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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SANTA CLARA**

17 MICHAEL BALLARD, an individual,
18
19 Petitioner/Plaintiff,
20
21 v.
22 COUNTY OF SANTA CLARA,
23
24 Respondent/Defendant.

Case No. 22CV395986

**FIRST AMENDED PETITION FOR
WRIT OF ADMINISTRATIVE
MANDAMUS (CCP §1094.5),
DAMAGES (CCP §1095), AND CIVIL
RIGHTS COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF (42 U.S.C. § 1983, CCP §§ 525 &
1060)**

1 **I. INTRODUCTION**

2 This case involves enforcement of an ordinance of Respondent Santa Clara County
3 (“Respondent” or the “County”) that punishes Michael Ballard (“Petitioner”) for allowing an
4 employee, Marcelino Martinez (“Mr. Martinez”) and his family, to live in a recreational vehicle
5 on Petitioner’s 60-acre vineyard and winery property when there are no other affordable housing
6 options available close to Mr. Martinez’s job or his children’s school. Respondent presented
7 Petitioner with the choice of either making Mr. Martinez and his family homeless, forcing them to
8 move so far away that Mr. Martinez cannot remain employed at his current job at Petitioner’s
9 winery and his children could not remain in their school, or pay a daily fine. Petitioner refused to
10 kick them out because Mr. Martinez has worked for Petitioner for more than 20 years, the
11 Martinez family are his friends, Mr. Martinez and his family harm no one by living in the RV,
12 Petitioner’s actions help alleviate the County’s severe problem with unhoused individuals and
13 families, and kicking the Martinez family out would harm them. So, instead, Respondent has
14 fined Petitioner every single day for several years running, resulting in a fine that currently stands
15 at more than \$120,000. Because Respondent’s enforcement of its ordinance here imposes a fine
16 that is unconstitutionally excessive, and deprives Petitioner of the process due to him under the
17 law and his rights to an independent judge and trial by jury, Petitioner (i) petitions this Court for a
18 writ of mandate under Code of Civil Procedure section 1094.5, directed to Respondent; (ii)
19 requests damages incidental to the writ under Code of Civil Procedure section 1095; and (iii)
20 requests this Court issue injunctive and declaratory relief against Respondent pursuant to 42
21 U.S.C. § 1983 and Code of Civil Procedure sections 525 and 1060.

22 **II. PARTIES**

23 1. Petitioner is a property owner in the unincorporated portion of the County of Santa
24 Clara in the vicinity of Saratoga, California, and brings this action as a protestant to a zoning
25 violation and fine issued by the County of Santa Clara, and confirmed in part by an administrative
26 appeal hearing, and as a plaintiff under 42 U.S.C. § 1983 and CCP §§ 525 & 1060.

27 2. At all times mentioned in this petition, Respondent has been and is now the agency
28 charged with administering the County of Santa Clara Zoning Code. Its offices are located at 70

1 West Hedding Street, San Jose, California 95110.

2 **III. FACTUAL ALLEGATIONS PERTAINING TO ALL COUNTS**

3 3. This case arises from code violations issued by Respondent to Petitioner regarding
4 an RV on Petitioner’s property located at 23600 Congress Springs Road, Saratoga, in Santa Clara
5 County (the “Property”).

6 4. The Property consists of multiple contiguous parcels totaling approximately 60
7 acres.

8 5. Petitioner owns and operates a winery and vineyard on the Property named
9 Savannah-Chanelle Vineyards. The Property contains a hilltop vineyard, related winery buildings,
10 substantial forested areas, and Petitioner’s own home.

11 6. The Property is zoned “Hillsides” (HS). Permitted uses in HS include, among
12 other things, “agriculture and grazing, very low-density residential use, low density, low intensity
13 recreation, mineral and other resource extraction, and land in its natural state.” Santa Clara
14 Zoning Ordinance (SCCZO) § 2.20.010(C).

15 7. Mr. Martinez has been an employee—the vineyard manager—at Savannah-
16 Chanelle Vineyards for more than 20 years.

17 8. With Petitioner’s consent, Mr. Martinez bought a 42’ travel trailer (deemed an
18 “RV” by Respondent), placed it on a quiet corner of the Property, and he and his family have
19 lived there since 2013 without having to pay rent or utilities.

