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Coalition on Homelessness

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

COALITION ON HOMELESSNESS, a California nonprofit corporation,

Petitioner,

v.

CITY AND COUNTY OF SAN FRANCISCO; the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY; the SAN FRANCISCO POLICE DEPARTMENT; and TEGSCO LLC dba SAN FRANCISCO AUTO RETURN,

Respondents.

Case No. CPF-18-516456

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONER COALITION ON HOMELESSNESS'S MOTION FOR WRIT OF MANDATE, INJUNCTION, AND DECLARATORY RELIEF

[Filed concurrently with:
(1) Notice of Motion and Motion;
(2) Declarations of Christopher Arvin, Kimberly Brown, Jennifer Friedenbach, Margot Kushel, Victoria Larson, Stephanie A. Roeser, and MiQueesha Willis;
(3) Declaration of Peter Hess, Ph.D.;
(4) Request for Judicial Notice; and
(5) [Proposed] Order.]

Hearing
Date: July 22, 2021
Time: 9:30 a.m.
Dept: 302

Complaint filed: December 19, 2018

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I. INTRODUCTION

The Coalition on Homelessness seeks an order from this Court declaring unconstitutional the City of San Francisco, San Francisco Municipal Transportation Agency, and San Francisco Police Department's (collectively, the "City")[1] policy and practice of seizing safely parked vehicles without warrant, without reasonable notice, and without opportunity to be heard, solely because the vehicle owner has accrued, and cannot pay, five parking tickets.[2] The City thus deprives individuals of their constitutional rights to protection against warrantless seizures and to due process of the law. The Court should issue a writ and injunction prohibiting such policy and practice for at least three reasons.

First, the City's current practices violate the Fourth Amendment guarantee against warrantless seizures of property. The City may skirt this requirement under only specific and limited circumstances – for example, where criminal activity is afoot, where there is risk of danger to the officers or others, or where a vehicle jeopardizes both public safety and the efficient movement of traffic (the so-called community caretaking exemption). No such circumstances exist here to justify the City's warrantless seizures of vehicles solely to collect debt.

Second, the City's current policy violates due process because the limited notice that it provides to vehicles owners is constitutionally insufficient. Before towing a vehicle for debt collection purposes, the City does not notify a vehicle owner when his or her car will be towed, on what grounds, or how to prevent it. Worse, when the City knows that a vehicle's owner is homeless, or did not receive the City's letters about unpaid parking tickets, the City does not even try effecting notice through other means, such as affixing a notice to the vehicle – *a usual practice for the City for other tows*. The City also does not provide vehicle owners with (i) any opportunity to be heard before a tow is executed, (ii) any hearing to assess a person's ability to pay, or (iii) other noticed process to avoid a costly tow. Once the vehicle is towed, which often

[1] Respondent Tegsco LLC dba San Francisco AutoReturn ("AutoReturn") has stipulated that it would be bound by the outcome of this case, and would respond to discovery, but would not participate in any briefing or argument or other proceedings in the case. (Declaration of Stephanie A. Roeser ["Roeser Decl."] ¶ 4.)

[2] The "City" or "San Francisco" shall hereinafter refer to Respondents City of and County of San Francisco, the San Francisco Municipal Transportation Agency, and the San Francisco Police Department, as well as its agents, including, but not limited to, AutoReturn.

results in thousands of dollars in tow-related fines and fees, tow hearing officers are prohibited from considering a person's ability to pay, or any legal or constitutional argument beyond the number of outstanding parking tickets. As a result, low wage workers and homeless San Franciscans are at a high risk of permanently losing their cars without any meaningful opportunity to be heard.

For low-income vehicle owners, a tow is not just a tow; instead, it is a debt trap plunging them further into poverty. Indeed, for the many low-income individuals who cannot afford to pay the astronomical fees charged to retrieve their cars after a tow, a simple municipal tow often results in permanent deprivation of their vehicle, their sole asset, and their job. Worse, the City specifically targets people living in their cars for debt collection tows, knowing that they are least likely to be able to pay the hundreds (and more likely, thousands) of dollars required to retrieve their vehicles, and that the tow is deprivation of their only shelter.

Nor do debt collection tows financially benefit the City. Though close to 100% of cars towed for impeding the flow of traffic are returned to their owners, more than half of cars towed for debt collection are sold at auction. Most often, the City does not recoup enough money from the sale of the vehicle to cover the costs incurred to tow and store the vehicle, let alone the outstanding parking or registration fees. In other words, the City loses money and vehicle owners are permanently deprived of their property. Everybody loses.

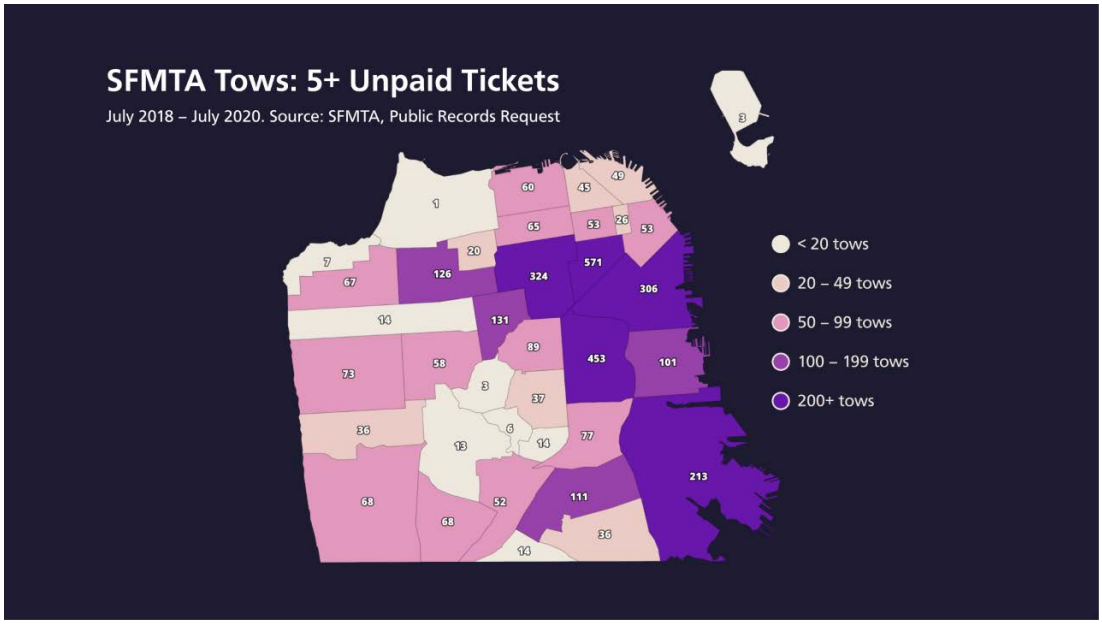
The Coalition respectfully requests that the Court declare the City's towing practice unlawful, and issue a writ of mandate and an injunction prohibiting the City from towing vehicles for unpaid parking tickets without (i) a warrant and (ii) providing pre-tow reasonable notice and an opportunity to be heard.

