 2019, he learned about the CAPP program, which allows unhoused
16 residents to work off their parking tickets through community service. Mr. Safuto enrolled in
17 CAPP and entered into a contract with the City of Los Angeles and Hope of the Valley to perform
18 the requisite community service hours to satisfy his parking ticket debt. He was scheduled to
19 perform his community service on April 11, 2019.

20 15. On the morning of April 11, 2019, a traffic officer with the Los Angeles
21 Police Department caused Mr. Safuto’s vehicle to be towed by Howard Sommers Towing, Inc., an
22 Official Police Garage, which contracts with the City of Los Angeles to tow vehicles at the
23 instruction of the LAPD and the Los Angeles Department of Transportation (LA DOT).

24 16. The stated reason for the tow was that the registration on his vehicle had
25 expired.

26 17. At the time the vehicle was towed, it was parked in a location where it was
27 legally permissible to park a car. It was parked alongside a number of other vehicles on Del Valle
28 Street near Sale Avenue in the Woodland Hills neighborhood of Los Angeles. The car was not

1 obstructing traffic in any way or violating any restrictions on parking in the location where it was
2 parked.

3 18. The officer who ordered the towing of Mr. Safuto’s vehicle was aware or
4 should have known that Mr. Safuto had submitted all required verifications and paid the required
5 registration fees to the DMV. The officer was also aware that the only reason Mr. Safuto did not
6 have proof of registration on his car was because the City of Los Angeles had placed a hold on
7 his DMV registration because of the outstanding debt for his two parking tickets. Mr. Safuto was
8 present with the vehicle at the time it was towed and provided evidence to the LAPD officer that
9 he had paid his registration fee, submitted proof of smog certification, and the insurance was up
10 to date. Mr. Safuto also informed the officer that he was attempting to satisfy the outstanding debt
11 from the parking tickets and was enrolled in the City’s CAPP program.

12 19. Despite these circumstances—including the documentation Mr. Safuto
13 provided and the fact that the vehicle was parked in an area where vehicles were legally permitted
14 to be parked, was not obstructing traffic in any way, and was not otherwise creating a public
15 safety concern—the officer still caused Mr. Safuto’s vehicle to be towed.

16 20. On or about April 18, 2019, Mr. Safuto requested an administrative hearing
17 to challenge the tow, pursuant to California Vehicle Code Section 22852. He was provided a
18 paper which outlined his rights to a hearing, including that the hearing would determine if there
19 was probable cause to tow his vehicle. The hearing was scheduled for April 23, 2019 at 10:00
20 a.m.

21 21. On April 23, 2019, Detective Avila, who is, on information and belief, the
22 LAPD officer tasked with conducting hearings for the Topanga station, conducted the hearing at
23 the Topanga Community Police Station.

24 22. At the hearing, Mr. Safuto attempted to present evidence that the vehicle
25 registration had been paid but was incomplete only because he had two outstanding parking
26 tickets, which he was attempting to work off through the CAPP Program. He also informed the
27 officer that his car was legally parked.

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1 23. Detective Avila informed Mr. Safuto that the relevant standard for
2 determining whether the vehicle could be towed was probable cause. The detective did not
3 consider any facts Mr. Safuto attempted to present regarding the circumstances related to the tow.
4 He informed Mr. Safuto that the only relevant piece of information was that the vehicle had not
5 been registered at the time of the tow. As a result, he found that there was probable cause for the
6 LAPD to tow the vehicle and upheld the tow.

7 24. The detective conducting the hearing did not provide Mr. Safuto with any
8 written decision or determination.

9 25. The detective informed Mr. Safuto that if he was unsatisfied with the
10 decision, he could contact the City Clerk. He provided Mr. Safuto a hand-written post-it note with
11 “Office of the City Clerk” and an address and telephone number written on it. He did not provide
12 Mr. Safuto with any additional information about how Mr. Safuto could contest the legality of the
13 tow or the hearing decision.

14 26. As a result of the tow, Mr. Safuto faced a number of charges stemming
15 from the tow, including \$133.00 for the tow itself, \$115.00 for the City of Los Angeles “vehicle
16 release fee,” \$41.50 per day storage fee, and \$70.00 lien processing fee. He was unable to pay
17 these fees, which resulted in a lien on his vehicle by Howard Sommers Towing, Inc.

18 27. On or about May 21, 2019, Mr. Safuto’s vehicle was sold at a lien sale.
19 Shortly thereafter, he received a letter from a debt collection agency, stating that he owed an
20 additional \$1,004.50 to cover the lien by Howard Sommers Towing for the related fees. In
21 addition, Mr. Safuto still owed the City of Los Angeles for the parking tickets.

22 28. Mr. Safuto has exhausted his administrative remedies.