20 9. Petitioner has allowed Mr. Martinez and his family to live in the RV on his property
21 because the Martinezes had no other affordable housing options available to them within a
22 reasonable distance of Mr. Martinez’s job at the Savannah-Channelle Vineyards and his children’s
23 school. Their only other option was for the Martinezes to move to a less expensive area of the
24 country and for Mr. Martinez to give up his job at Savannah-Channelle Vineyards and his children
25 to leave their school.

26 10. Santa Clara County has exceptionally high housing costs, even compared to the
27
28

1 rest of California.¹

2 11. But for Petitioner allowing Mr. Martinez to live on the Property, Mr. Martinez
3 would not be able to afford a home close enough to his employment and his children's school to
4 keep his job and his children in their school.

5 12. The Martinezes living in the RV does not cause any harm to public health or
6 safety.

7 13. No neighbor, visitor, or customer of Savannah-Chanelle Vineyards has ever
8 complained to Petitioner or filed a complaint regarding the RV with Respondent.

9 14. The RV is connected to water and electrical service and is attached to a portable
10 holding tank, which can be transported to the Property's main septic system and dumped.

11 15. At all times, the RV was not visible from outside the Property.

12 16. While Respondent bans Mr. Martinez from living in his RV, it otherwise allows
13 living in RVs in other areas and allows living in an RV on the Property in some circumstances.

14 17. On or about September 28, 2017, someone made an anonymous complaint to
15 Respondent's Department of Environmental Health regarding a potential sewage violation on the
16 Property.

17 18. On or about December 1, 2017, a code enforcement officer employed by
18 Respondent visited the Property regarding the potential sewage violation and found no evidence
19 of that violation.

20 19. But the code enforcement officer did note the existence of the RV and its
21 occupation by the Martinezes.

22 20. On December 5, 2017, Respondent emailed Petitioner to inform him that the RV
23 cannot be used as a dwelling unit under SCCZO § 4.20.090.

24 21. SCCZO § 4.20.090(4) provides, "No RV may be used for dwelling purposes while
25 being parked or stored on the premises. Utility connections are not allowed except when
26 necessary for limited maintenance activity."

27 _____
28 ¹ <https://www.sfgate.com/news/bayarea/article/santa-clara-county-has-the-second-most-expensive-18497960.php>.

1 22. On or about January 5, 2018, Respondent sent Petitioner a Compliance Order
2 (Notice of Violation) giving Petitioner until March 12, 2018, to remove the trailer or force Mr.
3 Martinez and his family to stop living in it. The communication informed him that failure to
4 comply with the notice will result in administrative fines of up to \$1,000 a day.

5 23. Beginning in early 2018, Petitioner attempted to get a permit or permits for the
6 RV. Ultimately, Petitioner determined that the easiest and least expensive way to legally house
7 the Martinezes on his property was to obtain a permit for a mobile or manufactured home on the
8 Property as an accessory dwelling unit.

9 24. While Petitioner attempted to obtain a permit for a mobile or manufactured home
10 for the Martinezes, the Martinezes continued to live in the RV on the property.

11 25. Petitioner did not, and could not, obtain a permit for the Martinezes to continue
12 living in the RV.

13 26. On March 1, 2019, Respondent issued a notice of violation and public nuisance for
14 the RV. Respondent insisted that the only way to abate the nuisance was to kick the Martinez
15 family out of the RV.

16 27. Petitioner refused to do so.

17 28. On May 13, 2019, Respondent issued another notice of violation and public
18 nuisance for the RV.

19 29. On May 16, 2019, Petitioner applied for a permit for the “installation of a single
20 wide mobile home to be permitted as a detached second dwelling.”

21 30. On May 20, 2019, Petitioner applied for a permit for a new septic system for the
22 mobile home.

23 31. On July 5, 2019, Respondent issued a notice of administrative fines in the amount
24 of \$1,000 a day for the continuing violation regarding the RV.

25 32. On October 11, 2019, Respondent issued another notice of administrative fines for
26 the RV, which reduced the daily fine from \$1,000 a day to \$250 a day.

