

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

People of the State of California, Superior Court of California, County of Napa, City of American Canyon, Peace Officer C. Roberts Serial No 226

(b) County of Residence of First Listed Plaintiff Napa (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Allison Haley Napa County District Attorney 1127 First Street, Suite C Napa, CA 94559

DEFENDANTS

TYLER WAYNE MUNSON

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Pro se, 218 landana St. American Canyon, Ca 94503 707-359-9692

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff X 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding X 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 1983, 28 U.S.C. § 2201

Brief description of cause:

Color of law: false arrest, abuse of process, denial of due process, malicious prosecution

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$ 10,000.00

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

X SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 11/23/2021

SIGNATURE OF ATTORNEY OF RECORD

Court Name: U.S. District Court, NDCD
Division: 4
Receipt Number: 44611017319
Cashier ID: jimenez
Transaction Date: 11/26/2021
Payer Name: Rik W. Munson

CIVIL FILING FEE- NON-PRISONER
For: Rik W. Munson
Case/Party: D-CAN-3-21-CV-009155-001
Amount: \$402.00

PAPER CHECK CONVERSION
Check/Money Order Num: 1747
Amt Tendered: \$402.00

Total Due: \$402.00
Total Tendered: \$402.00
Change Amt: \$0.00

JSC

Checks and drafts are accepted
subject to collections and full
credit will only be given when the
check or draft has been accepted by
the financial institution on which
it was drawn.

PRESS FIRMLY TO SEAL



PRIORITY MAIL

- Expected delivery date specified for domestic use.
- Most domestic shipments include up to \$50 of insurance (restrictions apply)
- USPS Tracking® included for domestic and many international destinations
- Limited international insurance.**
- When used internationally, a customs declaration form is required.

*Insurance does not cover certain items. For details regarding claims exclusions see the Domestic Mail Manual at <http://pe.usps.com>.

** See International Mail Manual at <http://pe.usps.com> for availability and limitations of coverage

FLAT RATE ENVELOPE

ONE RATE ■ ANY WEIGHT

TRACKED ■ INSURED



EP14F May 2020
OD: 12 1/2 x 9 1/2

To schedule free Package Pickup, scan the QR code.



USPS.COM/PICKUP

| | | | |
|------------------------------------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|----------------------------------------------------------|
| UNITED STATES POSTAL SERVICE® | | Click-N-Ship® | |
| P | usps.com \$8.70 US POSTAGE Flat Rate Env | 9405 5036 9930 0071 5477 93 0087 0000 0019 4612 | U.S. POSTAGE PAID <small>Click-N-Ship®</small> |
| | 11/23/2021 | Mailed from 94503 | |
| PRIORITY MAIL 1-DAY™ | | | |
| RIK MUNSON 218 LANDANA ST AMERICAN CYN CA 94503-1050 | | Expected Delivery Date: 11/24/21 0006 | |
| C037 | | | |
| SHIP TO: CLERK, UNITED STATES DISTRICT COURT 1301 CLAY ST 400 S OAKLAND CA 94612-5217 | | | |
| USPS TRACKING # | | | |
| | | | |
| 9405 5036 9930 0071 5477 93 | | | |
| Electronic Rate Approved #038555749 | | | |

3. Plaintiff appears in the person of “*Superior Court of California*”, “*County of Napa*”, *City of American Canyon* and/or “*People of the State of California*”.

JURISDICTION AND VENUE

4. This Court has removal jurisdiction pursuant to 28 U.S.C. §§ 1441(a) and (c) subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

5. Venue in this Court is proper pursuant to 28 U.S.C. § 1391 because all of the events and transactions giving rise to this action took place in Napa County California, and within the jurisdiction of the Northern District of California .

6. The state court record indicates the filing of a “citation” on September 29, 2021 but to Defendant’s knowledge no civil petition has actually been filed in the state court and Defendant has thirty (30) days after the receipt of summons to remove the case to federal court per 28 U.S.C. § 1446(b).

7. Plaintiff used “**arrest without warrant**” to initiate contact with Defendant while **claiming their post arrest prosecution is civil in character** in order to justify post arrest denial of due process.

