

No. S219567

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHERRITY WHEATHERFORD,

Plaintiff/Appellant/Petitioner,

vs.

CITY OF SAN RAFAEL, et al.

Defendants/Respondents.

SUPREME COURT
FILED

AUG 18 2014

Frank A. McGuire Clerk
Deputy

ANSWER TO PETITION FOR REVIEW

On Review of the Published Decision of the Court of Appeal, First District,
Division One, *Wheatherford v. City of San Rafael* (May 22, 2014) 226 Cal.App.4th
460 [Petition for Rehearing Denied June 16, 2012]
Appellate Case No. A138949

On Appeal from the Judgment of the Superior Court of the State of California,
County of Marin, the Honorable Roy Chernus, Judge, Presiding
Superior Court Case No. CIV 1300112

RENEE GIACOMINI BREWER, Deputy (SBN 173012)
VALORIE R. BOUGHEY, Deputy (SBN 267424)
MARIN COUNTY COUNSEL
3501 Civic Center Drive, Suite 275
San Rafael, CA 94903
Telephone: (415) 473-6117
Attorneys for Respondent
COUNTY OF MARIN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. STATEMENT OF FACTS AND THE CASE 2

II. ISSUES PRESENTED..... 3

III. ARGUMENT 3

A. A PLAINTIFF MUST PAY, OR BE LIABLE TO PAY, A DIRECTLY ASSESSED TAX IN ORDER TO HAVE TAXPAYER STANDING UNDER SECTION 526A 3

 i) The Plain Language of Section 526a, Establishes that a Plaintiff Must pay, or Be Liable to Pay, a Directly Assessed Tax in Order To Have Taxpayer Standing 4

 ii) Appellate Court Precedent Unanimously Establishes that a Plaintiff Must pay, or Be Liable to Pay, a Directly Assessed Tax in Order To Have Taxpayer Standing 5

 iii) Supreme Court Treatment of Section 526a Does Not Conflict With Appellate Court Precedent Establishing That a Plaintiff Must Pay, Or Be Liable to Pay, a Directly Assessed Tax in Order to Have Taxpayer Standing..... 8

B. THE TRIAL COURT DID NOT ERR IN DISMISSING PLAINTIFF’S COMPLAINT FOR LACK OF TAXPAYER STANDING 11

IV. CONCLUSION 11

TABLE OF AUTHORITIES

Cases

Arrieta v. Mahon (1982) 31 Cal.3d 381 10

Bank of America, N.A. v. Roberts (2013) 217 Cal.App.4th 1386, 1399.....3

Blair v. Pitchess (1971) 5 Cal.3d 258..... 11

Camarillo v. Vaage (2003) 105 Cal.App.4th 552, 5659

Cornelius v. Los Angeles Co. Metro. Transp. Auth. (1996)
49 Cal.App.4th 1761 6, 7, 9

Cummings v. Stanley (2009) 177 Cal.App.4th 493, 5075

Golden Gate Bridge & Highway Dist. v. Felt (1931) 214 Cal. 308,..... 12

Irwin v. City of Manhattan Beach (1966) 65 Cal.2d 13 11

McAllister v. California Coastal Com. (2008) 169 Cal.App.4th 912, 928 4, 14

Northwest Energetic Services, LLC v. California Franchise Tax Bd. (2008)
159 Cal.App.4th 841, 854.....7

Reynolds v. City of Calistoga (2014) 223 Cal.App.4th 8656

*Santa Barbara Co. Coalition Against Automobile Subsidies v. Santa
Barbara Co. Assn. of Governments* (2008) 167 Cal.App.4th
1229 (Santa Barbara).....6

Serrano v. Priest (1971) 5 Cal.3d 584..... 11

Sinclair Paint Co. v. State Bd. of Equalization (1997) 15 Cal.4th 866, 874.....7

Tobe v. City of Santa Ana (1995) 9 Cal.4th 1069.....9, 10

Torres v. City of Yorba Linda (1993) 13 Cal.App.4th 1035 6, 8

Wheatherford v. City of San Rafael (2014) 226 Cal.App.4th 460.....4, 5, 8, 11

1 **Statutes**

2 California Rules of Court 8.500 1, 2, 12

3
4 Code of Civil Procedure section 526a.....passim

5 Rev. and Tax. Code §§ 73617

6 Vehicle Code section 14602.63

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

**TO: THE HONORABLE CHIEF JUSTICE CANTIL-SAKAUYE
AND THE HONORABLE ASSOCIATE JUSTICES OF THE
CALIFORNIA SUPREME COURT:**

Pursuant to Rule 8.500(a)(2) and (e)(4) of the California Rules of Court¹, the County of Marin (“the County”) hereby answers Appellant’s Petition for Review (“Appellant’s Petition”) of the published opinion of the First District Court of Appeal, Division One (“Court of Appeal”), issued May 22, 2014, upholding existing appellate precedent and affirming the trial court’s judgment. The County respectfully requests that this Court deny Appellant’s Petition.

Appellant invokes Rule 8.500(b) as a basis for the proposed review, attempting to characterize this case as raising important, unsettled questions of law relating to the application of taxpayer standing under Code of Civil Procedure section 526a (“section 526a”). In reality, however, the Court of Appeal’s decision is wholly consistent with both the plain language of the operative statute and existing appellate and Supreme Court case law that is several decades old. Thus, Appellant’s Petition does meet the standard for review under Rule 8.500.

The plain text of section 526a is perfectly clear regarding the type of taxes that must be paid in order to invoke taxpayer standing under that particular statute. Specifically, “[a]n action to obtain a judgment [against] a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, *who is assessed for and is liable to pay, or, within one year before the*

¹ All further rule references are to the California Rules of Court unless otherwise indicated.

commencement of the action, has paid, a tax therein." (Cal. Code Civ. Proc. § 526a, emphasis added.) California appellate courts have uniformly read this statute in accordance with its plain meaning, holding that only those taxes assessed directly upon a taxpayer – such as property and business taxes – suffice to trigger standing under section 526a. And this Court has never held otherwise. Consequently, Appellant's Petition raises no novel question of law worthy of review by this Court. Supreme Court review of the Court of Appeal decision is not necessary to secure uniformity of decision or to settle an important issue of law.

I. STATEMENT OF FACTS AND THE CASE

On January 9, 2013, Appellant filed a complaint for declaratory and injunctive relief. (CT² 1:) In her complaint, Appellant challenged the County's policies and practices concerning the impoundment of vehicles under Vehicle Code section 14602.6. (CT 1 - 12.) She brought this challenge despite the fact that the County had never impounded her vehicle under the section, and despite the fact that she had no reason to believe the County would ever do so. (CT 2 - 3.) Appellant's only claim to standing was the taxpayer standing provision found in section 526a.

Appellant alleged she possessed taxpayer standing under section 526a because she had paid sales tax, gasoline tax, and water and sewage fees in both the City of San Rafael and the County of Marin.³ (CT 1.) She

² All references to "CT" refer to the Clerk's Transcript on Appeal, Volume 1, filed Jul 12, 2013, and attached hereto as Exhibit A.

³ Although Appellant's Petition now alleges that Appellant has paid income taxes imposed by the City, County and State, this allegation was notably absent in the trial court proceedings and should not be considered at this late time. (Appellant's Petition, p. 11; CT 1 - 15.) Because Appellant did not raise the issue of income tax payments in her initial complaint, the First District Court of Appeal, Division One, ignored the novel factual allegation in reaching its decision. The County respectfully requests that this Court do the same. California courts "ignore arguments, authority, and facts not

conceded, however, that she did not pay property or any other taxes sufficient for taxpayer standing under existing law. (CT 1 – 2, 13 – 14.) On April 22, 2013, the trial court filed a stipulated order and judgment of dismissal. (CT 15.) On June 11, 2013, Appellant filed a timely notice of appeal. (CT 21.)

Having read and considered briefing by all parties, the First District Court of Appeal, Division One, issued an opinion on May 22, 2014, holding that 1) Appellant's payment of sales and gasoline taxes as a consumer did not confer taxpayer standing; 2) Appellant's payment of fees for services such as water and sewage did not confer taxpayer standing; 3) any disparate treatment based upon wealth was reviewed for rational basis under equal protection clause; and 4) wealth-based classification concerning taxpayer standing to restrain county or city expenditures did not violate equal protection. (*Wheatherford v. City of San Rafael* (2014) 226 Cal.App.4th 460 (*Wheatherford*)). Appellant timely filed a petition for rehearing or modification of the *Wheatherford* opinion, which the Court of Appeal denied on June 16, 2014. The decision of the Court of Appeal became final on June 21, 2014.

presented and litigated in the trial court. Generally, issues raised for the first time on appeal which were not litigated in the trial court are waived." (*Bank of America, N.A. v. Roberts* (2013) 217 Cal.App.4th 1386, 1399.)

II. ISSUES PRESENTED

Appellant's Petition presents the following questions:

1. What type of taxes must a plaintiff pay, or be liable to pay, to have taxpayer standing under section 526a?
2. Did the trial court err in dismissing plaintiff's complaint for lack of taxpayer standing?

III. ARGUMENT

A. A PLAINTIFF MUST PAY, OR BE LIABLE TO PAY, A DIRECTLY ASSESSED TAX IN ORDER TO HAVE TAXPAYER STANDING UNDER SECTION 526A.

- i. **The Plain Language of Section 526a Establishes that a Plaintiff Must Pay, or Be Liable to Pay, a Directly Assessed Tax in Order to Have Taxpayer Standing.**

In interpreting statutory language, the fundamental task of the reviewing court is to "ascertain the aim and goal of the lawmakers so as to effectuate the purpose of the statute." (*McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 928.) Courts accomplish this, when possible, by "giving the words of the statute their ordinary, everyday meaning." (*Cummings v. Stanley* (2009) 177 Cal.App.4th 493, 507.) Using this approach, it becomes clear, for reasons explained at greater length below, that the payment of sales and gasoline taxes, as well as various municipal fees, remains an insufficient basis upon which to claim taxpayer standing. Payment of a tax assessed *directly* upon a taxpayer, however, such as property or business taxes, is sufficient.

Per the plain language of section 526a, an individual may make use of the taxpayer standing provision as against a municipality when that individual has been "assessed for and is liable to pay, or, within

one year before the commencement of the action, has paid, a tax therein.” (Cal. Code Civ. Proc. § 526a.) Individuals who pay passed-through taxes for which the individual is not himself assessed, such sales and gasoline tax, cannot be said to have paid an “assessed tax” within the meaning of section 526a. Nor can individuals who pay water, sewage and other municipal fees and charges be said to have paid “a tax” for the purposes of section 526a. The statute very clearly limits taxpayer standing to “two classes of persons who have been assessed for taxes: (1) those who are liable to pay an assessed tax but who have not yet paid, and (2) those who paid an assessed tax within one year before the filing of the lawsuit.” (*Wheatherford, supra*, 226 Cal.App.4th at p. 466.)

The First District Court of Appeal, Division One, opinion in this matter is wholly consistent with a plain reading of section 526a. Thus, the language of the statute provides no basis for granting a Petition for Review.

ii. Appellate Court Precedent Unanimously Establishes that a Plaintiff Must Pay, or Be Liable to Pay, a Directly Assessed Tax in Order to Have Taxpayer Standing.