27 33. Petitioner made a timely request for an administrative hearing regarding
28 Respondent’s notice of violation. A Hearing Officer conducted the hearing on December 4 and 9,

1 2019.

2 34. At the hearing, Petitioner was represented by counsel. Petitioner admitted that the
3 RV violated Respondent's zoning code but argued that the fines were inappropriate given the
4 harm that would occur if Petitioner kicked the Martinez family off the Property.

5 35. The Hearing Officer issued his decision on December 16, 2019. The Hearing
6 Officer's decision concluded that Petitioner violated SCCZO § 4.20.090 by allowing the RV to
7 remain on the Property and that Respondent legally imposed a monetary per day administrative
8 fine for the violation retroactive to July 5, 2019 (the date of the first notice of administrative
9 fines).

10 36. While the Hearing Officer upheld the violation and the fine, he also ordered "that,
11 in the interests of justice, and based on the evidence presented the administrative fine imposed by
12 [Respondent] is hereby reduced to a past due amount of \$15,200.00 up to the date of December 4,
13 2019 hearing and shall continue at the daily rate of \$100.00 per day until the violation is cured."

14 37. A true and correct copy of this order (the "Order") is attached as **Exhibit A** and
15 incorporated in this petition.

16 38. The statute of limitations for bringing a writ was extended generally month to
17 month by Respondent to provide incentive for Petitioner to continue processing for permit
18 approval. However, on February 25, 2022, Respondent's attorney sent an email advising that the
19 deadline to take a writ on the Hearing Officer's decision would not be extended beyond March 1,
20 2022.

21 39. On February 28, 2022, Respondent filed a timely Petition for Writ of Mandamus
22 pursuant to California Code of Civil Procedure § 1094.5 and damages pursuant to California
23 Code of Civil Procedure § 1095 regarding the Order.

24 40. With the original Petition, Petitioner also requested that Respondent prepare a true
25 and correct copy of the administrative record. A true and correct copy of the record will be lodged
26 with the court before the hearing date.

27 41. Subsequent to the Order, Petitioner continued the process for permit approval. But
28 in March 2020, that process ground to a halt because of government ordered shutdowns for Covid

1 and other events.

2 42. Respondent issued a permit on October 18, 2022.

3 43. Files continued to be daily imposed on Petitioner through at least October 18,
4 2022.

5 **IV. PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS PURSUANT TO**
6 **CALIFORNIA CODE OF CIVIL PROCEDURE § 1094.5**

7 44. Petitioner incorporates paragraphs 1 through 43 by reference as if fully set forth
8 herein.

9 45. By this verified petition, Petitioner alleges as follow:

10 46. The Order, **Exhibit A**, is invalid under Code of Civil Procedure § 1094.5, for the
11 following reasons:

12 a. Respondent proceeded without, or in excess of its jurisdiction, in that:

13 (i) SCCZO § 4.20.090(4), as applied to Petitioner by Respondent, violates the
14 Eighth Amendment to the U.S. Constitution and Article I, § 17 of the
15 California Constitution by imposing a fine that is grossly disproportional to the
16 gravity of any purported offense committed by Petitioner;

17 (ii) SCCZO § 4.20.090(4), as applied to Petitioner by Respondent, violates the
18 Fourteenth Amendment to the United States Constitution and Article I, § 7 of
19 the California Constitution because forcing Petitioner to choose between
20 making the Martinezes homeless or forcing Mr. Martinez to move from his
21 place of employment is fundamentally unfair and shocking to the conscience
22 and is so brutal and offensive as to not comport with traditional ideas of fair
23 play and decency.

24 (iii) The administrative hearing violates the Seventh Amendment to the United
25 States Constitution and Article I, § 16 of the California Constitution because it
26 denied Petitioner the right to a jury trial when the government sought civil
27 penalties against him, a legal rather than equitable remedy.

28 (iv) The administrative hearing—which is conducted by the Office of the County

1 Hearing Officer rather than an independent judge exercising the judicial power
2 granted by Article 6 of the California Constitution—violates the separation of
3 powers guarantee of Article 3, § 3 of the California Constitution because only
4 an Article 6 court—an independent judge—may order Petitioner to pay civil
5 penalties to the government.

