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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KATIE ANN BARCELO and JUSTIN
ROBERTS,

Plaintiff,

vs.

CITY OF SAN DIEGO, 51
STRATEGIES L.L.C. doing business as
S & S TOWING, SEAN GERMAINE
METCALF, SONYA DEFREITAS-
METCALF, 5471 BAYVIEW
HEIGHTS, L.P., MAAC BAYVIEW
HEIGHTS, L.L.C., CRP VALENCIA
POINTE L.P., MAAC VALENCIA
POINTE MGP L.L.C. and DOES 1
through 10, INCLUSIVE,

Defendants.

Case No.: 3:25-cv-00329-BAS-AHG

SECOND AMENDED COMPLAINT
FOR DAMAGES FOR VIOLATION
OF FEDERAL CONSTITUTIONAL
RIGHTS UNDER COLOR OF STATE
LAW [42 U.S.C. § 1983]; CLAIMS
FOR UNREASONABLE SEIZURE OF
PROPERTY (U.S. CONST. AMEND
4); RIGHT TO FREEDOM OF
SPEECH (U.S. CONST. AMEND 1);
CLAIM AGAINST LOCAL PUBLIC
ENTITY BASED ON FAILURE TO
TRAIN / OFFICIAL POLICY,
PRACTICE OR CUSTOM (MONELL
CLAIM and CLAIM AGAINST
PRIVATE ENTITY ACTING UNDER
COLOR OF STATE LAW);
CALIFORNIA STATE LAW CLAIMS
FOR CONVERSION /TRESPASS TO
CHATTELS; NEGLIGENCE,
INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS and
VIOLATION OF CAL. VEH CODE §
22658

**UNITED STATES DISTRICT
JUDGE CYTHIA BASHANT**

COME NOW plaintiffs Katie Ann Barcelo and Justin Roberts and show this Honorable Court the following:

JURISDICTIONAL ALLEGATIONS

1. As this action is brought under 42 U.S.C. § 1983, this court has jurisdiction over this case under its federal question jurisdiction pursuant to 28 U.S.C. § 1331.

2. As the incidents complained of in this action occurred in the City of San Diego, County of San Diego, State of California, within the territorial jurisdiction of this court, venue properly lies in this court pursuant to 28 U.S.C. § 1391(b)(2).

3. As the plaintiffs' claims under California state law arise out of a common nucleus of operative facts and out of the same transactions and occurrences at plaintiffs' claims under federal law this Honorable Court has jurisdiction over the plaintiffs' state law claims under 28 U.S.C. § 1367 and otherwise pursuant to *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966).

4. Plaintiffs Katie Ann Barcelo and Justin Roberts both timely filed their Claim For Damages against the City of San Diego on June 24, 2024, pursuant to the California Tort Claims Act, Cal. Gov't. Code § 900 et seq. Plaintiff Katie Ann Barcelo's Claim was rejected by defendant City of San Diego on August 13, 2024 and defendant City of San Diego failed to respond to plaintiff Justin Roberts' Claim for Damages at all. Moreover, this action was commenced on February 13, 2025.

GENERAL ALLEGATIONS

5. Plaintiff Katie Ann Barcelo, hereinafter referred to as "KATIE BARCELO" and/or "plaintiff" and/or "BARCELO" and/or "plaintiff BARCELO"

1 is a natural person, who, at all times complained of in this action, resided in the
2 County of San Diego, State of California.

3 6. Plaintiff Justin Roberts, hereinafter referred to as “JUSTIN
4 ROBERTS” and/or “plaintiff” and/or “ROBERTS” and/or “plaintiff ROBERTS”
5 is a natural person, who, at all times complained of in this action, resided in the
6 County of San Diego, State of California.

7 7. Defendant City of San Diego, hereinafter also referred to as “CITY”,
8 is a municipal entity located in the State of California; within the territorial
9 jurisdiction of this court.

10 8. Defendant 51 Strategies L.L.C., doing business as S & S Towing, is a
11 California Limited Liability Company, hereinafter also referred to as “S & S
12 TOWING,” doing business in the City and County of San Diego, State of
13 California, within the territorial jurisdiction of this court. Plaintiffs also show that
14 defendant 51 Strategies L.L.C., doing business in the City and County of San
15 Diego as S & S Towing, is a nationwide criminal organization, that is involved,
16 *inter alia*, in ongoing auto-thefts¹ in the City and County of San Diego and in the
17 San Diego Metropolitan Area under the guise and ruse of being a legitimate
18 towing company, which it is not.²

19 9. Defendant Sean Germaine Metcalf, hereinafter also referred to as
20 “SEAN METCALF,” is a natural person who, at all times complained of in this
21 action, resided in the County of San Diego, State of California, within the

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24 ¹ Including auto-thefts and criminal and tortious violations of various provisions of California
25 Vehicle Code and the California Penal Code prohibiting certain actions in conducting private
26 property impounds of vehicles.

27 ² See the San Diego Police Department bulletin, *SDPD INVESTIGATING ILLEGAL*
28 *PRACTICES BY S&S TOWING IN THE CITY OF SAN DIEGO, Investigators Seeking*
Additional Information From People Who’ve Been Unlawfully Towed In Past 3 Years, San
Diego Police Department, August 15, 2024 at <https://www.sandiego.gov/sites/default/files/2024-08/20240815-sdpd-investigating-illegal-practices-by-ss-towing-in-the-city-of-san-diego.pdf>

1 territorial jurisdiction of this court. Defendant SEAN METCALF is the Managing
2 Member, the owner and an alter ego of 51 Strategies, L.L.C.

3 10. Plaintiffs also show that defendant 51 Strategies L.L.C., doing
4 business in California as S & S Towing, is a nationwide criminal organization,
5 that is involved, *inter alia*, in ongoing auto-thefts in the City and County of San
6 Diego and in the San Diego Metropolitan Area under the guise and ruse of being a
7 legitimate towing company, and, that defendant SEAN METCALF along with his
8 wife, defendant SONYA METCALF, directs and actively participates in these
9 ongoing criminal acts by defendant 51 Strategies L.L.C., including auto-thefts and
10 other criminal and tortious violations of various provisions of California Vehicle
11 Code and the California Penal Code prohibiting certain criminal actions in
12 conducting Private Property Impounds of vehicles.

13 11. Defendant Sonya Defreitas-Metcalf, hereinafter referred to as
14 "SONYA METCALF," is a natural person who, at all times complained of in this
15 action, resided in the County of San Diego, State of California, within the
16 territorial jurisdiction of this court. SONYA METCALF is a Manager or Member
17 and/or a Managing Member and/or an owner of, and is an alter ego owner of
18 Defendant 51 Strategies L.L.C.

19 12. Plaintiffs also show that defendant 51 Strategies L.L.C., doing
20 business in California as S & S Towing, is a nationwide criminal organization,
21 that is involved, *inter alia*, in ongoing auto-thefts in the City and County of San
22 Diego and in the San Diego Metropolitan Area under the guise and ruse of being a
23 legitimate towing company, and, that defendant SONYA METCALF along with
24 her husband, defendant SEAN METCALF, directs and actively participates in
25 these ongoing criminal acts by defendant 51 Strategies L.L.C., including auto-
26 thefts and other criminal and tortious violations of various provisions of California
27 Vehicle Code and the California Penal Code prohibiting certain criminal and
28 tortious actions in conducting Private Property Impounds of vehicles.

1 13. Defendant 5471 Bayview Heights, L.P., hereinafter referred to as
2 “BAYVIEW HEIGHTS,” is a California Limited Partnership, doing business in
3 the City and County of San Diego, State of California, within the territorial
4 jurisdiction of this court. Defendant BAYVIEW HEIGHTS is the landlord for the
5 Hillside Views Apartments³.

6 14. Defendant MAAC Bayview Heights, L.L.C., hereinafter referred to
7 as “MAAC BAYVIEW HEIGHTS,” is a California Limited Liability Company,
8 doing business in the County of San Diego, State of California, within the
9 territorial jurisdiction of this court. Defendant MAAC BAYVIEW HEIGHTS is
10 the General Partner of defendant BAYVIEW HEIGHTS, and is the property
11 management company for the Hillside Views Apartments.

12 15. Defendant CRP Valencia Pointe L.P., hereinafter referred to as
13 “VALENICIA POINTE,” is a California Limited Partnership, doing business in
14 the City and County of San Diego, State of California, within the territorial
15 jurisdiction of this court. Defendant VALENICIA POINTE is the landlord for the
16 Valencia Point Apartments⁴.

17 16. Defendant MAAC Valencia Pointe MGP, L.L.C., hereinafter referred
18 to as “MAAC VALENICIA POINTE,” is a California Limited Liability Company,
19 doing business in the County of San Diego, State of California, within the
20 territorial jurisdiction of this court. Defendant MAAC VALENICIA POINTE is
21 the General Partner of defendant VALENICIA POINTE, and is the property
22 management company for the Valencia Pointe Apartments.

23 17. Defendants DOES 1 and 2, inclusive, are, at all times complained of
24 herein, tow truck drivers or dispatchers or other agents/employees, who are
25 employed by defendant S & S TOWING and were acting within their course and
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28 ³ Located at 6421 Bayview Heights Pl, San Diego, CA 92105.

⁴ Located at 5930 Division St, San Diego, CA 92114

1 scope of employment with defendant S & S TOWING.

2 18. Defendant DOES 3 and DOES 4 are the property management
3 persons or entities for the Hillside Views Apartments and for the Valencia Pointe
4 Apartments who/which authorized/contracted with and/or directed defendant S &
5 S TOWING to tow cars from the Hillside Views Apartments and/or from the
6 Valencia Pointe Apartments pursuant to a General Authorization to patrol the
7 Hillside Views Apartments and the Valencia Pointe Apartments, and to perform
8 Private Property Impounds⁵ at said apartment, including the towing of any
9 vehicles parked next to any red curb in said apartment complex, including red
10 curbs that were not fire lanes, notwithstanding that a curb merely painted red is
11 not a fire lane under California state law.

12 19. At all times complained of herein defendants DOES 3 and 4 were
13 acting in the course of and within the scope of their employment with BAYVIEW
14 HEIGHTS, BAYVIEW HEIGHTS MAAC, VALENCIA POINTE and
15 VALENCIA POINTE MAAC.

16 20. Defendants DOES 5 and 6 are California Certified Peace Officers,
17 and police officers and/or supervisors and/or Investigators and/ Special Officers
18 and/or a dispatchers and/or some other public officer, public official or employee
19 of defendant City of San Diego/the San Diego Police Department and/or with
20 some other public entity, who in some way committed some or all of the tortious
21 actions and constitutional violations complained of in this action, and/or are
22 otherwise responsible for and liable to plaintiffs for the acts complained of in this
23 action, whose identities are, and remain unknown to plaintiffs, who will amend
24 their complaint to add and to show the actual names of said DOE defendants when
25 ascertained by plaintiffs.

26 21. At all times complained of herein, DOES 5 and 6 were acting as
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⁵ The towing of vehicles from private property.

1 individual persons acting under the color of state law, pursuant to their authority
2 as sworn peace officers and/or police officers and/or Special Officers and/or
3 Supervisors (i.e. Sergeants, Lieutenants, Captains, Commanders, etc.) and/or
4 dispatchers and/or public officers, employed by defendant City of San Diego/the
5 San Diego Police Department and/or with some other public entity, and were
6 acting in the course of and within the scope of their employment with defendant
7 City of San Diego⁶.

