

1 Mark E. Merin (State Bar No. 043849)
Joshua Kaizuka (State Bar No. 212195)
2 **LAW OFFICES OF MARK E. MERIN**
2001 P Street, Suite 100
3 Sacramento, California 95811
Telephone: (916) 443-6911
4 Facsimile: (916) 447-8336

5 Attorneys for Plaintiffs

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7 SUPERIOR COURT OF CALIFORNIA

8 COUNTY OF SACRAMENTO

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Department
Assignments
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10 FRED J. HIESTAND, on behalf of himself and all
11 others similarly situated, and on behalf of the
general public,

12 Plaintiffs,

13 v.

14 CITY OF SACRAMENTO; CITY OF
15 SACRAMENTO POLICE CHIEF RICK
BRAZIEL, in his individual and official capacity;
16 CITY OF SACRAMENTO POLICE OFFICER
LOEWEN, in his individual and official capacity;
17 CITY OF SACRAMENTO POLICE OFFICERS
DOES 1 THROUGH 200; CENTRAL VALLEY
18 TOWING, INC., a California Corporation; and
TOWING COMPANIES ROES 1 through 50,

19 Defendants.

Case No.

**CLASS ACTION COMPLAINT FOR
DAMAGES**

DEMAND FOR JURY TRIAL

20
21 PLAINTIFF ALLEGES:

22 **I. INTRODUCTION**

23 1. This is an action brought by Plaintiff FRED J. HIESTAND, a resident of the city and
24 county of Sacramento, on behalf of himself and all those similarly situated against Defendants CITY OF
25 SACRAMENTO; CITY OF SACRAMENTO POLICE CHIEF RICK BRAZIEL, in his individual and
26 official capacity; CITY OF SACRAMENTO POLICE OFFICER LOEWEN, in his individual and
27 official capacity; CITY OF SACRAMENTO POLICE OFFICERS DOES 1 THROUGH 200;
28 CENTRAL VALLEY TOWING, INC., a California Corporation; and TOWING COMPANIES ROES 1

1 through 50, for violations of the California Vehicle Code, and the California Business and Professions
2 Code.

3 2. During the four years prior to the filing of this action, Defendants have engaged in a
4 policy of towing illegally parked vehicles, including the Plaintiff's vehicle, from places where no signs
5 are posted giving notice that cars so parked are subject to removal.

6 3. During the four years prior to the filing of this action, Defendants CITY OF
7 SACRAMENTO, CITY OF SACRAMENTO POLICE CHIEF RICK BRAZIEL, CITY OF
8 SACRAMENTO POLICE OFFICER LOEWEN, and DOES 1 THROUGH 200 have had a policy of
9 charging citizens, including Plaintiff, erroneous fines and towing costs while engaging in a financially
10 beneficial relationship with private towing companies, Defendants CENTRAL VALLEY TOWING,
11 INC., and TOWING COMPANIES ROES 1 THROUGH 50.

12 4. Plaintiff, on behalf of himself and all class members, brings this action pursuant California
13 Motor Vehicles Code § 22651 and California Business and Professions Code § 17200 et. seq., for
14 damages and restitution and disgorgement of profits obtained by Defendants as a result of their violation
15 of the California Vehicle Code and their failure to comply with California State unfair business practices
16 laws.

17 II. VENUE

18 5. Venue is proper in Sacramento County pursuant to California Code of Civil Procedure §
19 395. Defendants operate their scheme and commit violations of the California Vehicle Code and the
20 California Business and Professions Code in Sacramento County. The violations alleged herein have a
21 direct affect on Plaintiffs and all those similarly situated within the county of Sacramento in the state of
22 California.

23 III. PARTIES

24 6. At all times material hereto, Plaintiff FRED J. HIESTAND was a citizen of the CITY OF
25 SACRAMENTO located in Sacramento County in the state of California.

