

APPENDIX

APPENDIX

TABLE OF CONTENTS

Appendix A Opinion in the United States Court of Appeals for the Ninth Circuit (June 21, 2017) App. 1

Appendix B Judgment in the United States District Court, Central District of California (March 19, 2015) App. 10

Appendix C Order: (1) Granting Defendants’ Motion to Dismiss (Doc. No. 33); (2) Denying Plaintiff’s Motion for Class Certification (Doc. No. 26): and (3) Denying Plaintiff’s Motion for Preliminary Injunction (Doc. No. 28) (In Chambers) in the United States District Court, Central District of California (February 27, 2015) App. 11

Appendix D Order Denying Petition for Rehearing En Banc in the United States Court of Appeals for the Ninth Circuit (August 23, 2017) App. 28

Appendix E California Vehicle Code § 14602.6 App. 29

California Vehicle Code § 22852 App. 38

LAPD’s Special Order No. 7 (Impound Policy) App. 41

App. 1

APPENDIX A

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 15-55479

D.C. No. 5:14-cv-02257-JGB-SP

[Filed June 21, 2017]

LAMYA BREWSTER, individually and)
as class representative,)
Plaintiff-Appellant,)
)
v.)
)
CHARLIE BECK, Chief, individual and)
official capacity; CITY OF LOS ANGELES,)
a municipal corporation; CITY OF LOS)
ANGELES POLICE DEPARTMENT, a public entity,)
Defendants-Appellees.)
)

OPINION

Appeal from the United States District Court
for the Central District of California
Jesus G. Bernal, District Judge, Presiding

Argued and Submitted January 12, 2017
Pasadena, California

Filed June 21, 2017

App. 2

Before: Alex Kozinski, M. Margaret McKeown
and Paul J. Watford, Circuit Judges.

Opinion by Judge Kozinski

SUMMARY*

Civil Rights

The panel reversed the district court's dismissal of an action brought under 42 U.S.C. § 1983 alleging that Los Angeles police officers violated plaintiff's Fourth Amendment rights when they impounded her vehicle for 30 days pursuant to California Vehicle Code section 14602.6(a)(1), which authorizes impounding a vehicle when the driver has a suspended license.

Plaintiff loaned her vehicle to her brother-in-law, who was stopped by police officers and discovered to be driving without a license. When plaintiff, who had a valid driver's license, attempted to recover her vehicle, the Los Angeles Police Department refused to release the vehicle before the 30-day holding period had elapsed.

The panel held that the 30-day impound of plaintiff's vehicle constituted a seizure that required compliance with the Fourth Amendment. The panel held that the exigency that justified the initial seizure vanished once the vehicle arrived in impound and plaintiff showed up with proof of ownership and a valid driver's license. The panel concluded that appellees provided no justification for the continued impound of plaintiff's vehicle.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

COUNSEL

Donald W. Cook (argued), Los Angeles, California; Barrett S. Litt, Kaye McLane Bednarski & Litt, Pasadena, California; Paul Hoffman and Catherine Sweetser, Schonbrun De Simone Seplow Harris & Hoffman LLP, Venice, California; for Plaintiff-Appellant.

Gabriel S. Dermer (argued) and Adena M. Hopenstand, Deputy City Attorneys; Ronald S. Whitaker, Assistant City Attorney; Michael N. Feuer, City Attorney; Office of the City Attorney, Los Angeles, California; for Defendants-Appellees.

OPINION

KOZINSKI, Circuit Judge:

We consider whether a 30-day impound of a vehicle is a “seizure” requiring compliance with the Fourth Amendment.

BACKGROUND

Lamya Brewster loaned her vehicle to Yonnie Percy, her brother-in-law. Percy was stopped by Los Angeles Police Department (LAPD) officers who learned that Percy’s driver’s license was suspended. The officers then seized the vehicle under California Vehicle Code section 14602.6(a)(1), which authorizes impounding a vehicle when the driver has a suspended license. Vehicles seized under this section must generally be held in impound for 30 days. Cal. Veh. Code. § 14602.6(a)(1).

Three days later, Brewster appeared at a hearing before the LAPD with proof that she was the registered

App. 4

owner of the vehicle and her valid California driver's license. Brewster offered to pay all towing and storage fees that had accrued, but the LAPD refused to release the vehicle before the 30-day holding period had lapsed.¹

Brewster filed a class action lawsuit under 42 U.S.C. § 1983 on behalf of all vehicle owners whose vehicles were subjected to the 30-day impound. The complaint alleges that the 30-day impound is a warrantless seizure that violates the Fourth Amendment. The district court concluded that the 30-day impound is a valid administrative penalty and granted appellees' motion to dismiss.

DISCUSSION

Section 14602.6(a)(1) of the California Vehicle Code authorizes police to seize a vehicle when the driver's license has been suspended. "A vehicle so impounded shall be impounded for 30 days." *Id.* Within two business days of impoundment, the agency that seizes the vehicle must notify the vehicle's owner and provide an "opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage." *Id.* § 14602.6(a)(2), (b). The LAPD's "Impound Policy" mirrors section 14602.6.

¹ Ten days after the impound, the LAPD released the vehicle to Superior Auto, the lien holder and legal owner of the vehicle. But, under LAPD policy, Superior Auto had to "ensure that no one, including the registered owner . . . will have access to the . . . vehicle during the remainder of the 30-day impoundment period." Accordingly, Brewster was deprived of her vehicle for the full 30 days.

App. 5

The district court found that “the thirty-day impoundment period—designed to deter unlicensed drivers or drivers with a suspended license from driving—is an administrative penalty, and thus not unconstitutional under the Fourth Amendment.” But this is the wrong inquiry. Whether the seizure is a valid penalty or forfeiture under the Fifth and Fourteenth Amendments is an interesting question but not one that is raised in this case. Plaintiff claims only that the 30-day impound violates the Fourth Amendment.²

The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. amend. IV. A seizure is a “meaningful interference with an individual’s possessory interests in [his] property.” *Soldal v. Cook County*, 506 U.S. 56, 61 (1992) (internal quotation marks and citation omitted). “A seizure conducted without a warrant is *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions.” *United States v. Hawkins*, 249 F.3d 867, 872 (9th Cir. 2001) (internal quotation marks and citation omitted).

It’s well established that “a seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution

² We express no view as to whether the 30-day impound is a valid administrative penalty under the Fifth and Fourteenth Amendments. See *Lee v. City of Chicago*, 330 F.3d 456, 474 (7th Cir. 2003) (Wood, J., concurring) (suggesting that a prolonged impound of a vehicle may be an unconstitutional taking under the Fifth Amendment). On remand, Brewster shall be given leave to amend the complaint to include any additional claims she may choose to bring.