To avoid the result dictated by a commonsense reading of section 526a, Appellant asks this Court to interpret the statute to allow payment of *any* form of tax or municipal fee to automatically trigger taxpayer standing under section 526a. In doing so, Appellant is not seeking a ruling that would serve to create uniformity of decision or settle an important question of law. Appellant, rather, is requesting that this Court not only read section 526a’s plain meaning out of the statute, but also that it overturn all existing appellate court precedent on the issue of taxpayer standing.

Appellant's suggestion that payment of a sales tax by a consumer should serve to trigger section 526a's taxpayer standing provision is controverted by a multitude of cases that expressly hold that sales taxes are levied against retailers, not consumers, and thus a consumer's payment of sales tax is an insufficient basis upon which to found section 526a standing. (See *Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035 (*Torres*); *Cornelius v. Los Angeles Co. Metro. Transp. Auth.* (1996) 49 Cal.App.4th 1761 (*Cornelius*); *Santa Barbara Co. Coalition Against Automobile Subsidies v. Santa Barbara Co. Assn. of Governments* (2008) 167 Cal.App.4th 1229 (*Santa Barbara*); *Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865.) As these cases diligently explain, even though the price of goods purchased by a consumer may be increased by the amount of the sales tax, "the tax [i]s imposed on the person who sold the goods to [the consumer]." (*Torres, supra*, 13 Cal.App.4th at p. 1048, emphasis added.) Thus, "[e]ven if a merchant passes the tax on to the consumer... a sales tax is considered a tax on the retailer." (*Santa Barbara, supra*, at p. 1236, citing *Cornelius, supra*, 49 Cal.App.4th at pp. 1777-1778.) Section 526a consequently does not confer taxpayer standing on mere purchasers of goods, and no appellate court has ever held that it does.

Similarly, it has long been established that a consumer's repayment of gasoline taxes to a gas vendor can no more endow that consumer with taxpayer standing than can the repayment of a sales tax to a business owner. (*Cornelius, supra*, 49 Cal.App.4th at pp. 1777-1778.) Again, this is because gas taxes are imposed upon the vendors of gasoline, not the consumers of gasoline. (See Rev. and Tax. Code §§ 7361 ["For the privilege of storing, for the purpose of removal, sale, or use, every distributor owning motor vehicle fuel... shall pay a tax..."]

and 8733 [“The tax required to be collected by the vendor constitutes a debt owed by the vendor to this State”].) Section 526a consequently does not confer taxpayer standing on consumers of gasoline, and, again, no appellate court has ever held that it does.

Finally, Appellant’s remittance of water and sewage fees to the County does not, and cannot, lay the foundation for plaintiffs to bring a section 526a taxpayer action against the County. There are fundamental differences between taxes and fees, and section 526a most explicitly requires payment of “a tax.” (Cal. Code Civ. Proc. § 526a.) “The essence of a tax is that it raises revenue for general governmental purposes and is ‘compulsory rather than imposed in response to a voluntary decision ... to seek ... benefits.’” (*Northwest Energetic Services, LLC v. California Franchise Tax Bd.* (2008) 159 Cal.App.4th 841, 854 [citing *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 874].) “A fee, on the other hand, funds a regulatory program or compensates for services or benefits provided by the government.” (*Id.*) Payment of a municipal fee does not amount to payment of a tax for purposes of section 526a, and no appellate court has ever found that it does.

Although Appellant attempts to characterize the state of the law regarding what sort of tax payments are required by section 526a as ambiguous and variable, this is simply not the case. Never, in the 105 years since section 562a was enacted in 1909⁴, has a California court of appeal found a consumer’s payment of sales or gasoline taxes, or any sort of municipal fee, to be sufficient to trigger section 526a’s

⁴ Section 526a was approved as Senate Bill 924 in 1909. It is referenced in the Senate Journal, Senate Final History, Thirty-eighth Session, 1909, Final Calendar of Legislative Business, at p. 212. (Legislative Research & Intent LLC, <http://192.234.213.35/clerkarchive/> <as of October 22, 2013>.)

taxpayer standing provisions. The appellate courts have, quite to the contrary, unanimously and unwaveringly held that payment of a tax assessed directly upon the taxpayer is required. Such assessed taxes include, but are not limited to, real property taxes. (*Wheatherford, supra*, 226 Cal.App.4th at p. 467, fn. 6.)

The First District Court of Appeal, Division One, opinion in this matter is wholly consistent with a plain reading of section 526a. Thus, existing appellate court precedent provides no basis for granting a Petition for Review.

iii. Supreme Court Treatment of Section 526a Does Not Conflict with Appellate Court Precedent Establishing that a Plaintiff Must Pay, or Be Liable to Pay, a Directly Assessed Tax in Order to Have Taxpayer Standing.

The Supreme Court has never disagreed with the fact that section 526a requires that an individual pay an assessed tax – that is, a tax which has been directly imposed on that individual – in order to qualify as a “taxpayer” for purposes of 526a standing. (See, e.g. *Torres, supra*, 13 Cal.App.4th at pp. 1047-1048; *Cornelius, supra*, 49 Cal.App.4th at pp. 1775-1778.) There are, as Appellant points out, a multitude of Supreme Court cases in which plaintiffs were afforded section 526a taxpayer standing, but in which the Court declined to explicitly consider or discuss the type of taxes these plaintiffs had paid in order to become section 526a taxpayers. (Appellant’s Petition, at pp. 16 – 19.) Such cases do little, however, to inform the present discussion, as “cases are not precedent for issues not considered and decided.” (*Camarillo v. Vaage* (2003) 105 Cal.App.4th 552, 565.) Because the Supreme Court, in reaching its decisions in those cases enumerated by Appellant, did not consider or decide what taxes

plaintiffs had paid in order to enjoy taxpayer standing, the cases cannot and do not serve as precedent for the question now before this Court.

Despite this fact, Appellant insists that this Court should use two such cases to guide the present discussion. Specifically, Appellant calls attention to *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069 (*Tobe*), wherein plaintiffs, some of whom were homeless, brought an action to bar the enforcement of a city ordinance that banned camping and storage of personal effects in public areas throughout the city. (*Id.* at pp. 1081-1082.) In the course of reaching its decision, the Court held that, although the challenge to the ordinance failed for other reasons, plaintiffs did have standing to bring the action as section 526a taxpayers. (*Id.* at p. 1086.) There is no indication, however, that the Court considered the issue of what taxes – real property, business, or otherwise – plaintiffs had paid to enjoy this standing. The main focus of the case, and the entire discussion in the case, was geared toward separate constitutional concerns. Appellant's suggestion that the homeless plaintiffs in *Tobe* had "plainly... not paid real property or business taxes" (Appellant's Petition, at p. 20) fundamentally mischaracterizes not only the facts of the case, but also attempts to turn an issue that the Court did not consider or decide upon into something with precedential value.

Similarly, in *Arrieta v. Mahon* (1982) 31 Cal.3d 381 (*Arrieta*), plaintiffs were a group of tenants who brought a 526a taxpayer's action to challenge the county marshal's policy of evicting all occupants when enforcing a writ of execution after an unlawful detainer judgment, regardless of whether or not the occupants were actually named in the writ. (*Id.* at p. 385.) Again, the Supreme Court concluded that the plaintiffs had standing to bring the suit under section 526a. (*Id.*, at p.

387.) And again, the Court did not discuss the issue of what specific taxes plaintiffs had paid – real property, business, or otherwise – that served to render them proper recipients of taxpayer standing. As such, Appellant’s claim that the plaintiffs in *Arrieta* “plainly had not paid real property or business taxes, and necessarily paid other forms of taxes” (Appellant’s Petition, at p. 4) is against a blatant mischaracterization of the stated case facts as well as a hollow attempt to conjure precedential value out of case that never actually addressed the issue at hand.

Because the Supreme Court, in reaching its decisions in *Tobe* and *Arrieta*, did not consider or decide what taxes plaintiffs had paid in order to enjoy taxpayer standing, these cases are no more illuminating than the multitude of others listed in Appellant’s Petition that offhandedly deem plaintiffs to be “taxpayers” prior to addressing the merits of the case. And it cannot realistically be said that plaintiffs in those two cases did not pay property taxes or another sort of tax directly assessed upon them; we simply do not know.

There are, on the other hand, a handful of cases in which this Court has engaged in a more substantive discussion of the types of taxes paid by plaintiffs in order to properly invoke section 526a. And these cases uniformly and explicitly support existing appellate court precedent, including the *Wheatherford* opinion. Specifically, in *Blair v. Pitchess* (1971) 5 Cal.3d 258, the Supreme Court found that plaintiffs properly qualified for section 526a taxpayer standing because they were residents of the County of Los Angeles and had been assessed and paid real property taxes therein. (*Id.*, at p 285.) In *Irwin v. City of Manhattan Beach* (1966) 65 Cal.2d 13, the Court held that a city nonresident, who owned and paid property taxes within the city, could properly bring a taxpayer suit under section 526a. (*Id.*, at pp. 18-20.)

And in *Serrano v. Priest* (1971) 5 Cal.3d 584, plaintiffs were allowed to move forward with their taxpayer suit based on their allegations that they were citizens and residents of Los Angeles County who owned real property assessed by the county. (*Id.* at p. 618.)

Thus, in each and every case in which this Court has specifically turned its attention to the issue of what sort of taxes are sufficient to support section 526a taxpayer standing, the Court has found that only plaintiffs who are directly “assessed for and are liable to pay...a tax” can be the proper recipients of section 526a standing. (Cal. Code Civ. Proc. § 526a.) This is in direct accordance with the plain language of section 526a, all existing appellate court precedent, and the decision now at issue in *Wheatherford*. Thus, existing Supreme Court case law provides no basis for granting a Petition for Review.

B. THE TRIAL COURT DID NOT ERR IN DISMISSING PLAINTIFF’S COMPLAINT FOR LACK OF TAXPAYER STANDING.

In general, “an action not founded upon an actual controversy between the parties to it, and brought for the purpose of securing a determination of a point of law, is collusive, and will not be entertained; and the same is true of a suit the sole object of which is to settle rights of third persons who are not parties.” (*Golden Gate Bridge & Highway Dist. v. Felt* (1931) 214 Cal. 308, 316.) Only if an action “meets the requirements of section 526a” will it “present a true case or controversy.” (*Blair, supra*, 5 Cal.3d at p. 269.)

Because Appellant’s present action fails to meet the requirements of section 526a for the reasons discussed above, and because her underlying pleading contains no allegations that her vehicle has been or will be subjected to impoundment under the Vehicle Code, the present


action does not present a true case or controversy. And, as such, it was not cognizable by the trial court, and was properly dismissed.

IV. CONCLUSION

In light of the fact that Appellant's Petition does not meet the standard for review under Rule 8.500(b), and Supreme Court review is not necessary to either secure uniformity of decision or settle an important question of law, the County respectfully requests that the order of the trial court dismissing Appellant's complaint for lack of standing be affirmed and Appellant's Petition for Supreme Court review be denied.

Dated: August 14, 2014.