II. BACKGROUND

A. The City Targets and Seizes Vehicles With Unpaid Parking Tickets Without a Warrant or Notice.

It is the City's express policy to seize a safely parked vehicle merely because the vehicle has accrued five or more unpaid parking tickets. (Roeser Decl., Exh. K ["Hammons Dep."] at

51:12-15; Exh. I ["Doyle Dep."] at 39:10-15.) Under this official policy, the City seizes more than 2,100 vehicles each year to collect debts attributed to unpaid parking tickets. (Declaration of Peter Hess, Ph.D. ("Hess Decl."), ¶ 16.) In so doing, the City targets its most vulnerable residents. Indeed, as the map below shows, the City most frequently tows vehicles for unpaid parking tickets in the neighborhoods that house the highest percentage of Black individuals and people of color in the City: the Bayview, Hunter's Point, SOMA, the Tenderloin, Western Addition, the Inner Sunset, and Civic Center. (Declaration of Christopher Arvin, ¶¶ 4-5.)



Tows for debt collection are not purely incidental. Before adopting a moratorium on non-essential tows during the COVID-19 pandemic, the City regularly conducted what it calls "scofflaw sweeps," in which 15-20 SFMTA officers would canvass specific neighborhoods and scan license plates of parked cars to identify, and to tow, cars that have outstanding tickets or other violations. (Roeser Decl., Exh. L ["McCormick Dep."] at 83:20-85:19; 89:18-90:5; 115:23-116:10; Doyle Dep. at 133:24-134:15.) The moratorium ends on June 21, 2021, and the City will then resume this harmful type of targeted tow. In addition, rather than taking steps to avoid towing cars that are used as homes, the City actively seeks them out – coordinating "sweeps" of homeless encampments, with the specific goal of "assist[ing] with the removal of vehicles that may be associated with [the] homeless encampment." (McCormick Dep. at 78:19-79:1, 153:8-14

["SFMTA's policy [is] to conduct the tow of a vehicle that is a person's home *even if that person has no ability to pay to retrieve their vehicle*"] [emphasis added].) The City executes these sweeps even if the vehicles are safely and legally parked (McCormick Dep. at 83:17-24, 85:11-19; 89:18-24; 90:3-5) and offers no accommodation even when it understands that the car functions as the home of a family *with an infant.* (McCormick Dep. at 151:12-22.) The City performs these tows knowing that they are "cruel or at least insensitive" and will likely result in the owners' permanent loss of the vehicle. (Doyle Dep. at 109:10-111:4, 133:25-134:15.)

The City also treats cars towed for debt collection *more punitively* than cars towed for other reasons. If a car is blocking traffic or parked dangerously and its owner comes back while a tow truck is there, the tow truck driver is instructed to release the car. For debt collection tows, the City refuses any request to release a car after the tow truck has been called. (*Cf.* McCormick Dep. at 101:19-103:8.)

B. The Cost of Retrieving a Car Towed for Debt Collection Purposes Is Prohibitive for Many Low-Income San Francisco Residents.

After executing a tow, the City will impound the vehicle – with compounding storage rates in the amount of $67.50 per day – until (a) the vehicle owner resolves all outstanding parking tickets *and* pays the tow-related charges, or (b) the City sells the vehicle at auction. (Roeser Decl., Exh. J ["Rosales Dep."] at 65:20-66:7.)

Unlike those who have their cars towed for other reasons (i.e., blocking driveways), the majority of people who have their cars towed for unpaid tickets are unable to retrieve them. (Hess Decl., ¶ 17; Exhs. 2-3 [showing that the City forces the sale of 51% of debt collection tows compared with sales of only 12% of vehicles towed for other reasons].) Vehicles towed for debt collection represent 6% of the overall vehicles towed, yet are sold four times more frequently than cars towed for other reasons. (*Id.*, Exhs. 1-2.)

To retrieve a vehicle seized for debt collection purposes, a vehicle owner must pay $1,498 on average. (Hess Decl., ¶ 19, Exh. 5.) The fees required to retrieve a vehicle towed for unpaid parking tickets from the tow yard include, at least:

- The amount due for any unpaid citations and penalties associates for non-payment;
- **$318.00** in administrative fees;
- **$256.00** in tow fees;
- **$46.00** in dolly service fees, if applicable; and
- **$56.50** in storage fees for the first day and another $67.50 for each subsequent day that a car is impounded.

(Rosales Dep. at 65:23-66:7; Petitioner's Request for Judicial Notice ("RJN"), Exh. S [SFMTA's Schedule of Towing Fees effective August 1, 2020].) San Francisco's parking fines and fees are among the highest in the country, and the daily tow storage rate is more than three times the average cost of daily parking in the neighborhood surrounding the tow yard. (Declaration of Jennifer Friedenbach ["Friedenbach Decl."], Exh. B [Towed Into Debt: How Towing Practices in California Punish Poor People (hereafter "Towed Into Debt") (March 2019)] pp. 7-10; RJN, Exh. R [SFMTA Schedule of Fees].) These costs are prohibitive for the low-income residents whom the City specifically targets in the execution of its policy. Four in ten Americans cannot afford an unexpected $500 expense (Towed Into Debt at 12), much less the $1,498 that it costs (on average) to retrieve a vehicle towed for debt collection purposes.

C. The City's Tow Practices Permanently Deprive Many Low-Income San Franciscans of Their Vehicles.

In the likely event that a low-income person in San Francisco cannot afford to pay the outstanding citations and fees to retrieve a towed vehicle, the City and its agents keep the vehicle, and storage charges mount with each passing day. (RJN, Exh. S.) If the vehicle remains unclaimed for 72 hours after the City tows it, the City initiates the lien process and then sells the vehicle at auction, keeping the proceeds to pay for the outstanding towing and ticket charges. (*Id.*; Rosales Dep. at 65:20-66:7; 111:18-112:16.)

Cars sold through auction regularly sell for less than the amount of accrued storage charges incurred as a result of the tow. (Hess Decl., Exhs. 5 and 9 [showing the average amount due after a vehicle has been towed for debt collection purposes and the amount for which it is likely to be sold, based on the age of the vehicle].) In other words, the City is rarely able to recoup enough money from the sale of the vehicle to cover the costs incurred to tow and store the

vehicle. The result: the City loses money, and vehicle owners are permanently deprived of their property.

Even after permanently losing their cars, vehicle owners are still liable to repay any outstanding debt not covered by the sale of their vehicle. (*See* Veh. Code, § 22651.07, subd. (e) ["You are responsible for paying the towing company any outstanding balance due on any of these fees once the sale is complete."]; Civ. Code, §§ 3068.1-3074.) After towing and selling the cars of people who cannot afford to pay parking tickets, the City can – and regularly does – bring suit against vehicle owners for the remaining debts. (*See*, *e.g.*, Larson Decl., Exhs. D-H [five examples – out of 219 – of claims filed by the City in the past 16 years to demand payment from people who had already lost their towed vehicles].) So instead of using less harmful or less costly collection methods – calls, email or text reminders, garnishments, levies, or tax intercepts – before taking and selling people's property, the City tows what is many people's only asset, and still puts many owners through a lawsuit afterward. And the City loses money on its towing program. (RJN, Exh. T at 29 [listing the losses incurred by SFMTA under various towing categories].)