8 22. Defendants DOES 7 and 8 are sworn peace officers and/or
9 Supervisors and/or Commanders and/or Captains and/or Lieutenants and/or
10 Sergeants and/or Detectives and/or other Supervisory personnel (such as) and/or
11 policy making and/or final policy making officials, employed by the City of San
12 Diego/the San Diego Police Department and/or with some other public entity, who
13 are in some substantial way liable and responsible for, or otherwise proximately
14 caused and/or contributed to the occurrences complained of by plaintiffs in this
15 action, such as by failing to properly train San Diego Police Department police
16 officers and other San Diego Police Department officers, agents and employees
17 about California laws on Private Property Impounds of vehicles and the towing of
18 vehicles from private property, including the laws regarding the towing vehicles
19 from fire lanes and from other places on private property, and about threatening
20 persons with arrest for asserting their federal and state constitutional rights and
21 their federal and state statutory rights⁷.

22 23. At all times complained of herein, DOES 7 and 8 were acting as
23 individual persons acting under the color of state law, pursuant to their authority
24 as Police Officers and/or Supervisory Officers, Commanders and/or Captains

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27 ⁶ And/or with some other public entity.

28 ⁷ Such as their right to demand the release of their vehicle that is being towed from private property but not yet off of the private property and in transit pursuant to Cal. Veh. Code § 22658(g)(1)(B).

1 and/or Lieutenants and/or Sergeants and/or other Supervisory personnel and/or
2 policy making and/or final policy making officials, employed by the City of San
3 Diego and/or with some other public entity, and/or some other public official(s)
4 with the City of San Diego and/or with some other public entity, and were acting
5 in the course of and within the scope of their employment with defendant the City
6 of San Diego⁸.

7 24. Plaintiffs are presently unaware of the identities of DOES 1 through
8 10, inclusive, and will amend this complaint to add and to show the actual names
9 of said DOE defendants, when ascertained by plaintiffs.

10 25. Defendants DOES 9 and 10 were at all times complained of herein
11 the San Diego City Manager⁹ and/or the Chief of Police of the San Diego Police
12 Department¹⁰ and/or Assistant or Deputy Chiefs of Police of the San Diego Police
13 Department¹¹ and/or Commanders of the San Diego Police Department¹² and/or
14 Captains of the San Diego Police Department¹³ and/or Lieutenants of the San
15 Diego Police Department¹⁴ and/or Sergeants of the San Diego Police Department¹⁵
16 and other Supervisory peace officers of the San Diego Police Department¹⁶ (as
17 described herein, above and below), and were policy making and/or final policy
18 making officials with defendant City of San Diego¹⁷

19 26. At all times complained of herein, defendants DOES 9 and 10 were
20 acting as individual persons under the color of state law and were acting in the
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23 ⁸ And/or with some other public entity.

24 ⁹ And/or of some other public entity.

25 ¹⁰ And/or with some other public entity or police agency.

26 ¹¹ And/or with some other public entity or police agency.

27 ¹² And/or with some other public entity or police agency.

28 ¹³ And/or with some other public entity or police agency.

¹⁴ And/or with some other public entity or police agency.

¹⁵ And/or with some other public entity or police agency.

¹⁶ And/or with some other public entity or police agency.

¹⁷ And/or with some other public entity.

1 course of and within the scope of their employment with defendant City of San
2 Diego¹⁸, under and pursuant to their status and authority as the City Manager, the
3 Chief of Police, Assistant/Deputy Chiefs of Police, Commanders, Captains,
4 Lieutenants, Sergeants and other Supervisory peace officers (as described herein,
5 above and below) and were policy making and/or final policy making officials
6 with defendant City of San Diego¹⁹ via their status with and actions for the San
7 Diego Police Department and/or otherwise with defendant CITY²⁰.

8 27. Moreover, at all times complained of herein, defendants DOES 9 and
9 10 were acting pursuant to, or otherwise contributed to the creation and
10 maintenance of, the customs, policies, usages and practices of the San Diego
11 Police Department/City of San Diego²¹ of failing to properly train San Diego
12 Police Department police officers and other San Diego Police Department
13 officers, agents and employees about California laws on Private Property
14 Impounds of vehicles, about the laws regarding the towing vehicles from fire
15 lanes and from other places on private property, and about threatening persons
16 with arrest for asserting their federal and state constitutional rights and their
17 federal and state statutory rights²².

18 28. In addition to the above and foregoing, defendants S & S TOWING,
19 SEAN METCALF, SONYA METCALF, 51 STRATEGIES, L.L.C., BAYVIEW
20 HEIGHTS, MAAC BAYVIEW HEIGHTS and DOES 1 through 6, inclusive,
21 acted pursuant to a conspiracy, agreement and understanding and common plan
22 and scheme to deprive the plaintiffs BARCELO and ROBERTS of their federal
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25 ¹⁸ And/or with some other public entity.

26 ¹⁹ And/or with some other public entity.

27 ²⁰ And/or with some other public entity.

28 ²¹ And/or with some other public entity.

²² Such as their right to demand the release of their vehicle that is being towed from private property but not yet off of the private property and in transit pursuant to Cal. Veh. Code § 22658(g)(1)(B).

1 and California state law Constitutional and statutory rights, as complained of
2 below in this action, and acted in joint and concerted action to so deprive plaintiffs
3 BARCELO and ROBERTS of those rights as complained of herein; all in
4 violation of 42 U.S.C. § 1983, and otherwise in violation of United States
5 (Constitutional and statutory) law.

6 29. Said conspiracy / agreement / understanding / plan / scheme / joint
7 action / concerted action, above referenced, was a proximate cause of the violation
8 of the plaintiffs BARCELO's and ROBERTS' federal and California state law
9 Constitutional and statutory rights as complained of herein.

10 **FIRST CAUSE OF ACTION**
11 **VIOLATION OF 42 U.S.C. § 1983**
12 **Violation of Fourth Amendment Rights**
13 **Unlawful/Unreasonable Seizure of Property**
14 **(AGAINST DEFENDANTS S & S TOWING, SEAN METCALF, SONYA**
15 **METCALF, 51 STRATEGIES L.L.C., BAYVIEW HEIGHTS, MAAC**
16 **BAYVIEW HEIGHTS and DOES 1 through 6, inclusive)**

17 30. Plaintiffs hereby reallege and incorporate by reference the allegations
18 set forth in paragraphs 1 through 29, inclusive, above, as if set forth in full herein.

19 31. On February 26, 2024, plaintiff BARCELO drove her car, a 2017
20 Hyundai Elantra²³ to the Hillside Views Apartments, located at 5446 Bayview
21 Heights Place, San Diego, California to pick up her children from a friend's
22 apartment.

23 32. Plaintiff BARCELO's 2017 Hyundai Elantra (hereinafter, "Hyundai"
24 or "car" or "plaintiffs' car" or "Hyundai Elantra") was registered to plaintiff
25 ROBERTS, who is plaintiff BARCELO's nephew.

26 33. Plaintiff BARCELO had been making payments on the 2017
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28 ²³ Said vehicle bearing Vehicle Identification Number KMHD35LH2HU384029 and California
license plate number 8KKY404.

1 Hyundai Elantra for approximately six months and was in the process of
2 purchasing the car from ROBERTS.

3 34. There were no guest spots for parking at the Hillside Views
4 Apartments available for BARCELO to park her Hyundai Elantra sedan to go pick
5 up her children, so plaintiff BARCELO parked her car approximately 15 feet
6 away from her friend's apartment on the street next to the curb, leaving her hazard
7 lights, on and went to and into her friend's apartment to get her children.

8 35. Within a few minutes plaintiff BARCELO's friend had noticed that a
9 tow truck driver(s), defendant DOE 1 and/or DOE 2, employed by defendant S &
10 S TOWING²⁴, was in the process of towing plaintiff BARCELO's car and had her
11 Hyundai Elantra coupled to the tow truck. Plaintiff BARCELO immediately ran
12 outside and confronted said tow truck driver(s) and demanded the release of her
13 car²⁵.

14 36. Thereafter, the tow truck driver, defendant(s) DOE 1 and/or DOE 2,
15 handed plaintiff BARCELO defendant S & S TOWING's business card that had
16 no address and only had a phone number shown on it, to pick up her car that he
17 intended to tow away.

18 37. During this time, the tow truck driver(s), DOE 1 and/or DOE 2,
19 stopped towing plaintiff's car, the Hyundai, away, and was waiting for his/their
20 dispatcher to tell him/them on what to do next.

21 38. Plaintiff BARCELO again demanded that defendant(s) tow truck
22 driver(s) DOE 1 and/or DOE 2 release her Hyundai Elantra as it was on private
23 property, and that California law required that defendant(s) DOE 1 and/or DOE 2

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26 ²⁴ That is owned by defendant 51 Strategies, L.L.C. and by SEAN METCALF and SONYA
METCALF.

27 ²⁵ As shown above, Cal. Veh. Code § 22658(g)(1)(B) provides: "(B) Upon the request of the
28 owner of the vehicle or that owner's agent, the towing company or its driver shall immediately
and unconditionally release a vehicle that is not yet removed from the private property and in
transit."

1 unconditionally release her Hyundai Elantra to her²⁶.

2 39. Defendant tow truck driver(), defendant DOE 1 and/or DOE 2, once
3 again refused to release plaintiff BARCELO's car to her.

4 40. Thereafter, both plaintiff BARCELO and defendant tow truck
5 driver(s), DOE 1 and/or DOE 2, called the San Diego Police Department.

6 41. Thereafter, the tow truck driver(s), defendant DOE 1 and/or DOE 2,
7 told plaintiff BARCELO that her registration sticker on her license plate was
8 expired, something that defendant(s) DOE 1 and/or DOE 2 could not take her car
9 for as it was on private property, and was not something defendant(s) DOE 1
10 and/or DOE 2 was not authorized to enforce under California state law.

11 42. Plaintiff BARCELO then explained to defendant(s) DOE 1 and/or
12 DOE 2 that her car registration license plate stickers were stolen, and she had
13 already gone to the California Department of Motor Vehicles to get new stickers,
14 and that she was waiting for them to come in the mail, and that her vehicle was
15 current validly registered.

16 43. When the defendant San Diego Police Department police officers
17 DOES 5 and 6 arrived at the scene, they ignored plaintiff BARCELO and spoke
18 with defendant(s) DOE 1 and/or DOE 2.

19 44. Thereafter, defendants San Diego Police Department police officer(s)
20 DOES 5 and 6 told plaintiff BARCELO that because she was parked in a "fire
21 lane²⁷," that defendant(s) DOE 1 and/or DOE 2 could take her car and tow it
22 away; something untrue, as she had a right to demand the unconditional release of
23 her car under Cal. Veh. Code § 22658(g)(1)(B), and as plaintiffs' car was not

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26 ²⁶ As shown above, Cal. Veh. Code § 22658(g)(1)(B) provides: "(B) Upon the request of the
27 owner of the vehicle or that owner's agent, the towing company or its driver shall immediately
28 and unconditionally release a vehicle that is not yet removed from the private property and in
transit."

²⁷ A merely painted red curb is not a legitimate or lawful "fire lane" under Cal. Veh. Code §
22500.1.

1 parked in a fire lane, but only next to a red curb with neither stenciling showing
2 the words “Fire Lane” nor a sign next to that red curb showing the words “Fire
3 Lane”²⁸.

4 45. Plaintiff BARCELO verbally protested to DOES 5 and 6 that DOE 1
5 and/or DOE 2 had no right to tow her car away, and that DOE 1 and/or DOE 2
6 was/were stealing her car, and she demanded the release of her car, but
7 BARCELO was ignored by DOES 5 and 6.

8 46. Plaintiff BARCELO then heard defendants DOE 5 and DOE 6
9 conspire with the tow truck driver(s), defendant(s) DOE 1 and/or DOE 2, to
10 unlawfully tow away plaintiff BARCELO’s car, and defendant police officers
11 DOES 5 and 6²⁹ then told defendant(s) DOE 1 and/or DOE 2, to tow plaintiff
12 BARCELO’s car away, which defendant(s) DOE 1 and/or DOE 2 then did.

13 47. Thereafter, plaintiff BARCELO kept calling defendant S & S
14 TOWING to retrieve her car, but S & S TOWING to answer her phone call and
15 blocked plaintiff BARCELO’s cellphone number.