App. 6

unreasonably infringes possessory interests.” *United States v. Jacobsen*, 466 U.S. 109, 124 & n.25 (1984) (citing *United States v. Place*, 462 U.S. 696, 707–10 (1983)). For example, in *United States v. Dass*, officers validly seized packages that they suspected contained marijuana. 849 F.2d 414, 414–15 (9th Cir. 1988). But we held that the *length* of the warrantless seizures—in that case, between seven to twenty-three days—violated the Fourth Amendment. *Id.*

The parties agree that the LAPD could impound—and, therefore, seize—Brewster’s vehicle under section 14602.6(a)(1) pursuant to the community caretaking exception to the Fourth Amendment. *See United States v. Cervantes*, 703 F.3d 1135, 1141 (9th Cir. 2012) (discussing the community caretaking exception). But this exception is available only to “impound vehicles that jeopardize public safety and the efficient movement of vehicular traffic.” *Id.* (internal quotation marks and citation omitted). The exigency that justified the seizure vanished once the vehicle arrived in impound and Brewster showed up with proof of ownership and a valid driver’s license. The question we must consider is whether the Fourth Amendment required further authorization for the LAPD to hold the vehicle for 30 days.

We have no cases on point, but Judge Henderson of the Northern District of California has addressed the matter in a thorough and well-reasoned opinion, which we find persuasive. *See Sandoval v. County of Sonoma*, 72 F. Supp. 3d 997 (N.D. Cal. 2014).

Because a 30-day impound is a “meaningful interference with an individual’s possessory interests in [his] property,” *Soldal*, 506 U.S. at 61 (internal

App. 7

quotation marks and citation omitted), the Fourth Amendment is implicated when a vehicle is impounded under section 14602.6(a). The district court found that such a seizure doesn't present a Fourth Amendment problem because "the state has an important interest in . . . keeping unlicensed drivers from driving illegally." But that is beside the point. The Fourth Amendment "is implicated by a delay in returning the property, whether the property was seized for a criminal investigation, to protect the public, or to punish the individual." *Sandoval*, 72 F. Supp. 3d at 1004.

The Fourth Amendment doesn't become irrelevant once an initial seizure has run its course. *See Jacobsen*, 466 U.S. at 124 & n.25; *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1030 (9th Cir. 2012); *see also Manuel v. City of Joliet*, 137 S. Ct. 911, 914, 920 (2017) (holding that the Fourth Amendment governed the entirety of plaintiff's 48-day detention). A seizure is justified under the Fourth Amendment only to the extent that the government's justification holds force. Thereafter, the government must cease the seizure or secure a new justification. Appellees have provided no justification here.

The only other circuit to address this specific issue is the Seventh. *See Lee*, 330 F.3d at 466. There, the City of Chicago seized Lee's vehicle for evidentiary purposes but failed to return it when it was no longer needed. *Id.* at 458–59. The parties agreed that the initial seizure of the vehicle was reasonable. *Id.* at 460. But Lee argued that "the *continued* possession of the property by the government became a meaningful interference with his possessory interest and, thus,

must be interpreted as a Fourth Amendment seizure.” *Id.* (emphasis added). The Seventh Circuit disagreed, holding that “[o]nce an individual has been meaningfully dispossessed, the seizure of the property is complete, and once justified by probable cause, that seizure is reasonable.” *Id.* at 466. Reasoning that “Lee’s car was seized when it was impounded,” the Seventh Circuit concluded that the City’s continued possession of the vehicle “neither continued the initial seizure nor began another.” *Id.*

To arrive at its conclusion, the Seventh Circuit distinguished *United States v. Place*. Law enforcement agents seized Place’s luggage on suspicion that he might be carrying narcotics. 462 U.S. at 699. “There [was] no doubt that the agents made a ‘seizure’ of Place’s luggage for purposes of the Fourth Amendment when . . . the agent told Place that he was going to take the luggage to a federal judge to secure issuance of a warrant.” *Id.* at 707. But it wasn’t this initial seizure that concerned the Supreme Court. Rather, it was the “90-minute detention of [Place’s] luggage [that was] sufficient to render the seizure unreasonable.” *Id.* at 710. We are unpersuaded by the Seventh Circuit’s conclusion that *Place* “deal[t] only with the transformation of a momentary, investigative detention into a seizure” and “has no application after probable cause to seize has been established.” *Lee*, 330 F.3d at 464.

* * *

The 30-day impound of Brewster’s vehicle constituted a seizure that required compliance with the Fourth Amendment. Appellees argue that this result frustrates the state legislature’s intent to impose a

App. 9

penalty on unlicensed drivers. We have no occasion to decide whether this objective is lawful. *See supra* p. 5 n.2. The police could impound a vehicle under section 22651(p), which authorizes impoundment when the driver doesn't have a valid license. *See* Cal. Veh. Code § 22651(p). Section 22651(p) doesn't have a mandatory 30-day hold period, thus avoiding the Fourth Amendment problem presented by section 14602.6(a).

REVERSED.

APPENDIX B

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Case No. EDCV 14-2257-JGB (Spx)

[Filed March 19, 2015]

LAMYA BREWSTER)
Plaintiff,)
)
v.)
)
CITY OF LOS ANGELES, LOS ANGELES)
POLICE DEPARTMENT, CHIEF)
CHARLIE BECK, DOES 1-10)
Defendants.)

JUDGMENT

**TO ALL PARTIES AND THEIR ATTORNEYS OF
RECORD:**

Pursuant to the Order filed herewith, IT IS ORDERED AND ADJUDGED that Plaintiff's Complaint is DISMISSED WITH PREJUDICE. The Court orders that such judgment be entered.

Dated: March 19, 2015

/s/ _____
Jesus G. Bernal
United States District Judge

APPENDIX C

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL**

Case No. EDCV 14-2257-JGB (SPx)

[Filed February 27, 2015]

Lamya Brewster)
)
 v.)
)
 City of Los Angeles, et al.)
)

Present: The Honorable JESUS G. BERNAL,
UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ
Deputy Clerk

Not Reported
Court Reporter

Attorney(s) Present for Plaintiff(s):
None Present

Attorney(s) Present for Defendant(s):
None Present

Proceedings:

Order: (1) GRANTING Defendants' Motion to Dismiss (Doc. No. 33); (2) DENYING Plaintiff's Motion for Class Certification (Doc. No. 26); and (3) DENYING Plaintiff's Motion for Preliminary Injunction (Doc. No. 28) (IN CHAMBERS)

Before the Court are three motions. The Court has considered all papers filed in support of and in opposition to the motions, as well as the arguments presented at the February 9, 2015 hearing. For the reasons expressed below, the Court GRANTS Defendants' Motion to Dismiss. (Doc. No. 33.) Accordingly, the Court DENIES Plaintiff's Motion for Class Certification (Doc. No. 26) and DENIES Plaintiff's Motion for a Preliminary Injunction (Doc. No. 28), as both of these motions presuppose the existence of a valid legal claim.

I. BACKGROUND

A. Factual Allegations

Plaintiff Lamy Brewster ("Plaintiff") is the registered owner of a 2010 Chevrolet Impala. (Complaint, Doc. No. 1, ¶ 12.) On October 28, 2014, Plaintiff and a group of family and friends were at the Kaiser Permanente Hospital in Hollywood, as Plaintiff's daughter was undergoing medical evaluation and treatment. (Id. ¶ 14.) At some point during the day, Plaintiff loaned her car to her brother-in-law, Yonnie Percy. (Id.) Mr. Percy drove himself and two other members of the group to a nearby restaurant. (Id.)