8. Defendant has not been served with civil process as required by California Code of Civil Procedure §418 and no proof to the contrary is on file with the state court.

9. Defendant challenged the state court's jurisdiction over him by arguing the illegality of the arrest with a motion to quash¹ instead of making a general appearance by filing a 1538.5 motion to suppress² and has asked for no other relief from the state court other than to dismiss for want of personam jurisdiction. Therefore, this removal is timely.

10. Further, Defendant files his original answer in this court with 42 U.S.C. §1983 counterclaims and seeking declaratory relief under 28 U.S.C. § 2201 for redress of color of law deprivations of rights protected by the Constitution and laws of the United States of America.

¹ As a defendant may waive his right to prevent the introduction of illegally seized evidence by failure to object, he may, by failure to move to quash the indictment or information, waive the illegality of an arrest. *People v. Garcia* (1959), 174 C.A.2d 525

² The designation of the paper or the proceeding as a special appearance (*supra*, §124) is -9 useful and desirable procedure, but it is not Conclusive ill its effect. If the moving party does not confine himself to the objection of lack of jurisdiction of the person, but seeks relief on the merits, his application may be deemed a general appearance regardless of its designation. As the court said in *Security Loan & T. Co. v. Boston & S. Riverside Fruit Co.* (1899) 126 C. 418, 422, 58 P. 941: "[W]here the defendant appears and asks some relief which can only be granted on the hypothesis that the court has jurisdiction of the cause and person, it is a submission to the jurisdiction of the court as completely as if he had been regularly served with process, whether such an appearance by its terms be limited to a special appearance or not."

A fuller exposition appears in the case of *In re Clarke* (1889) 125 C. 388, 392, 58 P. 22: "On general principles, a statement that a defendant or party makes a special appearance is of no consequence whatever, If he appears and objects only to the consideration of the case. or to any procedure in it, because the court has not acquired jurisdiction of the person of the defendant, the appearance is special, and no statement to that effect in the notice or motion is required or could fave any effect if made. On the other hand, if he appears and asks for any relief which could only be given to a party in a pending case. or which itself would be a regular proceeding in the case, it is a general appearance no matter how carefully or expressly it may be stated that the appearance is special. It is the character of the relief asked, and not the intention of the party that it shall or shall not constitute a general appearance, which is material." (See also *Milstein v. Ogden* (1948) 84 C.A.2d 229, 232, 190 P.2d 312; 5 Am.Jur.2d 490, 508; Rest., Conflict of Laws 2d (Prop. Off. Draft) §81, Comment c.)

11. Defendant is not engaged in the transportation of persons or property for hire and objects to any presumptions, intendment or assuming of facts thereto and hereby incorporates the attached Memorandum as if fully restated herein.

STATEMENT OF FACTS

12. On September 15, 2021 at approximately 1:01 P.M., American Canyon Peace Officer C. Roberts, Serial No. 226 (Roberts) activated his emergency lights commanding Defendant to yield to his display of the police power of the state and Defendant did yield. Roberts then dismounted his motorcycle at which time he turned to face south and waved other autos to the shoulder of the road.

13. Roberts demanded Defendant produce his identification papers for inspection and detained Defendant further while he performed similar functions with the other autos he had “stopped”.

14. Roberts subsequently presented Defendant with a “Notice to Appear”³ while offering Defendant the opportunity to secure his release from police custody by signing the promise to appear portion of the Notice to Appear rather than being handcuffed and transported to a holding cell to await the availability of a magistrate. Defendant chose the lesser of evils and secured his release from police custody by signing the promise to appear portion of the Notice to Appear.

15. Defendant appeared specially and not generally before the Clerk to file a notice to quash the illegal service of summons (notice) and to dismiss the allegations for want of personam jurisdiction.

16. Defendant subsequently received a U.S. Mail communication threatening constructive restraint⁴ and indicating an intention to proceed against Defendant in absentia should Defendant fail to appear before the court or comply with the Plaintiffs demand for pretextual remuneration.⁵

³ Plaintiffs improperly refer to this instrument as a “ticket” or “citation” as shown by the record. The vehicle code identifies tickets and citations as types of notices placed on unoccupied vehicles.