23 **B. Respondent’s Policies and Practices**

24 29. Respondent has a policy and practice of towing vehicles with a registration
25 expiration date in excess of six months (per Veh. Code § 22651(o)(1)(A)), regardless of whether
26 the specific circumstances, such as the need to ensure the safe flow of traffic or to protect the
27 vehicle from theft or vandalism, necessitates a tow, as required by Section 22650(b) of the
28 California Vehicle Code.

1 30. Respondent has a policy and practice of towing vehicles with a registration
2 expiration date in excess of six months, without a warrant, even when the tow is not necessary to
3 achieve a community caretaking need, and there is no other exception that would permit a
4 warrantless seizure.

5 31. Pursuant to Respondent’s policies and procedures, a vehicle owner whose
6 vehicle has been towed may request a post-seizure hearing; however, Respondent’s policy and
7 practice limits such hearings in a manner that prevents full and fair hearings and deprives
8 petitioners of due process, including because:

9 a. The notice regarding the hearing does not adequately inform the vehicle
10 owner of the right to a full and fair hearing;

11 b. Police officers conducting the tow hearings, who are supposed to evaluate
12 the appropriateness of the vehicle seizure, limit their consideration to whether there
13 was probable cause to tow the vehicle, based solely on whether the registration was
14 expired for more than six months. Officers fail to consider the specific
15 circumstances of the vehicle to determine if the tow was necessary under the
16 community caretaking doctrine, as required by Vehicle Code Section 22650(b), or
17 whether the tow was otherwise constitutionally permissible. Officers also do not
18 consider whether the expired registration is due to an inability to pay a parking
19 ticket or registration fee;

20 c. Hearings are conducted by members of the Los Angeles Police Department,
21 which has a financial incentive to find against the vehicle owner and uphold tows
22 ordered by its officers. Finding otherwise would mean that the Los Angeles Police
23 Department would not only lose revenue from the tow, but would also be forced to
24 pay the third party towing company the cost of the tow and the storage.

25 **FIRST CAUSE OF ACTION**

26 **Petition for Writ of Mandate—C.C.P. §§ 1094.5, 1094.6**

27 32. Petitioner re-alleges and incorporates by reference each allegation set forth
28 in paragraphs 1–31.

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33. Mandamus is authorized under California Code of Civil Procedure §§ 1094.5, 1094.6.

34. LAPD’s decision to uphold the towing of Mr. Safuto’s vehicle is invalid for the following reasons:

- a. The findings of fact do not, as a matter of law, support the determination that the tow was valid, because the tow was inconsistent with California law, and because the tow violated Article I, Section 13 of the California Constitution, which prevents the unreasonable seizure of vehicles;
- b. The hearing officer committed legal error by using the wrong standard to determine that the tow was valid.
- c. The LAPD did not provide Mr. Safuto adequate due process and a fair hearing, in conducting the hearing.

35. Petitioner is entitled to a writ of mandate under the Code of Civil Procedure § 1094.5 commanding respondents to set aside the hearing decision upholding the towing of his vehicle.

SECOND CAUSE OF ACTION

Ordinary Mandamus (CCP § 1085), Ca. Vehicle Code Section 22650

36. Petitioner re-alleges and incorporates by reference each allegation set forth in paragraphs 1–35.

37. Section 22650(a) of the California Vehicle Code prevents peace officers and unauthorized persons from ordering the towing of a vehicle from the street unless the Vehicle Code authorizes the removal.

38. Section 22650(b), amended in 2018, provides that “a removal pursuant to an authority, including, but not limited to, as provided in Section 22651, that is based on community caretaking, is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism.”

39. Respondent has a ministerial duty to conduct vehicle tows in accordance with the Vehicle Code, including Section 22650(b).

1 40. Respondent has a policy and practice of violating its ministerial duty under
2 Section 22650(b) of the Vehicle Code by seizing vehicles with expired registration where towing
3 is unnecessary to achieve the community caretaking need.

4 41. Petitioner is beneficially interested in the outcome of this dispute, and the
5 question is one of public right and the object of the mandamus is to procure the enforcement of a
6 public duty.

7 42. Petitioner has no plain, speedy and adequate alternative remedy at law.

8 **THIRD CAUSE OF ACTION**

9 **Ordinary Mandamus (CCP § 1085), Unconstitutional Seizure**

10 **Article 1, Section 13 of the California Constitution**

11 43. Petitioner re-alleges and incorporates by reference each allegation set forth
12 in paragraphs 1–42.

13 44. Article I, Section 13 of the California Constitution provides that “[t]he right
14 of the people to be secure in their persons, houses, papers and effects against unreasonable
15 seizures and searches may not be violated; and a warrant may not issue except on probable cause,
16 supported by oath or affirmation, particularly describing the place to be searched and the persons
17 and things to be seized.”