As Mr. Percy was about to pull into the restaurant's parking lot, Los Angeles Police Department ("LAPD") officers conducted a traffic stop of the car. (Id. ¶ 15.) During the course of the stop, the officers learned Mr. Percy's driver's license was suspended. (Id.) The officers ultimately seized and impounded the vehicle, as it was being driven by a person with a suspended license. (Id.) The Complaint alleges the two passengers, both licensed drivers, offered to drive the car to a safe location. (Id.) Plaintiff learned of the traffic stop and took a taxi to the scene, but by the time she arrived the car had already been towed. (Id. ¶ 16.) The Complaint alleges one of the LAPD officers explained to Plaintiff that her car would be impounded for thirty days, during which she could not reclaim possession. (Id.)

On October 31, 2014, Plaintiff's legal representative "made demand" on the LAPD to release the car to Plaintiff. (Id. ¶ 19.) Plaintiff's representative informed the LAPD that Plaintiff was the registered owner and was willing to pay the charged and fees that had accrued. (Id.) The LAPD denied Plaintiff's request to release the car. (Id.)

**B. California Vehicle Code § 14602.6 and
LAPD Special Order No. 7**

California Vehicle Code § 14602.6(a)(1), the statutory authority used to impound Plaintiff's vehicle, provides:

Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a vehicle while his or her driving privilege is restricted pursuant to Section 13352

App. 14

or 23575 and the vehicle is not equipped with a functioning, certified interlock device, or driving a vehicle without ever having been issued a driver's license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person.... A vehicle so impounded shall be impounded for 30 days.

Within two working days of an impoundment pursuant to § 14602.6(a)(1), the impounding agency must notify the vehicle's owner of the impoundment. Cal. Veh. Code § 14602.6(a)(2). The vehicle's owner "shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852." Cal. Veh. Code § 14602.6(b). Section 22852 sets out the procedure for hearings to "determine the validity of the storage" and provides, among other things, that a "public agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle." Cal. Veh. Code § 22852(c).

The LAPD's Impound Policy, also referred to as Special Order No. 7, ("SO7," Mot. for Class Cert., Exh. 1, Doc. No. 26-1) outlines the LAPD's interpretation and enforcement of Section 14602.6. The Impound Policy does not contain any additional bases for the thirty-day impoundment of a vehicle beyond those set forth in California Vehicle Code § 14602.6; in effect, the Impound Policy mirrors the statute.

C. Procedural History

On November 2, 2014, Plaintiff filed a class action Complaint against Defendants City of Los Angeles (the “City”), Los Angeles Police Department, and Police Chief Charlie Beck (collectively “Defendants”) seeking injunctive relief and damages under 42 U.S.C. § 1983. (Doc. No. 1.) The Complaint alleges that Defendants have promulgated the “Impound Policy”, an official policy by which an LAPD officer may direct or cause a vehicle to be seized then impounded for thirty days under certain conditions. (*Id.* ¶ 8.) The Complaint alleges the Impound Policy violates the Fourth Amendment of the Constitution. (*Id.* ¶¶ 41, 44.)

On November 24, 2014, Plaintiff filed two motions. The first is a motion for class certification. (“Mot. for Class Cert.,” Doc. No. 26.) Defendants opposed this motion on January 12, 2015. (“Opp’n Mot. for Class Cert.,” Doc. No. 34.) Plaintiff replied on January 20, 2015. (“Reply Mot. for Class Cert.,” Doc. No. 37.) Plaintiff’s second motion is for a preliminary injunction, which would enjoin Defendants from imposing thirty day holds on vehicles; specifically, those seized (1) without a warrant and (2) under Defendants’ Impound Policy. (“Mot. for PI,” Doc. No. 28) Defendants opposed on January 12, 2015 (“Opp’n Mot. for PI,” Doc. No. 35) and Plaintiff replied on January 20, 2015 (“Reply Mot. for PI,” Doc. No. 39.)

On December 26, 2014, Defendants filed a motion to dismiss based on (1) Plaintiff’s lack of standing and (2) Plaintiff’s failure to state a claim. (“MTD,” Doc. No. 33.) Plaintiff filed an opposition on January 20, 2015. (“Opp’n MTD,” Doc. No. 40.) On January 26, 2015, Defendants replied. (“Reply,” Doc. No. 39.)

On February 9, 2015, the Court heard oral argument on the motions. At the hearing, the Court requested supplemental briefing on Defendants' contention that the thirty-day impound is an administrative penalty. Both parties filed their supplemental briefs on February 17, 2015. ("Pl.'s Supp. Br.," Doc. No. 49; "Def.'s Supp. Br.," Doc. No. 50.)

II. MOTION TO DISMISS

Defendants move to dismiss on several grounds. Defendants contend that (1) Plaintiff lacks standing to bring her suit, (2) the Complaint fails to state a claim because Defendants' Impound Policy rests on state law, and (3) the Complaint fails to state a claim because the thirty-day impoundment of Plaintiff's car was a valid administrative penalty. (MTD at 6-13.) The Court finds Defendants' third contention persuasive, for reasons explained below, and therefore need not examine Defendants' remaining arguments.

A. Legal Standard

1. Failure to State a Claim

Federal Rule of Civil Procedure 12(b)(6) allows a party to bring a motion to dismiss for failure to state a claim upon which relief can be granted. Rule 12(b)(6) is read in conjunction with Rule 8(a), which requires only a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); Conley v. Gibson, 355 U.S. 41, 47 (1957) (holding that the Federal Rules require that a plaintiff provide "a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." (quoting Fed. R.

App. 17

Civ. P. 8(a)(2)); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

When evaluating a motion to dismiss, a court must accept all material allegations in the complaint — as well as any reasonable inferences to be drawn from them — as true and construe them in the light most favorable to the non-moving party. See Doe v. United States, 419 F.3d 1058, 1062 (9th Cir. 2005); ARC Ecology v. U.S. Dep’t of Air Force, 411 F.3d 1092, 1096 (9th Cir. 2005); Moyo v. Gomez, 32 F.3d 1382, 1384 (9th Cir. 1994).

To survive a motion to dismiss, a plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570; Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it stops short of the line between possibility and plausibility of ‘entitlement to relief.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557). The Ninth Circuit has clarified that (1) a complaint must “contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively,” and (2) “the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.” Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.” Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir.2008).

B. Application

It is undisputed that Defendants’ Impound Policy rests upon California Vehicle Code § 14602.6 (“Section 14602.6”). When a vehicle is seized under Section 14602.6, the statute imposes a mandatory thirty-day impoundment. Cal. Veh. Code § 14602.6 (stating that the vehicle “shall be impounded for thirty days”). In this lawsuit, Plaintiff does not challenge the initial decision to impound her car.¹ Rather, she contends the thirty-day impoundment is unconstitutional under the Fourth Amendment. (See Complaint ¶¶ 39-45; Mot. for PI at 5; Reply Mot. for Class Cert., at 4.) Defendants argue that the thirty-day impoundment is a valid administrative penalty. (Motion at 8-13.) Defendants contend that, as an administrative penalty, the impoundment presents no Fourth Amendment issue. (Def.’s Supp. Br. at 10.)