⁴ Threatening restraint against Defendants license, facilitated by DMV administrative process, thus interfering with Defendants ability to maintain a livelihood while sidestepping all due process protections.

⁵ California Penal Code § 836(a)(1) vis-à-vis California Vehicle Code §§ 40300, 40300.5

“A Court Trial: Short Cause has been scheduled for 11/29/2021 at 3:00 PM in Department 3. Failure to appear or comply may result in the trial being heard without your testimony. No continuances will be granted without a written time waiver on file and at least 10 days written notice to the court. You have selected to have a court trial on 11/29/2021. If you pay the fine in full before this date, your court trial will be cancelled, and no further action will be required on your case.”⁶

17. When American Canyon Peace Officer C. Roberts activated his emergency lights commanding Defendant to yield, the Peace Officer was not in possession of a warrant for Defendants arrest and had no reasonable cause to believe Defendant had committed, was committing or was about to commit a public offense in the officers presence. No California “Peace officer” has ever been legislatively delegated with the authority to arrest without warrant for conduct that does not rise to the level of a public offense.

18. A copy of all process, pleadings, and orders in the state court suit are being filed with this notice as required by 28 U.S.C. § 1446(a), along with any additional documentation identified in Local Rules of the United States District Court for the Northern District of California.

⁶ Constructive restraint is the only intermediate step that distinguishes this policy, pattern and practice from the actual restraint utilized in “Ferguson”. Defendant asks the Court to take judicial notice of Yancy v California in the United States District Court For The Southern District Of California Case 3:15-cv-00580-JM-PCL; Fant et al v Ferguson, in the Eastern District of Missouri, Eastern Division Case: 4:15-cv-00253-SPM, and United States v Ferguson Case: 4:16-cv-00180-CDP in the Eastern District of Missouri, Eastern Division as examples of this kind of abuse of the police power of the state. Pretending to protect children as a subterfuge for this kind of corporate revenue mustering is an outrage and an offense against public justice. The greatest threat to the security of society comes from the corruption of justice.

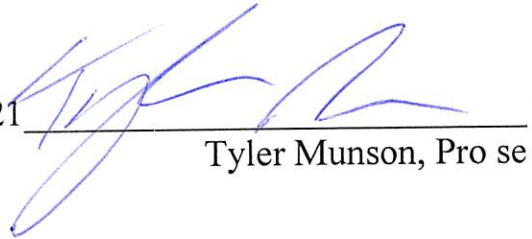
19. Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the action is pending.

PRAYER

ACCORDINGLY, Defendant prays that this cause be removed to the United States District Court for the Northern District of California (Oakland Division).

Respectfully submitted,

Tuesday, November 23, 2021



Tyler Munson, Pro se

PROOF OF SERVICE

I, Rik Wayne Munson, declare under penalty of perjury, pursuant to the laws of the United States of America, that on this 23rd day of November 2021, I placed the following list of original instruments in the U.S. Mail with postage fully prepaid addressed to:

United States District Court
Ronald V. Dellums Federal Building
& United States Courthouse
1301 Clay Street Suite 400 S
Oakland, CA 94612


1. Defendant's Notice of Removal
2. Defendant's Original Answer and Counter Claims
3. Defendants Memorandum of Law
4. Civil Cover Sheet with filing fee and Exhibits

I also placed photo copies of items 1-3 in the U.S. Mail with postage fully prepaid addressed to:

Napa County Superior Court
Criminal Courthouse
1111 Third Street
Napa, CA 94559

& to:

Allison Haley
Napa County District Attorney
1127 First Street, Suite C
Napa, CA 94559


_____ Tuesday, November 23, 2021
Rik Wayne Munson

Case Information

21TR004669 | The People of the State of California vs. Munson, Tyler Wayne

| | | |
|-------------|-------------------------------------|-------------|
| Case Number | Court | |
| 21TR004669 | Superior Court of Napa - Traffic | |
| File Date | Case Type | Case Status |
| 09/29/2021 | Adult Traffic | Active |