26 7. Plaintiff brings this action on his own behalf as well as on behalf of a class of citizens of
27 the CITY OF SACRAMENTO more fully described below.
28

1 8. Defendant CITY OF SACRAMENTO is a Municipal Entity under the laws of the state of
2 California, with the capacity to sue and be sued. The CITY OF SACRAMENTO is the legal and
3 political governmental entity responsible for the actions of the Sacramento Police Department, its
4 officials, agents and employees. The CITY OF SACRAMENTO is sued in its own right and on the basis
5 of the acts of its officials, agents and employees.

6 9. Defendant RICK BRAZIEL is the CHIEF OF POLICE OF THE SACRAMENTO
7 POLICE DEPARTMENT (hereinafter "SPD"). He is the official within the SPD responsible for the
8 administration and operation of the SPD. The polices complained of herein are enforced pursuant to the
9 direction of CHIEF BRAZIEL, and in accordance with its custom and policy. He is sued in his
10 individual and official capacity. All these acts were pursuant to the custom and practice of the CITY OF
11 SACRAMENTO and CITY POLICE CHIEF RICK BRAZIEL.

12 10. Defendant SACRAMENTO CITY POLICE OFFICER LOEWEN is responsible for
13 ordering the towing of Plaintiff Hiestand's vehicle complained of herein, who acted together and
14 with other CITY POLICE OFFICERS whose names and identities are not now known and who are
15 therefore sued herein by these fictitious names, CITY POLICE OFFICER DOES 1-200.

16 11. Defendant CENTRAL VALLEY TOWING, INC. is, upon information and belief, a
17 corporation with its principal place of business in the state of California, in the city of Sacramento, in the
18 county of Sacramento, and is a person as defined in California Business and Professions Code § 17201.

19 12. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
20 TOWING COMPANIES ROES 1-50, inclusive, and therefore Plaintiff sues these Defendants by such
21 fictitious names. Plaintiff is informed and believes and on that basis alleges that each of the fictitiously
22 named Defendants is responsible, in some manner, for the occurrences alleged herein and that Plaintiff's
23 damages and the damages of the persons in the class he seeks to represent as herein alleged are
24 proximately caused by such occurrences. Plaintiffs will amend this complaint to allege their true names
25 and capacities when the same are ascertained.

26 13. At all times herein mentioned each of the Defendants was the agent of each of the other
27 Defendants and acted within the course and scope of such agency.

1 **IV. FACTUAL ALLEGATIONS**

2 14. On August 10, 2008, Plaintiff FRED J. HIESTAND's vehicle was parked on 18th Street
3 and Capitol Street in the City and county of Sacramento, in the state of California.

4 15. During this time, there was no sign giving notice of removal of vehicles posted around the
5 area where Plaintiff HIESTAND's vehicle was parked on 18th Street and Capitol Street in the City and
6 county of Sacramento.

7 16. Upon information and belief, at or around 9:40 p.m. on August 10, 2008, at the direction
8 of Defendants LOEWEN, CITY OF SACRAMENTO, and CITY OF SACRAMENTO POLICE CHIEF
9 BRAZIEL, Defendants CENTRAL VALLEY TOWING, INC. illegally towed Plaintiff HIESTAND's
10 vehicle in violation of California Vehicle Code § 22651.

11 17. On August 11, 2008, Plaintiff HIESTAND paid Defendant SPD \$67.00 to release the
12 vehicle.

13 18. On August 11, 2008, Plaintiff HIESTAND paid Defendant CENTRAL VALLEY
14 TOWING the tow rate of \$160.00 and the \$45 per day storage fee, totaling \$205.00 to retrieve his
15 vehicle.

16 19. On or about August 19, 2008, Plaintiff HIESTAND telephoned Defendant SPD and left a
17 voicemail requesting a post-storage hearing pursuant to California Vehicle Code § 22852.

18 20. On or about August 19, 2008, Plaintiff HIESTAND sent Defendant SPD a letter
19 requesting a post-storage hearing pursuant to California Vehicle Code § 22852.