The Fourth Amendment prohibits unreasonable searches and seizures. U.S. Const. amend. IV. A Fourth

¹ See Mot. for PI at 1-2 (“Finally, it should be noted what is not challenged. Plaintiff does not seek to restrict or limit LAPD policy for seizing and removing from the street a vehicle without a warrant when such seizure is justified by community caretaking. Hence, on this motion Plaintiff does not dispute defendants’ claim they had, as of October 28, 2014, community caretaking justification for seizing and removing from the street Plaintiff’s 2010 Impala.”)

Amendment “seizure” occurs where there is “some meaningful interference with an individual’s possessory interest in that property.” United States v. Jacobsen, 466 U.S. 109, 113 (1984). Here, Defendants do not dispute that the initial impoundment of Plaintiff’s car was a seizure. This accords with Ninth Circuit case law that “the impoundment of an automobile is a seizure within the meaning of the Fourth Amendment.” Miranda v. City of Cornelius, 429 F.3d 858, 862 (9th Cir. 2005).

Consequently, Defendants must provide a justification for the initial seizure of Plaintiff’s vehicle. United States v. Hawkins, 249 F.3d 867, 872 (9th Cir. 2001) (“A seizure conducted without a warrant is per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions. The burden is on the Government to persuade the district court that a seizure comes under one of a few specifically established exceptions to the warrant requirement.”) Defendants justify the initial seizure of Plaintiff’s automobile under the community caretaking doctrine, an exception to the warrant requirement. (MTD at 8.) The community caretaking exception allows police officers to impound vehicles that “jeopardize public safety and the efficient movement of vehicular traffic.” S. Dakota v. Opperman, 428 U.S. 364, 368-69 (1976). Plaintiff does not challenge the initial seizure of her vehicle.

Instead, the parties’ dispute centers on the validity of the thirty-day impoundment that follows the initial seizure.

Plaintiff's argument stems from case law that teaches that a seizure justified at its outset may become unreasonable. For example, in United States v. Place, 462 U.S. 696 (1983), the police seized the defendant's luggage to permit the use of a drug detection dog; the process took about ninety minutes. Id. at 698-99. The initial seizure of the bag, while without a warrant, was found to be justified under the Terry exception to the warrant requirement; nevertheless, the Court found that the ninety-minute detention of the luggage was "sufficient to render the seizure unreasonable." Id. at 709. In other words, "a seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests." United States v. Jacobsen, 466 U.S. 109, 124 (1984) (citing Place, 462 U.S. at 709-710 (1983)).

However, while Plaintiff's analytical framework has some merit, the Court is persuaded that the thirty-day impoundment period – designed to deter unlicensed drivers or drivers with a suspended license from driving – is an administrative penalty, and thus not unconstitutional under the Fourth Amendment. This conclusion conforms with the significant majority of federal and state courts that have examined this issue.

Most tellingly, the Ninth Circuit has addressed this issue in Salazar v. City of Maywood, 414 Fed. Appx. 73 (9th Cir. 2011.) In that case, the plaintiffs' automobiles had been impounded for thirty days pursuant to Section 14602.6. 414 Fed. Appx. at 74. The plaintiffs asserted in the trial court that Section 14602.6, as well as the defendants' implementation of the statute, violated their rights under "the Fourth, Fifth, and

Fourteenth Amendments.” Id. (emphasis added). The Ninth Circuit upheld the district court’s grant of summary judgment in favor of defendants “on the federal claims.” Id. While an unpublished opinion, the Ninth Circuit’s reasoning is instructive. The court noted:

“Section 14602.6 applies only in very limited circumstances. The statute authorizes impoundment of vehicles for up to thirty days when an individual is found to be driving with a suspended or revoked license or without ever having been issued a driver’s license. Cal. Veh.Code § 14602.6(a)(1). This limited application accords with the California legislature’s determination that such a temporary forfeiture is warranted to protect Californians from the harm caused by unlicensed drivers—a determination we have no basis to reject.”

Id. In other words, the Ninth Circuit, when faced with a Fourth Amendment challenge to Section 14602.6, upheld the statute as a temporary forfeiture², thereby finding that the statutorily mandated thirty-day impoundment was not an unconstitutional seizure.

² The thirty-day impoundment is an administrative penalty that has aspects of a temporary forfeiture as well – hence the admittedly imprecise nomenclature used. See Wilson v. Com., 23 Va. App. 443, 449 (1996) (“A temporary impoundment of a vehicle is not a forfeiture, although it has characteristics of a forfeiture. Being temporarily deprived of one’s vehicle until one pays a fee to release it also resembles a civil penalty.”). However, the analysis remains the same under either classification.

This holding aligns with two other decisions from this district. In Salazar v. Schwarzenegger, 2008 U.S. Dist. LEXIS 124790 (C.D. Cal. Sept. 8, 2008) – the case upheld by Maywood – the district court found that a temporary forfeiture comports with the spirit of Section 14602.6 as well as “the legislative policy decision to deter unlicensed driving by impounding the vehicle driven by an unlicensed person.” 2008 U.S. Dist. LEXIS at * 13. Thus, the plaintiffs’ claims regarding the impoundment – including the unlawful seizure claims – were reduced to challenges concerning the sufficiency of the procedural due process afforded under the statute. In Miranda v. Bonner, No. CV 08-03178 SJO (C.D. Cal. Apr. 26, 2012), several plaintiffs challenged Section 14602.6’s thirty-day impoundment on a variety of grounds, including a claim that the statute effected an unconstitutional seizure – the same claim made by Plaintiff here. The district court dismissed this claim without leave to amend as to three of the plaintiffs, explaining that these plaintiffs’ vehicles were lawfully impounded under Section 14602.6, and that such a temporary forfeiture was lawful under the Fourth Amendment “because it served the legitimate purpose of removing vehicles driven by unlicensed drivers from the streets.” Id., slip op. at 6.

In contrast, in Sandoval v. County of Sonoma, 2014 WL 5474804 (N.D. Cal. Oct. 29, 2014), a case heavily cited by Plaintiff, the court did not address the administrative penalty argument Defendants put forward here. In fact, in ruling on a motion to dismiss in that case, the Court made clear that the plaintiff – who had a Mexican driver’s license – did not fall under

Section 14602.6.³ Sandoval v. Cnty. of Sonoma, 942 F. Supp. 2d 890, 908 (N.D. Cal. 2013). The court explained that, therefore, the defendants “cannot justify the thirty-day impoundment of [plaintiff’s] truck by reference to § 14602.6, and the Court may not decide whether the provision is facially valid as an administrative penalty.” Id. Consequently, the Court’s later ruling on summary judgment also did not address Section 14602.6’s validity as an administrative penalty. See 2014 WL 5474804.