Party

Plaintiff

The People of the State of California

Address

Allison Haley
Napa County District Attorney
1127 First Street, Suite C
Napa CA 94559

Officer (Participant)

Roberts, Christopher

Address

American Canyon Police Department
911 Donaldson Way East
American Canyon CA 94503

Defendant

Munson, Tyler Wayne

DOB

XX/XX/XXXX

Address

218 Landana St
American Cyn CA 94503

Charge

Charges
Munson, Tyler Wayne

| | Description | Citation | Statute | Level | Date |
|-----|---------------------------------------------------------------------------|-----------|----------|------------|------------|
| 001 | VC22454(a)- I-Failure to Stop - Flashing School Bus Signal | AC2007770 | 22454(a) | Infraction | 09/15/2021 |

Events and Hearings

09/29/2021 Citation: Filed

10/15/2021 Motion: Criminal/Traffic/Juv Del ▼

Comment
to Quash

11/02/2021 Motion ▼

Original Type
Motion

Judicial Officer
Guadagni, Raymond A.

Hearing Time

2:00 PM

Result

Heard

Comment

to Quash

11/02/2021 Minute Order

11/02/2021 Notice of Hearing Court

11/29/2021 Court Trial: Short Cause ▼

Judicial Officer

Young, Scott R.L.

Hearing Time

3:00 PM

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA**

Amended Notice

Case #: 21TR004669

Tyler Wayne Munson

Tyler Wayne Munson
218 Landana St
American Cyn CA 94503

FILED

NOV - 2 2021

Clerk of the Napa Superior Court

By: 

Citation: AC2007770

A Court Trial: Short Cause has been scheduled for 11/29/2021 at 3:00 PM in Department 3.

Failure to appear or comply may result in the trial being heard without your testimony. **No continuances will be granted** without a written time waiver on file and at least 10 days written notice to the court.

You have selected to have a court trial on 11/29/2021. If you pay the fine in full before this date, your court trial will be cancelled, and no further action will be required on your case.

Charge(s):

22454(a) VC22454(a)-I-Failure to Stop - Flashing School Bus Signal

CERTIFICATE OF MAILING

I hereby certify that I am not a party to this cause and that a copy of the foregoing document was

- mailed (first class postage pre-paid) in a sealed envelope
- placed in attorney/agency folders in the Criminal Courthouse Historic Courthouse
- personal service – personally delivered to the party listed above

at Napa, California on this date and that this certificate is executed at Napa, California this Date. I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing within the United States Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

Date: 11/2/2021

Robert E Fleshman, Court Executive Officer


Catelyn Martinez

*An Assistive listening system is available upon request pursuant to Section 54.8(a0 of the Civil Code.

Tyler Munson
218 Landana St.
American Canyon, California 94503
By Special Appearance Only
in Pro per

ENDORSED

OCT 15 2021

CLERK OF THE NAPA SUPERIOR COURT
By: C. ROBLEDO
Deputy

Superior Court of the State of California
County of Napa

Case No. 21TR004669

Notice to quash illegal service of summons and to dismiss action for want of personam jurisdiction

Please take notice that Defendant, by special and not general appearance, herein moves the clerk to quash service of summons in this matter. Defendant, by special and not general appearance, challenges the jurisdiction of the Court over the person of the accused and challenges the service of summons under Code of Civil Procedure § 418.10 (a) (1) as the product of an illegal seizure, leaving the court without jurisdiction over the person of the accused. The police contact was an unwarranted seizure within the meaning of the fourth amendment and the conduct complained of is not conduct rising to the level of crime. Arrest without warrant is not authorized for conduct that does not rising to the level of crime.

A Motion to Quash is Proper

A Motion to Quash is the Proper Method for challenging the police contact as an illegal arrest, to challenge the resulting service of summons as violative of due process and therefore unlawful and thus to challenge the jurisdiction of the Court¹.