STEVEN M. WOODSIDE
MARIN COUNTY COUNSEL

By: 
VALORIE R. BOUGHEY
Attorneys for the County of Marin

CERTIFICATION OF WORD COUNT

I, VALORIE R. BOUGHEY, counsel for Respondent in this matter hereby certify that the attached Respondent's Brief contains a total of 3444 words. This brief was produced on Microsoft Word processing program.

Dated: August 12, 2014

STEVEN M. WOODSIDE
County Counsel


VALORIE R. BOUGHEY
Deputy County Counsel

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Marin County Counsel, 3501 Civic Center Dr., Room 275 San Rafael, CA 94903. On August 13, 2014, I served the within document(s):

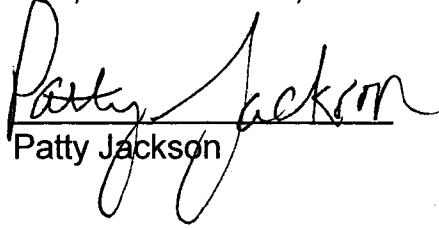
ANSWER TO PETITION FOR REVIEW

Were placed in sealed envelopes, postage prepaid, hand delivered or e-mailed at the following addresses:

Clerk of the California Supreme Court, Earl Warren Building 350 McAllister Street San Francisco, CA 94102 1 original & 8 Copies; and 1 for endorsed copy hand delivered; 1 PDF E-filed copy	Attorney General of California 1515 Clay Street P.O. Box 70550 Oakland, CA 94612 1 copy via 1 st Class Mail
Clerk-Court of Appeal First Appellate District, Div. One 350 McAllister Street San Francisco, CA 94102 Hand Delivered	Counsel for Respondent <u>City of San Rafael</u> Richard W. Osman Bertrand, Fox & Elliott 2749 Hyde Street San Francisco, CA 94109 Via 1 st Class Mail
<u>Counsel for Appellant</u> Mark T. Clausen 769 Carr Avenue Santa Rosa, CA 95404 Via First Class Mail	Marin County Superior Court, Hall of Justice Judge Roy O. Chernus c/o Appeals Clerk, Room 112 Civic Center, San Rafael, CA 94903 Via Inter Office Mail

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 13, 2014, at San Rafael, California.


Patty Jackson



1
2
3
4
5 COURT OF APPEAL OF THE STATE OF CALIFORNIA

6 FIRST APPELLATE DISTRICT

7 DIVISION ONE

8
9 Cherrity Wheatherford,)
10 Appellant,) A138949
11 v.)
12 City of San Rafael, et al.,)
13 Respondents,)
14)

15 CLERK'S TRANSCRIPT ON APPEAL

16 FROM COURT RECORDS MADE AND ENTERED

17 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF MARIN

19 Volume 1, Pages 1 – 29

20

<p>21 <u>Appellant (Cherrity Wheatherford):</u> 22 Mark T. Clausen (SBN 196721) 23 769 Carr Avenue 24 Santa Rosa, CA 95404</p>	<p><u>Respondent (City of San Rafael):</u> Richard W. Osman (SBN 167993) 2749 Hyde Street San Francisco, CA 94109</p>
	<p><u>Respondent (County of Marin)</u> Renee G. Brewer (SBN 173012) <u>Office of Marin County Counsel</u> 3501 Civic Center Drive, Suite 275 San Rafael, CA 94903</p>

25
26
27
28

FILED

JUL 12 2013

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: D. Taylor, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

Cherrity Wheatherford,
Appellant,

v.

City of San Rafael, et al.,
Respondent,

CIV 1300112
CLERK'S TRANSCRIPT

ROY O. CHERNUS,

JUDGE, SUPERIOR COURT

KIM TURNER,

COURT EXECUTIVE OFFICER

NONE,

COURT REPORTER

<p><u>Appellant (Cherrity Wheatherford):</u> Mark T. Clausen (SBN 196721) 769 Carr Avenue Santa Rosa, CA 95404</p>	<p><u>Respondent (City of San Rafael):</u> Richard W. Osman (SBN 167993) 2749 Hyde Street San Francisco, CA 94109</p>
	<p><u>Respondent (County of Marin)</u> Renee G. Brewer (SBN 173012) Office of Marin County Counsel 3501 Civic Center Drive, Suite 275 San Rafael, CA 94903</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Chronological Index for CIV 1300112 – Cherrity Wheatherford v. City of San Rafael, et al.

Page

1	Register Of Actions (Contains Minute Orders)	---	---
2	Complaint For Declaratory And Injunctive Relief	Filed 01/09/13	1
3	Stipulated Order And Judgment Of Dismissal	Filed 04/22/13	13
4	Notice Of Entry Of Stipulated Stipulated Order And Judgment Of Dismissal	Filed 05/13/13	16
5	Notice Of Appeal	Filed 06/11/13	21
6	Appellant's Notice Designating Record On Appeal	Filed 07/01/13	23
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

MARIN SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

CHERRITY WHEATHERFORD Plaintiff(s) S. CITY OF SAN RAFAEL, ET AL Defendant(s)	DATE FILED:	1/9/2013
	CASE TYPE:	Civil Complaint
	CASE SUBTYPE:	Declaratory Relief
	DATE OF LAST ACTIVITY:	7/1/2013
	DATE/TIME RUN:	7/12/2013 9:01am
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1300112

INVOLVED PERSON/PARTY AND ATTORNEY SUMMARY:

WHEATHERFORD, CHERRITY is the Plaintiff and is represented by: CLAUSEN, MARK T.

CITY OF SAN RAFAEL is the Defendant and is represented by:

COUNTY OF MARIN is the Defendant and is represented by:

REGISTER OF ACTIONS:

2013 CASE OPEN / ACTIVE STATUS Hon. Roy O. Chernus

2013 FILING FEE PROCESSED: PLTF, CHERRITY WHEATHERFORD - 435.00

2013 COMPLAINT/FIRST PAPER COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

2013 SUMMONS ISSUED AND FILED

7/2013 HEARING CONFIRMED FOR: 03/22/2013 AT: 08:30 AM FOR APPEARANCE TYPE: OSCH IN DEPARTMENT: D06

7/2013 HEARING CONFIRMED FOR: 04/22/2013 AT: 08:30 AM FOR APPEARANCE TYPE: OSCH IN DEPARTMENT: D06

7/2013 HEARING CONFIRMED FOR: 06/03/2013 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06

7/13 MINUTE ORDER POSTED - Appearance: 3/22/2013 at 08:30 AM for OSC RE: PROOF OF SERVICE
JUDGE/PROTEM/REFEREE ROY O. CHERNUS , REPORTER NOT REPORTED , DEP CLK D.THAI
NO APPEARANCE BY OR FOR THE PARTIES
IT IS ORDERED: ORDER TO SHOW CAUSE RE: PROOF OF SERVICE CONTINUED TO JOIN ORDER TO SHOW
CAUSE RE: ANSWER ON 04/22/13 AT 8:30 A.M.
OSC ISSUED TO MARK CLAUSEN FOR FAILING TO APPEAR ON 03/22/13 OR FILE PROOF OF SERVICE AS TO
DEFENDANTS: 04/22/13 AT 8:30 A.M. COURTROOM B BEFORE JUDGE: ROY CHERNUS
HEARING BEFORE TRIAL
ENTERED BY: D.THAI

2013 PROOF OF SERVICE FILED, AS TO: DEFT, COUNTY OF MARIN; PERSONAL SERVICE ON 2/2/13 BY SERVING
MARIN COUNTY BOARD OF SUPERVISORS.

2013 PROOF OF SERVICE FILED, AS TO: DEFT, CITY OF SAN RAFAEL; PERSONAL SERVICE ON 2/2/13 BY
SERVING CLERK OF THE CITY OF SAN RAFAEL.

7/2013 MINUTE ORDER POSTED - Appearance: 4/22/2013 at 08:30 AM for OSC RE: FILING OF ANSWER
JUDGE/PROTEM/REFEREE ROY O. CHERNUS , REPORTER NOT REPORTED , DEP CLK D.THAI
ATTORNEY MARK CLAUSEN APPEARED FOR PLAINTIFF
STIPULATION TO DISMISSED SIGNED IN OPEN COURT.
HEARING BEFORE TRIAL
ENTERED BY: D.THAI

7/13 FILING FEE WAIVED- GOVERNMENTAL AGENCY DEFT, CITY OF SAN RAFAEL

7/2013 FILING FEE WAIVED- GOVERNMENTAL AGENCY DEFT, COUNTY OF MARIN

MARIN SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

CHERRITY WHEATHERFORD Plaintiff(s) S. CITY OF SAN RAFAEL, ET AL Defendant(s)	DATE FILED:	1/9/2013
	CASE TYPE:	Civil Complaint
	CASE SUBTYPE:	Declaratory Relief
	DATE OF LAST ACTIVITY:	7/1/2013
	DATE/TIME RUN:	7/12/2013 9:01am
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1300112

/2013 CASE DISPOSED BEFORE TRIAL - OTHER JUDGMENTS STIPULATED ORDER AND JUDGMENT OF DISMISSAL; WITHOUT NEED OF THE FILING OF A MOTION BY DEFTS CHALLENGING PLTF'S STANDING AS TAXPAYER, THE ACTION IS DISMISSED INI FULL BASED ON LACK OF TAXPAYER STANDING, AS PLTF CONCEDES SHE HAS NOT PAID AN ASSESSED REAL PROPERTY TAX AS REQUIRED, AND CANNOT AMEND THE COMPLAINT TO CURE THE DEFECT IN STANDING; PLTF SHALL HAVE THE RIGHT OF APPEAL; ALL PENDING HEARING DATES ARE DROPPED FROM CALENDAR; PLTF'S COUNSEL SHALL TIMELY SERVE NOTICE OF ENTRY OF ORDER AND JUDGMENT. (SEE FILE FOR DETAILS) JUDGE ROY O. CHERNUS

/2013 CASE DISPOSED IN ENTIRETY

/2013 APPEARANCE DROPPED FOR 06/03/2013 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 DROP REASON: JUDGMENT OF DISMISSAL FILED

/2013 HEARING CONFIRMED FOR: 04/22/2014 AT: 09:00 AM FOR APPEARANCE TYPE: CSCM IN DEPARTMENT: Z7

2013 APPEARANCE DROPPED FOR 04/22/2014 AT: 09:00 AM FOR APPEARANCE TYPE: CSCM IN DEPARTMENT: Z7 DROP REASON: DISMISSED 4/22/2013

/2013 NOTICE OF APPEAL BY PLAINTIFF FROM THE STIPULATED ORDER AND JUDGMENT OF DISMISSAL, FILED 04/22/2013; \$100/\$775.

/2013 HEARING CONFIRMED FOR: 06/11/2014 AT: 09:00 AM FOR APPEARANCE TYPE: CSCM IN DEPARTMENT: Z7

13 FILED APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL IN COURT OF APPEAL # A138949: CLERK'S TRANSCRIPT ONLY.

1 Mark T. Clausen (Calif. SB# 196721)
2 Attorney at Law
3 769 Carr Avenue
4 Santa Rosa, California 95404
5 Office Telephone: (707) 595-3154
6 Cellular: (707) 235-3663
7 Facsimile: (707) 542-9700
8 Email: MarkToddClausen@yahoo.com

FILED

JAN - 9 2013

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

Joey Hale

9 Attorney for Plaintiff
10 Cherrity Wheatherford

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA,
12 COUNTY OF MARIN

13 [An Unlimited Civil Action]

14 CHERRITY WHEATHERFORD,

Case No. CIV 1300112

15 Plaintiff,

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

16 vs.