Furthermore, there are numerous published California State Court opinions that have upheld the constitutionality of Section 14602.6. See Smith v. Santa Rosa Police Dept., 97 Cal. App. 4th 546, 557-62 (2002) (extensively analyzing the legislative history of Section 14602.6, noting that it was part of statutory changes “aimed at increasing penalties for driving without a valid license”); Samples v. Brown, 146 Cal. App. 4th 787 (2007) (explaining that the statute implements “the legislative policy decision to deter and punish unlicensed driving”); Thompson v. Petaluma Police Dep’t, 231 Cal. App. 4th 101 (“The courts have . . . concluded that the statute does not violate state and federal constitutional principles of . . . freedom from

³ As noted previously, Section 14602.6 permits police officers to impound for thirty days vehicles driven by three categories of drivers: (1) those whose driving privilege has been suspended or revoked, (2) those who have been convicted of driving under the influence and who are driving a vehicle not equipped with a required ignition interlock device, and (3) those who are “driving a vehicle without ever having been issued a driver’s license.” Cal. Veh. Code. § 14602.6(a)(1). The plaintiff in Sandoval had been issued a license; thus, the court found he did not fit into any of the categories of drivers covered by Section 14602.6.

unreasonable seizures.”). In Alviso v. Sonoma County Sheriff's Dept., 186 Cal. App. 4th 198 (2010), the California appellate court squarely addressed whether “the 30-day impoundment without a warrant . . . violates the unlawful seizure provisions of both the state and federal Constitutions” and held that it did not. 186 Cal. App. 4th at 786. The Alviso court found that the prompt administrative hearing provided by Section 14602.6 satisfied due process requirements, and thus a thirty-day impoundment under the statute was not an unconstitutional seizure. 186 Cal. App. 4th at 786. This holding comports with the principle that administrative penalties are generally not subject to analysis under the Fourth Amendment, but are more appropriately analyzed under due process standards.

The Court finds the analysis under Alviso particularly instructive. While the initial seizure of the car must comport with the Fourth Amendment, see Miranda, 429 F.3d at 862, the storage hearing provides an opportunity for the owner of the car to contest the validity of the seizure before the full thirty-day impoundment occurs. The owner may argue that the driver of the vehicle had a valid license, for example, or the owner may present mitigating circumstances. See Cal. Veh. Code § 14602(b). The owner may also put forward one of the several other defenses available under the statute (although these may also be presented at other times). See Cal. Veh. Code § 14602(d)(1)(A)-(E). If the owner is successful, the thirty-day impoundment does not occur. If the owner either does not request a storage hearing or is unsuccessful at the hearing – i.e., there is a determination that the car was driven by a driver without a valid license – then the owner’s vehicle is

impounded for the full thirty-day period. Thus, the thirty-day impoundment, analytically separated from the initial seizure by the storage hearing, is not an unconstitutional seizure; rather, it is an administrative penalty.

The federal and state courts cited above have afforded significant weight to the California legislature's intent in passing Section 14602.6. The legislative findings that accompanied the enactment of section 14602.6 identified significant public safety issues arising out of vehicles operated by unlicensed drivers. Cal. Veh. Code, § 14607.4. The California legislature found that unlicensed drivers are far more likely than licensed drivers to cause fatal accidents and to inflict injuries and property loss on innocent drivers. Id., §§ (b)-(e). Yet, an estimated 75 percent of all drivers whose driving privileges have been withdrawn continue to drive. Id., § (e). As a result, the California Legislature determined that it was "necessary and appropriate to take additional steps to prevent unlicensed drivers from driving, including the civil forfeiture of vehicles used by unlicensed drivers." Id., § (f).

It is clear that the state has an important interest in enforcing its traffic laws and in keeping unlicensed drivers from driving illegally. As the legislature has stated, seizing the vehicles used by unlicensed drivers "serves a significant governmental and public interest, namely the protection of the health, safety, and welfare of Californians who are involved in a disproportionate number of traffic accidents, and the avoidance of the associated destruction and damage to lives and property." Id.

Through Section 14602.6, the legislature has provided for a temporary impoundment to penalize drivers who pose an increased risk to community safety. It is clear that the weight of authority, including the Ninth Circuit, has held that Section 14602.6's thirty-day impoundment is not an unconstitutional seizure. This Court comes to the same conclusion.

Accordingly, Defendant's Motion to Dismiss is GRANTED. The Court DISMISSES the Complaint WITHOUT LEAVE TO AMEND.⁴

III. MOTIONS FOR CLASS CERTIFICATION AND PRELIMINARY INJUNCTION

Plaintiff realleges the foregoing constitutional challenge in her Motion for Class Certification. (Mot. for Class Cert. at 1, 13.) Because Plaintiff's Fourth Amendment claim – on which the proposed class action is based – fails to state a claim upon which relief could be granted, Plaintiff's Motion for Class Certification also fails.

As to Plaintiff's Motion for a Preliminary Injunction, “a plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v. Natural Res. Def. Council, Inc., 555

⁴ A district court can deny leave “where the amendment would be futile . . . or where the amended complaint would be subject to dismissal.” Saul v. United States, 928 F.2d 829, 843 (9th Cir. 1991) (citations omitted); see also Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1298 (9th Cir. 1998).

U.S. 7, 20 (2008). As discussed above, Plaintiff has failed to state a claim on which relief can be granted. Therefore, there is no likelihood of success on the merits. As Plaintiff fails to clear this threshold requirement for injunctive relief, her Motion for Preliminary Injunction is DENIED.

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Defendants' Motion to Dismiss, and DISMISSES the Complaint WITHOUT LEAVE TO AMEND. The Court DENIES Plaintiff's Motion for Class Certification and DENIES Plaintiff's Motion for Preliminary Injunction.

IT IS SO ORDERED.

APPENDIX D

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 15-55479

D.C. No. 5:14-cv-02257-JGB-SP

[Filed August 23, 2017]

LAMYA BREWSTER, individually)
and as class representative,)
Plaintiff-Appellant,)
)
v.)
)
CHARLIE BECK, Chief, individual)
and official capacity; CITY OF LOS)
ANGELES, a municipal corporation;)
CITY OF LOS ANGELES POLICE)
DEPARTMENT, a public entity,)
Defendants-Appellees.)

ORDER

Before: **KOZINSKI, McKEOWN** and **WATFORD**,
Circuit Judges.

The petition for rehearing en banc is **DENIED**.

APPENDIX E

VEHICLE CODE - VEH

DIVISION 6. DRIVERS' LICENSES [12500 - 15325]
(Heading of Division 6 amended by Stats. 1961, Ch. 1615.)

CHAPTER 4. Violation of License Provisions [14600 - 14611]
(Chapter 4 enacted by Stats. 1959, Ch. 3.)

14602.6.

(a)(1) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a vehicle while his or her driving privilege is restricted pursuant to Section 13352 or 23575 and the vehicle is not equipped with a functioning, certified interlock device, or driving a vehicle without ever having been issued a driver's license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

(2) The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been

App. 30

impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days' impoundment when the legal owner redeems the impounded vehicle. The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing. The law enforcement agency shall be open to issue a release to the registered owner or legal owner, or the agent of either, whenever the agency is open to serve the public for nonemergency business.

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852.

(c) Any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (a) of Section 14602.5.

(d)(1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 days' impoundment under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

App. 31

(C) When the license of the driver was suspended or revoked for an offense other than 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.

(D) When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.

(E) When the driver reinstates his or her driver's license or acquires a driver's license and proper insurance.

(2) No vehicle shall be released pursuant to this subdivision without presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(e) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(f) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of 30 days' impoundment if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.

App. 32

(2)(A) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

(B) A person operating or in charge of a storage facility where vehicles are stored pursuant to this section shall accept a valid bank credit card or cash for payment of towing, storage, and related fees by a legal or registered owner or the owner's agent claiming the vehicle. A credit card shall be in the name of the person presenting the card. "Credit card" means "credit card" as defined in subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes of this section, credit card does not include a credit card issued by a retail seller.