16 48. Thereafter, plaintiff ROBERTS, who was the registered owner of the
17 towed away 2017 Hyundai, was texting with a representative at defendant S & S
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21 ²⁸ Cal. Veh. Code § 22500.1 provides:

22 In addition to Section 22500, no person shall stop, park, or leave standing any vehicle, whether
23 attended or unattended, except when necessary to avoid conflict with other traffic or in
24 compliance with the directions of a peace officer or official traffic control device along the edge
25 of any highway, at any curb, or in any location in a publicly or privately owned or operated off-
26 street parking facility, designated as a fire lane by the fire department or fire district with
27 jurisdiction over the area in which the place is located. The designation shall be indicated (1) by
28 a sign posted immediately adjacent to, and visible from, the designated place clearly stating in
letters not less than one inch in height that the place is a fire lane, (2) by outlining or painting
the place in red and, in contrasting color, marking the place with the words “FIRE LANE”,
which are clearly visible from a vehicle, or (3) by a red curb or red paint on the edge of the
roadway upon which is clearly marked the words “FIRE LANE”.

²⁹ Defendants DOE 4 and/or DOE 5 and/or DOE 6

1 TOWING³⁰; either defendants SEAN METCALF and/or SONYA METCALF
2 and/or DOE 1 and/or DOE 2, and that person demanded identification from
3 plaintiff ROBERTS be sent via text message, and plaintiff ROBERTS did not feel
4 comfortable in doing so, fearful that he would be scammed by giving his personal
5 identifying information to a stranger via a text message.

6 49. Thereafter, during said text message exchange with a representative
7 at defendant S & S TOWING, either defendants SEAN METCALF and/or
8 SONYA METCALF and/or DOE 1 and/or DOE 2, whoever plaintiff ROBERTS
9 was texting, would not tell him how much it would cost to get his car out of
10 impound, would not reveal the location of the tow yard of defendant S & S
11 TOWING and would not tell plaintiff ROBERTS where his car was being
12 impounded/stored.

13 50. Thereafter, plaintiffs' counsel, Jerry L. Steering, did extensive
14 internet searches about S & S TOWING and learned that defendants SEAN
15 METCALF and SONYA METCALF were the principals and owners of S & S
16 TOWING and were the Managers, the Managing Members, the owners and the
17 alter egos of 51 STRATEGIES L.L.C. that was doing business as S & S
18 TOWING.

19 51. Plaintiff's counsel, Jerry L. Steering was also able to find a telephone
20 number for defendant SEAN METCALF, and on or about March 4, 2024 Jerry L.
21 Steering spoke with SEAN METCALF by phone.

22 52. During that March 4, 2024 discussion, Jerry L. Steering told SEAN
23 METCALF that plaintiffs' car had been illegally towed by S & S TOWING³¹, and
24 demanded to know where plaintiffs' vehicle was being stored, and demanded the
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27 ³⁰ Because defendants at S & S Towing, defendants SEAN METCALF and/or SONYA
28 METCALF and/or DOE 1 and/or DOE 2 had blocked plaintiff BARCELO's phone number.

³¹ And why it was an illegal tow.

1 return of plaintiffs' 2017 Hyundai sedan or plaintiffs would sue defendant SEAN
2 METCALF and his company(ies) for the felonious and tortious taking and
3 keeping plaintiffs' car.

4 52. During Mr. Steering's internet search for and about defendant SEAN
5 METCALF he learned that defendant SEAN METCALF was a criminal, that he
6 "steals" car using his towing company as a vehicle to "steal" vehicles by illegally
7 towing vehicles and by refusing to return or release them to the owners of the
8 vehicles, and then selling them off.

9 53. During Mr. Steering's internet search for and about defendant SEAN
10 METCALF, he learned that defendant SEAN METCALF and his front company S
11 & S TOWING, did not have a tow yard to tow vehicles to, and that defendant
12 SEAN METCALF, his wife defendant SONYA METCALF and their companies³²
13 were a nationwide group of scam companies to advance various criminal schemes
14 across the United States of America.

15 54. Thereafter, plaintiffs BARCELO and ROBERTS never saw their
16 Hyundai again.

17 55. Moreover, during that discussion between Mr. Steering and
18 defendant SEAN METCALF, defendant SEAN METCALF told Mr. Steering that
19 he would not reveal the location of plaintiffs' car and that he would not return or
20 release plaintiffs car to plaintiffs.

21 56. In addition to the above and foregoing, as shown above, defendants
22 MAAC BAYVIEW HEIGHTS and/or DOE 3 and/or DOE 4 who are the property
23 management persons or entities for the Hillside Views Apartments
24 authorized/contracted with and/or directed defendant S & S TOWING to tow cars
25 from the Hillside Views Apartments pursuant to a General Authorization to patrol
26 the Hillside Views Apartments, and to tow any vehicles parked next to any red

27
28 ³² 51 STRATEGIES L.L.C., doing business as S & S TOWING.

1 curb in said apartment complex, including red curbs that were not fire lanes,
2 notwithstanding that a curb merely painted red is not a fire lane under California
3 state law.

4 57. Accordingly, defendants S & S TOWING and DOE 1 and/or DOE 2
5 and DOES 4 through 6, inclusive were acting under the color of state law, as they
6 were acting in joint, concerted and conspiratorial action with defendant San Diego
7 Police Department police officers DOE 5 and/or DOE 6 to deprive plaintiffs
8 BARCELO and ROBERTS of their property (i.e. their vehicle); in violation of
9 plaintiffs' right not to be subjected to an unlawful and unreasonable seizure of
10 their property under the Fourth Amendment to the United States Constitution.

11 58. Said actions by S & S TOWING, SEAN METCALF, SONYA
12 METCALF, and DOES 1 and 2, DOES 3 and 4 and DOES 5 and 6 constituted a
13 violation of Cal. Penal Code § 487(d)(auto theft, a felony) and of violation of Cal.
14 Veh. Code § 10851 (taking vehicle without consent, a felony) and a violation of
15 Cal. Veh. Code §§ 22658(g) & (l) by said defendants.

16 59. Defendants S & S TOWING, SEAN METCALF, SONYA
17 METCALF ultimately auctioned off plaintiffs' Hyundai Elantra at a lien sale³³ and
18 plaintiffs BARCELO and ROBERTS do not know who owns their Hyundai
19 Elantra or where it is located.

20 60. Defendants DOE 1 and/or DOE 2, SEAN METCALF and SONYA
21 METCALF were acting pursuant to actual policies of defendants S & S
22 TOWING, and DOES 3 and 4 were acting pursuant to the actual policies of
23 defendants BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS to unlawfully
24 Patrol Tow vehicles from red curbs in the subject apartment complex, and to call
25 the police to get them to help them to allow defendants to unlawfully tow vehicles
26 away from the apartment complexes that DOES 3 and 4 manage, to facilitate

27
28 ³³ Unlawfully, and without the required notice to plaintiffs.

felony auto theft³⁴ and felony extortion³⁵.

61. Defendants DOE 1 and 2, SEAN METCALF, SONYA METCALF, S & S TOWING, BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS and DOES 3 and/or DOE 4, and defendants DOE 5 and/or DOES 6, are all liable to the plaintiffs BARCELO and ROBERTS for the loss of their personal property and for the other constitutional torts committed against them, above described.

56. As a direct and proximate result of the actions of said defendants complained of herein, plaintiffs were: 1) substantially, mentally and emotionally injured, and suffered great mental and emotional injury, distress and suffering; 2) incurred attorney's fees and associated litigation and other related costs, and 3) incurred other special and general damages and expenses, including the loss of their vehicle and their personal property, the 2017 Hyundai Elantra, in an amount to be proven at trial, in excess of \$3,000,000.00.

57. The actions by said defendants were committed maliciously, oppressively and in reckless disregard of plaintiffs' constitutional rights, sufficient for an award of punitive/exemplary damages against all defendants and each of them, save defendant CITY, in an amount to be proven at trial, in excess of \$3,000,000.00.

SECOND CAUSE OF ACTION
VIOLATION OF 42 U.S.C. § 1983
Violation of First Amendment Rights
Freedom of Speech / Right to Petition Government for Redress of Grievances
(By Plaintiff BARCELO Against Defendants DOES 5 and 6)

58. Plaintiff BARCELO hereby realleges and incorporates by reference the allegations set forth in paragraphs 1 through 57, inclusive, above, as though set

³⁴ Cal. Penal Code § 487(d) (grand theft auto) and Cal. Veh Code § 10851 (taking vehicle without consent).

³⁵ Cal. Penal Code § 518/519 (for demanding money in exchange of the release of the vehicle to its owner / owner's agent).

1 forth in full herein.

2 59. On February 26, 2024, in response to and in retaliation for plaintiff
3 BARCELO verbally protesting defendants DOES 5 and 6's statements to her that
4 defendants DOES 1 and 2 had the right to tow her Hyundai Elantra away and
5 defendants DOES 5 and 6's refusal to tell defendants DOES 1 and 2 to release
6 plaintiffs' Hyundai Elantra to her, defendants DOES 5 and 6 told plaintiff to move
7 away from her Hyundai Elantra under implied threat of arrest, prevented plaintiff
8 BARCELO from getting her personal property out of her Hyundai Elantra,
9 resulting in her ultimately losing those items of personal property, and told DOES
10 1 and 2 to tow plaintiffs' Hyundai Elantra away.

11 60. Those adverse actions by defendants DOES 5 and 6 taken against
12 plaintiff BARCELO would chill a person of ordinary firmness from continuing to
13 engage in plaintiff's protected activity; her verbal protest and verbal challenge to
14 the actions that defendants DOES 5 and 6 perpetrated against her.

15 61. Plaintiff BARCELO's protected activity (verbal protest of having her
16 car stolen) was a substantial or motivating factor in the decision of defendants
17 DOES 5 and 6 refusal to tell defendants DOES 1 and 2 to release plaintiffs'
18 Hyundai Elantra to her, and to tell plaintiff to move away from her Hyundai
19 Elantra under implied threat of arrest, and to prevent plaintiff BARCELO from
20 getting her personal property out of her Hyundai Elantra, and to tell DOES 1 and 2
21 to tow plaintiffs' Hyundai Elantra away.

22 62. The actions of defendants constituted a violation of plaintiff
23 BARCELO's First Amendment Freedom of Speech/Right to Petition the
24 Government for Redress of Grievances.

25 63. As a direct and proximate result of the actions of said defendants
26 DOES 5 and 6 complained of herein, plaintiff was: 1) substantially, mentally and
27 emotionally injured, and suffered great mental and emotional injury, distress and
28 suffering; 2) incurred attorney's fees and associated litigation and other related

1 costs, and 3) incurred other special and general damages and expenses, including
2 the loss of her vehicle and their personal property, in an amount to be proven at
3 trial, in excess of \$3,000,000.00.

4 64. The actions by defendants DOES 5 and 6 were committed
5 maliciously, oppressively and in reckless disregard of plaintiffs' constitutional
6 rights, sufficient for an award of punitive / exemplary damages against all
7 defendants and each of them, save defendant CITY, in an amount to be proven at
8 trial, in excess of \$3,000,000.00.

9 **THIRD CAUSE OF ACTION**
10 **VIOLATION OF 42 U.S.C. § 1983**

11 **Claim Against Local Governing Body and Private Party Employing**
12 **Defendants Based on Policy of Failure to Train / Policy, Custom and Practice**
13 **(By Plaintiffs Against Defendants CITY, S & S TOWING, SEAN**
14 **METCALF, SONYA METCALF, 51 STRATEGIES L.L.C., BAYVIEW**
15 **HEIGHTS, MAAC BAYVIEW HEIGHTS and DOES 7 through 10,**
16 **inclusive)**

17 65. Plaintiffs hereby reallege and incorporate by reference the allegations
18 set forth in paragraphs 1 through 64, inclusive, above, as if set forth in full herein.