17 THE CITY OF SAN RAFAEL AND
18 COUNTY OF MARIN,

19 Defendants.

20 Comes now plaintiff Cherrity Weatherford who hereby alleges, claims and prays as
21 follows:

22 PARTIES

23 1. Plaintiff Cheri Weatherford (hereafter "plaintiff") is an individual over the age of 18
24 and a resident of the City of San Rafael, County of Marin. Within 1 year of the filing of this
25 action, plaintiff paid taxes in and to the City of San Rafael, County of Marin and the State of
26 California, such that she has taxpayer standing pursuant to Code of Civil Procedure section 526a
27 to bring this action seeking declaratory and injunctive relief against the governmental defendants
28 in order to secure the defendants' compliance with state and federal constitutional guarantees and
enjoin the unlawful expenditure of taxpayer monies which occurs when the governmental
defendants act in contravention of state and federal constitutional rights.

2. The taxes paid by plaintiff in and to the City of San Rafael, County of Marin and State
of California include sales tax, gasoline tax, water and sewage fees, and other taxes, charges and
fees routinely imposed by municipalities, counties and the states, with the exception of property

SUMMONS ISSUED

CIN7 2 11/13

1 taxes. Payment of property taxes is not required for taxpayer standing.¹ Plaintiff has not paid
2 property taxes because, like millions of others, she does not own and cannot afford to buy real
3 property in California, particularly in the County of Marin, one of the most expensive real estate
4 markets in California— indeed, the entire United States.

5 3. Defendant City of San Rafael is a governmental entity organized under the laws of the
6 State of California and is responsible for the policies, practices, actions and omissions of the San
7 Rafael Police Department (“SRPD”), a law enforcement agency organized under the laws and
8 established, controlled and operated by and on behalf of the City of San Rafael. Herein, all factual
9 references to SRPD are also to the City of San Rafael which has approved and ratified the policies
10 and practices of SRPD as herein described and is responsible for the use of taxpayer dollars in the
11 past and ongoing enforcement of those policies and practices.

12 4. Defendant County of Marin is a governmental entity organized under the laws of the
13 State of California and is responsible for the policies, practices, actions and omissions of the
14 Marin County Sheriff’s Department (“MCSD”), a law enforcement agency organized under the
15 laws and established, controlled and operated by and on behalf of the County of Marin. Herein,
16 all factual references to MCSD are also to the County of Marin, which has approved and ratified
17 the policies and practices of MCSD as herein described and is responsible for the use of taxpayer
18 dollars in the past and ongoing enforcement of those policies and practices.

19 5. In enforcing the unconstitutional policies and practices and doing all other things
20 described herein, MCSD and SRPD use paid law enforcement officers and expends taxpayer
21 funds so as to be subject to suit for declaratory and injunctive relief pursuant to the taxpayer
22 standing provisions of Code of Civil Procedure section 526a.² Plaintiff has taxpayer standing
23 under Code of Civil Procedure section 526a to enjoin the unconstitutional policies and practices
24 of MCSD and SRPD, even though those policies and practices have never been applied to
25

26 ¹*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1082, 1084-1086 [homeless plaintiffs had
27 taxpayer standing].

28 ²See *Blair v. Pitchess* (1971) 5 Cal.3d 258, 267-270 and 285-286 at fn. 21.

1 plaintiff, and others who have been directly harmed by those policies and practices can bring suit.³

2 GENERAL ALLEGATIONS

3 6. Each year MCSD and SRPD order the 30-day impoundment of hundreds, if not
4 thousands of vehicle pursuant to Vehicle Code⁴ section 14602.6, primarily applicable to vehicles
5 (allegedly) operated by driver's whose license is suspended or revoked or who have never been
6 issued a valid license in California or any other state or foreign jurisdiction.⁵

7 7. It is a common misconception that the driver whose license is suspended or revoked or
8 whose conduct otherwise resulted in a 30-day impound under section 14602.6 is the sole owner of
9 the vehicle.⁶ In California, on average, this is true less than 35% of the time, and Marin County is
10 no exception. In the majority of cases, and certainly the generality of cases, the driver whose
11 conduct subjected the vehicle to impoundment is not the owner, or the *sole* owner, of the vehicle.
12 In the vast majority of cases, and certainly the generality of cases, regardless of whether the driver
13 is the sole owner, the driver has a spouse, children or other family members, employees or other
14 third parties, who are validly licensed to drive and who rely on the vehicle as their primary, and
15 often exclusive means of transportation for work, school, medical appointments and/or other day-
16 to-day necessities of life.

17 8. 30-day impounds work serious hardship on registered and/or legal owners of the
18 vehicles subject to impound. Use of a vehicle is lost for a period of at least 30-days, which can
19 prevent the owner and his/her family from driving to and from work, school, medical

20 ³See *Van Atta v. Scott* (1980) 27 Cal. 3d 424, 447; *Connerly v. State Personnel Bd.*, *supra*,
21 92 Cal.App.4th 16, 29-31.

22 ⁴All undesignated statutory references are to the Vehicle Code.

23 ⁵The legislative history of section 14602.6 and its proper interpretation and application is
24 discussed in *Smith v. Santa Rosa Police Department* (2002) 97 Cal. App. 4th 546 ("*Smith*"), *Alviso*
25 *v. Sonoma County Sheriff's Dept.* (2010) 186 Cal.App.4th 198 ("*Alviso*") and *Samples v. Brown*
26 (2007) 146 Cal.App.4th 787 ("*Samples*"), each of which were brought by plaintiff's counsel at bar.

27 ⁶See, e.g., *Alviso, supra*, 186 Cal.App.4th 198, 211-212 [without any evidentiary support in
28 the record, other than the circumstances of the single plaintiff whose license was admittedly
suspended for DUI, the Court of Appeal stated that "most other" owners whose vehicles are
impounded under section 14602.6 will also not be legally authorized to drive.]

1 appointments and other locations needed to carry on the day-to-day activities of life— particularly
2 in California, where distance between home and work is often great and public transportation is
3 not always easily accessible.⁷

4 9. In addition, in Marin County, as well as many other areas of California, towing, storage
5 and release fees for a 30-day impound approach \$2,000 and the fees must be paid in full before
6 the vehicle is released. There are no exceptions for financial hardship. If the owner cannot afford
7 to pay the accumulated fees, the vehicle is sold at auction— effectively forfeited— and the proceeds
8 are applied to pay the outstanding fees, with the vehicle owner liable for the remaining balance
9 (See §§14602.6, 22850.5, 22851 and 22851.12; Civ. Code §§ 3068.1 and 3073; see also *Smith*,
10 *supra*, 97 Cal.App.4th 546, 568 [when a vehicle owner is not able or willing to pay to secure
11 release of his vehicle following a 30-day impound, “application of ... section 14602.6 effects a
12 *forfeiture* of the vehicle.” (Italics added.)].)

13 10. Pursuant to sections 14602.6, subdivision (b), and 22852 the legal and/or registered
14 owner of a vehicle impounded pursuant to section 14602.6 is entitled to notice of the impound
15 and an opportunity for an impound hearing conducted by the seizing law enforcement agency. At
16 the hearing the seizing law enforcement agency must present evidence establishing the factual and
17 legal grounds for the initial seizure and impoundment of the vehicle, and the registered and/or
18 legal owner of the vehicle may present evidence to challenge the grounds for impound or establish
19 statutory grounds for early release in accordance with subdivisions (b) and (d) through (h) of
20 section 14602.6— including any “mitigating circumstances,” the vehicle is a rental car, was subject
21 to bailment or was stolen, the offending driver has subsequently obtained a valid license, or the
22
23
24

25 ⁷The Third District Court of Appeal expressly so held in another of plaintiff’s counsel
26 reported cases, *O’Connell v. Stockton*, formerly (2005) 128 Cal.App.4th 836, a taxpayer action which
27 invalidated Stockton’s vehicle forfeiture ordinance as violative of procedural due process and
28 preempted by state law. The Supreme Court granted review and affirmed on limited grounds of state
law preemption, *O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, with the 3 dissenting justices
noting that the constitutional issues were “worthy of careful scrutiny.” (*Id.*, 1081 at fn. 3.)

1 license suspension is pursuant to a statute *other than* sections 13200-13392.⁸

2 11. Following the impoundment of a vehicle under section 14602.6, the only notice
3 provided by MCSD and SRPD is a 2-sided CHP-180 form (aka "Notice of Stored Vehicle")
4 developed by the California Highway Patrol and employed as the sole means of notice by virtually
5 every law enforcement agency in the state when a vehicle is towed or impounded for *any* reason.⁹
6 The CHP-180 form is mailed to the address(es) of the registered and legal owner(s) of the vehicle.
7 The front of the form identifies the vehicle subject to impound, including the make, model, year,
8 and license plate and vin numbers, and the names and address of the legal and registered owners,
9 and includes a section titled "storage authority/reason" which the officer fills in by hand, usually
10 writing "VC 14602.6" or "30-day impound," but frequently simply "VC" or "impound." The
11 back of the form advises that a hearing may be requested by contacting the impounding law
12 enforcement agency within 10-days of the date of impound.

13 12. The CHP-180 form does not provide *any* information concerning the factual grounds
14 for the traffic stop or impoundment of the vehicle, the statutory basis for the driver's license
15 suspension/revocation, or grounds for early release under section 14602.6 or the policies and
16 practices of MCSD and SRPD, which are in many respects more liberal than section 14602.6.

17 13. Aside from the CHP-180 form, no other documents are provided to the registered or
18 legal owner of the vehicle, such as the police reports, DMV record, CLETS reports, or written
19 statements prepared by the arresting and/or impounding officer(s) which many agencies employ
20 specifically for 30-day impounds under section 14602.6.¹⁰

21
22 ⁸See *Smith, supra*, 97 Cal.App.4th 546 [construing the "mitigating circumstances" provision
23 of section 14602.6 to require release where the owner did not know his vehicle was being operated
24 by a person who does not possess a valid license]; *Samples v. Brown, supra*, 146 Cal.App.4th 787
25 [detailing the exemptions available under the statute and rejecting a facial equal protection challenge
thereto]; *Alviso, supra*, 186 Cal.App.4th 198 [same as to other exemptions, and finding no
constitutional right to a judicial impound hearing].)

26 ⁹The form was widely in use long before section 14602.6 was enacted in 1994 and has not
27 been substantively modified since.

28 ¹⁰Prior to 2002, law enforcement agencies throughout the state took the position that section
14602.6 mandated a strict impound policy: "No valid license; no vehicle; no exceptions." In 2002,

1 14. Without knowledge of the specific statutory grounds for the driver's license
 2 suspension or revocation, the impounding agency and the registered and/or legal owner of the
 3 vehicle cannot determine if a particular suspension or revocation qualifies for a 30-day impound
 4 under section 14602.6, subdivision (d)(1)(C), which provides:

5 An impounding agency *shall release* a vehicle to the registered owner or his or her
 6 agent prior to the end of 30 days' impoundment under any of the following
 circumstances:

7 When the license of the driver was suspended or revoked for an offense *other than*
 8 those included in Article 2 (commencing with Section 13200) of Chapter 2 of
 Division 6 or Article 3 (commencing with Section 13350) of Chapter 2 of Division
 6. (Italics added.)