Losing a car is often devastating. A car is a vitally important resource for individuals to obtain and maintain economic stability – it helps people get, and stay, employed. (Towed Into Debt, *supra*, at pp. 15-16 ["Having regular access to a vehicle is one of the biggest factors in determining who will prosper in our economic system and who will be shut out of it."]; *see also* Friedenbach Decl., Exh. C ["Paying More for Being Poor: Bias and Disparity in California's Traffic Court System" (hereafter "Paying More for Being Poor") (May 2017)], pp. 7-8 [roughly 78% of Californians use their cars for, or to get to, work and without a car are at risk of losing their jobs]; Declaration of MiQueesha Willis ["Willis Decl."], ¶ 5, Declaration of Kimberly Brown ["Brown Decl."], ¶¶ 17-19.) For some, cars may also provide an escape from violence (Brown Decl., ¶¶ 21 [a vehicle allows individuals to flee domestic violence]), as well as a means to get themselves and their children to medical appointments. (Declaration of Margot Kushel ["Kushel Decl."], ¶¶ 17-18.) Access to a car also increases wages. (Brown Decl., ¶ 18.)

In addition, more than 1,000 low-income San Franciscans rely on their vehicles as their only shelter. (Friedenbach Decl., ¶ 5.) When these individuals have their cars towed, they are forced into City-funded shelter beds or, more likely, onto the street. (*Id.*, ¶ 12.) The harm to the sizable population of individuals who cannot afford traditional housing and who rely on their cars as the sole place where they can escape the elements for a safe night's sleep is only compounded from there. Unsheltered individuals sleeping on the street are often subject to physical violence and crime, as they are forced to sleep unprotected in unfamiliar places. (*Id.*) Unhoused people without the protection of vehicles are also more likely to be criminally cited for sleeping and to experience traumatic interactions with the police. (Friedenbach Decl., ¶ 12.)

People forced to the street as a result of the City's tow practices suffer serious health consequences when their shelter is towed. (Friedenbach Decl., ¶ 14.) Unhoused people are particularly vulnerable because they already have higher rates of chronic and underlying health conditions, have an increased chance of infectious disease and mental health disorders, and age faster. (Kushel Decl., ¶¶ 7-10.) The loss of shelter may also impact treatment plans of those few homeless individuals who were previously able to access health care, and sometimes even the complete loss of health care. (*Id.*, ¶¶ 18, 25.) The sudden loss of a safe space also causes trauma that can spark deterioration of a person's mental health. (*Id.*, ¶ 27.)

In short, the deprivation of a car that serves as someone's home can have untold, and extremely traumatic, effects on a person's physical, mental, and emotional health. (Kushel Decl., ¶¶ 23-29; Willis Decl., ¶ 5; Brown Decl., ¶¶ 17-24.) As the Ninth Circuit has recognized, municipal tow practices such as those at issue here often create a "debt trap for the poor":

> Raising money for government through law enforcement whatever the source—parking tickets, police-issued citations, court-imposed fees, bills for court appointed attorneys, punitive fines, incarceration charges, supervision fees, and more—can lay a debt trap for the poor. When a minor offense produces a debt, that debt, along with the attendant court appearances, can lead to loss of employment or shelter, compounding interest, yet more legal action, and an ever-expanding financial burden—a cycle as predictable and counterproductive as it is intractable.

(*Rivera v. Orange County Prob. Dept.* (2016) 832 F.3d 1103, 1112, fn. 7.) [3]

D. Vehicle Owners Have No Opportunity to Be Heard *Before* the Vehicle Is Towed and Associated Costs Are Incurred.

When the City seizes a vehicle for unpaid parking tickets, it does not obtain a warrant or provide vehicle owners with advance notice about the date and time of the tow.[4] (Answer, ¶ 8, 2:16-18; Doyle Dep. at 38:24-39:2; McCormick Dep. at 179:22-180:5.) Two days after a tow – 48 hours after a person goes to look for their car and discovers it is missing without explanation – the City sends a notice to the registered owner of the car by U.S. mail. (Rosales Dep. at 106:19-107:1; 108:1-109:6.) For owners who receive the notice, it informs them that the car has been impounded, storage fees may accrue in connection with the tow, and the owner is entitled to a tow hearing. (Roeser Decl., Exh. L.) The City does not provide any opportunity for vehicle owners to be heard, or to prove their low-income or homeless status, before a tow (or before incurring the fees associated with such tow). (Answer, ¶ 8, 2:19-20.)

The City only alerts a vehicle owner that the vehicle has been towed, and provides information about how to contest such tow, ***after the City has already seized the vehicle*** (Rosales Dep. at 106:19-107:1) – in other words, after the owner will have incurred on average $1,498 in tow fees and, likely, multiple days of storage fees. Notably, the City ***does*** provide advance notice before executing other types of tows. For example, the City provides 72-hour notice before both towing a car parked in the same spot for more than 72 hours (in violation of San Francisco

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[3] Perhaps recognizing these potentially crushing effects of its policy, the City has implemented limited programs through which *some* low-income and unhoused vehicle owners can avoid paying *a fraction* of their tow charges. The programs, however, contain restrictions that make them largely ineffectual. For example, to qualify for the City's low-income tow discount (which reduces fees to $100 plus the cost of parking citations), individuals must come in person and prove that they are on public benefits or that their income falls below 200 percent of the Federal Poverty Level. (Hammons Dep. at 32:6-15.) In addition, to qualify for the one-time-only waiver of tow fees for people experiencing homelessness, individuals must be the registered owner of the vehicle and have registered at one of the City's access points – local social service provider offices that provide screening interviews and entrance into the City's coordinated entry system for homeless individuals – within the previous six months. (*Id.*) Notably, in crafting these programs, the City never considered either the amount of money that a person who qualified for that benefit might be receiving each month or whether the program was appropriately designed to make sure that everyone, *particularly* low-income individuals, "has the means to get their car back if it's been towed for unpaid citations." (Hammons Dep. at 124:14-18,152:7-12.)

[4] On parking citations, and in the "subsequent notices" that SFMTA mails to vehicle owners before towing, the City includes a general statement that a failure to pay a ticket *may* result in a tow. (Roeser Decl., Exh. Q.). The City does not, however, provide any specific notice once it has obtained basis for a tow – i.e., on the fifth ticket. *See id*.

Transportation Code, § 7.2.29) (McCormick Dep. at 167:4-14) and before towing a car immobilized by a "boot." (*Id.* at 181:14-22,168:3-9.)