19 66. As shown above, on February 26, 2024 when defendants DOES 1
20 and 2, and DOES 3 and 4 and DOES 5 and 6 deprived plaintiffs of their particular
21 rights under the United States Constitution, they were acting under the color of
22 state law, as they were acting pursuant to joint, concerted and conspiratorial action
23 in a joint effort to deprive the plaintiffs of their federal constitutional rights, as
24 described above and below.

25 67. As shown above, the training policies of defendants CITY and DOES
26 8 through 10, inclusive, were not adequate to train their police officers and other
27 sworn peace officer personnel to handle the usual and recurring situations with
28 which they must deal with as sworn peace officers, to wit; 1) by failing to properly
and adequately train San Diego Police Department police officers about California
Private Property Impound towing laws, such as improper training on Cal. Veh.

1 Code § 22658(l)³⁶ and Cal. Veh. Code §§ 22658(g)(1)(B) and (C)³⁷, and 2) by
2 failing to train its police officer and supervisors that a painted red curb is not a
3 Fire Lane under California state law unless there is stenciling on the red curb that
4 states FIRE LANE or that there is a sign next to the red painted curb that states
5 FIRE LANE³⁸.

6 68. In that regard San Diego Police Department police officers were and
7 are trained that vehicles towed from private property pursuant to private property
8 impounds³⁹ could be towed from private property in the same way and under the
9 same rules and laws as vehicles that are being repossessed by banks and other
10 lenders who finance the purchase of vehicles by private persons; to wit; that when
11 any such vehicles are being repossessed by a bank or finance company, that once
12 the vehicle is coupled to the tow truck that the vehicle is deemed to be in the
13 possession of the bank or the finance company, and that a person interfering with
14 the repossession of the vehicle once it is already coupled to the tow truck is a
15 misdemeanor under California law pursuant to Cal. Veh. Code § 10856.

16 69. Accordingly, San Diego Police Department police officers were
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20 ³⁶ In particular that it is unlawful for a towing company to tow vehicles from private property
21 pursuant to a General Authorization in the absence of the owner of the private property or the
22 owner's agent to be present at the scene of the towing of a vehicle from private property and to
23 sign for the towing of a vehicle from said private property, save a situation when the vehicle is
24 either blocking traffic on the private property or is parked in a fire lane on any such private
25 property.

26 ³⁷ Cal. Veh. Code § 22658 (g) (1) (A) provides: "Possession of a vehicle under this section shall
27 be deemed to arise when a vehicle is removed from private property and is in transit.

28 (B) Upon the request of the owner of the vehicle or that owner's agent, the towing company or
its driver shall immediately and unconditionally release a vehicle that is not yet removed from
the private property and in transit.

(C) A person failing to comply with subparagraph (B) is guilty of a misdemeanor.

³⁸ See, Cal. Veh. Code § 22500.1.

³⁹ The towing of the vehicles from private property at the behest of the property owners and/or
their agents and/or at the behest of tenants who have reserved parking places in apartment
complexes.

1 trained that if vehicles were lawfully being towed from private that the owner of
2 the vehicle being towed had no right to interfere with the tow truck removing the
3 vehicle or to demand the vehicle's release once the vehicle was coupled to the tow
4 truck.

5 70. However, the California Vehicle Code provides that in the case of the
6 towing of a vehicle from private property pursuant to a Private Property Impound,
7 that even if the private property owner or their agent has lawfully authorized the
8 towing of a vehicle from that private property, if the owner of the vehicle or the
9 owner's agent returns to the vehicle and demands its release, that unless the
10 vehicle is off of the private property and in transit, that the vehicle must be
11 unconditionally released to the owner of the vehicle or his/her agent⁴⁰.

12 71. Accordingly, due to that improper training of San Diego Police
13 Department police officers by the San Diego Police Department, DOE 5 and/or
14 DOE 6 told plaintiff BARCELO to get out of her car, and told DOE 1 and/or DOE
15 2 to tow her car away, in violation of Cal. Veh Code § (g) (1) (A); unlawfully
16 seizing plaintiffs' vehicle under the Fourth Amendment to the United States
17 Constitution.

18 72. Accordingly, the failure of CITY and DOES 7 through 10, inclusive,
19 to properly train its police officers regarding the laws involved in private property
20 impounds was a proximate cause of the constitutional violations committed by
21 defendants DOES 5 and 6 complained of above and below⁴¹.

22 73. Moreover, as set forth above, defendants BAYVIEW HEIGHTS,
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24

25 ⁴⁰ Cal. Vehicle Code § (g) (1) (A) provides:

26 "Possession of a vehicle under this section shall be deemed to arise when a vehicle is removed
27 from private property and is in transit. (B) Upon the request of the owner of the vehicle or that
28 owner's agent, the towing company or its driver shall immediately and unconditionally release a
vehicle that is not yet removed from the private property and in transit."

⁴¹ unlawfully seizing plaintiffs' vehicle under the Fourth Amendment to the United States
Constitution.

1 MAAC BAYVIEW HEIGHTS and their agents and employees DOE 3 and/or
2 DOE 4 who are the property management persons or entities for the Hillside
3 Views Apartments authorized/contracted with and/or directed defendant S & S
4 TOWING to tow cars from the Hillside Views Apartments pursuant to a General
5 Authorization to patrol the Hillside Views Apartments, and to tow any vehicles
6 parked next to any red curb in said apartment complex, including red curbs that
7 were not fire lanes, notwithstanding that a curb merely painted red is not a fire
8 lane under California state law.

9 74. Accordingly, defendants BAYVIEW HEIGHTS, MAAC BAYVIEW
10 HEIGHTS and DOES 3 and DOES 4 engaged in a criminal conspiracy to tow
11 vehicles from the Hillside Views Apartments in violation of California state law,
12 and that criminal conspiracy was made and the object of that conspiracy was
13 carried pursuant to the policies, customs and practices of defendants BAYVIEW
14 HEIGHTS and MAAC BAYVIEW HEIGHTS.

15 75. Moreover, when defendants DOES 1 and 2 coupled plaintiffs'
16 vehicle to their tow truck owned by defendants 51 STRATEGIES L.L.C., S & S
17 TOWING, SEAN METCALF, and SONYA METCALF, and when they towed
18 plaintiffs' vehicle from private property without legal justification for doing so, in
19 DOES 1 and 2 calling the San Diego Police Department to assist them in towing
20 the plaintiffs' vehicle away or otherwise stealing their car, in defendants S & S
21 TOWING, SEAN METCALF, and SONYA METCALF refusing to communicate
22 (either by telephone or text message) with either plaintiffs BARCELO or
23 ROBERTS, in defendants S & S TOWING, SEAN METCALF, and SONYA
24 METCALF refusing to inform the vehicle owners of the towing and impound
25 fees, and in defendants S & S TOWING, SEAN METCALF, and SONYA
26 METCALF refusing to tell vehicle owners where they could retrieve their vehicle,
27 they were acting pursuant to the policies, customs and practices of defendants 51
28 STRATEGIES L.L.C., S & S TOWING, SEAN METCALF and SONYA

1 METCALF, inclusive, to do exactly those things during their duty shifts.

2 76. DOES 1 and 2 were in fact trained by defendants 51 STRATEGIES
3 L.L.C., S & S TOWING, SEAN METCALF, and SONYA METCALF to: 1) tow
4 vehicles from red curbs at apartment complexes, even when those red curbs are
5 not properly designated as fire lanes; 2) refuse to release vehicles to the vehicle
6 owners and their agents who were demanding that S & S TOWING tow truck
7 drivers, and continued to tow their vehicles away after the vehicle was coupled to
8 the tow truck and was not in transit, 3) to call the San Diego Police Department if
9 the vehicle owner interfered with them unlawfully performing private property
10 impounds of vehicles, to have the police officers assist them in towing a private
11 vehicle from private property in violation of Cal. Veh. Code § 22658, and 4) in
12 charging towing fees and associated costs to vehicle owners and/or their agents
13 when the vehicles were unlawfully towed away to their towing yard.

14 77. Defendants CITY and DOES 8 through 10, inclusive, and defendants
15 51 STRATEGIES L.L.C., S & S TOWING, SEAN METCALF, and SONYA
16 METCALF, and BAYVIEW HEIGHTS and MAAC BAYVIEW HEIGHTS were
17 deliberately indifferent to the obvious consequences of their failure to train their
18 police officers and other sworn peace officers, and their tow truck drivers and
19 other towing company, and their property managers.

20 78. The failure of defendants CITY and DOES 8 through 10, inclusive,
21 defendants 51 STRATEGIES L.L.C., S & S TOWING, SEAN METCALF, and
22 SONYA METCALF and defendants BAYVIEW HEIGHTS and MAAC
23 BAYVIEW HEIGHTS to provide adequate training caused the deprivation of
24 plaintiff's rights by the defendants CITY, 51 STRATEGIES L.L.C., S & S
25 TOWING, SEAN METCALF, SONYA METCALF and DOES 1 through 6,
26 inclusive; that is, the defendants' failure to train is so closely related to the
27 deprivation of plaintiffs' rights as to be the moving force that caused the ultimate
28 injuries to the plaintiffs.

1 79. As a direct and proximate result of the actions of said defendants
2 complained of herein, plaintiffs were: 1) substantially, mentally and emotionally
3 injured, and suffered great mental and emotional injury, distress and suffering; 2)
4 incurred attorney's fees and associated litigation and other related costs, and 3)
5 incurred other special and general damages and expenses, including the loss of
6 their vehicle and their personal property, in an amount to be proven at trial, in
7 excess of \$3,000,000.00 for each plaintiff.

8 80. The actions by said defendants were committed maliciously,
9 oppressively and in reckless disregard of plaintiffs' constitutional rights, sufficient
10 for an award of punitive / exemplary damages against all defendants and each of
11 them, save defendant CITY, in an amount to be proven at trial, in excess of
12 \$3,000,000.00 for each plaintiff against each defendant.

13 **FOURTH CAUSE OF ACTION**
14 **CONVERSION / TRESPASS TO CHATTELS**
15 **UNDER CALIFORNIA STATE LAW**
16 **(February 26, 2024 Incident)**
 (By Plaintiffs Against all Defendants)

17 81. Plaintiffs hereby reallege and incorporate by reference the
18 allegations set forth in paragraphs 1 through 80, inclusive, above, as though set
19 forth in full herein.

20 82. On February 26, 2024 Plaintiffs BARCELO and ROBERTS owned
21 and possessed the vehicle identified hereinabove and at all times mentioned
22 herein.

23 83. Defendants BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS
24 and DOE 3 had an official policy, custom and practice, and had a written contract,
25 including a "General Authorizations"⁴², with defendants S & S TOWING, SEAN
26

27
28 ⁴² A "General Authorization" is a written agreement between the owner of private property or
their agent and a towing company to tow vehicles off of the private property, without the owner

1 METCALF, and SONYA METCALF, to patrol the Hillside Views Apartments
2 and to unlawfully tow vehicles away from their apartment complex (where the
3 subject incident took place) that were parked next to red curbs that were not fire
4 lanes, and without the apartment complex's owner(s) or their agents being present
5 at the scene of the towing of the vehicle and without their
6 employees/agents/property managers and signing to authorize the towing of such
7 vehicles at the scene of any such towing; all in violation of Cal. Veh. Code §
8 22658.

9 84. Moreover defendants 51 STRATEGIES L.L.C., S & S TOWING,
10 SEAN METCALF, and SONYA METCALF had its tow truck drivers such as
11 DOES 1 and 2 not only to unlawfully tow vehicles away from their apartment
12 complex (where the subject incident took place) that were parked next to red curbs
13 that were not fire lanes, and without the apartment complex's owner(s) or their
14 agents being present at the scene of the towing of the vehicle and without their
15 employees / agents / property managers and to sign to authorize the towing of
16 such vehicles, but also to refused to release vehicles that were coupled to S & S
17 TOWING tow trucks when the owner or the agent of the owner of the vehicle
18 demanded that the vehicle be released to them before the vehicle was off of the
19 private property and in transit.