9 15. Section 14602.6 applies only to license suspensions and revocation which fall under
 10 sections 13200-13392. All other suspensions and revocations are exempt. Suspensions and
 11 revocations which are except from section 14602.6 include sections 12810.5 (negligent operation
 12 - excessive violation points), 12814.6 (provisional license suspensions), 12818 (failed
 13 reexamination), 12819 (failure to respond to reexamination notice), 13801 (failure to submit to a
 14 DMV reexamination), 13953 (suspension or revocation based on reexamination), 13954(A) (in an
 15 accident within 5 years of a manslaughter conviction), 13954(D)(1) (in an accident with a .08
 16 BAC or higher), 13954(D)(2) (in an accident caused by a prohibited act or neglect of duty),
 17 16004(A) (failure to report an accident to DMV), 16030 (false evidence of insurance), 16070
 18 (failure to provide proof of insurance at an accident scene), 16071 (failure to provide proof of
 19 insurance in another state, resulting in suspension by the other state), 16072(A) (failure to
 20 maintain insurance), 16073 (b) (commercial operator suspension), 16370 and 16370.5 (unsatisfied
 21

22
 23 the First District Court of Appeal issued its decision in *Smith, supra*, 97 Cal. App. 4th 546, holding
 24 that the statute *does* allow for exceptions, and one such exception requiring release from impound
 25 is the owner's lack of knowledge that the driver does not have a valid license— an exception the
 26 vehicle owner has the burden to prove. Following the decision in *Smith*, agencies throughout the
 27 state instructed their officers to query the driver and/or passengers concerning the driver *and the*
 28 *owner's* knowledge of the driver's license status for later use in the event an owner sought release
 based on a claim of lack of knowledge. The information provided by the driver and/or passengers
 is often included in the police report or a separate document held for use at impound hearings.
 However, no law enforcement agency has found need to provide this valuable information to vehicle
 owners in advance of the impound hearing (nor any other information, for that matter).

1 civil judgment), 16381 (default on payments on a judgment), 16484 (insurance coverage lapse),
2 22454.5 (3rd conviction for passing a school bus), 23247(G)(1) and 23247(2) (operation of a
3 vehicle without a court ordered DUI ignition interlock device), 34623 (motor carrier suspension),
4 and 42001.1 (crossing guard violation with 2 priors); as well as Family Code section 17520
5 (failure to pay child support).¹¹

6 16. Many— in fact, most— law officers in California do not have any idea that there are
7 statutory exemptions to section 14602.6 which are dependent on the specific statutory grounds for
8 a driver's license suspension/revocation. Certainly, law enforcement officers and the registered
9 and/or legal owners of a vehicle will not know if the specific suspension/revocation at issue
10 qualifies for 30-day impound under section 14602.6 unless the specific statutory grounds for the
11 suspension/revocation are known.¹² MCSD and SRPD do not provide this information to the
12 registered and/or legal owner of a vehicle, who, as previously mentioned, is quite often a person
13 or entity *other than* the driver whose license status is at issue and therefore has no access to
14 information concerning the specific offense and corresponding statutory grounds for the driver's
15 license suspension or revocation.

16 17. When an impound hearing is requested by a registered or legal owner, MCSD and
17 SRPD do not provide copies of *any* documents in advance of the hearing or allow the person
18 requesting the hearing to review the documents on which the hearing officers routinely rely to
19

20
21 ¹¹Since subdivision (d)(1)(C) of section 14602.6 speaks in terms of suspensions *other than*
22 those found in sections 13200-13392, locating the excluded statutes requires review of the entirety
23 of the California Code. The exemptions are random and similar suspensions produce different
24 results, but the statutory scheme has nonetheless been upheld against a facial equal protection
25 challenge. (*Alviso, supra*, 186 Cal.App.4th 198.) The randomness prevents memorization of
26 included and excluded suspensions and revocations. The only way to know if a specific type of
27 offense resulting in suspension or revocation of driving privileges qualifies for 30-day impound
28 under section 14602.6 is to ascertain the specific statutory provision governing the offense and
determine if it falls within sections 13200-13392.

26
27 ¹²A few (very few) law enforcement agencies have developed a list of included and excluded
28 suspensions, such as the Sebastopol Police Department (County of Sonoma), whose Chief provided
plaintiff's counsel with a list which was used as the template for the list of excluded offenses found
in paragraph 15, above. MCSD and SRPD do not use such a list.

1 justify the 30-day impoundment of a vehicle, such as police reports, DMV printouts, CLETS
2 reports, and statements specially prepared by officers or other witnesses for use at the impound
3 hearing.

4 18. Impound hearings are conducted by telephone or "over-the counter" in the lobby of
5 the MCSD or SRPD. The hearings are exceedingly informal and brief, usually lasting no more
6 than 5 minutes, often much less. Prior to or during the hearing, the hearing officer reviews
7 information found in documents which have not been shown to the registered or legal owner. The
8 hearing officer generally does not present evidence orally or in documentary form, but merely
9 invites the registered and/or legal owner to explain why (s)he believes the vehicle should be
10 released, without first telling the owner of the recognized grounds for release under section
11 14602.6 or MCSD or SRPD policies. When the registered and/or legal owner has finished
12 making a statement, the hearing officer will often re-review information found in documents
13 which have not been shown to the registered or legal owner, and use that information as grounds
14 to reject the owner's testimony or otherwise uphold the impound. There is no contemporaneous
15 recording of the evidence presented at the hearing. Hearing officers rarely takes notes and then
16 only in the most cursory manner. There is no written statement summarizing the factual and legal
17 grounds for the decision. The owner is given an oral explanation, if any. The owner is not given
18 notice of the availability of judicial review through the filing of a writ of mandamus.

19 19. As a practical, if not also a legal matter, the filing of a writ of mandamus is often
20 significantly frustrated if not completely prevented by the absence of a suitable record of any kind.
21 A vehicle owner who elects to pursue judicial review must attempt to create a record on his own,
22 often many months after the impound hearing, when memories have faded. In the vast majority of
23 cases, and certainly the generality of cases, the impounding and hearing officers present newly-
24 drafted declarations recounting their (long-faded) recollection of the events, without benefit of
25 written notes or with only the most cursory of written documentation from which to draw. In
26 almost every instance, the record presented by the impounding law enforcement agency includes a
27 host of documents which the owner has never before seen and which were not produced in
28 evidence at the impound hearing— such as police reports, DMV printouts and CLETS reports. A

1 law enforcement agency's tender of evidence obtained *after* an impound hearing is concluded is
2 another frequent problem encountered by vehicle owners who bring writs; for in the absence of a
3 suitable administrative record, a vehicle owner has no way to prove what evidence was presented
4 at the impound hearing.

5 20. In the vast majority of cases, and certainly the generality of cases, vehicle owners or
6 their counsel elect not to pursue judicial review by writ of mandate because the absence of a
7 suitable record of the impound hearing makes it virtually impossible for them to secure full and
8 fair judicial review. It is rightly feared that a trial court faced with competing declarations and
9 factual conflicts, will side with the law enforcement agency over the vehicle owner.¹³

10 **FIRST CAUSE OF ACTION**

11 **For Declaratory and Injunctive Relief**

12 21. There exists a current and present controversy between the parties for which
13 declaratory and injunctive relief is appropriate pursuant to Code of Civil Procedure sections 526,
14 526a and 1060.

15 22. Plaintiff contends that the state and federal due process clauses require, but
16 defendants do not provide vehicle owners with:

17 (A) Timely written notice of the available grounds for securing release of a vehicle from
18 impound, as set forth in subdivisions (b) and (d)(1) of section 14602.6 and under the policies of
19 the defendants. A mere reference to section 14602.6 (as is found in the CHP-180 forms currently
20

21 ¹³*Smith, supra*, 97 Cal.App.4th 546, is the only published or unpublished California case in
22 which a vehicle owner has prevailed by petition for writ of mandamus. *Smith* is an anomaly because
23 the seizing law enforcement agency (the Santa Rosa Police Department) was so confident in the
24 correctness of its legal position that it did not dispute the vehicle owner's declaration (which
25 plaintiff's counsel at bar was forced to prepare because there was no record) stating he had no
26 knowledge of the license suspension of his grandson to whom he had loaned his vehicle, and had so
27 testified without rebuttal at the impound hearing (conducted over the counter in the lobby of the
28 police department). After the Court of Appeal ruled in *Smith*, the Santa Rosa PD thought better of
it and on remand sought to present new evidence gathered *after* the impound hearing which the
police department claimed would defeat Mr. Smith's testimony. Thwarted in this effort, Santa Rosa
PD then implemented the policy referenced in footnote 10, above, by which the arresting and
impounding officers query the driver and passengers concerning the owner's knowledge.

1 used by defendants) is not enough to meet constitutional requirements.

2 (B) Timely written notice of the factual basis for the impoundment of the vehicle,
3 including the specific statutory grounds for the suspension of the driver's license so that the
4 vehicle owner may determine whether the specific driver's license suspension/revocation at issue
5 is subject to section 14602.6, subdivision (d)(1)(C).

6 (C) Copies of all police reports, DMV printouts, CLETS reports and other documents on
7 which the seizing agency intends to rely to justify the impoundment of a vehicle, which must be
8 provided to the registered and/or legal owner *prior to the hearing* so that the owner will have
9 notice of the evidence to be presented against him/her and may make an informed decision
10 concerning the evidence to present at the hearing and what grounds to press as justification for
11 release from impound.

12 (D) A timely-issued written statement summarizing the factual and legal grounds for the
13 hearing officer's decision to hold a vehicle in impound for 30-days and describing the available
14 procedures to challenge the decision, including administrative appeal (if such is available) and
15 judicial review through the filing of a writ of mandamus.

16 23. The defendants dispute plaintiff's contentions and maintain that their current policies
17 and practices comply with the state and federal constitutions and sections 14602.6 and 22852.
18 Defendants intend to and will continue to maintain the status quo and enforce the policies and
19 practices described herein, unless ordered, enjoined or mandated by this Court to do otherwise.
20 Defendants have used and unless enjoined will to continue to use paid police officers to carry out
21 the policies and practices described herein, so as to be subject to declaratory and injunctive relief
22 pursuant to the taxpayer standing provisions of Code of Civil Procedure section 526a.

23 24. Wherefore, it is necessary for the Court to issue a declaratory order determining the
24 duties and obligations of the defendants with respect to the pre- and post- hearing notice which
25 must be provided when a vehicle is impounded for 30-days pursuant to section 14602.6, in order
26 to satisfy state and federal constitutional requirements. It also necessary for the Court to issue an
27 injunctive decree mandating that defendants provide the relief sought in paragraph 22, above, and
28 any other relief which the Court finds necessary to bring defendants' policies and practices within

1 the bounds of the state and federal constitutional requirements.