18 45. Impounding a vehicle constitutes a seizure. *People v. Williams*, 145
19 Cal.App.4th 756, 761 (2006).

20 46. Warrantless seizures are “per se unreasonable” subject only to a few
21 “specifically established and well delineated exceptions.” *Id.*

22 47. Respondent has a ministerial duty to conduct vehicle tows in accordance
23 with Article 1, Section 13 of the California Constitution.

24 48. Respondent has a policy and practice of violating its ministerial duty under
25 Article 1 Section 13 of the California Constitution by seizing vehicles with expired registration
26 without a warrant and in the absence of circumstances that would justify an exception to the
27 constitutional warrant requirement
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1 **FIFTH CAUSE OF ACTION**

2 **Code of Civil Procedure § 526a**

3 57. Petitioner re-alleges and incorporates by reference each allegation set forth
4 in paragraphs 1–57.

5 58. Respondent has expended public funds in the promulgation and
6 implementation of unlawful policies and practices as described above.

7 59. Petitioner, who within one year before the commencement of this suit, has
8 paid a tax within and to the City of Los Angeles, has been substantially affected by these illegal
9 expenditures.

10 60. Petitioner is informed and believes, and thereon alleges, that Respondent
11 disputes Petitioner’s contentions and intends to continue to make illegal expenditures on the
12 unconstitutional and unlawful practices described above, causing great and irreparable injury to
13 Petitioner, unless and until enjoined by order of this Court.

14 61. Judicial intervention in this dispute, and a declaration by the Court, is
15 necessary to resolve whether Respondent’s towing practices are unconstitutional and unlawful.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Petitioner prays that this Court enter judgment in his favor and against
18 Respondent on all counts, and:

19 a. Issue a writ of mandate, pursuant to Code of Civil Procedure § 1085, and a
20 taxpayer injunction, pursuant to Code of Civil Procedure § 526a, requiring Respondent and its
21 agents to:

- 22 i. Cease towing vehicles based on expired registration where the
23 circumstances do not comply with Section 22650(b) of the Vehicle Code,
24 including that the tow is necessary to achieve a community caretaking need;
- 25 ii. Cease towing vehicles based on expired registration where the
26 circumstances do not comply with Article 1, Section 13, of the California
27 Constitution, including where the vehicle seizure does not justify an
28 exception to the constitutional warrant requirement;

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- iii. Provide a post-seizure hearing that complies with the Due Process requirements of Article 1, Section 7, of the California Constitution, including adequate notice, a hearing that considers whether the tow meets the requirements of Vehicle Code Section 22650(b) and Article 1, Section 13 of the California Constitution, and a hearing conducted by an independent hearing officer;
- iv. Amend their towing policies to conform to the mandates of Section 22650 of the Vehicle Code and the California Constitution;

b. Issue a writ of mandate pursuant to Code of Civil Procedure § 1094.5 and § 1094.6 ordering Respondent to set aside the hearing decision upholding the towing of Petitioner’s vehicle;

c. Issue an order reimbursing Petitioner for all costs associated with the tow, including the charges by the City of Los Angeles and the Official Police Garage and interest;

d. Award Petitioner the costs of replacement of his vehicle;


e. Issue a declaration of rights;

f. Award Petitioner’s costs and reasonable attorney’s fees, payable to his counsel; and

g. Grant such other and further relief the Court deems just and proper.

Dated: October 15, 2019

LEGAL AID FOUNDATION OF
LOS ANGELES

By  _____
Shayla Myers
Attorneys for Petitioner

1 VERIFICATION

2 I, JOSEPH SAFUTO, declare:

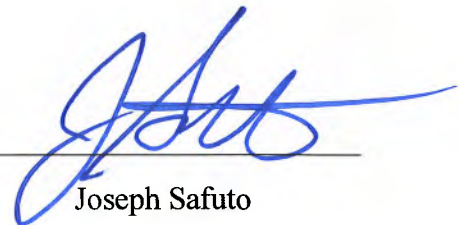
3 1. I am a party to this action.

4 2. I have read the VERIFIED FIRST AMENDED PETITION FOR WRIT
5 OF MANDATE AND COMPLAINT DIRECTED TO THE CITY OF LOS ANGELES.

6 The facts stated in the Petition and Compliant are either true and correct of my own
7 personal knowledge, or I am informed and believe that such facts are true and correct,
8 and on that basis I allege them to be true and correct.

9
10 This verification was executed on October 10, 2019, in Los Angeles, California.

11 I declare under penalty of perjury that the foregoing is true and correct.

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15 
16 Joseph Safuto