6 (v) The administrative fines violate the Fourteenth Amendment to the United
7 States Constitution and Article I, § 7 of the California Constitution because
8 fines imposed daily after the hearing are imposed without reasoned discretion
9 or regard to the circumstances of the violation, the offender, the victim, or the
10 damage caused.

11 b. Respondent’s order is not supported by the findings, because:

12 (i) It does not adequately demonstrate the analysis to bridge the analytical gap
13 between the raw evidence and the ultimate decision;

14 (ii) The findings were ambiguous, uncertain and/or conclusory; and

15 (iii) The findings are insufficient to support its decision, including the penalty
16 assessed against Petitioner.

17 c. The finding set forth in Exhibit A that Petitioner should be fined \$100 a day for a
18 total past due of \$15,200 and continuing at a rate of \$100 is not supported by substantial evidence
19 and/or the weight of the evidence, because of mitigating circumstances:

20 (i) there is a housing crisis in Santa Clara County;

21 (ii) the homeless are living throughout the County in RVs with and without
22 governmental consent;

23 (iii) the County was in the process of adopting an ordinance allowing temporary
24 RV residency for agricultural workers;

25 (iv) the County pursued the alleged violation against Petitioner knowing that low-
26 income housing and agricultural worker housing was in critical shortage;

27 (v) the County selected enforcement against Petitioner while not pursuing the same
28 enforcement against other known violators;

1 (vi) Petitioner's motivation was to keep the Martinez family from being homeless;
2 and
3 (vii) the property where the Martinezes live and work is a large vineyard on a rural
4 hillside near Saratoga, California.

5 47. Petitioner has exhausted the available administrative remedies required to be
6 pursued by him.

7 48. Petitioner does not have a plain, speedy, and adequate remedy in the ordinary
8 course of law.

9 49. If Respondent's order is allowed to be executed, Petitioner will be irreparably
10 injured in that he will have to evict the Martinez family who will lose their home or Petitioner
11 will continue to be fined. Furthermore, imposition of a stay is not against the public interest,
12 because a stay will allow the Martinez family a place to live, and there is no harm to public health
13 and safety from letting them remain. In addition, Petitioner is likely to ultimately prevail on the
14 merits.

15 50. Petitioner has relevant evidence to offer, which Petitioner attempted to introduce at
16 the administrative hearing. Petitioner duly made an offer of proof, but the hearing officer
17 excluded the evidence of the County's own efforts instituted by its Land Use and Development
18 Committee to permit temporary RV residency on agricultural land. Exclusion of this evidence
19 was improper because it addressed mitigating circumstances. A true and correct copy of the
20 excluded evidence is shown by offer of proof in the requested administrative record. A true and
21 correct copy of Petitioner's Statement of Facts submitted to the hearing officer is attached as
22 Exhibit B and incorporated in this petition.

23 **V. DAMAGES PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE**

24 **§ 1095**

25 51. Petitioner incorporates paragraphs 1 through 50 by reference as if fully set forth
26 herein.

27 52. Petitioner is personally obligated to pay his attorney or attorney services to
28 prosecute this action. Petitioner is entitled to recover attorney fees as provided in Government

1 Code § 800(a) if he prevails in this case.

2 WHEREFORE, PETITIONER PRAYS AS FOLLOWS:

3 A. For issuance of writ of mandate issue, under California Code of Civil Procedure
4 § 1094.5, directed to Respondent, and compelling Respondent to set aside its Administrative
5 Order dated December 16, 2019;

6 B. For attorney fees and litigation expenses under California Government Code §
7 800(a);

8 C. For costs of suit incurred herein; and

9 D. For such other and further relief as the Court deems just and proper.

10 **VI. CIVIL RIGHTS COMPLAINT**

11 53. Petitioner incorporates and re-alleges each and every allegation contained in the
12 previous paragraphs of this pleading as if fully set forth herein.