20 85. Said defendants DOES 1 through 6, inclusive, 51 STRATEGIES
21 L.L.C., S & S TOWING, SEAN METCALF, SONYA METCALF, BAYVIEW
22 HEIGHTS, MAAC BAYVIEW HEIGHTS, intentionally and substantially
23 interfered with plaintiffs' use of their property by taking possession of their
24
25

26 of the private property or their agent being present at the scene of the tow and signing the
27 written authorization at the scene of the tow at the time of the towing of vehicles away from the
28 private property, other than in situations involving vehicles on any such private property that are
neither blocking traffic or are parked in a true fire lane, as is required by Cal. Veh. Code §
22658.

1 vehicle during the February 26, 2024 incident complained of in this action and did
2 so in violation of Cal. Veh Code § 22658.

3 86. Plaintiffs did not consent to said defendants', and each of them, the
4 taking of their vehicle and their items of personal property.

5 87. Plaintiffs were actually harmed by the taking of their vehicle and of
6 their personal property, and such taking of their property constituted a Conversion
7 of plaintiffs' property and a Trespass to Chattels of the plaintiff's property.

8 88. Said defendants' conduct, and each of them, was a substantial factor
9 in causing plaintiffs' harm.

10 89. Moreover, defendants DOES 5 and 6 are liable to plaintiffs for their
11 Conversion of and Trespass to plaintiff's Chattels pursuant to Cal. Gov't Code §
12 820.

13 90. Moreover, defendant CITY is vicariously liable to plaintiff for the
14 defendants DOES 5's and 6's Conversion of and Trespass to plaintiff's Chattels
15 pursuant to Cal. Gov't Code § 815.2.

16 91. As a direct and proximate result of the actions of said defendants
17 complained of herein, plaintiffs were: 1) substantially, mentally and emotionally
18 injured, and suffered great mental and emotional injury, distress and suffering; 2)
19 incurred attorney's fees and associated litigation and other related costs, and 3)
20 incurred other special and general damages and expenses, including the loss of
21 their vehicle and their items of personal property, in an amount to be proven at
22 trial, in excess of \$3,000,000.00 for each plaintiff.

23 92. The actions by said defendants were committed maliciously,
24 oppressively and in reckless disregard of plaintiffs' constitutional rights, sufficient
25 for an award of punitive/exemplary damages against all defendants and each of
26 them, save defendant CITY, in an amount to be proven at trial, in excess of
27 \$3,000,000.00 for each plaintiff against each defendant.
28

FIFTH CAUSE OF ACTION
Negligence
Under California State Law
(February 26, 2024 Incident)
(By Plaintiffs Against all Defendants)

93. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in paragraphs 1 through 88, inclusive, above, as if set forth in full herein.

94. Defendants S & S TOWING, 51 STRATEGIES L.L.C., SEAN METCALF, SONYA METCALF, BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS and DOES 1 through 6, inclusive, owed plaintiffs BARCELO and ROBERTS a duty of care pursuant to Cal. Civil Code § 1714 to ensure that any vehicles towed from the Hillside Views Apartments be done in accordance with California state law, including Cal. Veh Code § 22658.

95. Defendants BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS and DOES 3 and 4, owed plaintiff BARCELO, at the Hillside Views Apartments, a duty of care pursuant to Cal. Civil Code § 1714 to ensure that the towing company that it contracted with to patrol and to perform private property impounds at the Hillside Views Apartments was a legitimate company that did not engage in criminal violations in performing private property impounds, unlike S & S TOWING, a notorious criminal enterprise.

96. Defendants BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS and DOES 3 and 4, owed plaintiffs BARCELO and ROBERTS also owed a duty of care pursuant to Cal. Veh Code § 22658(l) to ensure that the towing company that it contracted with to patrol and to perform private property impounds at the Hillside Views Apartments that performed private property impounds would not “patrol tow” vehicles from the Hillside Views Apartments without DOES 3 and/or 4 or some other authorized agent from BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS being present at the scene of any such towing of vehicles

1 that were unlawfully or wrongfully parked at the Hillside Views Point
2 Apartments, and signing a written authorization for the towing of vehicles
3 pursuant to a Private Property Impound at the scene of the tow and at the time of
4 the tow, save any private property impounds done on vehicles that were either
5 parked in a Fire Lane⁴³ or were blocking traffic.

6 97. Defendants BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS
7 and DOES 3 and 4, also owed plaintiffs BARCELO and ROBERTS a duty of care
8 pursuant to Cal. Civil Code § 1714 and pursuant to Cal. Veh Code § 22658(l) to
9 ensure that the towing company that it contracted with to “patrol tow”⁴⁴ and to
10 perform private property impounds at the Hillside Views Apartments that
11 performed private property impounds would not “patrol tow”⁴⁵ vehicles from the
12 Hillside Views Apartments that were parked next to curbs that were painted red,
13 unless the red painted curb had painted on it the words “Fire Lane”, or that had a
14 sign next to the red painted curb that showed the words “Fire Lane”⁴⁶.

15 98. Defendants BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS and
16 DOES 3 and 4, owed plaintiffs BARCELO and ROBERTS a duty of care pursuant
17 to Cal. Civil Code § 1714 and pursuant to Cal. Veh Code § 22658(g)(1)(B)⁴⁷ to
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21 ⁴³ Unless the red painted curb had painted on it the words “Fire Lane”, or that had a sign next to
the red painted curb that showed the words “Fire Lane”.

22 Or next to a fire hydrant.

23 ⁴⁴ That to tow vehicles pursuant to a written authorization to remove vehicles from private
property without the property owner or the property owner’s agent present at the scene of the
24 tow and to sign for the tow at the scene of the tow.

25 ⁴⁵ That to tow vehicles pursuant to a written authorization to remove vehicles from private
property without the property owner or the property owner’s agent present at the scene of the
26 tow and to sign for the tow at the scene of the tow.

27 ⁴⁶ Or from a curb close to a fire hydrant.

28 ⁴⁷ Cal. Veh Code § 22658(g)(1) provides:

“(A) Possession of a vehicle under this section shall be deemed to arise when a vehicle is
removed from private property and is in transit. (B) Upon the request of the owner of the
vehicle or that owner’s agent, the towing company or its driver shall immediately and

1 ensure that the towing company that it contracted with to patrol tow⁴⁸ and to
2 perform Private Property Impounds at the Hillside Views Apartments that
3 performed Private Property Impounds would release vehicles to the owner of the
4 vehicle or the owner's agent if the owner or the owner's agent arrived at the scene
5 of the vehicle that was being towed⁴⁹, and before the vehicle was off of the private
6 property and in transit, demanded that the vehicle be released to them.

7 99. Defendants BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS and
8 DOES 3 and 4, breached their duty of care that it owed plaintiff BARCELO
9 pursuant to Cal. Civil Code § 1714 and pursuant to the common law, by hiring
10 what said defendants should have known was basically an ongoing criminal
11 enterprise auto-theft and extortion company, S & S TOWING, to patrol tow⁵⁰
12 from the Hillside Views Point Apartments.

13 100. Defendants BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS
14 and DOES 3 and 4, breached their duty of care that it owed plaintiffs BARCELO
15 and ROBERTS pursuant to Cal. Civil Code § 1714 and pursuant to the common
16 law, by contracting with S & S TOWING to patrol tow⁵¹ from the Hillside Views
17 Apartments and to tow vehicles from the Hillside Views Apartments without
18 DOES 3 and/or 4 or some other authorized agent from BAYVIEW HEIGHTS,
19 MAAC BAYVIEW HEIGHTS being present at the scene of any such towing of
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24 unconditionally release a vehicle that is not yet removed from the private property and in transit.
(C) A person failing to comply with subparagraph (B) is guilty of a misdemeanor.”

25 ⁴⁸ That is without the property owner or the property owner's agent present at the scene of the
26 tow and to sign for the tow at the scene of the tow.

27 ⁴⁹ Lawfully or otherwise.

28 ⁵⁰ That is without the property owner or the property owner's agent present at the scene of the
tow and to sign for the tow at the scene of the tow.

⁵¹ That is without the property owner or the property owner's agent present at the scene of the
tow and to sign for the tow at the scene of the tow.

1 vehicles that were unlawfully or wrongfully parked at the Hillside Views
2 Apartments, and without DOES 3 and/or 4 or some other authorized agent from
3 BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS signing for the towing of
4 vehicles pursuant to a private property impound at the scene of the tow and at the
5 time of the tow, save any private property impounds done on vehicles that were
6 either parked in a Fire Lane⁵² or were blocking traffic.

7 101. Defendants BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS
8 and DOES 3 and 4, breached their duty of care that it owed plaintiffs BARCELO
9 and ROBERTS pursuant to Cal. Civil Code § 1714 and pursuant to Cal. Veh Code
10 § 22658(l) and otherwise pursuant to the common law, by contracting with S & S
11 TOWING to patrol tow from the Hillside Views Apartments and to tow vehicles
12 from the Hillside Views Apartments that were parked next to curbs that were
13 painted red without the red painted curb have painted on it the words “Fire Lane”,
14 or without a sign next to the red painted curb that showed the words “Fire Lane”.
15

16 102. Defendants BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS
17 and DOES 3 and 4, breached their duty of care that it owed plaintiffs BARCELO
18 and ROBERTS pursuant to Cal. Civil Code § 1714 and pursuant to Cal. Veh Code
19 § 22658(g)(1) and otherwise pursuant to the common law, to ensure that the
20 towing company that it contracted with to patrol and to perform private property
21 impounds at the Hillside Views Apartments that performed private property
22 impounds would release vehicles to the owner of the vehicle or the owner’s agent
23 if the owner or the owner’s agent arrived at the scene of the vehicle that was being
24 lawfully towed, and before the vehicle was off of the private property and in
25 transit, demanded that the vehicle be released to them.

26
27
28 ⁵² Or next to a fire hydrant.

1 103. In addition, defendants DOES 1 and 2, and defendants 51
2 STRATEGIES L.L.C., S & S TOWING, SEAN METCALF, SONYA METCALF
3 owed plaintiffs BARCELO and ROBERTS a duty of care pursuant to Cal. Veh
4 Code § 22658(l) to not patrol tow⁵³ vehicles from the Hillside Views Apartments
5 that were parked at the Hillside Views Apartments next to curbs that were painted
6 red but did not have painted on that red painted curb the words “Fire Lane”, or
7 without a sign next to the red painted curb that showed the words “Fire Lane”⁵⁴.

8 104. On February 26, 2024 defendants DOES 1 and 2, on behalf of
9 defendants 51 STRATEGIES L.L.C., S & S TOWING, SEAN METCALF and
10 SONYA METCALF and on behalf of defendants BAYVIEW HEIGHTS, MAAC
11 BAYVIEW HEIGHTS, breached its duty of care owed to plaintiffs BARCELO
12 and ROBERTS pursuant to Cal. Civil Code § 1714 and pursuant to Cal. Veh Code
13 § 22658(l) by towing their vehicle (Hyundai) that was parked next to a red painted
14 curb that did not have lettering on it showing the words “Fire Lane” and that did
15 not have a sign next to it that showed the words “Fire Lane”, and without an agent
16 of defendants BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS such as
17 DOES 3 and/or 4 being at the scene of the towing of plaintiffs’ vehicle and
18 signing a written authorization for the towing of plaintiffs’ vehicle.
19

20 105. In addition on February 26, 2024 defendants DOES 1 and 2, on
21 behalf of defendants 51 STRATEGIES L.L.C., S & S TOWING, SEAN
22 METCALF and SONYA METCALF and on behalf of defendants BAYVIEW
23 HEIGHTS, MAAC BAYVIEW HEIGHTS, owed plaintiffs a duty of care that
24 they owed to plaintiffs BARCELO and ROBERTS pursuant to Cal. Civil Code §
25

26
27 ⁵³ That is without the property owner or the property owner’s agent present at the scene of the
28 tow and to sign for the tow at the scene of the tow.