20 21. On August 25, 2008, Plaintiff HIESTAND filed a class claim against the Defendant CITY
21 OF SACRAMENTO under the California Tort Claims Act (California Government Code §§ 810-996).

22 22. On or about August 26, 2008, Defendant CITY OF SACRAMENTO sent Plaintiff
23 HIESTAND a letter acknowledging receipt of his claim and notifying Plaintiff that the case had been
24 referred to the City's liability claims administrator, Gregory B. Bragg and Associates.

25 23. As of the time of this filing, Plaintiff HIESTAND has received no letter rejecting the class
26 tort claim filed on August 25, 2008.

27 24. Plaintiff is informed and believes, and thereupon alleges, that Defendants have a policy,
28 practice, and custom of failing to comply with the California Vehicle Code § 22651 by towing vehicles

1 from areas where there are no signs posted giving notice of removal.

2 25. Plaintiff is informed and believes, and thereupon alleges, that Defendants CENTRAL
3 VALLEY TOWING and TOWING COMPANIES ROES 1 through 50, have a policy, practice, and
4 custom of failing to comply with California Business and Profession Code by engaging in unfair business
5 practices by unlawfully towing vehicles and collecting erroneous fees.

6 26. Plaintiff is informed and believes, and thereupon alleges, that Defendants CENTRAL
7 VALLEY TOWING, INC., and TOWING COMPANIES ROES 1 through 50 have a policy, practice,
8 and custom of engaging in unfair business practices by engaging in the financially beneficial relationship
9 of illegally towing vehicles from CITY streets without the posted notice required by California Vehicle
10 Code § 22651, and that they have done so to putative class Plaintiffs whom Plaintiff Hiestand seeks
11 to represent.

12 27. Plaintiff is informed and believes, and thereupon alleges, that the Defendants have the
13 ability to identify all such similarly situated Plaintiffs, specifically, all those citizens who had their
14 vehicles towed under § 22651 from areas lacking signs giving notice of removal in the City of
15 Sacramento during the relevant time period.

16 **V. CLASS ACTION ALLEGATIONS**

17 28. Plaintiff brings this complaint as a class action, pursuant to California Code of Civil
18 Procedure § 382, on his own behalf and on behalf of all of those similarly situated citizens.

19 29. Plaintiff seeks to represent a Class composed of and defined as follows:

- 20
- 21 a. As to Defendants CITY OF SACRAMENTO, SPD, OFFICER LOEWEN, and SPD
22 OFFICER DOES 1 through 200, all persons who have had their vehicles towed by
23 Defendants in the City of Sacramento, who, within six months of the filing of the August
24 25, 2008 tort class claim, have had their vehicles towed from areas within the City of
25 Sacramento lacking requisite signage giving notice of removal.
- 26
- 27 b. As to Defendants CENTRAL VALLEY TOWING and TOWING COMPANY ROES 1
28 through 50, all persons who have had their vehicles towed by Defendants in the City of

1 Sacramento, who, within four years of the filing of this Complaint, have had their vehicles
2 towed from areas within the City of Sacramento lacking requisite signage giving notice of
3 removal.

4
5 30. Plaintiff reserves the right, pursuant to California Rules of Court, Rule 3.764 (a), to amend
6 or modify the Class description with greater specificity or further division into Subclasses or limitation to
7 particular issues.

8 31. The questions raised are of common or general interest to the class members and there is a
9 well-defined community of interest in question of law and fact raised in this action including but not
10 limited to:

- 11 a. Whether Defendants violated California Vehicle Code § 22651 by towing vehicles from
12 areas in the City of Sacramento lacking posted notice of removal.
- 13 b. Whether towing company Defendants violated California Business and Professions Code
14 § 17200 et seq. by unlawfully towing vehicles and collecting excessive fees.
- 15 c. Whether Defendants violated California Vehicle Code and California Business and
16 Professions Code by engaging in a civil conspiracy to defraud citizens by illegally towing
17 their vehicles for their financial benefit.
- 18 d. Whether Plaintiff and members of the class are entitled to equitable relief pursuant to
19 California Business and Professions Code § 17200 et seq.