2 **SECOND CAUSE OF ACTION**

3 **For Declaratory and Injunctive Relief**

4 25. There exists a current and present controversy between the parties for which
5 declaratory and injunctive relief is appropriate pursuant to Code of Civil Procedure sections 526,
6 526a and 1060.

7 26. Plaintiff contends that when there has been no custodial arrest of the driver of a
8 vehicle, and the vehicle has not been in a collision, a 30-day impound is plainly inapplicable and
9 unavailable under section 14602.6(a), even if the driver has a suspended or revoked license or has
10 never been issued a valid license. And, if the driver's license is not suspended or revoked and the
11 driver has been issued a driver's license at *any* point in the past, in California or any other state, or
12 foreign jurisdiction, such as Mexico, even if the license is long-expired, a 30-day impound under
13 section 14602.6 is not permitted.

14 27. Defendants routinely impound vehicles for 30-days under section 14602.6 and refuse
15 to release the vehicle from impound in the circumstances described in paragraph 26. The most
16 frequent circumstance is 30-day impoundment of vehicles driven by "illegal" aliens (most of
17 Hispanic) who obtained a valid license in their home country (most of Mexico) before arriving in
18 California and who cannot obtain a valid California driver's license, but who have never suffered
19 the suspension or revocation of their California driving privileges. Defendants have impounded
20 hundreds, if not thousands of such vehicles in the preceding 4 years, though section 14602.6
21 plainly does not allow it.

22 28. The defendants dispute plaintiff's contentions and maintain that their current policies
23 and practices comply with section 14602.6. Defendants intend to and will continue to maintain
24 the status quo and enforce the policies and practices described herein, unless ordered, enjoined or
25 mandated by this Court to do otherwise. Defendants have used and unless enjoined will to
26 continue to use paid police officers to carry out the policies and practices described herein, so as
27 to be subject to declaratory and injunctive relief pursuant to the taxpayer standing provisions of
28 Code of Civil Procedure section 526a.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

29. Wherefore, it is necessary for the Court to issue a declaratory order determining the duties and obligations of the defendants with respect to the 30-day impoundment of vehicles in the circumstances described in paragraphs 26-27, and enjoining the defendants from continuing to impound vehicles in those circumstances in violation of section 14602.6.

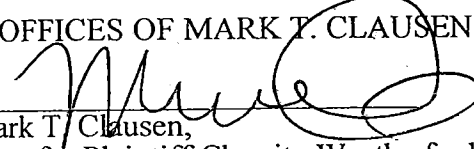
PRAYER

WHEREFORE, plaintiff prays for the following relief:

- 1. For declaratory and injunctive relief as herein requested;
- 2. For costs of suit, including attorneys fees pursuant to Code of Civil Procedure §1021.5 or as otherwise available by law; and
- 3. For such other relief as the court deems just.

LAW OFFICES OF MARK T. CLAUSEN

Date: January 4, 2013

By: 
Mark T. Clausen,
Attorney for Plaintiff Cherrity Weatherford

1 Mark T. Clausen (Calif. SB# 196721)
2 Attorney at Law
3 769 Carr Avenue
4 Santa Rosa, California 95404
5 Office Telephone: (707) 595-3154
6 Cellular: (707) 235-3663
7 Facsimile: (707) 542-9700
8 Email: MarkToddClausen@yahoo.com

FILED

APR 22 2013

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

9 Attorney for Plaintiff
10 Cherrity Wheatherford

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA,
12 COUNTY OF MARIN

13 [An Unlimited Civil Action]

14 CHERRITY WHEATHERFORD,

Case No. CIV-1300112

15 Plaintiff,

STIPULATED ORDER AND JUDGMENT
OF DISMISSAL

16 vs.

17 THE CITY OF SAN RAFAEL AND
18 COUNTY OF MARIN,

19 Defendants.

20 Claiming taxpayer standing under Code of Civil Procedure section 526a ("section 526a"),
21 plaintiff Cherrity Weatherford brought this action against defendants City of San Rafael and
22 County of Marin. Plaintiff seeks to challenges defendants' policies and practices concerning the
23 impoundment of vehicles for 30-days under Vehicle Code section 14602.6, primarily applicable to
24 driving on a suspended or revoked license.

25 In her complaint, plaintiff concedes she has not paid real property taxes. The Second
26 District Court of Appeal has twice held that payment of property taxes is required for taxpayer
27 standing under section 526a. (See *Cornelius v. Los Angeles County etc. Authority* (1996) 49 Cal.
28 App. 4th 1761 (*Cornelius*); *Torres v. City of Yorba Linda* (1993) 13 Cal. App. 4th 1035 (*Torres*.)
While plaintiff has alleged that she cannot afford to buy real property, and claims that the
requirement of payment of property taxes is an unconstitutional wealth-based classification;
plaintiff concedes such a claim is precluded under existing law, *Torres, supra*, 13 Cal. App. 4th
1035, 1048, fn. 7. Plaintiff further concedes there is no possibility that she can amend the
complaint to cure the defect in standing, as plaintiff is not willing to substitute a property taxpayer

APR 22 2013

20

1 in her place.

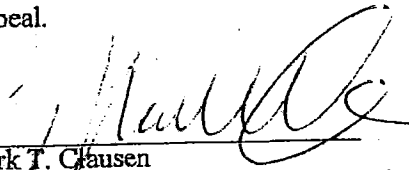
2 Plaintiff contends that *Cornelius* and *Torres* were wrongly decided. Plaintiff looks to the
 3 intervening decision of the California Supreme Court in *Tobe v. City of Santa Ana* (1995) 9
 4 Cal.4th 1069, 1084-1086 (*Tobe*), where taxpayer standing under section 526a was found on behalf
 5 of 2 homeless plaintiffs, who presumably did not own real property or pay real property taxes.
 6 *Tobe*, however, did not expressly address whether payment of real property taxes is required by
 7 section 526a, whereas *Cornelius* did do so, concluding that property tax payment is required.
 8 Plaintiff concedes that under principles of stare decisis, the trial court is bound by the appellate
 9 decision in *Cornelius*, which post-dates the Supreme Court's decision in *Tobe*, and the trial court
 10 is therefore compelled to find that plaintiff lacks taxpayer standing under section 526a. Plaintiff
 11 further concedes that if she desires to challenge *Cornelius* and *Torres*, she must do so on appeal,
 12 not in the trial court.

13 WHEREFORE, in accordance with *Nogart v. Upjohn Co.* (1999) 21 Cal.4th 383, 400, to
 14 avoid the need for further proceedings in the trial court, and facilitate the right of appeal, counsel
 15 for the parties hereby stipulate as follows.

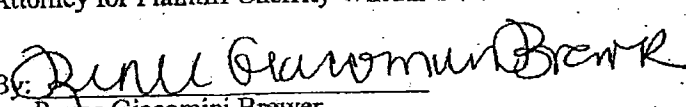
16 Without need of the filing of a motion by defendants challenging plaintiff's standing as a
 17 taxpayer under section 526a, the Court shall issue an Order and Judgment of Dismissal of the
 18 action based on plaintiff's lack of taxpayer standing under section 526a, pursuant to *Cornelius*,
 19 and *Torres*, reserving plaintiff's rights of appeal.

20 IT IS SO STIPULATED.

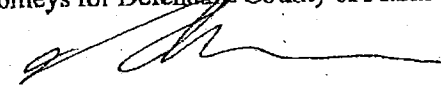
21 Date: March 18, 2013

By: 
 Mark T. Clausen
 Attorney for Plaintiff Cherrity Weatherford

22
 23 Date: March __, 2013

By: 
 Renee Giacomini Brewer
 Deputy County Counsel for the County of Marin
 Attorneys for Defendant County of Marin

24
 25
 26 Date: ~~March~~ ^{April 12} __, 2013

By: 
 Richard Osman
 Assistant City Attorney for the City of San Rafael
 Attorneys for Defendant City of San Rafael

27
 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STIPULATED ORDER AND JUDGMENT

GOOD CAUSE APPEARING, the stipulation of the parties is adopted as the Order and Judgment of the Court.

Without need of the filing of a motion by defendants challenging plaintiff's standing as a taxpayer under Code of Civil Procedure section 526a, the action is dismissed in full based on lack of taxpayer standing, as plaintiff concedes she has not paid an assessed real property tax as required by *Cornelius v. Los Angeles County etc. Authority* (1996) 49 Cal. App. 4th 1761 and *Torres v. City of Yorba Linda* (1993) 13 Cal. App. 4th 1035, and cannot amend the complaint to cure the defect in standing. Plaintiff shall have the right of appeal.

All pending hearing dates are dropped from calendar. Plaintiff's counsel shall timely serve Notice of Entry of Order and Judgment.

IT IS SO ORDERED.

Date: 4/22, 2013

By: 

Judge of the Superior Court
County of Marin

1 Mark T. Clausen (Calif. SB# 196721)
2 Attorney at Law
3 769 Carr Avenue
4 Santa Rosa, California 95404
5 Office Telephone: (707) 595-3154
6 Cellular: (707) 235-3663
7 Facsimile: (707) 542-9700
8 Email: MarkToddClausen@yahoo.com

FILED
Mark
MAY 13 2013
KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

9 Attorney for Plaintiff
10 Cherrity Wheatherford

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA,
12 COUNTY OF MARIN

13 [An Unlimited Civil Action]

14 CHERRITY WHEATHERFORD,

Case No. CIV 1300112

15 Plaintiff,

NOTICE OF ENTRY OF STIPULATED
STIPULATED ORDER AND JUDGMENT
OF DISMISSAL,

16 vs.

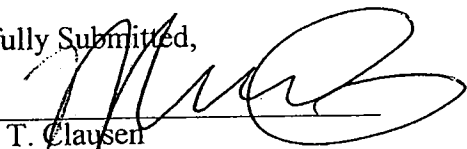
17 THE CITY OF SAN RAFAEL AND
18 COUNTY OF MARIN,

19 Defendants.

20 **TO: Defendants City of San Rafael and County of Sonoma and their respective**
21 **attorneys:**

22 **PLEASE TAKE NOTICE** that on April 22, 2013, the Court entered the attached
23 Stipulated Order and Judgment of Dismissal.

24 Date: May 8, 2013

25 Respectfully Submitted,
26 By: 
27 Mark T. Clausen
28 Attorney for Plaintiff Cherrity Wheatherford

1 Mark T. Clausen (Calif. SB# 196721)
2 Attorney at Law
3 769 Carr Avenue
4 Santa Rosa, California 95404
5 Office Telephone: (707) 595-3154
6 Cellular: (707) 235-3663
7 Facsimile: (707) 542-9700
8 Email: MarkToddClausen@yahoo.com

FILED

APR 22 2013

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

9 Attorney for Plaintiff
10 Cherrity Wheatherford

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF MARIN

[An Unlimited Civil Action]

11 CHERRITY WHEATHERFORD,
12 Plaintiff,

Case No. CIV-1300112

STIPULATED ORDER AND JUDGMENT
OF DISMISSAL

13 vs.