E. The City Limits Post-Tow Hearings to a Single Inquiry: Whether Unpaid Parking Tickets Were Incurred.

The City allows vehicle owners to request a post-tow "tow hearing"; but the City so limits the scope of such hearings that it strips vehicle owners of any meaningful opportunity to challenge a tow. During debt collection tow hearings, hearing officers are authorized to consider only a single factor: whether the vehicle had accrued five or more unpaid parking tickets. (Doyle Dep. at 89:1-24.) Tow hearing officers cannot, however, consider whether the tow and impoundment are unconstitutional (*id.* at 108:8-18); whether a vehicle owner is able to pay the parking tickets that gave rise to the tow, much less the amount demanded to retrieve the car; whether tow/impoundment charges should be reduced (*id.* at 60:17-21; 93:12-20); or even whether the tickets used to justify the seizure of the vehicle are valid.

III. ARGUMENT

A. The Fourth Amendment Precludes the City From Towing Vehicles for Unpaid Parking Tickets Without First Obtaining a Warrant.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause …" (U.S. Const. 4th Amend.) This guarantees to individuals that their property – here, cars – cannot be seized without a warrant issued upon probable cause. (*Id.*; Cal. Const., art. I, § 13; Veh. Code, § 22650, subd. (b) ["Any removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution…."]; *see also Halajian v. D & B Towing* (2012) 209 Cal.App.4th 1, 16; *Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 862 ["The impoundment of an automobile is seizure within the meaning of the Fourth Amendment."]; *Soldal v. Cook County, Ill.* (1992) 506 U.S. 56, 61.) This holds especially true where, as here, such a vehicle functions as a person's home:

> As our sane, decent, civilized society has failed to afford more of an oasis, shelter, or castle for the homeless of Skid Row than their [vehicular shelters], it is in keeping with the Fourth Amendment's "very core" for the same society to recognize as reasonable homeless persons' expectation that their [vehicular shelters] are not beyond the reach of the Fourth Amendment.

(*Lavan v. City of L.A.* (2012) 693 F.3d 1022, 1028, fn. 6; *Silverman v. United States* (1961) 365 U.S. 505, 511, fn. 4; *see also Cobine v. City of Eureka* (2017) 250 F.Supp.3d 423, 434 ["'At the very core' of the Fourth Amendment 'stands the right of a man to retreat into his own home.'"].)

As such, to justify its warrantless seizures, the City must establish that its debt collection tows are reasonable under the Fourth Amendment. This it cannot do.

1. <u>There Is No Exception to the Warrant Requirement Justifying Debt Collection Tows.</u>

Warrantless seizures, including by towing a vehicle, are "per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well delineated exceptions," which the government bears the burden to establish. (*Minnesota v. Dickerson* (1993) 508 U.S. 366, 372; *United States v. Hawkins* (9th Cir. 2001) 249 F.3d 867, 872; *see also Brewster v. Beck* (9th Cir. 2017) 859 F.3d 1194, 1196; *Robey v. Super. Ct.* (2013) 56 Cal.4th 1218, 1224 ["[I]t is a cardinal principle that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions.'"] [quoting *Katz v. United States* (1967) 389 U.S. 347, 357]; *People v. Bracamonte* (1975) 15 Cal.3d 396, 402-03; *Vale v. Louisiana* (1970) 399 U.S. 30, 34 [the government bears the burden to prove a particular exception to the warrant requirement applies].)

Such exceptions apply to permit seizure in the context of criminal activity, "community caretaking," or "exigent" circumstances. For example, where (1) a police officer has reasonably concluded that "criminal activity may be afoot" (i.e., where an officer is in "hot pursuit of a fleeing felon") (*Missouri v. McNeely* (2013) 569 U.S. 141, 149; *see also Terry v. Ohio* (1968) 392 U. S. 1 [an officer can briefly detain a suspect if he has reasonable suspicion to believe that criminal activity is afoot]); (2) evidence of criminality is in plain view (*Coolidge v. New Hampshire* (1971) 403 U.S. 443, 465 ["It is well established that under certain circumstances the

police may seize evidence in plain view without a warrant."]); (3) the vehicle owner consented; (4) exigent circumstances justified the absence of a warrant (i.e., imminent destruction of evidence, the need to prevent a suspect's escape, or the risk of danger to the police or other persons) (*Terry v. Ohio* (1968) 392 U.S. 1, 30 [an officer may briefly detain a suspect if there is reasonable suspicion that the suspect is armed and dangerous]); or (5) community caretaking justifies the absence of a warrant, for example, where a vehicle "jeopardize[s] both public safety and the efficient movement of vehicular traffic" (the "community caretaking exception") (*South Dakota v. Opperman* (1976) 428 U.S. 364, 368-69 [defining the community caretaking exception to cover vehicle accidents, the removal of disabled or damaged vehicles, and the impounding of automobiles that impair the efficient movement of vehicular traffic].) (*Kentucky v. King* (2011) 563 U.S. 452, 463-64; *People v. Celis* (2004) 33 Cal.4th 667, 676; *People v. Thompson* (2006) 38 Cal.4th 811, 817-18; *People v. Bates* (2013) 222 Cal.App.4th 60, 66 [detention of vehicle would be reasonable if there were "specific articulable facts" that the person or vehicle may be involved in criminal activity].)

No recognized exception to the warrant requirement applies here to render the City's warrantless seizures of vehicles for unpaid parking tickets reasonable. Unpaid parking tickets are neither criminal nor exigent. And debt collection tows unquestionably are not executed to protect the public from any safety hazard – to the contrary, at issue in this Motion is the City's practice of towing *safely parked* cars solely for the purpose of collecting unpaid parking tickets. A federal court considered this exact issue in 2018, when two homeless individuals brought similar challenges to the City's seizure of their vehicles. (*See* RJN, Exh. U (*Smith v. Reiskin* (N.D.Cal. 2018) No. C1801239, 2018 WL 7820727 [granting preliminary injunction]; Compl. at ¶¶ 110-21 [ECF 24].) In considering potentially applicable exceptions to the warrant requirement, that court found no "persuasive or binding authority to support a recognized exception to the warrant requirement" to justify the City's practices. (*Smith*, 2018 WL 7820727 at *3.)

Because there is no recognized ground on which SFMTA could constitutionally seize a vehicle for unpaid parking tickets without obtaining a warrant, the City must obtain a warrant to

seize vehicles. The City's failure to do so violates the Fourth Amendment and Article I, Section 13, of the California Constitution. (*See People v. Brisendine* (1975) 13 Cal.3d 528, 548-52, *abrogated on other grounds as discussed in In re Lance W.* (1985) 37 Cal.3d 873, 879 [holding that Article I, Section 13, of the California constitution "requires a more exacting standard for cases arising within this state" does than the Fourth Amendment of the United States Constitution].) A writ should issue, accordingly.