¹ Motion to quash, set aside, or dismiss information or indictment based upon improper form of charge. 5 Am Jur Trials 27, Pretrial Procedures and Motions in Criminal Cases §§ 13, 16. Motion to quash, set aside, or dismiss accusatory pleading—General form. 8 Am Jur Pl & Pr Forms (Rev), Criminal Procedure, Form 91. Forms: Motion to quash, dismiss or set aside—Insufficient evidence. 8 Am Jur Pl & Pr Forms (Rev), Criminal Procedure, Form 94.

As a defendant may waive his right to prevent the introduction of illegally seized evidence by failure to object, he may, by failure to move to quash the indictment or information, waive the illegality of an arrest. *People v. Garcia* (1959), 174 C.A.2d 525.

Code of Civil procedure § 418.10 (a)(1) holds in relevant part:

Motion to quash service of summons or to stay or dismiss action; procedure

(a.) A defendant on or before his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion either or both:

(1.) To quash service of the summons on the ground of lack of jurisdiction over him or her.

Defendant has not entered a plea and herein challenges the legality of the arrest and asserts that the service of the “summons” (*Notice to Appear AC2007770*) was unlawful in that the “stop” was an unlawful arrest because the

Forms: Motion to quash, dismiss, or set aside accusatory pleading on the ground that it does not conform to the requirements of law. 8 Am Jur Pl & Pr Forms (Rev), Criminal Procedure, Form 97.

Motion to quash, dismiss, or set aside—Ground—Court has no jurisdiction. 8 Am Jur Pl & Pr Forms (Rev), Criminal Procedure, Form 98. Forms: Motion to quash, dismiss, or set aside—Ground—Accusation does not state public offense. 8 Am Jur Pl & Pr Forms (Rev), Criminal Procedure, Form 102.

Motion to quash, dismiss, or set aside indictment—General form. 8 Am Jur Pl & Pr Forms (Rev), Criminal Procedure, Form 111. Forms: Motion to quash, dismiss or set aside—Ground—Not found, indorsed, or presented properly. 8 Am Jur Pl & Pr Forms (Rev), Criminal Procedure, Form 116.

Forms: Motion to quash, dismiss, or set aside indictment—witnesses' names not endorsed. 8 Am Jur Pl & Pr Forms (Rev), Criminal Procedure, Form 118. Forms: Motion to quash, dismiss or set aside—Ground—Requisite number of grand jurors did not concur. 8 Am Jur Pl & Pr forms (Rev), Criminal Procedure, Form 119.

Motion to quash, dismiss or set aside—Ground—Prosecution barred by statute of limitations. 8Am Jur Pl & Pr Forms (Rev), Criminal Procedure, Form 119.1. Forms: Motion to quash, dismiss or set aside information—General form. 8 Am Jur Pl & Pr Forms (Rev), Criminal Procedure, Form 131. Forms: Motion to quash, dismiss or set aside information—Ground—Failure to hold preliminary examination. 8 Am Jur Pl & Pr Forms (Rev), Criminal Procedure, Form 133.

Attack on indictment; pretrial motions—Motion to quash indictment. 13 Am Jur Trials, Defending Minor Felony Cases, § 20

seizure was not specifically authorized by our legislature² and because it was factually pretextual at its inception.

Statement of the Case

On Wednesday, September 15, 2021 at approximately 1:01 P.M. American Canyon Peace Officer *C. Roberts*, Serial No. 226 (*Roberts*) activated his emergency lights, commanding Defendant to yield to his display of the police power of the state, effectively seizing Defendant for an alleged violation of Vehicle Code §22454(a), an infraction.

After the unauthorized seizure of Defendant, an unauthorized investigative search was conducted by Roberts who then proceeded to issue “Notice to Appear” No. AC2007770, accusing Defendant of violating Vehicle Code §22454(a), an infraction. Defendant was only able to secure his release from police custody by signing the “Promise to Appear” portion of the “Notice to Appear”.

This incident occurred at or near the corner of Rio Del Mar and Eucalyptus Drive in the City of American Canyon, an incorporated area of Napa County.