⁵⁴ Or next to a fire hydrant.

1 1714 and pursuant to Cal. Veh Code § 22658(l) to not tow her vehicle that was
2 parked next to a red painted curb that did not have lettering on it showing the
3 words “Fire Lane” and that did not have a sign next to it that showed the words
4 “Fire Lane”⁵⁵.

5 106. In addition on February 26, 2024 defendants DOES 1 and 2, on
6 behalf of defendants S & S TOWING, SEAN METCALF and SONYA
7 METCALF and on behalf of defendants BAYVIEW HEIGHTS, MAAC
8 BAYVIEW HEIGHTS, breached that duty of care that they owed to plaintiffs
9 BARCELO and ROBERTS pursuant to Cal. Civil Code § 1714 and pursuant to
10 Cal. Veh Code § 22658(l) to not tow her vehicle that was parked next to a red
11 painted curb that did not have lettering on it showing the words “Fire Lane” and
12 that did not have a sign next to it that showed the words “Fire Lane”⁵⁶.

13 107. In addition on February 26, 2024 defendants DOES 1 and 2, on
14 behalf of defendants S & S TOWING, SEAN METCALF and SONYA
15 METCALF and on behalf of defendants BAYVIEW HEIGHTS, MAAC
16 BAYVIEW HEIGHTS, owed plaintiffs a duty of care that they owed to plaintiffs
17 BARCELO and ROBERTS pursuant to Cal. Civil Code § 1714 and pursuant to
18 Cal. Veh Code § 22658(g) to release plaintiffs’ vehicle when it was coupled to the
19 S & S TOWING tow truck when plaintiff BARCELO returned to plaintiffs’
20 vehicle and demanded that it be released to her prior to plaintiffs’ vehicle being
21 off of the private property and in transit.

22 108. In addition on February 26, 2024 defendants DOES 1 and 2, on
23 behalf of defendants S & S TOWING, SEAN METCALF and SONYA
24

25
26
27
28 ⁵⁵ Or next to a fire hydrant.

⁵⁶ Or next to a fire hydrant.

1 METCALF and on behalf of defendants BAYVIEW HEIGHTS, MAAC
2 BAYVIEW HEIGHTS, breached that duty of care that they owed the plaintiffs a
3 pursuant to Cal. Civil Code § 1714 and pursuant to Cal. Veh Code § 22658(g) to
4 release plaintiffs' vehicle when it was coupled to the S & S TOWING tow truck
5 when plaintiff BARCELO returned to plaintiffs' vehicle and demanded that it be
6 released to her prior to plaintiffs' vehicle being off of the private property and in
7 transit, and when the DOES 1 and/or 2 refused to release plaintiffs' vehicle and
8 drove off with it; stealing plaintiffs' vehicle.

9 109. In addition on February 26, 2024 defendant San Diego Police
10 Department police officers DOES 5 and 6, owed plaintiffs a duty of care pursuant
11 to Cal. Civil Code § 1714 and pursuant to Cal. Veh Code § 22658(l) to not cause
12 or to not encourage defendants DOES 1 and 2 and defendants S & S TOWING,
13 SEAN METCALF and SONYA METCALF and defendants DOES 3 and 4 and
14 defendants BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS to unlawfully
15 tow plaintiffs' vehicle, pursuant to Cal. Civil Code § 1714 and pursuant to Cal.
16 Veh Code §§ 22658(g) and (l).

17 110. Defendant San Diego Police Department police officers DOES 5 and
18 6, breached that duty of care that it owed plaintiffs a duty of care pursuant to Cal.
19 Civil Code § 1714 and pursuant to Cal. Veh Code § 22658(l) to not cause or to not
20 encourage defendants DOES 1 and 2 and defendants S & S TOWING, SEAN
21 METCALF and SONYA METCALF and defendants DOES 3 and 4 and
22 defendants BAYVIEW HEIGHTS, MAAC BAYVIEW HEIGHTS to unlawfully
23 tow plaintiffs' vehicle, by telling defendants DOES 1 and 2 to tow plaintiffs'
24 vehicle away from BARCELO and by ordering BARCELO to exit plaintiffs'
25 vehicle without being able to take her personal property out of said vehicle.
26

27 111. Plaintiffs were actually harmed by the taking of their vehicle and of
28 their personal property.

1 112. Said defendants' conduct, and each of them, was a substantial factor
2 in causing plaintiffs' harm.

3 113. Moreover, defendants DOES 5 and 6 are liable to plaintiffs for their
4 Negligence that caused said harm to plaintiffs pursuant to Cal. Gov't Code § 820.

5 114. Moreover, defendant CITY is vicariously liable to plaintiffs for the
6 defendants DOES 5's and 6's negligence pursuant to Cal. Gov't Code § 815.2.

7 115. As a direct and proximate result of the actions of said defendants
8 complained of herein, plaintiff was: 1) substantially, mentally and emotionally
9 injured, and suffered great mental and emotional injury, distress and suffering; 2)
10 incurred attorney's fees and associated litigation and other related costs, and 3)
11 incurred other special and general damages and expenses, including the loss of
12 their vehicle, in an amount to be proven at trial, in excess of \$3,000,000.00 for
13 each plaintiff.

14 116. As a direct and proximate result of the actions of said defendants'
15 acts of negligence complained of herein, plaintiffs were: 1) substantially, mentally
16 and emotionally injured, and suffered great mental and emotional injury, distress
17 and suffering; 2) incurred attorney's fees and associated litigation and other
18 related costs, and 3) incurred other special and general damages and expenses,
19 including the loss of their vehicle, in an amount to be proven at trial, in excess of
20 \$3,000,000.00 for each plaintiff.

21
22 **SIXTH CAUSE OF ACTION**
23 **Intentional Infliction Of Emotional Distress**
24 **Under California State Law**
25 **(February 26, 2024 Incident)**
(By Plaintiffs Against All Defendants)

26 117. Plaintiffs hereby reallege and incorporate by reference the allegations
27 set forth in paragraphs 1 through 116, inclusive, above, as if set forth in full
28 herein.

1 118. Defendants DOES 1 through 6, inclusive, and each of them, knew
2 and/or should have known that plaintiffs were susceptible to suffering severe
3 emotional distress from the actions taken and committed against plaintiffs as
4 complained of above and herein.

5 119. Moreover, the conduct of said defendants for all of the incidents
6 complained of herein, were outrageous and not the type of conduct condoned in a
7 civilized society.

8 120. As defendants DOES 1 and 2 were acting in the course of and within
9 the scope of their employment with defendants 51 STRATEGIES L.L.C., S & S
10 TOWING, SEAN METCALF and SONYA METCALF S & S TOWING, SEAN
11 METCALF and SONYA METCALF, and as defendants DOES 1 and 2 were
12 acting pursuant to the policies, customs and practices of defendants 51
13 STRATEGIES L.L.C., S & S TOWING, SEAN METCALF and SONYA
14 METCALF, defendants DOES 1 and 2 and defendants 51 STRATEGIES L.L.C.,
15 S & S TOWING, SEAN METCALF and SONYA METCALF are all liable to
16 plaintiff for the Intentional Infliction of Emotional Distress Inflicted upon the
17 plaintiffs.

18 121. As defendants DOES 3 and 4 were acting in the course of and within
19 the scope of their employment with defendants BAYVIEW HEIGHTS, MAAC
20 BAYVIEW HEIGHTS, and as defendants DOES 3 and 4 were acting pursuant to
21 the policies, customs and practices of defendants BAYVIEW HEIGHTS, MAAC
22 BAYVIEW HEIGHTS, defendants DOES 3 and 4 and defendants BAYVIEW
23 HEIGHTS, MAAC BAYVIEW HEIGHTS are all liable to plaintiff for the
24 Intentional Infliction of Emotional Distress Inflicted upon the plaintiffs.

25 122. Moreover, defendants DOES 5 and 6 are liable to plaintiffs for their
26 Negligence that caused said harm to plaintiffs pursuant to Cal. Gov't Code § 820.
27

28 123. Moreover, defendant CITY is vicariously liable to plaintiffs for the

1 defendants DOES 5's and 6's negligence pursuant to Cal. Gov't Code § 815.2.

2 124. As a direct and proximate result of the actions of said defendants
3 complained of herein, plaintiffs were: 1) substantially, mentally and emotionally
4 injured, and suffered great mental and emotional injury, distress and suffering; 2)
5 incurred attorney's fees and associated litigation and other related costs, and 3)
6 incurred other special and general damages and expenses, including the loss of
7 their vehicle and their items of personal property, in an amount to be proven at
8 trial, in excess of \$3,000,000.00 for each plaintiff.

9 125. The actions by said defendants were committed maliciously,
10 oppressively and in reckless disregard of plaintiffs' constitutional rights, sufficient
11 for an award of punitive / exemplary damages against all defendants and each of
12 them, save defendant CITY, in an amount to be proven at trial, in excess of
13 \$3,000,000.00.

14 **SEVENTH CAUSE OF ACTION**
15 **VIOLATION OF CAL. VEH CODE § 22658**
16 **UNDER CALIFORNIA STATE LAW**
17 **(February 26, 2024 Incident)**

18 **(AGAINST DEFENDANTS CITY, S & S TOWING, 51 STRATEGIES**
19 **L.L.C., SEAN METCALF, SONYA METCALF, BAYVIEW HEIGHTS,**
20 **MAAC BAYVIEW HEIGHTS and DOES 1 through 6, inclusive)**

21 126. Plaintiffs hereby reallege and incorporate by reference the
22 allegations set forth in paragraphs 1 through 125, inclusive, above, as though set
23 forth in full herein.

24 127. Plaintiffs BARCELO and ROBERTS owned and possessed the
25 Hyundai vehicle identified hereinabove and at all times mentioned herein.

26 128. As set forth above, defendants BAYVIEW HEIGHTS, MAAC
27 BAYVIEW HEIGHTS and DOES 3 and 4 had an official policy, custom and
28 practice, and had a written contract with defendants S & S TOWING, SEAN
METCALF, and SONYA METCALF to patrol the Hillside Views Apartments
and to unlawfully "patrol tow" vehicles away from their apartment complex

1 (where the subject incident took place) that were parked next to red curbs that
2 were not fire lanes, and without the apartment complex's owner(s) or their agents
3 being present at the scene of the towing of the vehicle and without their
4 employees / agents / property managers and to sign to authorize the towing of
5 such vehicles; all in violation of Cal. Veh. Code § 22658(l).

6 129. Moreover defendants S & S TOWING, SEAN METCALF, SONYA
7 METCALF and 51 STRATEGIES L.L.C. had its tow truck drivers such as DOES
8 1 and 2 not only to unlawfully tow vehicles away from their apartment complex
9 (where the subject incident took place) that were parked next to red curbs that
10 were not fire lanes, and without the apartment complex's owner(s) or their agents
11 being present at the scene of the towing of the vehicle and without their
12 employees / agents / property managers and to sign to authorize the towing of
13 such vehicles, but also to refuse to release vehicles that were coupled to S & S
14 TOWING tow trucks when the owner or the agent of the owner of the vehicle
15 demanded that the vehicle be released to them before the vehicle was off of the
16 private property and in transit, in violation of Cal. Veh. Code § 22658(g)(1)(B).