2. <u>The City Cannot Avoid the Fourth Amendment's Warrant and Reasonableness Requirements by Relying on State Statute.</u>

The existence of a state statute does not obviate the warrant requirement. (*Miranda,* 429 F.3d at 864 ["the decision to impound pursuant to the authority of … a state statute does not, in and of itself, determine the reasonableness of the seizure under the Fourth Amendment"]; *see also Sandoval v. County of Sonoma* (2014) 72 F.Supp.3d 997, 1007 ("[t]he mere fact that a state has authorized a search or seizure does not render it reasonable under the Fourth Amendment") [denying defendants' motion to dismiss Fourth Amendment claim for unreasonable tow and impoundment based on the Vehicle Code].) As such, the City's burden goes beyond simply citing a statute that authorizes tows; it must obtain a warrant and/or prove that such tows are reasonable. (*Id.*; *see also Smith*, 2018 WL 7820727 at *3 [granting preliminary injunction, stating, "Towing of the vehicle pursuant to the authority of an ordinance permitting seizure for repeated non-payment of parking fees does not, in and of itself, justify the seizure. Rather, Respondents must establish that the seizure was not inconsistent with the mandates of the Fourth Amendment."]; *Sibron v. New York* (1968) 392 U.S. 40, 61; *Williams*, 145 Cal.App.4th at 762-63 ["Statutory authorization does not, in and of itself, determine the constitutional reasonableness of the seizure."].) This requirement is enshrined in California statute. (Cal. Veh. Code, § 22650, subd. (b) ["Any removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution, and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence."].)

B. The City's Policy and Practice Violate Due Process by Seizing Vehicles Without Reasonable Notice.

The Court should declare the City's debt collection tows unconstitutional for the additional reason that the City deprives vehicle owners of their property without due process in direct contravention of the California and U.S. Constitutions. (Cal. Const. art. I, § 7; U.S. Const., 14th Amend.; *see also Modacure v. B&B Vehicle Processing, Inc.* (2018) 30 Cal.App.5th 690, 694 [due process rights apply to vehicle tows]; *Clement v. City of Glendale* (9th Cir. 2008) 518 F.3d 1090, 1093-96.) The City implements its policy without (1) taking practicable steps to provide vehicles owners with constitutionally sufficient notice before seizing their vehicles or (2) providing vehicle owners with any meaningful opportunity to challenge tows.

1. The City Cannot Justify Its Failure to Provide Pre-Tow Notice.

"An essential principle of due process is that a deprivation of life, liberty, or property 'be ***preceded*** by notice and opportunity for hearing appropriate to the nature of the case.'" (*Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 542 [emphasis added].) This so-called root requirement of the Due Process Clause requires that individuals be given an opportunity for a hearing *before* they are deprived of any significant property interests. (*Id.*; *Clement*, 518 F.3d at 1093-94 ["The government may not take property like a thief in the night; rather, it must announce its intentions and give the property owner a chance to argue against the taking."]; *Conservatorship of Key* (2005) 134 Cal.App.4th 254, 260 ["Procedural due process principles require reasonable notice and an opportunity to be heard before governmental deprivation of a significant property interest."] [citations omitted]; *see, e.g., Today's Fresh Start, Inc. v. L.A. City Office of Educ.* (2013) 57 Cal.4th 197, 212.) As such, post-seizure notice is tolerated "only in extraordinary situations." (*Love v. City of Monterey* (1995) 37 Cal.App.4th 562, 574; *Clement*, 518 F.3d at 1093-94.) In the context of towing a car, this might include where a car is blocking traffic or a driveway, obstructing a fire lane, or unregistered. (*Clement*, 518 F.3d at 1093-94.)

It is a "settled principle" that "[d]ue process requires that individualized notice be given

before an illegally parked car is towed unless the state has a 'strong justification' for not doing so." (*Grimm v. City of Portland* (9th Cir. 2020) 971 F.3d 1060, 1063 [citing *Clement v. City of Glendale* (9th Cir. 2008) 518 F.3d 1090, 1094.) *Clement* is instructive. There, the Ninth Circuit explained that due process "require[s] that notice generally be given before the government may seize property" and held that the City of Glendale's failure to give notice before towing an unregistered car that had a planned non-operation certificate violated due process. *(Clement*, 518 F.3d at 1095-96.) In so holding, the *Clement* court reasoned that while the Vehicle Code does not explicitly require pre-tow notice, "giving notice would be a minor inconvenience" and would carry "a relatively light burden that is consistent with the state's interest…." (*Id.* at 1096.) The court went on to articulate that "the costs and burdens on the car owner associated with a tow ***can only be justified*** by conditions that make a tow ***necessary and appropriate***, such as that car is parked in the path of traffic, blocking a driveway, obstructing a fire lane, or appears abandoned." (*Id.* at 1094-95 [emphasis added].)

Here, the City does not have a "strong justification" to forgo pre-tow notice or opportunity to be heard. The City is towing cars that are registered and safely parked, that meet the state's safety standards, and that do not raise any traffic concerns. (*See* Doyle Dep. at 39:10-15.) Nor can the City reasonably posit that the interest of vehicle owners in receiving pre-tow notice is "small relative to the burden." As set forth above, individuals rely on their vehicles to perform their jobs, to get to medical appointments, to take their children to school, and, for some, to provide shelter. (Paying More for Being Poor, *supra*, at p. 8; Willis Decl., ¶ 5; McCormick Dep. at 115:23-116:10; Doyle Dep. at 133:24-134:15.) The import of this interest cannot be overstated. In contrast, the City's only stated interest is to deter parking violations. (*See* McCormick Dep. at 57:16-24.) But its policy allows people with money to violate parking laws repeatedly without losing their vehicles to tow. (*People v. Schoop* (2012) 212 Cal.App.4th 457, 472 ["[W]e must undertake 'a serious and genuine judicial inquiry into the correspondence between the classification and the legislative goals.'"] [quotation marks omitted].) The City's dubious deterrence interest is insufficient to justify depriving individuals of their constitutional

right to notice, and providing an opportunity to be heard, before seizing their safely parked vehicles for debt collection purposes.

2. The City's Notices Do Not Provide Adequate Pre-Tow Notice and Opportunity to Be Heard.

"The primary purpose of procedural due process is to provide affected parties with the right to be heard at a meaningful time and in a meaningful manner." (*Ryan v. California Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1072; *Jones v. Flowers* (2006) 547 U.S. 220, 226 [quoting *Mullane v. Cent. Hannover Bank & Trust Co.* (1950) 339 U.S. 306, 314] [notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"]; *Richards v. Jefferson Cty.* (1996) 517 U.S. 793, 799; *Kash Enterprises, Inc. v. City of Los Angeles* (1977) 19 Cal.3d 294, 307-08; *D&M Fin. Corp. v. City of Long Beach* (2006) 136 Cal.App.4th 165, 174.) As such, notice must be more than a "mere gesture" and, instead, must employ means "such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." (*Mullane*, 339 U.S. at 315.)