13 54. Petitioner brings this civil rights lawsuit pursuant to the Eighth and Fourteenth
14 Amendments to the United States Constitution; Article I, sections 7 and 17 of the California
15 Constitution; the Civil Rights Action of 1871, 42 U.S.C. § 1983; and California Code of Civil
16 Procedure §§ 525 & 1060. Petitioner seeks relief against enforcement of SCCZO § 4.20.090(4),
17 including fines imposed for violation thereof, and the practices and policies of Respondent that,
18 as applied, deny Petitioner his rights guaranteed by the United States and California
19 Constitutions. Petitioner also seeks damages in an amount to be determined at trial for the
20 violation of his constitutional rights.

21 55. Jurisdiction is proper pursuant to California Code of Civil Procedure § 1060.

22 56. Venue is proper in this Court pursuant to California Code of Civil Procedure §§
23 392 and 394 because, respectively, (i) the Property is located in Santa Clara County, California;
24 and (ii) Respondent is situated in the County of Santa Clara, California.

25 Petitioner's Injuries:

26 57. Petitioner has been fined more than \$120,000 for allowing Mr. Martinez and his
27 family to live in a recreational vehicle on Petitioner's 60-acre vineyard and winery property when
28 there are no other affordable housing options available close to Mr. Martinez's job or his

1 children's school, Mr. Martinez and his family harm no one by living in the RV, and Petitioner's
2 actions help alleviate Santa Clara County's severe problem with unhoused individuals and
3 families.

4 58. Petitioner's violation of SCCZO § 4.20.090(4) has not harmed anyone.

5 59. Petitioner's violation of SCCZO § 4.20.090(4) was motivated to keep the Martinez
6 family from homelessness. In doing so, he provided a secluded enclave for the Martinez family to
7 live and work when no affordable housing options existed; his actions have benefitted both the
8 Martinez family and the surrounding area by providing affordable housing.

9 60. Respondent presented Petitioner with the choice of either kicking Mr. Martinez
10 and his family out of their home—forcing them to move so far away that Mr. Martinez cannot
11 remain employed at his current job at Petitioner's winery and his children could not remain in
12 their school—or pay a daily fine.

13 61. Petitioner is subjected to a \$100 a day fine for allowing Mr. Martinez and his
14 family to live at his property. Petitioner has spent years housing the Martinez family while trying
15 to come into compliance without kicking the family off his property.

16 62. The daily accruing fine has operated automatically for years without regard to the
17 existing circumstances, the culpability of Petitioner, or the harm (if any) to anyone. It has
18 converted a single zoning violation into the source of potentially limitless fines regardless of the
19 circumstances.

20 63. The fine imposed has resulted in a confiscatory and disproportionate result.

21 64. The facts regarding Petitioner's fine were determined, not by a judge or a jury, but
22 by a county hearing officer, and the fines were imposed on Petitioner, not by a judge, but by a
23 county hearing officer.

24 Declaratory Relief Allegations:

25 65. An actual and substantial controversy exists between Petitioner and Respondent as
26 to the parties' respective rights and responsibilities. Petitioner asserts that SCCZO § 4.20.090, as
27 applied to Petitioner by Respondent violates the United States and California Constitutions.
28 Respondent continues to apply SCCZO § 4.20.090 to Petitioner.

Injunctive Relief Allegations:

1
2 66. Petitioner has no plain, speedy, and adequate remedy at law to address the
3 violations of his constitutional rights under color of state law. Petitioner’s injury would not be
4 adequately remedied by pecuniary compensation, it would be extremely difficult to ascertain the
5 amount of compensation which would afford adequate relief, and injunctive relief is necessary to
6 prevent a multiplicity of judicial proceedings.

7 67. Petitioner has a substantial likelihood of succeeding on the merits of his claims as
8 Respondent’s enforcement of SCCZO § 4.20.090 against Petitioner violates the United States and
9 California Constitutions.

10 68. An injunction restraining Respondent from enforcing SCCZO § 4.20.090 against
11 Petitioner will serve the public interest. An injunction will allow the Martinez family to remain in
12 their home until their new home is finished. An injunction will not prevent Respondent from
13 enforcing ordinances legitimately protecting public health and safety; it would instead only
14 require Respondent to do so in a manner consistent with the U.S. and California Constitution.

Count I

Excessive Fines (42 U.S.C. § 1983)

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16
17 69. Petitioner incorporates and realleges each and every allegation set forth in
18 paragraphs 1 through 68 of this Complaint.