20
21 32. Plaintiff is informed and believes, and thereupon alleges, that there are well over a
22 thousand citizens who have been subjected to the unlawful practices complained of herein during the
23 class period, and, therefore, their number makes it impractical to bring all of them before this court and
24 disposition of their claims in a class action is a benefit to the parties and to the court.

25
26 33. The class Plaintiff seeks to represent, as described above, is clearly ascertainable. The
27 rights of those individuals under California law have been violated by Defendants' actions.

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1 ROES 1 through 50's conduct, in illegally towing vehicles from areas lacking requisite signage giving
2 notice of removal and collecting fees is an unlawful business practice because towing company
3 Defendants unfairly defrauded owners of illegally towed vehicles for profit, and thereby violated the
4 California unfair business practices laws.

5 41. As a direct and proximate result of the aforementioned acts, towing company Defendants,
6 received and continue to receive ill-gotten gains belonging to Plaintiff and all the other similarly situated
7 members of the Class in that towing company Defendants have profited in the amount of their ill-gotten
8 gains from their unlawful practices.

9 42. California Business and Professions Code § 17203 provides that a court may restore to
10 any person any money or property which may have been acquired by means of such unfair competition
11 and to order disgorgement of all profits gained by Defendants by operation of the practices alleged
12 herein. Plaintiff, and all the other similarly situated members of the Class, are entitled to declaratory
13 relief pursuant to California Business and Professions Code §§ 17203 and 17208, and to monetary
14 restitution, disgorgement of profits, and other appropriate equitable relief.

15 43. Plaintiff herein has taken it upon himself to enforce the law and lawful claims of Plaintiff
16 and the Plaintiff class. There is a financial burden incurred in pursuing this action and it would be
17 against the interests of justice to penalize Plaintiff by forcing him to pay attorney's fees from the
18 recovery in this action. Therefore, Plaintiff prays for attorney's fees as are appropriate pursuant to statute
19 and Code of Civil Procedure § 1021.5.

20 Wherefore, Plaintiff prays for the relief as hereunder appears.
21

22 **VIII. THIRD CAUSE OF ACTION**

23 **Trespass to Chattels**

24 44. Plaintiff incorporates paragraphs 1 through 43 as though fully set forth herein.

25 45. Defendants, in illegally towing Plaintiffs' vehicles, willfully interfered with Plaintiffs'
26 possession of personal property and deprived Plaintiffs of the use of their vehicles. Plaintiff and class
27 members he seeks to represent did not willfully waive their rights to possession of their vehicles.

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1 **XI. PRAYER**

2 WHEREFORE, Plaintiff, on behalf of himself, on behalf of the members of the class he seeks to
3 represent, and the general public, prays that this court grant the following relief as follows:

- 4 1. Allow this action to proceed under Business and Professions Code § 17200 et seq.;
- 5 2. Certify this action as a class action;
- 6 3. Enter a preliminary and permanent injunction against Defendants restraining them from
7 violating the California Vehicle Code § 22651, California Business and Professions Code § 17200 et
8 seq.;
- 9 4. Enter a permanent injunction against Defendants requiring that they pay damages due;
- 10 5. Award restitution, disgorgement of profits, or other equitable relief under Business and
11 Professions Code §§ 17200 et seq.;
- 12 6. Award damages;
- 13 7. Award exemplary damages;
- 14 8. Award Plaintiff all costs of suit;
- 15 9. Award Plaintiff attorney's fees; and
- 16 10. Award Plaintiff such other and further relief as the court deems just and proper.

17 DATED: August 10, 2009

Respectfully submitted,

18 LAW OFFICE OF MARK E. MERIN

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21 BY: 

22 Mark E. Merin
23 Attorney for Plaintiffs
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