Summary of the Argument

1. When *Peace Officer Roberts* activated his emergency lights displaying the police power of the state he seized Defendant without warrant within the meaning of Article 1 §13 of the California Constitution and within the meaning of the Fourth Amendment of the federal constitution.

² Authority to arrest without warrant under the vehicle code is found at §40300.5 which defers to Penal Code §836(a)(1) authorizing arrest without warrant when the peace officer has reasonable cause to believe a public offense has been, is being or is about to be committed in the officers presence. There is no other legislative delegation of authority for said “unwarranted arrest”

2. When *Peace Officer Roberts* activated his emergency lights he was without warrant and without probable cause to believe Defendant had committed, was committing, or was about to commit a public offense in his presence.
3. Infractions are not crimes,³ if they were, statutes denying assistance of counsel at public expense and statutes denying jury trial to one accused of “infraction” would violate the California constitutional guarantees for one accused of crime and would also conflict with Penal Code 689.
4. Courts that fail to follow the decisions of higher courts produce void judgments.
5. Statutes do not trump the constitution.
6. To be valid *Peace Officer Roberts*’ conduct must be specifically authorized by statute. Arrest without a warrant for non-criminal conduct has not been authorized, because it cannot be authorized by legislative statute.
7. There is no delegation of authority from the legislature for a sworn California Peace Officer to apply the police power of the state to non-criminal (civil) infractions of the Vehicle Code.
8. The exclusive procedures applicable to Peace Officers who enforce provisions of the Vehicle Code for offenses not declared to be a felony are those found in the Vehicle Code not the Penal Code⁴.
9. The legislative delegation of authority to seize without warrant under the California Vehicle Code is found at § 40300.5.

California Vehicle Code § 40300.5

“In addition to the authority to make an arrest without a warrant pursuant to paragraph (1) of subdivision (a) of Section 836 of the Penal Code, a peace officer may, without a warrant, arrest a person

³ People v. Sava 190 Cal.App.3rd 438

⁴ People v. Wohellben (1968), 261 Cal.App.2nd 461, People v. Superior Court (Simon) (1993), 7 Cal.3d 186

when the officer has reasonable cause to believe that the person had been driving while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug when any of the following exists:

(a) The person is involved in a traffic accident. (b) The person is observed in or about a vehicle that is obstructing a roadway. (c) The person will not be apprehended unless immediately arrested. (d) The person may cause injury to himself or herself or damage property unless immediately arrested. (e) The person may destroy or conceal evidence of the crime unless immediately arrested.”

Cal. Pen. Code § 836

“(a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur: (1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence. (2) The person arrested has committed a felony, although not in the officer's presence. (3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.”

10. *Peace Officer Roberts*’ was not legislatively delegated with the authority to subject defendant to the unwarranted seizure of his person. An arrest without warrant, not authorized by statute, is invalid. The issuance of the “Notice to Appear” (summons) was unlawful, constitutes a false arrest, and the compelled promise obtained under duress was equally unlawful.

For these reasons the Court is without personam Jurisdiction and in the absence of a valid charging instrument having been lawfully filed and served the Court only has the jurisdiction to dismiss the action for want of jurisdiction over the person of the accused.

Conclusion

Jurisdiction must be lawfully conferred

Assertions of jurisdiction over the person of the defendant must comport with due process in order to be enforceable either by the court rendering the judgment or by other state or federal courts.

The procedures on arrest without a warrant for non-felony offenses that are applicable to peace officers who enforce provisions of the Vehicle Code are those contained in the Vehicle Code not the Penal Code⁵ and thus we do not have to argue the constitutionality of perceptions that Penal Code 19.7 extends the power of a peace officer to arrest without warrant to non-criminal a.k.a. civil infractions.

The Prosecutions claim to personam jurisdiction in this case is grounded upon the service of summons. Service of a summons (Notice to Appear) was accomplished by arrest without warrant or probable cause of crime in violation of express constitutional protections and in excess of the constitutional delegation of authority provided in Vehicle Code Division 17, Chapter 2, § 40300.5. The police contact with defendant was not expressly authorized by statute and the service of summons was therefore unlawful at inception⁶.