19 70. The Eighth Amendment to the U.S. Constitution provides, “Excessive bail shall
20 not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

21 71. Petitioner is a citizen of the United States or a person within the jurisdiction
22 thereof under 42 U.S.C. § 1983.

23 72. Respondent Santa Clara County is a person under 42 U.S.C. § 1983. *Maine v.*
24 *Thiboutot*, 448 U.S. 1, 4 (1980).

25 73. SCCZO § 4.20.090(4), as applied to Petitioner by Respondent, violates the Eighth
26 Amendment to the U.S. Constitution by imposing a fine that is grossly disproportional to the
27 gravity of any purported offense committed by Petitioner.

28

1 **Count II**

2 **Denial of Due Process of the Law (42 U.S.C. § 1983)**

3 74. Petitioner incorporates and realleges each and every allegation set forth in
4 paragraphs 1 through 73 of this Complaint.

5 75. The Fourteenth Amendment to the U.S. Constitution provides that “[n]o State shall
6 . . . deprive any person of life, liberty, or property, without due process of law.” U.S. Const.
7 amend. XIV, § 1.

8 76. Petitioner is a citizen of the United States or a person within the jurisdiction
9 thereof under 42 U.S.C. § 1983. Respondent Santa Clara County is a person under 42 U.S.C. §
10 1983. *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980).

11 77. SCCZO § 4.20.090(4), as applied to Petitioner by Respondent, violates the
12 Fourteenth Amendment to the United States Constitution because forcing Petitioner to choose
13 between making the Martinezes homeless, forcing Mr. Martinez to move from his place of
14 employment and his children’s school, or face massive fines is fundamentally unfair and shocking
15 to the conscience and is so brutal and offensive as to not comport with traditional ideas of fair
16 play and decency.

17 **Count III**

18 **Excessive Fines (California Code of Civil Procedure §§ 525& 1060)**

19 78. Petitioner incorporates and realleges each and every allegation set forth in
20 paragraphs 1 through 77 of this Complaint.

21 79. Article I, Section 17 of the California Constitution provides “Cruel or unusual
22 punishment may not be inflicted or excessive fines imposed.” Cal. Const. art. I, § 17.

23 80. SCCZO § 4.20.090(4), as applied to Petitioner by Respondent, violates Article I,
24 Section 17 of the California Constitution by imposing a fine that is grossly disproportional to the
25 gravity of any purported offense committed by Petitioner.

26 **Count IV**

27 **Denial of Due Process of the Law (California Code of Civil Procedure §§ 525 & 1060)**

28 81. Petitioner incorporates and realleges each and every allegation set forth in

1 paragraphs 1 through 80 of this Complaint.

2 82. Article I, Section 7 of the California Constitution provides “A person may not be
3 deprived of life, liberty, or property without due process of law or denied equal protection of the
4 laws.” Cal. Const. art. I, § 7(a).

5 83. SCCZO § 4.20.090(4), as applied to Petitioner by Respondent, violates Article I,
6 Section 7 of the California Constitution because forcing Petitioner to choose between making the
7 Martinezes homeless or forcing Mr. Martinez to move from his place of employment is
8 fundamentally unfair and shocking to the conscience and is so brutal and offensive as to not
9 comport with traditional ideas of fair play and decency.

10 **Count V**

11 **Denial of Separation of Powers (California Code of Civil Procedure §§ 525 & 1060)**

12 84. Petitioner incorporates and realleges each and every allegation set forth in
13 paragraphs 1 through 83 of this Complaint.

14 85. Article III, Section 3 of the California Constitution provides, “The powers of state
15 government are legislative, executive, and judicial. Persons charged with the exercise of one
16 power may not exercise either of the others except as permitted by this Constitution.” Cal. Const.
17 art. III, § 3.

18 86. The administrative proceedings by Respondent to enforce SCCZO § 4.20.090(4)
19 against Petitioner violates Article III, Section 3 of the California Constitution because only an
20 Article 6 court—an independent judge—may order Petitioner to pay civil penalties to the
21 government; a county hearing officer does not have that judicial power.

22 **Count VI**

23 **Denial of Jury Trial (42 U.S.C. § 1983)**

24 87. Petitioner incorporates and realleges each and every allegation set forth in
25 paragraphs 1 through 86 of this Complaint.