Though the City mails letters to vehicle owners before towing their vehicles, those letters fail to meet this standard for several reasons. First, California law is clear that a pre-deprivation notice of a *possible* enforcement action – towing – without an express time to contest or respond fails to satisfy due process. (*Traverso v. People ex rel. Dept. of Transportation* (1993) 6 Cal.4th 1152, 1163 [the right to a meaningful opportunity to be heard "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to … contest."]; *see also Little v. Kern County Superior Court* (9th Cir. 2002) 294 F.3d 1075, 1081.) Yet this is precisely the notice that the City provides to people with delinquent parking tickets. The City's letters state only in general terms that failure to pay the tickets *may* subject the vehicle to booting and towing; they do not specifically provide that the vehicle *will* be towed. (Roeser Decl., Exh. Q.) In addition, the City's letters do not provide a time frame for the possible tow – making it impossible for people to plan for or prioritize preventing the loss of their vehicles. (*See Finney v. Gomez* (2003) 111 Cal.App.4th 527, 539 ["'due process requires that they know exactly what risk

they assume by not responding'"] [quoting *Janssen v. Luu* (1997) 57 Cal.App.4th 272, 277]; *Robertson v. Dept. of Motor Vehicles* (1992) 7 Cal.App.4th 938, 941-42 [noting Vehicle Code provisions applying to driver's license suspension were "aimed at safeguarding the driver's rights of due process" where pre-suspension notice included "the reason and statutory grounds for the suspension, the right to request an administrative hearing, and *the date when a request must be made to receive a determination prior to the effective date of the suspension*"] [emphasis added].)

Second, the letters do not apprise a vehicle owner of the right to seek a pre-deprivation hearing to contest the City's impoundment of their vehicle. (Roeser Decl., Exh. Q [CCSF0000022 (Notice of Delinquency); CCSF0000001 (Notification of Delinquent Account); CCSF0000015 ("Your Vehicle Can Be Booted Or Towed")].) Without such notice, the City's letters fail to meaningfully advise vehicle owners of their right to prevent the threatened enforcement action. (*Edward W. v. Lamkins* (2002) 99 Cal.App.4th 516, 532 [notices fail to satisfy due process where they do not inform individual "about means to challenge" conservatorship]; *see Ryan*, 94 Cal.App.4th at 1072.)

Third, the City's letters do not notify vehicle owners of the factual basis for a tow. (*See, e.g., Doe v. Saenz* (2006) 140 Cal.App.4th 960, 972, 997-98; *In re S. O.* (2002) 103 Cal.App.4th 453, 460 ["a parent must be given notice of the specific factual allegations against him or her with sufficient particularity to permit him or her to properly meet the charge"] [citations and quotation marks omitted].)

Fourth, the City does not inform vehicle owners of their right to request a determination regarding their ability to pay the unpaid parking tickets. (Roeser Decl., Exh. Q [CCSF0000022 (Notice of Delinquency); CCSF0000001 (Notification of Delinquent Account); CCSF0000015 ("Your Vehicle Can Be Booted Or Towed")].) Such determination is requisite to guarantee due process. (*People v. Dueñas* (2019) 30 Cal.App.5th 1157, 1164 [due process requires courts to conduct an ability-to-pay hearing and ascertain a defendant's present ability to pay before they impose court facilities and court operations assessments].)

As *Dueñas* notes, without ability-to-pay determinations, governments "lay a debt trap for

the poor" and punish individuals who may be unable to pay government fines through no fault of their own. (*Dueñas*, 30 Cal.App.5th at 1163.) The court went on to state: "When a minor offense produces a debt, that debt, along with the attendant court appearances, can lead to loss of employment or shelter, compounding interest, yet more legal action, and an ever-expanding financial burden – a cycle as predictable and counterproductive as it is intractable." (*Id.* [quoting *Rivera*, 832 F.3d at 1112, fn. 7]; *City of Chicago v. Fulton* (2021) __U.S.__ [2021 U.S. LEXIS 496, at *15] ["Drivers in low-income communities across the country face similar vicious cycles: A driver is assessed a fine she cannot immediately pay; the balance balloons as late fees accrue; the local government seizes the driver's vehicle, adding impounding and storage fees to the growing debt; and the driver, now without reliable transportation to and from work, finds it all but impossible to repay her debt and recover her vehicle."] [footnote and citation omitted] [conc. opn. of Sotomayor, J.].)

The City's debt collection tows are a manifestation of the debt trap that courts have cautioned against. The average cost to retrieve a vehicle towed for debt collection purposes is $1,498 (Hess Decl., ¶ 19, Exh. 5) – an amount which exceeds that which low-income and vehicularly housed San Franciscans can afford to pay. (Towed Into Debt at 12.) And homeless vehicle owners also suffer the loss of their only shelter, making them more vulnerable to crime while sleeping outdoors or more likely to be harmed as a result of increased police contact. (Friedenbach Decl., ¶ 12, Kushel Decl., ¶ 19.) As the *Dueñas* court recognized, government-inflicted punishment of indigent persons solely because of their poverty is fundamentally unfair and contravenes due process. (*Dueñas*, 30 Cal.App.5th at 1167-68 [citing *In re Antazo* (1970) 3 Cal.3d 100, 103-04, 108, 115 and noting the ruling applies to civil punishments].)

Finally, the City fails to make reasonable efforts to ensure that vehicle owners actually receive notice. The Supreme Court has held that "the government's knowledge that notice pursuant to the normal procedure was ineffective trigger[s] an obligation on the government's part to take additional steps to effect notice." (*Jones*, 547 U.S. at 230 [citing *Robinson v. Hanrahan* (1972) 409 U.S. 38, 40 (requiring the government to take additional practicable steps

to give notice of vehicle forfeiture proceedings where the state knew that the property owner was in prison)]; *see also Bank of Am. v. Giant Inland Empire R.V. Ctr.* (2000) 78 Cal.App.4th 1267, 1276 [county violated due process when it failed to resend notice when it knew that initial notice was returned and never reached intended recipient].) In *Jones*, the Supreme Court considered the "practicalities" of the case, including that it concerned "such an important and irreversible prospect as the loss of a house." (*Jones*, 547 U.S. at 230.) Under this framework, "[t]he adequacy of a particular form of notice is assessed by balancing the State's interest against 'the individual interest sought to be protected by the Fourteenth Amendment.'" (*Id.* at 221 [citing *Mullane*, 339 U.S. at 314].)

The City's employees often see observable signs that a person is living in their car at the time of tow. Still, the City sends all of its communications by U.S. mail, and when City officials learn that the mail has been returned as undeliverable, they do not forward the notices to the "general delivery" address typically used by people who are homeless. (Hammons Dep. at 205:8-22.) The City also does not check with SFMTA parking staff or other City agencies for alternative contact information. (Hammons Dep. at 205:8-22.) Nor does the City leave a tow notice on the vehicle itself. (*Id.*) In short, the City knows that unhoused people generally do not receive its mailed notices of a possible tow, yet it fails to take any additional steps to effect notice. This practice plainly violates due process requirements. (*Mullane.* 339 U.S. at 315; *see Grimm*, 971 F.3d at 1066 [requiring *Mullane* standard of notice pre-tow, including additional practicable notice attempts where a city knows its standard notice was ineffectual].)

C. The City's Post-Deprivation Hearing Procedures Violate Due Process Under the "*Mathews-Plus*" Balancing Test for California's Due Process Clause.