14 THE CITY OF SAN RAFAEL AND
15 COUNTY OF MARIN,
16 Defendants.

17 Claiming taxpayer standing under Code of Civil Procedure section 526a ("section 526a"),
18 plaintiff Cherrity Weatherford brought this action against defendants City of San Rafael and
19 County of Marin. Plaintiff seeks to challenges defendants' policies and practices concerning the
20 impoundment of vehicles for 30-days under Vehicle Code section 14602.6, primarily applicable to
21 driving on a suspended or revoked license.

22 In her complaint, plaintiff concedes she has not paid real property taxes. The Second
23 District Court of Appeal has twice held that payment of property taxes is required for taxpayer
24 standing under section 526a. (See *Cornelius v. Los Angeles County etc. Authority* (1996) 49 Cal.
25 App. 4th 1761 (*Cornelius*); *Torres v. City of Yorba Linda* (1993) 13 Cal. App. 4th 1035 (*Torres*)).
26 While plaintiff has alleged that she cannot afford to buy real property, and claims that the
27 requirement of payment of property taxes is an unconstitutional wealth-based classification;
28 plaintiff concedes such a claim is precluded under existing law, *Torres, supra*, 13 Cal. App. 4th
1035, 1048, fn. 7. Plaintiff further concedes there is no possibility that she can amend the
complaint to cure the defect in standing, as plaintiff is not willing to substitute a property taxpayer

1 in her place.

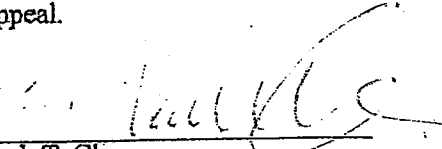
2 Plaintiff contends that *Cornelius* and *Torres* were wrongly decided. Plaintiff looks to the
 3 intervening decision of the California Supreme Court in *Tobe v. City of Santa Ana* (1995) 9
 4 Cal.4th 1069, 1084-1086 (*Tobe*), where taxpayer standing under section 526a was found on behalf
 5 of 2 homeless plaintiffs, who presumably did not own real property or pay real property taxes.
 6 *Tobe*, however, did not expressly address whether payment of real property taxes is required by
 7 section 526a, whereas *Cornelius* did do so, concluding that property tax payment is required.
 8 Plaintiff concedes that under principles of stare decisis, the trial court is bound by the appellate
 9 decision in *Cornelius*, which post-dates the Supreme Court's decision in *Tobe*, and the trial court
 10 is therefore compelled to find that plaintiff lacks taxpayer standing under section 526a. Plaintiff
 11 further concedes that if she desires to challenge *Cornelius* and *Torres*, she must do so on appeal,
 12 not in the trial court.

13 WHEREFORE, in accordance with *Nogart v. Upjohn Co.* (1999) 21 Cal.4th 383, 400, to
 14 avoid the need for further proceedings in the trial court, and facilitate the right of appeal, counsel
 15 for the parties hereby stipulate as follows.

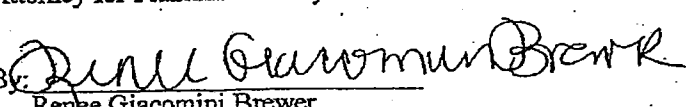
16 Without need of the filing of a motion by defendants challenging plaintiff's standing as a
 17 taxpayer under section 526a, the Court shall issue an Order and Judgment of Dismissal of the
 18 action based on plaintiff's lack of taxpayer standing under section 526a, pursuant to *Cornelius*,
 19 and *Torres*, reserving plaintiff's rights of appeal.

20 IT IS SO STIPULATED.


21 Date: March 18, 2013

By: 
 Mark T. Clausen
 Attorney for Plaintiff Cherrity Wheatherford

23 Date: March __, 2013

By: 
 Renee Giacomini Brewer
 Deputy County Counsel for the County of Marin
 Attorneys for Defendant County of Marin

26 ~~Date: March~~ ^{April 12} __, 2013
 27

By: 
 Richard Osman
 Assistant City Attorney for the City of San Rafael
 Attorneys for Defendant City of San Rafael

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STIPULATED ORDER AND JUDGMENT

GOOD CAUSE APPEARING, the stipulation of the parties is adopted as the Order and Judgment of the Court.

Without need of the filing of a motion by defendants challenging plaintiff's standing as a taxpayer under Code of Civil Procedure section 526a, the action is dismissed in full based on lack of taxpayer standing, as plaintiff concedes she has not paid an assessed real property tax as required by *Cornelius v. Los Angeles County etc. Authority* (1996) 49 Cal. App. 4th 1761 and *Torres v City of Yorba Linda* (1993) 13 Cal. App. 4th 1035, and cannot amend the complaint to cure the defect in standing. Plaintiff shall have the right of appeal.

All pending hearing dates are dropped from calendar. Plaintiff's counsel shall timely serve Notice of Entry of Order and Judgment.

IT IS SO ORDERED.

ROY CHERNUS

Date: 4/22, 2013

By: _____

Judge of the Superior Court
County of Marin

PROOF OF SERVICE

I, the undersigned, do hereby declare:

I am over the age of 18 and not a party to the above-entitled action. My business address is 769 Carr Avenue, Santa Rosa, California, 95404. On the date indicated below true copies of the attached documents were placed in the U.S. mail, postage prepaid, addressed as follows:

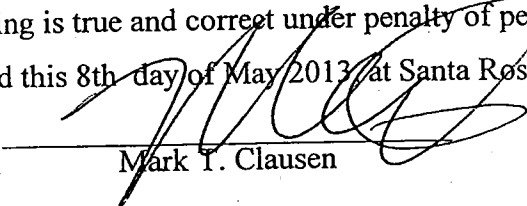
Richard W. Osman
Bertrand, Fox & Elliot
2749 Hyde Street
San Francisco, California 94109

Attorney for Defendant City of San Rafael

Renee G. Brewer, Deputy County Counsel
Office of Marin County Counsel
3501 Civic Center Drive, Suite 275
San Rafael, CA 94903

Attorneys for Defendant County of Marin

I declare that the foregoing is true and correct under penalty of perjury of the laws of the State of California . So declared this 8th day of May 2013 at Santa Rosa, California.


Mark I. Clausen

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Mark T. Clausen, Attorney at Law (CSB #196721) 769 Carr Avenue Santa Rosa, CA 95404 TELEPHONE NO.: 707-235-3663 FAX NO. (Optional): 707-542-9713 E-MAIL ADDRESS (Optional): MarkToddClausen@yahoo.com ATTORNEY FOR (Name): Plaintiff and Appellant Cherrity Weatherford	FOR COURT USE ONLY <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> <div style="text-align: center; font-weight: bold;">JUN 11 2013</div> <div style="text-align: center;"> KIM TURNER, Court Executive Officer MARIN COUNTY SUPERIOR COURT By: <i>[Signature]</i> Deputy </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN STREET ADDRESS: 3501 Civic Center Drive MAILING ADDRESS: P.O. Box 4988 CITY AND ZIP CODE: Marin, CA 94913 BRANCH NAME:	
PLAINTIFF/PETITIONER: CHERRITY WHEATHERFORD DEFENDANT/RESPONDENT: THE CITY OF SAN RAFAEL, et al.	
<input checked="" type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)	CASE NUMBER: <div style="text-align: center; font-weight: bold;">CIV 1300112</div>
Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.	

1. NOTICE IS HEREBY GIVEN that (name): Plaintiff CHERRITY WHEATHERFORD
 appeals from the following judgment or order in this case, which was entered on (date): ~~May 13, 2013~~ *April 22, 2013* (PL)
- Judgment after jury trial
 - Judgment after court trial
 - Default judgment
 - Judgment after an order granting a summary judgment motion
 - Judgment of dismissal under Code of Civil Procedure sections 581d, 583.250, 583.360, or 583.430
 - Judgment of dismissal after an order sustaining a demurrer
 - An order after judgment under Code of Civil Procedure section 904.1(a)(2)
 - An order or judgment under Code of Civil Procedure section 904.1(a)(3)-(13)
 - Other (describe and specify code section that authorizes this appeal):
 Stipulated judgment appealable per CCP 904.1 and *Nogart v. UpJohn Co*, 21 Cal.4th 383, 400
2. For cross-appeals only:
- a. Date notice of appeal was filed in original appeal:
 - b. Date superior court clerk mailed notice of original appeal:
 - c. Court of Appeal case number (if known):

Date: 6/8/13

Mark T. Clausen, Attorney for Plaintiff/Appellant
(TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:

WHEATHERFORD v. CITY OF SAN RAFAEL

CASE NUMBER:

CIV 1300112

NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

 Mail Personal Service

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My residence or business address is (specify):

769 Carr Avenue, Santa Rosa CA 95404

3. I mailed or personally delivered a copy of the Notice of Appeal/Cross-Appeal (Unlimited Civil Case) as follows (complete either a or b):

a. Mail. I am a resident of or employed in the county where the mailing occurred.

(1) I enclosed a copy in an envelope and

(a) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

(b) placed the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

(2) The envelope was addressed and mailed as follows:

(a) Name of person served: Richard W. Osman

(b) Address on envelope:

Bertrand, Fox & Elliot, 2749 Hyde Street, San Francisco, CA 94109

(c) Date of mailing: 6/10/13

(d) Place of mailing (city and state): Santa Rosa, CA 95404

Personal delivery. I personally delivered a copy as follows:

(1) Name of person served: Renee G. Brewer, Deputy County Counsel

(2) Address where delivered: *by mail*

Office of Marin County Counsel, 3501 Civic Center Drive, Suite 275, San Rafael, CA 94903

(3) Date delivered: *mailed* 6/10/13

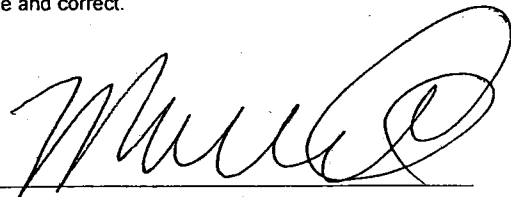
(4) Place delivered: *mailed* Santa Rosa, CA 95404

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 6/10/13

Mark T. Clausen, Attorney for Plaintiff/Appellant

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

APP-003

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Mark T. Clausen (CSB #196721) 769 Carr Avenue Santa Rosa, CA 95404 TELEPHONE NO.: 707-235-3663 FAX NO. (Optional): 707-542-9713 E-MAIL ADDRESS (Optional): MarkTClausen@yahoo.com ATTORNEY FOR (Name): Plaintiff and Appellant Cherrity Wheatherford	FOR COURT USE ONLY <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.2em; font-weight: bold;">JUL 01 2013</div> KIM TURNER, Court Executive Officer MARIN COUNTY SUPERIOR COURT By: <i>D. Taylor</i> , Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN STREET ADDRESS: 3501 Civic Center Drive MAILING ADDRESS: P.O. Box 4988 CITY AND ZIP CODE: San Rafael, CA 94913 BRANCH NAME:	
PLAINTIFF/PETITIONER: Cherrity Wheatherford DEFENDANT/RESPONDENT: City of San Rafael, et al.	
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	
RE: Appeal filed on (date): 6/11/13	Superior Court Case Number: CIV 1300112 Court of Appeal Case Number (if known): A138949
Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.	