(C) A person operating or in charge of a storage facility described in subparagraph (B) who violates subparagraph (B) shall be civilly liable to the owner of the vehicle or to the person who tendered the fees for four times the amount of the towing, storage, and related fees, but not to exceed five hundred dollars (\$500).

(D) A person operating or in charge of a storage facility described in subparagraph (B) shall have sufficient funds on the premises of the primary storage facility

App. 33

during normal business hours to accommodate, and make change in, a reasonable monetary transaction.

(E) Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies on rates.

(3) The legal owner or the legal owner's agent presents a copy of the assignment, as defined in subdivision (b) of Section 7500.1 of the Business and Professions Code; a release from the one responsible governmental agency, only if required by the agency; a government-issued photographic identification card; and any one of the following, as determined by the legal owner or the legal owner's agent: a certificate of repossession for the vehicle, a security agreement for the vehicle, or title, whether paper or electronic, showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The law enforcement agency, impounding agency, or any other governmental agency, or any person acting on behalf of those agencies, shall not require any documents to be notarized. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the law enforcement agency, impounding agency, or any person acting on behalf of those agencies, that the agent is

App. 34

exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

No administrative costs authorized under subdivision (a) of Section 22850.5 shall be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city and county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The law enforcement agency, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall not require any documents other than those specified in this paragraph. The law enforcement agency, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall not require any documents to be notarized. The legal owner or the legal owner's agent shall be given a copy of any documents he or she is required to sign, except for a vehicle evidentiary hold logbook. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies, or any person in possession of the vehicle, may photocopy and retain the copies of any documents presented by the legal owner or legal owner's agent.

(4) A failure by a storage facility to comply with any applicable conditions set forth in this subdivision shall not affect the right of the legal owner or the legal owner's agent to retrieve the vehicle, provided all conditions required of the legal owner or legal owner's agent under this subdivision are satisfied.

App. 35

(g)(1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (f) shall not release the vehicle to the registered owner of the vehicle, or the person who was listed as the registered owner when the vehicle was impounded, or any agents of the registered owner, unless the registered owner is a rental car agency, until after the termination of the 30-day impoundment period.

(2) The legal owner or the legal owner's agent shall not relinquish the vehicle to the registered owner or the person who was listed as the registered owner when the vehicle was impounded until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent or the person in possession of the vehicle shall make every reasonable effort to ensure that the license presented is valid and possession of the vehicle will not be given to the driver who was involved in the original impoundment proceeding until the expiration of the impoundment period.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(4) Any legal owner who knowingly releases or causes the release of a vehicle to a registered owner or the person in possession of the vehicle at the time of the impoundment or any agent of the registered owner in violation of this subdivision shall be guilty of a misdemeanor and subject to a fine in the amount of two

App. 36

thousand dollars (\$2,000) in addition to any other penalties established by law.

(5) The legal owner, registered owner, or person in possession of the vehicle shall not change or attempt to change the name of the legal owner or the registered owner on the records of the department until the vehicle is released from the impoundment.

(h)(1) A vehicle removed and seized under subdivision (a) shall be released to a rental car agency prior to the end of 30 days' impoundment if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency may not rent another vehicle to the driver of the vehicle that was seized until 30 days after the date that the vehicle was seized.

(3) The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining custody of the vehicle.

(i) Notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment, any administrative charges authorized under Section 22850.5, and any parking fines, penalties, and administrative fees incurred by the registered owner.

App. 37

(j)(1) The law enforcement agency and the impounding agency, including any storage facility acting on behalf of the law enforcement agency or impounding agency, shall comply with this section and shall not be liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with the provisions of this section. A law enforcement agency shall not refuse to issue a release to a legal owner or the agent of a legal owner on the grounds that it previously issued a release.

(2)(A) The legal owner of collateral shall, by operation of law and without requiring further action, indemnify and hold harmless a law enforcement agency, city, county, city and county, the state, a tow yard, storage facility, or an impounding yard from a claim arising out of the release of the collateral to a licensed reposessor or licensed repossession agency, and from any damage to the collateral after its release, including reasonable attorney's fees and costs associated with defending a claim, if the collateral was released in compliance with this section.

(B) This subdivision shall apply only when collateral is released to a licensed reposessor, licensed repossession agency, or its officers or employees pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code.

(Amended by Stats. 2015, Ch. 740, Sec. 14. Effective January 1, 2016.)

VEHICLE CODE - VEH

DIVISION 11. RULES OF THE ROAD [21000 - 23336] (*Division 11 enacted by Stats. 1959, Ch. 3.*)

CHAPTER 10. Removal of Parked and Abandoned Vehicles [22650 - 22856] (*Chapter 10 enacted by Stats. 1959, Ch. 3.*)

ARTICLE 2. Vehicle Disposition [22850 - 22856] (*Heading of Article 2 renumbered from Article 3 by Stats. 1980, Ch. 1111, Sec. 28.*)

22852.

(a) Whenever an authorized member of a public agency directs the storage of a vehicle, as permitted by this chapter, or upon the storage of a vehicle as permitted under this section (except as provided in subdivision (f) or (g)), the agency or person directing the storage shall provide the vehicle's registered and legal owners of record, or their agents, with the opportunity for a poststorage hearing to determine the validity of the storage.

(b) A notice of the storage shall be mailed or personally delivered to the registered and legal owners within 48 hours, excluding weekends and holidays, and shall include all of the following information:

(1) The name, address, and telephone number of the agency providing the notice.

(2) The location of the place of storage and description of the vehicle, which shall include, if available, the name or make, the manufacturer, the license plate number, and the mileage.

App. 39

(3) The authority and purpose for the removal of the vehicle.

(4) A statement that, in order to receive their poststorage hearing, the owners, or their agents, shall request the hearing in person, writing, or by telephone within 10 days of the date appearing on the notice.

(c) The poststorage hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The public agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle.

(d) Failure of either the registered or legal owner, or his or her agent, to request or to attend a scheduled hearing shall satisfy the poststorage hearing requirement.

(e) The agency employing the person who directed the storage shall be responsible for the costs incurred for towing and storage if it is determined in the poststorage hearing that reasonable grounds for the storage are not established.

(f) This section does not apply to vehicles abated under the Abandoned Vehicle Abatement Program pursuant to Sections 22660 to 22668, inclusive, and Section 22710, or to vehicles impounded for investigation pursuant to Section 22655, or to vehicles removed from private property pursuant to Section 22658.

App. 40

(g) This section does not apply to abandoned vehicles removed pursuant to Section 22669 that are determined by the public agency to have an estimated value of five hundred dollars (\$500) or less.

(Amended by Stats. 2004, Ch. 650, Sec. 17. Effective January 1, 2005.)