17 130. As set forth above, on February 26, 2024, DOES 1 and 2 while patrol
18 towing towed plaintiffs' Hyundai Elantra to a place owned and or operated by S &
19 S TOWING, 51 STRATEGIES L.L.C., SEAN METCALF and SONYA
20 METCALF in violation of Cal. Veh. Code § 22658, to wit:

21 a) DOES 1 and 2 towed plaintiffs' Hyundai Elantra away from plaintiff
22 BARCELO without the owner or agent of the private property where it was on
23 being present at the scene of the tow and without the owner or agent of the private
24 property signing for the tow of plaintiffs' vehicle at the scene of the tow;

25 b) After plaintiffs' Hyundai Elantra was coupled to the tow truck
26 plaintiff BARCELO demanded that DOES 1 and 2 release her car to her, and they
27 refused to do so;

28 c) DOES 1 and 2 towed plaintiffs' car from it being parked next to a red

1 painted curb that was not a fire lane pursuant to a General Authorization provided
2 to S & S TOWING by DOES 3 and 4 to patrol the Hillside Views Apartments and
3 to tow vehicle parked next to red curbs that were not Fire Lanes;

4 d) DOES 1 and 2 towed plaintiffs Hyundai Elantra when there were not
5 proper signs that were compliant with Cal. Veh. Code § 22658 posted at every
6 entrance and exit to the Hillside Views Apartments;

7 e) DOES 1 and 2 towed plaintiffs' Hyundai Elantra to a place unknown
8 and to place not shown on any signs posted on every entrance to and exit from the
9 Hillside Views Apartments.

10 f) DOES 1 and 2 towed plaintiffs' Hyundai Elantra from the Hillside
11 Views Apartments even though after plaintiff's Hyundai Elantra was coupled to
12 the tow truck but before the tow truck and the Hyundai Elantra were off of the
13 private property and in transit, plaintiff BARCELO arrived at the scene of the tow
14 and demanded that DOES 1 and 2 release the Hyundai Elantra vehicle to her.

15 131. After plaintiffs' Hyundai Elantra was towed away that vehicle was
16 secreted from plaintiffs and plaintiffs were deprived of the opportunity to retrieve
17 their car by S & S TOWING, 51 STRATGIES, DOES 1 and 2, and SEAN
18 METCALF.

19 132. Moreover, as set forth above, defendant San Diego Police
20 Department police officers DOES 5 and 6 actually told defendant tow truck
21 driver(s) DOES 1 and 2 to tow plaintiffs' car away, and ordered plaintiff
22 BARCELO to exit her vehicle (the Hyundai) and not to retrieve her personal
23 property from plaintiffs' car, resulting in the loss of plaintiffs' car and the loss of
24 plaintiff BARCELO's personal property.

25 133. Moreover, defendants DOES 5 and 6 are liable to plaintiffs for their
26 Negligence that caused said harm to plaintiffs pursuant to Cal. Gov't Code § 820.

27 134. Moreover, defendant CITY is vicariously liable to plaintiffs for the
28 defendants DOES 5's and 6's negligence pursuant to Cal. Gov't Code § 815.2.

1 As a direct and proximate result of the actions of said defendants
2 complained of herein, plaintiffs were: 1) substantially, mentally and emotionally
3 injured, and suffered great mental and emotional injury, distress and suffering; 2)
4 incurred attorney's fees and associated litigation and other related costs, and 3)
5 incurred other special and general damages and expenses, including the loss of
6 their vehicle and their items of personal property, in an amount to be proven at
7 trial, in excess of \$3,000,000.00.

8 135. The actions by said defendants were committed maliciously,
9 oppressively and in reckless disregard of plaintiffs' constitutional rights, sufficient
10 for an award of punitive / exemplary damages against all defendants and each of
11 them, save defendant CITY, in an amount to be proven at trial, in excess of
12 \$3,000,000.00 for each plaintiff.

13 **EIGHTH CAUSE OF ACTION**
14 **CONVERSION / TRESPASS TO CHATTELS**
15 **UNDER CALIFORNIA STATE LAW**
16 **(May 31, 2024 Incident)**

17 **(By Plaintiff BARCELO AGAINST DEFENDANTS S & S TOWING, 51**
18 **STRATEGIES L.L.C., SEAN METCALF, SONYA METCALF, VALENCIA**
19 **POINTE, MAAC VALENCIA POINTE and DOES 1 through 4, inclusive)**

20 136. Plaintiff BARCELO hereby realleges and incorporates by reference
21 the allegations set forth in paragraphs 1 through 135, inclusive, above, as though
22 set forth in full herein.

23 137. On May 31, 2024 plaintiff BARCELO owned and possessed a 2018
24 Ford Explorer Limited Sport Utility Vehicle (hereinafter referred to as the
25 "EXPLORER").

26 138. Also on May 31, 2024 plaintiff BARCELO resided at 5930 Division
27 Street, Apt. 323 San Diego, California in the Valencia Pointe Apartments.

28 139. Defendants VALENCIA POINTE, VALENCIA POINTE and/or
DOE 3 and/or DOE 4 had an official policy, custom and practice, and had a

1 written contract with defendants S & S TOWING, SEAN METCALF, and
2 SONYA METCALF to patrol the Valencia Pointe Apartments and to unlawfully
3 patrol tow⁵⁷ vehicles away from their apartment complex (where the subject
4 incident took place) that were parked next to red curbs that were not fire lanes,
5 and without the apartment complex's owner(s) or their agents consent and without
6 apartment complex's owner(s) or their agents being present at the scene of the
7 towing of the vehicle and without their employees / agents / property managers
8 and to signing to authorize the towing of such vehicles at the scene of the tow; all
9 in violation of Cal. Veh. Code § 22658.

10 140. Moreover defendants S & S TOWING, SEAN METCALF, and
11 SONYA METCALF had its tow truck drivers such as DOES 1 and 2 unlawfully
12 tow vehicles away from the Valencia Pointe Apartments apartment complex
13 (where the subject incident took place) that were parked next to red curbs that
14 were not fire lanes, and without the apartment complex's owners or property
15 managers or other agents of the owners of the Valencia Pointe Apartments
16 consent, and without or their agents being present at the scene of the towing of the
17 vehicle, and without the owners of the Valencia Pointe Apartments or their
18 employees / agents / property managers signing to authorize the towing of such
19 vehicles at the scene of the tow when the towing of any such vehicle was made.

20 141. Moreover defendants S & S TOWING, SEAN METCALF, and
21 SONYA METCALF had its tow truck drivers such as DOES 1 and 2 unlawfully
22 tow vehicles away from the Valencia Pointe Apartments apartment complex
23 during the towing process, including when the vehicle to be towed was already
24 coupled to the tow truck, when the vehicle was still on the private property and
25 was not yet in transit, and when the owner or the agent of the owner of the vehicle

26
27
28 ⁵⁷ That is without the property owner or the property owner's agent present at the scene of the
tow and to sign for the tow at the scene of the tow.

1 demanded that the vehicle be released to them before the vehicle was off of the
2 private property and in transit.

3 142. On May 31, 2024 DOES 1 and 2, tow truck drivers for S & S
4 TOWING towed away plaintiff BARCELO's EXPLORER that was properly and
5 lawfully parking in her designated parking space at the Valencia Pointe
6 Apartments; a parking space that was designated for BARCELO to park her
7 EXPLORER in.

8 143. Accordingly, defendants DOES 1 through 4, inclusive, S & S
9 TOWING, SEAN METCALF, SONYA METCALF, VALENCIA POINTE and
10 MAAC VALENCIA POINTE , intentionally and substantially interfered with
11 plaintiff BARCELO's use of her EXPLORER / her personal property, by taking
12 possession of her EXPLORER vehicle during the May 31, 2024 incident
13 complained of in this action and did so in violation of Cal. Veh Code §§ 22658
14 (the California private property impound statute) and 10851 (taking vehicle
15 without consent), in violation of Cal. Penal Code § 487(d) (auto theft), and in
16 violation of Cal. Penal Code § 518/519 (extortion), for demanding \$400.00 from
17 plaintiff BARCELO to release her EXPLORER back to her.

18 144. Plaintiff BARCELO did not consent to said defendants', and each of
19 them, the taking of their vehicle and her items of personal property, to wit; her
20 EXPLORER.

21 145. Plaintiff BARCELO was actually harmed by the taking of her
22 EXPLORER vehicle and of her personal property, and such taking of her
23 EXPLORER constituted a Conversion of plaintiff's property and a Trespass to
24 Chattels of the plaintiff's property.

25 146. Said defendants' conduct, and each of them, was a substantial factor
26 in causing plaintiffs' harm.

27 147. As a direct and proximate result of the actions of said defendants
28 complained of herein, plaintiff BARCELO was: 1) substantially, mentally and

1 emotionally injured, and suffered great mental and emotional injury, distress and
2 suffering; 2) incurred attorney's fees and associated litigation and other related
3 costs, and 3) incurred other special and general damages and expenses, including
4 the loss of use of her EXPLORER vehicle, in an amount to be proven at trial, in
5 excess of \$3,000,000.00.

6 148. The actions by said defendants S & S TOWING, 51 STRATEGIES
7 L.L.C., SEAN METCALF, SONYA METCALF, VALENCIA POINTE, and
8 MAAC VALENCIA POINTE were committed maliciously, oppressively and in
9 reckless disregard of plaintiffs' constitutional rights, sufficient for an award of
10 punitive / exemplary damages against all defendants and each of them in an
11 amount to be proven at trial, in excess of \$3,000,000.00 against each defendant.

12 **NINTH CAUSE OF ACTION**

13 **Negligence**

14 **Under California State Law**

15 **(May 31, 2024 Incident)**

16 **(By Plaintiff BARCELO AGAINST DEFENDANTS S & S TOWING, 51
17 STRATEGIES L.L.C., SEAN METCALF, SONYA METCALF, VALENCIA
18 POINTE, MAAC VALENCIA POINTE and DOES 1 through 4, inclusive)**

19 149. Plaintiff hereby realleges and incorporates by reference the
20 allegations set forth in paragraphs 1 through 148, inclusive, above, as if set forth
21 in full herein.

22 150. Defendants S & S TOWING, 51 STRATEGIES L.L.C., SEAN
23 METCALF, SONYA METCALF, VALENCIA POINTE, MAAC VALENCIA
24 POINTE and DOES 1 through 4, inclusive, owed plaintiff BARCELO a duty of
25 care pursuant to Cal. Civil Code § 1714 and pursuant to the common law, to
26 ensure that any vehicles towed from the Valencia Pointe Apartments be done in
27 accordance with California state law, including Cal. Veh Code § 22658.

28 151. Defendants VALENCIA POINTE, MAAC VALENCIA POINTE
and DOES 3 and 4, owed plaintiff BARCELO, a lawful tenant at the Valencia

1 Pointe Apartments, a duty of care pursuant to Cal. Civil Code § 1714 and pursuant
2 to the common law, to ensure that the towing company that it contracted with to
3 patrol tow and to perform private property impounds at the Valencia Pointe
4 Apartments was a legitimate company that did not engage in criminal violations in
5 performing private property impounds, unlike S & S TOWING, a notorious
6 criminal enterprise.

7 152. Defendants VALENCIA POINTE, MAAC VALENCIA POINTE
8 and DOES 3 and 4, owed plaintiff BARCELO, a lawful tenant at the Valencia
9 Pointe Apartments, a duty of care pursuant to Cal. Civil Code § 1714 and pursuant
10 to the common law, to ensure that the towing company that it contracted with to
11 patrol and to perform private property impounds at the Valencia Pointe
12 Apartments that performed private property impounds would not tow vehicles
13 from the Valencia Points Apartments that without DOES 3 and/or 4 or some other
14 authorized agent from VALENCIA POINTE and MAAC VALENCIA POINTE,
15 being present at the scene of any such towing of vehicles that were unlawfully or
16 wrongfully parked at the Valencia Pointe Apartments, and sign for the towing of
17 vehicles pursuant to a private property impound at the scene of the tow and at the
18 time of the tow, save any private property impounds done on vehicles that were
19 either parked in a Fire Lane or were blocking traffic.