Further, infraction legislation is constitutionally void for vagueness. For the reasons stated this Court cannot take cognizance of the person of the accused and has only the jurisdiction to dismiss for want of personam jurisdiction.

Relief Sought


"The right to relief without any showing of prejudice [is] limited to pretrial challenges of irregularities. ... If the issue is raised before trial ... prejudice is

⁵ People v. Wohellben (1968), 261 Cal.App.2nd 461, People v. Superior Court (Simon) (1993), 7 Cal.3d 186
⁶ See People v. Horvath (1982) 127 Cal.App.3d 398 , 179 Cal.Rptr. 577

presumed and the information is dismissed." (People v. Pompa-Ortiz, supra, 27 Cal. 3d at p. 529.)

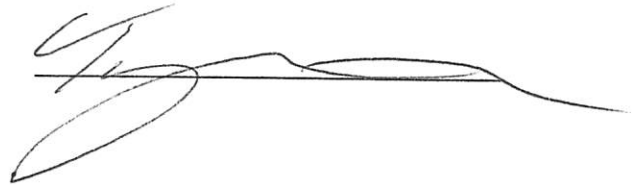
Defendant, appearing specially and not generally, hereby moves this Clerk to quash the Notice to Appear (summons) in this action for want of jurisdiction.

Respectfully Submitted


Tyler Munson, defendant in pro per

Proof of Service

A copy of this notice to quash illegal service of summons and to dismiss action for want of personam jurisdiction was personally served upon the Clerk on October 15th, 2021.



3. Because claims arising under the laws of the United States are asserted in Defendants counter claims, this Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331, 1333(1), 1343, and 1367.

4. Venue is properly within the District under 28 U.S.C. § 1391 (b) because all of the events and transactions giving rise to this action occurred in Napa County, California.

5. Jury trial is demanded.

STATEMENT OF FACTS

6. Defendant and his neighbor (Victor) work together at the same location and rather than travel in separate cars to the same place to work the same shift they elected to ride share.

7. After a routine shift on September 14, 2021 Defendant returned home, with his friend Victor, only to discover that Victor's car was missing. After further investigation Victor determined the car had been taken to police impound for allegedly having been unlawfully stored on the side street next to his corner lot home. Victor thus asked Defendant for a ride to get his car out of the impound lot before the daily storage fees amounted to more than he could raise.

8. On September 15, 2021 at approximately 1:01 P.M., while Plaintiff and his friend Victor were in route to the police impound, American Canyon Peace Officer C. Roberts, Serial No. 226 (Roberts) activated his emergency lights commanding Defendant to yield to his display of the police power of the state. Roberts then insisted Defendant produce his identification papers for inspection, and detained Defendant further while he performed warrant checks and filled out a Notice to Appear that he subsequently offered to Defendant that Defendant could opt to secure his release from police custody by signing the promise to appear portion of the Notice to Appear as an alternative to being immediately “taken” before a magistrate.

9. Defendant chose the lesser of evils and secured his release from police custody by signing the promise to appear portion of the Notice to Appear rather than being handcuffed and transported to a holding cell to await the availability of a magistrate.

10. Defendant appeared specially and not generally before the Court Clerk filing notice and motion to quash the illegal service of summons and to dismiss the allegations for want of personam jurisdiction.

11. Defendant subsequently received a communication threatening constructive restraint¹ and indicating an intention to proceed against Defendant in absentia should Defendants fail to appear before the court or comply with the Plaintiffs demand for pretextual remuneration.

CLAIMS FOR RELIEF

FALSE ARREST

12. When American Canyon Peace Officer C. Roberts activated his emergency lights, commanding Defendant to yield, the Peace Officer was not in possession of a warrant for Defendants arrest and had no reasonable cause to believe Defendant had committed, was committing or was about to commit a public offense in the officers presence.

13. No legislative delegation of authority has ever been granted to a California “Peace officer” to perform an unwarranted seizure in the complete absence of a public offense.

¹ Constructive restraint against was threatened against Defendants ability to use the rights of way belonging to the traveling public for ingress and egress in the ordinary course of maintaining a livelihood.