App. 41

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 7 **April 10, 2012**

**APPROVED BY THE BOARD OF POLICE
COMMISSIONERS ON FEBRUARY 28, 2012**

SUBJECT:

**COMMUNITY CARETAKING DOCTRINE AND
VEHICLE IMPOUND PROCEDURES -
ESTABLISHED**

EFFECTIVE:

APRIL 22, 2012

PURPOSE:

The California State Legislature continues to recognize that driving a motor vehicle is a privilege and not a right, as delineated in Section 14607.4 of the California Vehicle Code (VC). This Order establishes the procedures for impounding vehicles from unlicensed drivers, and drivers with suspended or revoked licenses encountered in the field, at the scene of traffic collisions and at driving under the influence (DUI) checkpoints. In addition, this Order provides guidance regarding the enforcement of VC Sections 22651(p) "Unlicensed Driver," and 14602.6(a)(1) "30-Day Holds," and guidance on how to apply the "Community Caretaking Doctrine." However, this Order is not intended to preclude officers from impounding vehicles for non-license violations by using appropriate statutory authority. This Order establishes Section 4/222.05, *Community Caretaking Doctrine and Vehicle Impound Procedures*, to the Department Manual.

PROCEDURE:

Various sections of the California Vehicle Code authorize the impoundment of a motor vehicle driven by an unlicensed driver or a driver with a suspended or revoked driver's license. However, State and federal court decisions have held that the statutory authority to impound, alone, does not determine the constitutional reasonableness of the seizure under the Fourth Amendment of the United States Constitution. In evaluating the reasonableness of warrantless vehicle impounds, courts have focused on whether the impoundment was in accordance with the Community Caretaking Doctrine. Consequently, this Order clarifies the application of the Community Caretaking Doctrine and establishes the Department's impound procedures.

I. COMMUNITY CARETAKING DOCTRINE
OVERVIEW. Officers shall be guided by the Community Caretaking Doctrine and the procedures set forth in this Order when deciding whether to impound a vehicle driven by an unlicensed driver, or a driver with a suspended or revoked license. The courts have ruled that this doctrine allows officers to impound a vehicle when doing so serves a community caretaking function. An impoundment based on the Community Caretaking Doctrine is likely warranted:

- * When the vehicle is impeding traffic or jeopardizing public safety and convenience, such as when a vehicle is disabled following a traffic collision;
- * When the vehicle is blocking a driveway or crosswalk or otherwise preventing the efficient

App. 43

movement of traffic (e.g., vehicle, pedestrian, bicycle);

- * When the location of the stopped vehicle may create a public safety hazard (e.g., vehicle, pedestrian, bicyclist);
- * When the location of the vehicle, if left at the location, may make it a target for vandalism or theft; or,
- * To prevent the immediate and continued unlawful operation of the vehicle (e.g., licensed driver not immediately available).

The totality of circumstances, including the factors listed above, should be considered when deciding whether impoundment is reasonable under the Community Caretaking Doctrine and the Fourth Amendment. The decision to impound any vehicle must be reasonable and in furtherance of public safety.

II. UNLICENSED DRIVER AND DRIVER WITH A SUSPENDED/REVOKED LICENSE IMPOUND AUTHORITIES.

- A. Unlicensed Driver – No Priors. Section 22651(p) VC shall be used as the impound authority for all vehicles being impounded when it has been determined that the driver was involved in the following and the officer issues a Traffic Notice to Appear citation, Form 04.50.00:
 - * Driving without a valid California Driver's License (unless the driver is a nonresident with

App. 44

a valid license or otherwise exempt under the Vehicle Code); or,

- * Driving with an expired, withheld, or out-of-class California Driver's License.

Officers shall release the vehicle in lieu of impound provided all of the following conditions are met:

- * The registered owner or his/her designee has a valid California Driver's license or is a nonresident with a valid license or otherwise exempt under the Vehicle Code;
- * The registered owner and licensed driver are immediately available;
- * The registered owner authorizes the licensed driver to drive the vehicle; and,
- * The vehicle's registration is not expired over six (6) months.

Note: If the traffic stop is conducted in the registered owner's residential driveway or a legal parking space in the immediate vicinity of the owner's residence, impounding the vehicle would not be appropriate. However, if the traffic stop is conducted in the driver's residential driveway or in the immediate vicinity of the driver's residence but the driver is not the registered owner, officers must consider the totality of the circumstances to determine if impoundment is reasonable.

The name and driver's license number of the licensed driver that the vehicle is being released to shall be documented in the narrative portion of the

App. 45

Traffic Notice to Appear that is issued to the unlicensed driver. If it is determined that the registered owner knowingly allowed an unlicensed driver to operate the vehicle, he or she may be cited for Section 14604(a) VC, “Non-Owner Driver of Vehicle.”

When the vehicle cannot be released to a licensed driver, the vehicle shall be impounded pursuant to Section 22651(p) VC or, if the vehicle’s registration is expired over six (6) months, pursuant to Section 22651(o) VC, to prevent the immediate and continued unlawful operation as warranted under the Community Caretaking Doctrine. The Official Police Garage (OPG) tow should be requested when it is determined that the vehicle cannot be released.

Note: If it is determined that the vehicle will be impounded, use impound authority Section 14602.6(a)(1) VC (30-Day Hold) if all of the following conditions are met:

- * The driver has never been issued a driver’s license by any jurisdiction (foreign or domestic); and,
- * The driver is unable to show proof of insurance or at-fault in the traffic collision or lacks proof of identification.

The reason to impound the vehicle shall not be based on whether the vehicle is properly insured.

B. Unlicensed Driver – With Prior(s). Section 14602.6(a)(1) VC (30-Day Hold) shall be used as the impound authority when it has been

App. 46

determined that the driver has never been issued a driver's license by any jurisdiction (foreign or domestic) and has a prior misdemeanor conviction, failure to appear, or warrant for Section 12500(a) VC.

Note: Section 22651(p) VC shall always be used as the impound authority if it has been determined that the driver has an expired, withheld or out of class driver's license and has a prior misdemeanor conviction, failure to appear, or warrant for 12500(a), 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5 VC.

If the driver is the registered owner and has a prior misdemeanor conviction: Officers shall document in the "Remarks" or "Narrative" section of the impound Vehicle Report, CHP 180 form, that the vehicle is eligible for vehicle forfeiture as delineated in Section 14607.6 VC, except if the driver's license expired within the preceding 30 days, then no such notation shall be made.

C. Driver with Suspended/Revoked License – No Priors. Section 14602.6(a)(1) VC (30-Day Hold) shall be used as the impound authority for all vehicles being impounded when it has been determined that the driver was involved in any of the following:

- * Driving with a suspended or revoked license;
or,
- * Driving with a restricted license pursuant to Sections 13352 or 23575 VC, and the vehicle

App. 47

is not equipped with a functioning, certified interlock device.

Officers shall release the vehicle in lieu of impound provided all of the following conditions are met:

- * The registered owner or his/her designee has a valid California Driver's License or is a nonresident with a valid license or is otherwise exempt under the Vehicle Code;
- * The registered owner and licensed driver are immediately available;
- * The registered owner authorizes the licensed driver to drive the vehicle; and,
- * The vehicle's registration is not expired over six (6) months.

Note: If the traffic stop is conducted in the registered owner's residential driveway or a legal parking space in the immediate vicinity of the owner's residence, impounding the vehicle would not be appropriate. However, if the traffic stop is conducted in the driver's residential driveway or in the immediate vicinity of the driver's residence but the driver is not the registered owner, officers must consider the totality of the circumstances to determine if impoundment is reasonable.