26 88. The Seventh Amendment of the U.S. Constitution provides, “In Suits at common
27 law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be
28 preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United

1 States, than according to the rules of the common law.” U.S. Const. amend. VII.

2 89. Petitioner is a citizen of the United States or a person within the jurisdiction
3 thereof under 42 U.S.C. § 1983. Respondent Santa Clara County is a person under 42 U.S.C. §
4 1983. *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980).

5 90. The administrative proceedings by Respondent to enforce SCCZO § 4.20.090(4)
6 against Petitioner violate the Seventh Amendment to the U.S. Constitution because they denied
7 Petitioner the right to a jury trial when the government sought civil penalties against him, a legal
8 rather than equitable remedy.

9 **Count VII**

10 **Denial of Jury Trial (California Code of Civil Procedure §§ 525 & 1060)**

11 91. Petitioner incorporates and realleges each and every allegation set forth in
12 paragraphs 1 through 90 of this Complaint.

13 92. Article I, Section 16 of the California Constitution provides, in relevant part, “Trial
14 by jury is an inviolate right and shall be secured to all...” Cal. Const. art. I, § 16.

15 The administrative proceedings by Respondent to enforce SCCZO § 4.20.090(4) against
16 Petitioner violate Article I, Section 16 of the California Constitution because they denied
17 Petitioner the right to a jury trial when the government sought civil penalties against him,
18 a legal rather than equitable remedy.

19 **Count VIII**

20 **Denial of Due Process of the Law (42 U.S.C. § 1983)**

21 93. Petitioner incorporates and realleges each and every allegation set forth in
22 paragraphs 1 through 92 of this Complaint.

23 94. The Fourteenth Amendment to the U.S. Constitution provides that “[n]o State shall
24 . . . deprive any person of life, liberty, or property, without due process of law.” U.S. Const.
25 amend. XIV, § 1.

26 95. Petitioner is a citizen of the United States or a person within the jurisdiction
27 thereof under 42 U.S.C. § 1983. Respondent Santa Clara County is a person under 42 U.S.C. §
28 1983. *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980).

1 proceedings violates Article I, Section 16 and Article III, Section 3 of the
2 California Constitution;

3 E. A judgment declaring that administrative fines imposed on Petitioner by
4 Respondent since the date of the administrative hearing violates the Fourteenth
5 Amendment to the U.S. Constitution;

6 F. A declaratory judgment, pursuant to Cal. Civ. Proc. Code § 1060, administrative
7 fines imposed on Petitioner by Respondent since the date of the administrative
8 hearing violate Article I, Section 7 of the California Constitution;

9 G. A permanent injunction, pursuant to California Code of Civil Procedure § 525 et
10 seq. and any other applicable authority, preventing Respondent from enforcing
11 SCCZO § 4.20.090(4), through administrative proceedings or otherwise, against
12 Petitioner in association with the Martinezes' occupation of the RV at the
13 Property;

14 H. That this Court award nominal damages in the amount of \$1.00 for the violation of
15 Petitioner's constitutional rights;

16 I. That Petitioner be awarded costs, fees, and expenses in this matter pursuant to 42
17 U.S.C. § 1988, Cal. Civ. Proc. Code § 1021.5, and any other applicable authority;
18 and

19 J. Such other and further relief as is just and proper under the circumstances.
20

21 Dated: September 12, 2024,

By: s/ Paul V. Avelar

22 Anthony Francois (SBN 184100)
23 BRISCOE IVESTER & BAZEL LLP

24 Paul V. Avelar (*pro hac vice*)
25 William R. Maurer (*pro hac vice*)
26 INSTITUTE FOR JUSTICE

27 Attorneys for Petitioner Michael Ballard
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VERIFICATION

I, MICHAEL BALLARD, declare as follows: I have read the foregoing FIRST AMENDED PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS (CCP §1094.5), DAMAGES (CCP §1095), AND CIVIL RIGHTS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF (42 U.S.C. § 1983, CCP §§ 525 & 1060) and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this verification was executed on September 11, 2024, in Saratoga, California.



Michael Ballard