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior (check a, b, c, d, or e and fill in any required information):

- a. A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
- (1) I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have attached the following document (check (a) or (b)):
- (a) An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b) An application for a waiver of court fees and costs under rule 3.50 et seq. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)
- b. An appendix under rule 8.124.
- c. The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)
- e. A settled statement under rule 8.137. (You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed:

- a. WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

Page 1 of 4

CASE NAME: Weatherford v. City of San Rafael

CASE NUMBER: CIV 1300112

- b. WITH the following record of the oral proceedings in the superior court:
- (1) A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section on page 3 of this form.)*
I have *(check all that apply)*:
- (a) Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
- (b) Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
- (c) Attached the reporter's written waiver of a deposit for *(check either (i) or (ii))*:
- (i) all of the designated proceedings.
- (ii) part of the designated proceedings.
- (d) Attached a certified transcript under rule 8.130(b)(3).
- (2) An agreed statement. *(Check and complete either (a) or (b) below.)*
- (a) I have attached an agreed statement to this notice.
- (b) All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation to this notice.)* I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
- (3) A settled statement under rule 8.137. *(You must attach the motion required under rule 8.137(a) to this form.)*

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

- I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court *(give the title and date or dates of the administrative proceeding)*:

Title of Administrative Proceeding	Date or Dates
------------------------------------	---------------

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)

- a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
(1) Notice of appeal	6/11/13
(2) Notice designating record on appeal <i>(this document)</i>	TBD
(3) Judgment or order appealed from	4/22/13
(4) Notice of entry of judgment <i>(if any)</i>	5/13/13
(5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order <i>(if any)</i>	N/A
(6) Ruling on one or more of the items listed in (5).	N/A
(7) Register of actions or docket <i>(if any)</i>	1/9/13 to 6/26/13

CASE NAME: Wheatherford v. City of San Rafael

CASE NUMBER: CIV 1300112

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

- b. **Additional documents.** (If you want any documents from the superior court proceeding in addition to the items listed in a. above to be included in the clerk's transcript, you must identify those documents here.)

- I request that the clerk include the following documents from the superior court proceeding in the transcript. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed)

	Document Title and Description	Date of Filing
(8)	Complaint	1/9/13
(9)	Stipulated Judgment	4/22/13
(10)	Notice of Entry of Judgment	5/13/13
(11)	Notice of Appeal	6/11/13
(12)		

See additional pages.

- c. **Exhibits to be included in clerk's transcript.**

- I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			
(5)			

See additional pages.

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

- a. I request that the reporters provide (check one):

- (1) My copy of the reporter's transcript in paper format.
- (2) My copy of the reporter's transcript in computer-readable format.
- (3) My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

CASE NAME: Wheatherford v. City of San Rafael

CASE NUMBER: CIV 1300112

b. Proceedings.

I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—and, if you know it, the name of the court reporter who recorded the proceedings).

Date	Department	Full/Partial Day	Description of Proceedings	Reporter's Name
------	------------	------------------	----------------------------	-----------------

(1)

(2)

(3)

(4)

(5)

(6)

(7)

See additional pages.

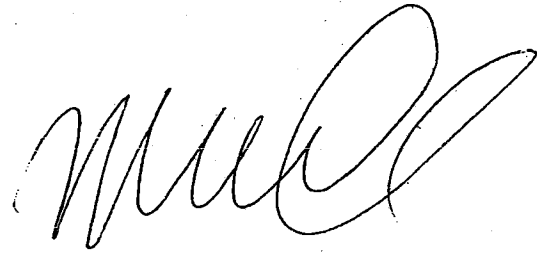
c. The proceedings designated in 5b include do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal (rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).

Date: 6/27/13

Mark T. Clausen, Attorney for Plaintiff

(TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

MARIN SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

CHERRITY WHEATHERFORD Plaintiff(s)	DATE FILED:	1/9/2013
VS.	CASE TYPE:	Civil Complaint
CITY OF SAN RAFAEL, ET AL Defendant(s)	CASE SUBTYPE:	Declaratory Relief
REGISTER OF ACTIONS	DATE OF LAST ACTIVITY:	6/11/2013
	DATE/TIME RUN:	06/27/2013 03:02 PM
	CASE NUMBER:	CIV 1300112

INVOLVED PERSON/PARTY AND ATTORNEY SUMMARY:

WHEATHERFORD, CHERRITY is the Plaintiff and is represented by: CLAUSEN, MARK T.

CITY OF SAN RAFAEL is the Defendant and is represented by:

COUNTY OF MARIN is the Defendant and is represented by:

REGISTER OF ACTIONS:

1/09/2013 CASE OPEN / ACTIVE STATUS Hon. Roy O. Chernus
1/09/2013 FILING FEE PROCESSED: PLTF, CHERRITY WHEATHERFORD - 435.00
1/09/2013 COMPLAINT/FIRST PAPER COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
1/09/2013 SUMMONS ISSUED AND FILED
1/10/2013 HEARING CONFIRMED FOR: 03/22/2013 AT: 08:30 AM FOR APPEARANCE TYPE: OSCH IN DEPARTMENT: D06
1/10/2013 HEARING CONFIRMED FOR: 04/22/2013 AT: 08:30 AM FOR APPEARANCE TYPE: OSCH IN DEPARTMENT: D06
1/10/2013 HEARING CONFIRMED FOR: 06/03/2013 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06
3/22/2013 MINUTE ORDER POSTED - Appearance: 03/22/2013 at 8:30AM for OSC RE: PROOF OF SERVICE
JUDGE/PROTEM/REFEREE ROY O. CHERNUS , REPORTER NOT REPORTED , DEP CLK D.THAI
NO APPEARANCE BY OR FOR THE PARTIES
IT IS ORDERED: ORDER TO SHOW CAUSE RE: PROOF OF SERVICE CONTINUED TO JOIN ORDER TO SHOW
CAUSE RE: ANSWER ON 04/22/13 AT 8:30 A.M.
OSC ISSUED TO MARK CLAUSEN FOR FAILING TO APPEAR ON 03/22/13 OR FILE PROOF OF SERVICE AS TO
DEFENDANTS: 04/22/13 AT 8:30 A.M. COURTROOM B BEFORE JUDGE: ROY CHERNUS
HEARING BEFORE TRIAL
ENTERED BY: D.THAI
4/05/2013 PROOF OF SERVICE FILED, AS TO: DEFT, COUNTY OF MARIN; PERSONAL SERVICE ON 2/2/13 BY SERVING MARIN
COUNTY BOARD OF SUPERVISORS.
4/05/2013 PROOF OF SERVICE FILED, AS TO: DEFT, CITY OF SAN RAFAEL; PERSONAL SERVICE ON 2/2/13 BY SERVING
CLERK OF THE CITY OF SAN RAFAEL.
4/22/2013 MINUTE ORDER POSTED - Appearance: 04/22/2013 at 8:30AM for OSC RE: FILING OF ANSWER
JUDGE/PROTEM/REFEREE ROY O. CHERNUS , REPORTER NOT REPORTED , DEP CLK D.THAI
ATTORNEY MARK CLAUSEN APPEARED FOR PLAINTIFF
STIPULATION TO DISMISSED SIGNED IN OPEN COURT.
HEARING BEFORE TRIAL
ENTERED BY: D.THAI
4/22/2013 FILING FEE WAIVED- GOVERNMENTAL AGENCY DEFT, CITY OF SAN RAFAEL
4/22/2013 FILING FEE WAIVED- GOVERNMENTAL AGENCY DEFT, COUNTY OF MARIN
4/22/2013 CASE DISPOSED BEFORE TRIAL - OTHER JUDGMENTS STIPULATED ORDER AND JUDGMENT OF DISMISSAL;
WITHOUT NEED OF THE FILING OF A MOTION BY DEFTS CHALLENGING PLTF'S STANDING AS TAXPAYER, THE
ACTION IS DISMISSED INI FULL BASED ON LACK OF TAXPAYER STANDING, AS PLTF CONCEDES SHE HAS NOT
PAID AN ASSESSEL; REAL PROPERTY TAX AS REQUIRED, AND CANNOT AMEND THE COMPLAINT TO CURE THE
DEFECT IN STANDING; PLTF SHALL HAVE THE RIGHT OF APPEAL; ALL PENDING HEARING DATES ARE DROPPED
FROM CALENDAR; PLTF'S COUNSEL SHALL TIMELY SERVE NOTICE OF ENTRY OF ORDER AND JUDGMENT. (SEE
FILE FOR DETAILS) JUDGE ROY O. CHERNUS
4/22/2013 CASE DISPOSED IN ENTIRETY

Disclaimer: This Register of Actions is not an official court record. For an official and/or certified record, visitors must obtain it from the Court.

MARIN SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

CHERRITY WHEATHERFORD Plaintiff(s)	DATE FILED:	1/9/2013
VS.	CASE TYPE:	Civil Complaint
CITY OF SAN RAFAEL, ET AL Defendant(s)	CASE SUBTYPE:	Declaratory Relief
REGISTER OF ACTIONS	DATE OF LAST ACTIVITY:	6/11/2013
	DATE/TIME RUN:	06/27/2013 03:02 PM
	CASE NUMBER:	CIV 1300112

4/22/2013 APPEARANCE DROPPED FOR 06/03/2013 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06
DROP REASON: JUDGMENT OF DISMISSAL FILED

6/11/2013 NOTICE OF APPEAL BY PLAINTIFF FROM THE STIPULATED ORDER AND JUDGMENT OF DISMISSAL, FILED
04/22/2013; \$100/\$775.

PROOF OF SERVICE

I, the undersigned, do hereby declare:

I am over the age of 18 and not a party to the above-entitled action. My business address is 769 Carr Avenue, Santa Rosa, California, 95404. On the date indicated below true copies of the attached documents were placed in the U.S. mail, postage prepaid, addressed as follows:

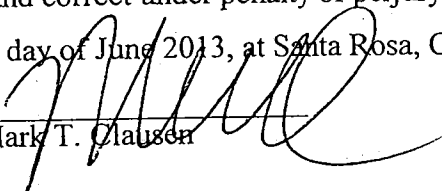
Richard W. Osman
Bertrand, Fox & Elliot
2749 Hyde Street
San Francisco, California 94109

Attorney for Defendant City of San Rafael

Renee G. Brewer, Deputy County Counsel
Office of Marin County Counsel
3501 Civic Center Drive, Suite 275
San Rafael, CA 94903

Attorneys for Defendant County of Marin

I declare that the foregoing is true and correct under penalty of perjury of the laws of the State of California. So declared this 27th day of June 2013, at Santa Rosa, California.



Mark T. Clausen

CERTIFICATION


1
2
3 STATE OF CALIFORNIA)
4)
5 COUNTY OF MARIN)
6
7

Marin Superior Court Case No. CIV 1300112

8 I, the Court Executive Officer and Deputy Clerk of the Superior Court of the State of
9 California, County of Marin, and custodian of the records of said court, do hereby certify the
10 foregoing to be a full, true and correct copy of the documents specifically listed on the index
11 pages of the Clerk's Transcript, as the same now appears on file in this office.
12

13 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the
14 Superior Court this 12th day of July, 2013.
15

16 Kim Turner
17 Court Executive Officer

18
19 By: 
20 Diane Taylor, Deputy Clerk
21
22
23
24
25
26
27
28