Officers impounding a vehicle under Section 14602.6(a)(1) VC shall either effect a custodial arrest of the driver or issue a Traffic Notice to

App. 48

Appear citation in the field. Vehicles impounded under this Section shall be impounded for 30 days, unless earlier release is authorized by the Area Auto detectives in accordance with Section 14602.6 VC.

The name and driver's license number of the licensed driver that the vehicle is being released to shall be documented in the narrative portion of the Traffic Notice to Appear that is issued to the unlicensed driver. If it is determined that the registered owner knowingly allowed an unlicensed driver to operate the vehicle, he or she may be cited for Section 14604(a) VC, "Non-Owner Driver of Vehicle."

- D. Driver with Suspended/Revoked License – With Prior(s) Section 14602.6(a)(1) VC (30-Day Hold) shall be used as the impound authority for all vehicles being impounded when it has been determined that the suspended/revoked/restricted violator has a prior misdemeanor conviction, failure to appear, or warrant for Sections 12500(a), 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5 VC.

Note: If the driver is the registered owner and has a prior misdemeanor conviction: Officers shall document in the "Remarks" or "Narrative" section of the impound Vehicle Report, that the vehicle is eligible for vehicle forfeiture as delineated in Section 14607.6 VC.

III. MISCELLANEOUS IMPOUNDS.

- A. Impounding Vehicles Driven by Habitual Driving Under the Influence Offenders. Section 14602.8(a)(1) VC authorizes an officer to impound a vehicle from a driver when it is determined that a person has been convicted of Section 23140 VC, Juvenile Driving Under the Influence of Alcohol; 23152 VC, Driving Under the Influence of Drugs or Alcohol; or 23153 VC, Causing Bodily Injury While Driving Under the Influence of Drugs or Alcohol, within the past 10 years and one or more of the following circumstances applies.

The officer shall immediately cause the removal and seizure of the vehicle that such a person was driving, under either of the following circumstances:

- * The person was driving a vehicle with a blood alcohol content of 0.10 percent or more; or,
- * The person driving the vehicle refused to submit to or complete a chemical test.

A vehicle impounded pursuant to the aforementioned section shall be impounded for one of the following time periods:

- * 5 Days – If the person has been convicted once for violating Sections 23140, 23152 or 23153 VC, and the violation occurred within the preceding 10 years; or,
- * 15 Days – If the person has been convicted two or more times for violating Sections

App. 50

23140, 23152 or 23153 VC or any combination thereof, and the violations occurred within the preceding 10 years.

The vehicle shall be released to the registered owner or his or her designee prior to the end of the impoundment period only under conditions set forth in Section 14602.8(d) VC.

- B. Citing or Arresting Unlicensed Drivers at Traffic Collision Scenes and Related Vehicle Impounds. For an unlicensed driver or driver with a suspended/revoked license at traffic collision scenes, the appropriate impound authority or release-at-scene protocol shall be utilized in accordance with Section II in this Order.

A driver involved in a traffic collision may be cited or placed under custodial arrest when the officer determines that the involved vehicle was operated by an unlicensed driver or a driver whose driving privilege was suspended or revoked.

The officer's determination shall be based upon witnesses' statements, a driver's admission and/or physical evidence. The related impound Vehicle Report shall contain the following:

- * A full narrative listing all of the information/elements to establish the driver's offense; and,
- * Names, addresses, telephone numbers and statements of witnesses that can establish the driver operating the vehicle.

App. 51

If the traffic collision results in injuries, officers shall complete the Traffic Collision Report, CHP 555 form. However, if the traffic collision does not result in injuries and one of the parties is unlicensed, a Traffic Collision Report shall not be completed. The officer shall ensure an exchange of information is completed between the involved parties. Officers shall issue a Traffic Notice to Appear citation to the unlicensed driver and document the name, address and telephone number of the witnessing party or parties on the back of the "Golden Rod" copy of the issuing officer's Traffic Notice to Appear citation.

If the violator challenges the citation during a subsequent court proceeding, the issuing officer shall be responsible for contacting the witnessing parties and requesting their attendance in court.

When the unlicensed driver does not possess valid identification, officers shall advise the other involved party of the option to effect a private person's arrest. When a private person's arrest is made, officers shall indicate a charge of Section 12500(a) VC or 14601(a) VC, or other appropriate VC section(s) for driving when the privilege is suspended or revoked.

- C. Impounding Vehicles at Driving Under the Influence Checkpoints. The following procedures apply if the driver's only offense is a violation of Section 12500 VC, even if the driver has a prior misdemeanor conviction, failure to appear, or warrant for 12500 VC. Officers shall make a

App. 52

reasonable attempt to identify the registered owner of the vehicle driven by an unlicensed driver. When the registered owner is present or able to respond to the scene prior to the conclusion of the DUI checkpoint operation, or the officer is able, without delay, to identify the registered owner and obtain his/her authorization to release the vehicle to a licensed driver at the scene, the vehicle shall be released to either the registered owner or the authorized licensed driver provided the following conditions are met:

- * The registered owner or his/her designee has a valid California Driver's License or is a nonresident with a valid license or is otherwise exempt under the Vehicle Code; and,
- * The registered owner authorizes the licensed driver to drive the vehicle.

The name and driver's license number of the licensed driver the vehicle is being released to shall be documented in the narrative portion of the Traffic Notice to Appear citation issued to the violator.

When the vehicle cannot be released to the registered owner or his or her designee, officers shall impound the vehicle under the authority of Section 22651(p) VC.

When the violator has a suspended or revoked driver's license, officers shall impound or release the vehicle as outlined in Section II "Unlicensed

App. 53

and Suspended/Revoked Driver Impound Authorities” of this Order.

D. Impounding Vehicles When the Driver is Arrested. Section 22651(h)(1) VC authorizes an officer to impound a vehicle from a driver who has been arrested and taken into physical custody. However, as noted in Section I of this Order, officers must also determine if the totality of the circumstances supports impoundment of the vehicle under the Community Caretaking Doctrine.

When a driver is arrested, the vehicle should not be impounded under the following circumstances:

- * If the arrestee is the registered owner and the vehicle is parked in the arrestee’s residential driveway or a legal parking space in the immediate vicinity of the arrestee’s residence;
- * If the vehicle is parked in a legal parking space where it is not posing a traffic hazard and is not likely to be a target of vandalism or theft; or,
- * If a licensed passenger is present and not impaired or otherwise unable to lawfully operate the vehicle and is given permission by the registered owner.

Note: In situations other than those above, when community caretaking warrants impoundment, Section 22651(h)(1) VC shall be used as the impound authority. If the

App. 54

driver arrested has prior DUI convictions, officers shall be guided by Section 14602.8(a)(1) VC.

Attached is the Vehicle Impound Chart, Form 15.23.06.

FORM AVAILABILITY: The Vehicle Impound Chart is available in LAPD E-Forms on the Department's Local Area Network (LAN). A copy of the form is attached for immediate use and duplication.

AMENDMENT: This Order adds Section 4/222.05 to the Department Manual.

AUDIT RESPONSIBILITY: The Commanding Officer, Internal Audits and Inspections Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.

/s/ Charlie Beck
CHARLIE BECK
Chief of Police

Attachment:

DISTRIBUTION "D"