20 153. Defendants VALENCIA POINTE, MAAC VALENCIA POINTE
21 and DOES 3 and 4, owed plaintiff BARCELO, a lawful tenant at the Valencia
22 Pointe Apartments, a duty of care pursuant to Cal. Civil Code § 1714 and pursuant
23 to the common law, to ensure that the towing company that it contracted with to
24 patrol and to perform private property impounds at the Valencia Pointe
25 Apartments that performed private property impounds would not tow vehicles
26 from the Valencia Pointe Apartments that were parked next to curbs that were
27 painted red unless the red painted curb has painted on it the words “Fire Lane”, or
28 that had a sign next to the red painted curb that showed the words “Fire Lane”,

1 without DOES 3 and/or 4 or some other authorized agent from VALENCIA
2 POINTE and MAAC VALENCIA POINTE, being present at the scene of any
3 such towing of vehicles that were unlawfully or wrongfully parked at the Valencia
4 Pointe Apartments, and sign for the towing of vehicles pursuant to a private
5 property impound at the scene of the tow and at the time of the tow, save any
6 private property impounds done on vehicles that were either parked in an actual
7 Fire Lane or were blocking traffic.

8 154. Defendants VALENCIA POINTE, MAAC VALENCIA POINTE
9 and DOES 3 and 4, breached their duty of care that it owed plaintiff BARCELO
10 pursuant to Cal. Civil Code § 1714 and pursuant to the common law, by hiring
11 what said defendants knew or should have known was basically an ongoing
12 criminal enterprise auto-theft and extortion company, S & S TOWING, to patrol
13 tow from the Valencia Pointe Apartments.

14 155. Defendants VALENCIA POINTE, MAAC VALENCIA POINTE
15 and DOES 3 and 4, breached their duty of care that it owed plaintiff BARCELO
16 pursuant to Cal. Civil Code § 1714 and pursuant to the common law, by
17 contracting with S & S TOWING to patrol tow from the Valencia Point
18 Apartments and to tow vehicles from the Valencia Point Apartments without
19 DOES 3 and/or 4 or some other authorized agent from VALENCIA POINTE and
20 MAAC VALENCIA POINTE, being present at the scene of any such towing of
21 vehicles that were unlawfully or wrongfully parked at the Valencia Pointe
22 Apartments, and without DOES 3 and/or 4 or some other authorized agent from
23 VALENCIA POINTE, MAAC VALENCIA POINTE signing for the towing of
24 vehicles pursuant to a private property impound at the scene of the tow and at the
25 time of the tow, save any private property impounds done on vehicles that were
26 either parked in a Fire Lane or were blocking traffic.

27 156. Defendants VALENCIA POINTE, MAAC VALENCIA POINTE
28 and DOES 3 and 4, breached their duty of care that it owed plaintiff BARCELO

1 pursuant to Cal. Civil Code § 1714 and pursuant to the common law, by
2 contracting with S & S TOWING to patrol tow from the Valencia Pointe
3 Apartments and to tow vehicles from the Valencia Pointe Apartments that were
4 parked next to curbs that were painted red without the red painted curb have
5 painted on it the words “Fire Lane”, or without a sign next to the red painted curb
6 that showed the words “Fire Lane”.

7 157. In addition, defendants DOES 1 and 2, and defendants S & S
8 TOWING, SEAN METCALF, SONYA METCALF, VALENCIA POINTE, and
9 MAAC VALENCIA POINTE owed plaintiff BARCELO a duty of care to not
10 tow vehicles from the Valencia Pointe Apartments that were not unlawfully or
11 wrongfully parked at the Valencia Pointe Apartments, and not to tow vehicles
12 from the Valencia Pointe Apartments that were properly parked in a tenant’s
13 assigned parking space or in any other proper parking space pursuant to Cal. Civil
14 Code § 1714 and pursuant to the common law.

15 158. On May 31, 2024 defendants DOES 1 and 2, on behalf of defendants
16 S & S TOWING, SEAN METCALF and SONYA METCALF and on behalf of
17 defendants VALENCIA POINTE, MAAC VALENCIA POINTE, breached its
18 duty of care owed to plaintiff BARCELO pursuant to Cal. Civil Code § 1714 and
19 pursuant to the common law, by towing her EXPLORER that was properly parked
20 at the Valencia Point Apartments.

21 159. As a direct and proximate result of the actions of said defendants
22 complained of herein, plaintiff was: 1) substantially, mentally and emotionally
23 injured, and suffered great mental and emotional injury, distress and suffering; 2)
24 incurred attorney’s fees and associated litigation and other related costs, and 3)
25 incurred other special and general damages and expenses, including the loss of
26 their vehicle, in an amount to be proven at trial, in excess of \$3,000,000.00 for
27 each plaintiff.

28 **TENTH CAUSE OF ACTION**

SECOND AMENDED COMPLAINT FOR DAMAGES

Intentional Infliction Of Emotional Distress

Under California State Law

(May 31, 2024 Incident)

(By Plaintiff BARCELO AGAINST DEFENDANTS S & S TOWING, 51 STRATEGIES L.L.C., SEAN METCALF, SONYA METCALF, VALENCIA POINTE, MAAC VALENCIA POINTE and DOES 1 through 4, inclusive)

160. Plaintiff hereby realleges and incorporates by reference the allegations set forth in paragraphs 1 through 139, inclusive, above, as if set forth in full herein.

161. Defendants S & S TOWING, 51 STRATEGIES L.L.C., SEAN METCALF, SONYA METCALF, VALENCIA POINTE, MAAC VALENCIA POINTE and DOES 1 through 6, inclusive, and each of them, knew and/or should have known that plaintiff BARCELO was susceptible to suffering severe emotional distress from the actions taken and committed against her as complained of above and herein.

162. Moreover, the conduct of defendants S & S TOWING, 51 STRATEGIES L.L.C., SEAN METCALF, SONYA METCALF, VALENCIA POINTE, MAAC VALENCIA POINTE and DOES 1 through 6, inclusive for all of the incidents complained of herein, were outrageous and not the type of conduct condoned in a civilized society.

163. As a direct and proximate result of the actions of said defendants complained of herein, plaintiff BARCELO was: 1) substantially, mentally and emotionally injured, and suffered great mental and emotional injury, distress and suffering; 2) incurred attorney's fees and associated litigation and other related costs, and 3) incurred other special and general damages and expenses, including the loss of use of her vehicle, in an amount to be proven at trial, in excess of \$3,000,000.00.

164. The actions by said defendants were committed maliciously, oppressively and in reckless disregard of plaintiffs' constitutional rights, sufficient for an award of punitive / exemplary damages against all defendants and each of

1 them, in an amount to be proven at trial, in excess of \$3,000,000.00 against each
2 defendant.

3 **ELEVENTH CAUSE OF ACTION**
4 **VIOLATION OF CAL. VEH CODE § 22658**
5 **UNDER CALIFORNIA STATE LAW**
6 **(May 31, 2024 Incident)**
7 **(AGAINST DEFENDANTS S & S TOWING, 51 STRATEGIES L.L.C.,**
8 **SEAN METCALF, SONYA METCALF, VALENCIA POINTE, MAAC**
9 **VALENCIA POINTE and DOES 1 through 6, inclusive)**

10 165. Plaintiff hereby realleges and incorporates by reference the
11 allegations set forth in paragraphs 1 through 144, inclusive, above, as though set
12 forth in full herein.

13 166. Plaintiff BARCELO and owned and possessed the EXPLORER
14 vehicle identified hereinabove and at all times mentioned herein.

15 167. Defendants VALENCIA POINTE, MAAC VALENCIA POINTE
16 and DOE 3 had an official policy, custom and practice, and had a written contract
17 with defendants S & S TOWING, SEAN METCALF, and SONYA METCALF to
18 patrol tow⁵⁸ the Valencia Pointe Apartments and to unlawfully tow vehicles away
19 from their apartment complex (where the subject incident took place) that were
20 parked next to red curbs that were not fire lanes, and without the apartment
21 complex's owner(s) or their agents being present at the scene of the towing of the
22 vehicle and without their employees / agents / property managers and to sign to
23 authorize the towing of such vehicles; all in violation of Cal. Veh. Code § 22658.

24 168. Moreover defendants S & S TOWING, SEAN METCALF, SONYA
25 METCALF and 51 STRATEGIES L.L.C. had its tow truck drivers such as DOES
26

27 ⁵⁸ That is to patrol the property for the property owner for wrongfully parked cars, and to tow
28 vehicles without the property owner or the owner's agents consent or direction to tow a vehicle
off of the owner's private property, and to do so without the property owner or the property
owner's agent present at the scene of the tow and to sign for the tow at the scene of the tow.

1 1 and 2 not only unlawfully tow vehicles away from the Valencia Pointe
2 Apartments apartment complex (where the subject incident took place) that were
3 parked next to red curbs that were not fire lanes, and without the consent or
4 knowledge of the apartment complex's owner(s) or their agents being present at
5 the scene of the towing of the vehicle, and without their employees / agents /
6 property managers signing an authorization for the towing of such vehicles, but
7 also had S & S TOWING tow truck drivers refuse to release vehicles that were
8 coupled to S & S TOWING tow trucks when the owner or the agent of the owner
9 of the vehicle demanded that the vehicle be released to them before the vehicle
10 was off of the private property and in transit.

11 169. As set forth above, on May 31, 2024, DOES 1 and 2 and S & S
12 TOWING, while patrol towing, towed plaintiff BARCELO's EXPLORER to a
13 place owned and or operated by S & S TOWING, 51 STRATEGIES L.L.C.,
14 SEAN METCALF and SONYA METCALF in violation of Cal. Veh. Code §
15 22658, to wit:

16 a) DOES 1 and 2 towed plaintiff BARCELO's EXPLORER away
17 from plaintiff BARCELO without the owner or agent of the private property
18 where it was on being present at the scene of the tow and without the owner or
19 agent of the private property signing for the tow of plaintiffs' vehicle at the scene
20 of the tow;

21 b) After plaintiff BARCELO's EXPLORER was coupled to the tow
22 truck plaintiff BARCELO demanded that DOES 1 and 2 release her car to her,
23 and they refused to do so;

24 c) DOES 1 and 2 towed plaintiff BARCELO's EXPLORER from a
25 parking space at the Valencia Pointe Apartments where plaintiff BARCELO was
26 authorized by the Valencia Pointe Apartments to park;

27 d) DOES 1 and 2 towed plaintiff BARCELO's EXPLORER when
28 there were not proper signs that were compliant with Cal. Veh. Code § 22658
posted at every entrance and exit to the Valencia Pointe Apartments;

1 170. As a direct and proximate result of the actions of said defendants
2 complained of herein, plaintiff BARCELO was: 1) substantially, mentally and
3 emotionally injured, and suffered great mental and emotional injury, distress and
4 suffering; 2) incurred attorney's fees and associated litigation and other related
5 costs, and 3) incurred other special and general damages and expenses, including
6 the loss of their vehicle and their items of personal property, in an amount to be
7 proven at trial, in excess of \$3,000,000.00.

8 171. The actions by said defendants were committed maliciously,
9 oppressively and in reckless disregard of plaintiffs' constitutional rights, sufficient
10 for an award of punitive / exemplary damages against all defendants and each of
11 them, in an amount to be proven at trial, in excess of \$3,000,000.00 against each
12 defendant.

13 **WHEREFORE**, plaintiffs pray that an order issue out of this Honorable
14 Court, as follows:

- 15 1. For judgment against all defendants for compensatory damages in an
16 amount in excess of \$3,000,000.00 for each plaintiff;
- 17 2. For judgment against all defendants, save CITY, for punitive
18 damages in an amount in excess of \$3,000,000.00 for each plaintiff
19 against each defendant;
- 20 3. For reasonable attorney's fees and other costs of suit;
- 21 4. For a trial by jury; and
- 22 5. For such other relief as this Honorable Court finds just and equitable.

23 /s/ Jerry L. Steering
24 JERRY L. STEERING, ATTORNEY FOR
25 PLAINTIFFS KATIE BARCELO and JUSTIN ROBERTS
26
27
28