In addition to requiring reasonable notice, the Due Process Clause requires that the City give vehicle owners a meaningful opportunity to be heard regarding the appropriateness of a vehicle tow. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333 [quoting *Armstrong v. Manzo* (1965) 380 U.S. 545, 552]; *Love*, 37 Cal.App.4th at 574 [same].) The adequacy of a hearing, or administrative hearing, due in a given circumstance "must be

analyzed in the context of the principle that freedom from arbitrary adjudicative procedures is a substantive element of one's liberty." (*People v. Ramirez* (1976) 25 Cal.3d 260, 268.) In *Mathews v. Eldridge* (1976) 424 U.S. 319, 335, the U.S. Supreme Court established a three-part balancing test to determine the sufficiency of administrative proceedings, like the tow hearings at issue here. The California Supreme Court subsequently expanded that test to evaluate compliance with the state Due Process Clause under a four-part "*Mathews-Plus*" test that balances, among other things, the following factors: (1) the private interest that will be affected; (2) the risk of erroneous deprivation through the procedures used and the value of the requested additional safeguards; (3) the dignitary interest in providing additional notice and in enabling individuals to present their side of the story before a responsible governmental official; and (4) the government's interest, including the fiscal and administrative burdens involved in implementing alternative procedures proposed. (*Ramirez*, 25 Cal.3d at 269; *Today's Fresh Start, Inc.*, 57 Cal.4th at 213.) At the outset, this mandates consideration of the substantial private interests at stake in vehicle ownership, which heavily favors requiring the government to take additional, practicable steps to ensure notice and an opportunity to be heard before towing a vehicle.

1. <u>Vehicle Owners Have an Important Private Interest in the Continued Possession of Their Cars.</u>

This Court must consider the important private interest in continued retention of a vehicle in determining the level of due process owed before the government executes a tow. (*Mathews*, 424 U.S. at 334 [internal citations omitted].) For more than 40 years, federal and state courts have recognized that the property right in a car is a substantial and important private interest – regardless of the condition or value of the vehicle. (*Stypmann v. City & Cty. of San Francisco* (9th Cir. 1977) 557 F.2d 1338, 1342-43 ["A person's ability to make a living and his access to both the necessities and amenities of life may depend upon the availability of an automobile."]; *Soffer v. City of Costa Mesa* (C.D.Cal. 1985) 607 F.Supp. 975, 981 ["A person's interest in his or her automobile is certainly significant"]; *Wong v. City & Cty. of Honolulu* (D.Haw. 2004) 333 F.Supp.2d 942, 954 ["Whether a junk car has little or great value, it is constitutionally protected

property."]; *Modacure*, 30 Cal.App.5th at 694 ["The uninterrupted use of one's vehicle is a significant and substantial private interest."] [quoting *Scofield v. City of Hillsborough* (9th Cir. 1988) 862 F.2d 759, 762]; *Love*, 37 Cal.App.4th at 579 [recognizing that a vehicle tow is a substantial deprivation].)

The interest is amplified where a vehicle is a person's home or only means of earning a livelihood. (*See Lavan v. City of Los* Angeles (9th Cir. 2012) 693 F.3d 1022, 1032 ["For many of us, the loss of our personal effects may pose a minor inconvenience. However, … the loss can be devastating for the homeless."] [citations omitted].) In many cases, deprivation often prevents an individual from getting to work, performing their work, and supporting their family. The City's debt collection towing practices significantly and disproportionately affect San Francisco's homeless population, and particularly those who rely on their cars for their livelihood. (Hess Decl., ¶ 22; Brown Decl., ¶¶ 17, 20, 24; Willis Decl., ¶ 5.] When the City seizes such cars for debt collection purposes, it deprives homeless individuals of their only home and source of income. Accordingly, the individual interests in preventing a vehicle tow warrant the highest level of due process protections.

2. <u>The Risk of Permanent Deprivation of an Important Property Interest Favors Additional Practicable Process.</u>

The second factor of the balancing test requires assessment of "the fairness and reliability of the existing pre[deprivation] procedures, and the probable value, if any, of additional procedural safeguards." (*Mathews*, 424 U.S. at 343.) Here, the risk of erroneous deprivation is particularly acute as vehicle owners are given no meaningful opportunity to contest tows. The City prohibits hearing officers from considering anything other than the number of unpaid parking citations – that is, the City prohibits officers from considering vehicle owners' inability to pay the parking tickets or tow fees, the validity of the tickets used to justify the tow, or potential constitutional challenges to a tow. (Doyle Dep. at 60:17-21; 89:1-24; 93:12-20; 108:8-18.)

On the other hand, allowing vehicle owners to request a pre-tow hearing and requiring hearing officers to consider such factors as ability to pay would come at relatively low cost to the City. In fact, tailoring fines to a person's ability to pay has been shown to increase collections.

(*See* Graduating Economic Sanctions According to Ability to Pay by Beth A. Colgan :: SSRN Iowa Law Review.) The opportunity to prevent debt collection tows would provide significant and meaningful benefits to vehicle owners. This mechanism would also prevent the spiraling fees that accumulate once the vehicle is towed and stored. (RJN, Exh. S [SFMTA's schedule of fees].) Notably, the City already provides pre-tow notice and opportunity to cure for cars towed and booted for violations of 72-hour restrictions. (McCormick Dep. at 167:4-14; 181:14-22.) If vehicle owners were notified that their cars were subject to tow due to outstanding tickets, told when the car would be towed, and given the opportunity to pay outstanding tickets according to income, the City would likely tow far fewer vehicles. This in turn would decrease the expenses – and recurring losses – that the City suffers as a result of its policy of conducting debt collection tows. (Roeser Decl., Exh. N at 7-8 [SFMTA's response to Special Interrogatory No. 15].)

3. The Administrative and Fiscal Burden on the City to Provide Adequate Pre-tow Notice Is Minimal.

Because there is a "significant and substantial private interest" in "[t]he uninterrupted use of one's vehicle" (*Scofield*, 862 F.2d at 762), "the government must present a 'strong justification' for departing from the norm that the government must generally provide notice before towing a vehicle." (*Lone Star Sec. & Video, Inc. v. City of Los Angeles* (9th Cir. 2009) 584 F.3d 1232, 1238 [citing *Clement v. City of Glendale* (9th Cir. 2009) 518 F.3d 1090, 1094]; *see Today's Fresh Start, Inc.*, 57 Cal.4th at 213; *Ramirez*, 25 Cal.3d at 269; *Civil Service Assn. v. City and Cty. of San Francisco* (1978) 22 Cal.3d 552, 561.) No such interest exists to obviate the need for additional practicable steps to ensure that an indigent person has an opportunity to be heard before the City seizes his/her vehicle. Where, as here, there is no public safety issue at stake, the government's interest in a vehicle tow is significantly lower. (*Compare Alviso v. Sonoma County Sheriff's Dept*. (2010) 186 Cal.App.4th 198 [public safety rationale for towing vehicle of unlicensed driver) *with Clement*, 518 F.3d at 1095-96 [no public safety rationale for towing safely parked inoperable vehicle].)

The City's alleged interest in ensuring compliance with parking regulations (McCormick Dep. at 57:16-24) does not support a towing practice that skirts due process, permanently

deprives individuals of their vehicles (which they may rely on for shelter and to perform their employment), and causes crushing hardships to a large percentage of extremely vulnerable vehicle owners. Indeed, it is beyond cavil that "[t]he state has no 'legitimate interest in building inescapable debt traps' for indigent residents." (*Dueñas*, 30 Cal.App.5th at 1171, fn. 8 [citing *Thomas v. Haslam* (M.D.Tenn. 2018) 329 F.Supp.3d 475, 521].) What is more, the rationale makes no sense given that some people can violate parking laws an unlimited number of times and still avoid a tow – just as long as they can afford to pay their tickets on time. (*Cf. Cooper v. Bray* (1978) 21 Cal.3d 841, 848 ["All of the formulas require the court to conduct '[a] serious and genuine judicial inquiry into the correspondence between the classification and the legislative goals.'"].)

To the extent that the City might claim interest in maintaining its current procedures in order to gain revenue from debt collection vehicle tows, the evidence shows that the towing practices actually *cost the City more than it recovers.* (Roeser Decl., Exh. O at 3 [SFMTA's Response to Request for Admission No. 6].) In fact, the City likely will save money by providing vehicle owners with specific pre-tow notice, thereby giving them an opportunity to pay (or enter alternative payment plans) to resolve the outstanding tickets. The government's revenue interest in debt collection tows is therefore minimal.

In contrast, the City has multiple options for a workable and inexpensive pre-tow process. It could pursue less intrusive collection efforts such as phone, email, or text reminders; wage garnishment; or bank levy. Those efforts failing, pre-tow hearings are workable and less expensive than tow fees. The burden in allowing tow hearing officers to consider such factors as a person's ability to pay in making determinations regarding the adequacy of a tow is similarly minimal.

D. The Court Should Issue a Writ of Mandate Prohibiting Unlawful Vehicle Seizures.

The Court should issue a writ of mandate prohibiting Respondents from seizing vehicles for unpaid parking tickets without warrant, reasonable notice, or meaningful opportunity to be

heard because such seizures violate SFMTA's mandatory duties.

Writ of mandate is appropriate "to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station…." (Code Civ. Proc., § 1085, subd. (a).) A Section 1085 writ "is available where the petitioner has no plain, speedy and adequate alternative remedy; the respondent has a clear, present and usually ministerial duty to perform; and the petitioner has a clear, present and beneficial right to performance." (*Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 752; *Pacific Bell v. California State & Consumer Services Agency* (1990) 225 Cal.App.3d 107, 118.) These elements are met here.

No alternative remedy at law, i.e., a damages suit, could prevent the City's ongoing constitutional violations. The object of this action is a writ prohibiting a public agency from violating its ministerial duties. The City has a clear, present, ministerial obligation to perform its duties in compliance with the mandates of the California Constitution. A violation of the California Constitution is grounds for a writ of mandate. (*See City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1201 [finding a writ action appropriate for evaluating a constitutional violation]; *St. John's Well Child & Family Ctr. v. Schwarzenegger* (2010) 50 Cal.4th 960, 972 [determining the Governor's authority under the California Constitution which was challenged by writ]; *see also Int'l Assn. of Fire Fighters, Local 188, AFL-CIO v. Pub. Emp't Relations Bd.* (2011) 51 Cal.4th 259, 283 [holding that if a constitutional violation was alleged, it would be within the superior court's equitable mandamus jurisdiction].)

As set forth above, the City violates the California Constitution by seizing vehicles without a warrant or the required procedural protections and therefore violates the ministerial duties imposed by California law. Accordingly, writ relief is appropriate.

Writ relief is also appropriate against both the SFMTA and its director, Jeffrey Tumlin, because SFMTA implements the illegal policies and practices in question, while the Director of the SFMTA, in his official capacity, oversees the challenged policies and practices. (*See Serrano v. Priest* (1977) 18 Cal.3d 728, 752 ["[I]t is the general and long-established rule that in actions for declaratory and injunctive relief challenging the constitutionality of state statutes, state

officers with statewide administrative functions under the challenged statute are the proper parties defendant."]; *Adams v. Dep't of Motor Vehicles* (1974) 11 Cal.3d 146, 151 & fn. 8, 10 [mandamus and taxpayer action against DMV and several DMV officials, including the Director].)

The Coalition on Homelessness has standing to seek this writ as a taxpayer. (*Adams*, 11 Cal.3d at 151 & fn. 10; *see also Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1249 [assuming taxpayer standing to seek writ of mandate and holding that "section 526a [of the Code of Civil Procedure] makes plaintiffs eligible to seek a range of remedies beyond mandamus"].) Further, where a writ petition raises a question "of public right and the object of the mandamus is to procure the enforcement of a public duty, the [petitioner] need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced." (*Green v. Obledo* (1981) 29 Cal.3d 126, 144 [citations and internal quotation marks omitted].)

Accordingly, Petitioner has satisfied all of the elements for issuance of a writ of mandate pursuant to Code of Civil Procedure Section 1085, and, as such, respectfully requests that the Court issue a writ prohibiting the City and its agents from towing vehicles in a manner that violates the constitutional rights of vehicle owners.

E. The Court Should Issue Declaratory and Injunctive Relief.

The Court should also issue a declaration that Respondents are violating the law by seizing vehicles for failures to pay parking tickets without obtaining a warrant or giving individuals a reasonable notice and opportunity to be heard, and it should enjoin Respondents from conducting such unlawful seizures, pursuant to Code of Civil Procedure Section 526a.

Code of Civil Procedure Section 526a provides authority for taxpayer suits to "restrain[] and prevent[] any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a local agency," where a local agency is defined as a city, town, county, city or city and county, or a district, public authority, or any other political subdivision of the state. Courts construe Section 526a liberally, as its "primary purpose" is to "enable a large body of the

citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement." (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 26768; *see Van Atta v. Scott* (1980) 27 Cal.3d 424, 447 [Section 526a gives taxpayers standing to sue for injunctive, declaratory, and mandamus relief to prevent officials from violating the law], superseded on other grounds as recognized in *In re York* (1995) 9 Cal.4th 1133, fn. 7.) The plaintiff in a taxpayer suit may be any person who "has paid an assessed tax to the defendant." (*Weatherford*, 2 Cal.5th at 1245.)

The Petitioner here pays taxes to the City and County of San Francisco. (*See* Friedenbach Decl., ¶ 3). The San Francisco Municipal Transportation Agency receives taxpayer dollars and expends monies from the public fisc when it engages in its unlawful towing scheme. (Roeser Decl., ¶ 19.) Because the City violates the law when it seizes vehicles for unpaid parking tickets without warrant, reasonable notice, or meaningful opportunity to be heard, the Court should declare the expenditure of funds in pursuit of such illegal towing to be unlawful, and issue an injunction prohibiting the implementation of such illegal vehicle tows. (Code Civ. Proc., § 526a.)

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court issue a declaration that the City's scheme for towing cars for unpaid parking tickets violates the California Constitution, and issue an injunction and writ of mandate.

Dated: June 8, 2021

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