14. Defendant's compulsory restraint was a color of law false arrest amounting to deprivation of rights, privileges, and immunities secured by the Constitution and laws of the United States in violation of his right to be secure in his person as guaranteed by the Fourth Amendment to the United States Constitution; made applicable to the states through the 14th Amendment and made actionable by 42 U.S.C. §1983.

ABUSE OF PROCESS

15. Judicial authority is abused when the judge abandons his proper role and assumes that of advocate. In this instance it is clear to see that the court is attempting to side step the law in favor of local policy and the bottom line motivation is the extraction of valuable consideration from those making viatic use of the rights of way belonging to the traveling public to sustain their livelihood and exploiting the people's limiting their travels in response to Government edicts regarding the SARS-Cov2 pandemic.

MALICIOUS PROSECUTION

16. The Superior Court's perpetuation of this matter, without regard for the complete absence of personal jurisdiction, is not merely an abuse of process for the improper purpose of generating municipal revenue. It is an action in restraint of

rights, privileges, and immunities without lawful grounds or articulable facts creating any reasonable cause to believe the officer was observing crime prior to the initial restraint (a seizure). The abuse of process also amounts to malicious prosecution which brings us a little closer to the general issues of conflicting interests, equal protection of law and a level playing field.

PATTERN POLICY AND PRACTICE

17. Records from the California Department of Motor Vehicles and Superior Court of California prove, by admission, that unwarranted arrests under the pretext of a vehicle code violation are not merely an illicit source of revenue but a policy and practice of municipal corporations that have resorted to robbing the public to sustain a portfolio that is unsustainable on its own merits because the problems are structural.

18. They thus become cannibalistic and turn to plundering the productive wealth of the people to serve their corporate interests rather than protecting the rights of the people in their capacity as instrumentalities of a republican form of government. Ferguson is an example of what results when this kind of abuse of the police power becomes economically debilitating to its victims. The injury flowing

from this abuse of process is not abated when set aside nunc pro tunc years later² as, by then, the damage that has already been done cannot be undone.

PRAYER

WHEREFORE, Plaintiffs request that this Court issue the following relief:

19. A declaratory judgment that Robert's arrest of Defendant was unwarranted.

20. A declaratory judgment that Robert's arrest of Defendant was in violation of Defendants Fourth Amendment right to be secure in his person and possessions against unwarranted searches and seizures.

21. A declaratory judgment that Plaintiff's use of criminal procedures to arrest for non-criminal infractions is a violation of Defendants Fourth Amendment right to be secure in his person and possessions against unwarranted searches and seizures.

22. A declaratory judgment that Plaintiff's use of criminal procedures to arrest followed by characterizing post arrest prosecution procedures as civil, violates

² see DMV Notice of Set Aside Nunc pro tunc after 8 years: *Vehicle Code §13551(b) The department shall return the license to the licensee, or may issue the person a new license, whenever the department determines that the grounds for suspension, revocation, or cancellation did not exist at the time the action was taken, if the person is otherwise eligible for a driver's license.*

Defendants' due process and equal protection rights under the First, Fourth, Fifth, Sixth, Seventh and Fourteenth Amendments.

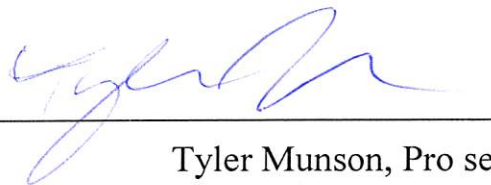
23. A declaratory judgment that Plaintiff's use of criminal procedures to arrest followed by characterizing post arrest prosecution procedures as civil, fails to provide Defendant with adequate notice of the nature and cause of the action against him.

24. A declaratory judgment that Plaintiff has engaged in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

25. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final trial in this matter, he will take judgment for his actual and exemplary damages, and that pre- and post-judgment interest and costs of court be assessed against Plaintiff s, and that Defendant/Counter Plaintiff, be granted such further and additional relief to which he may show himself justly entitled.

26. Respectfully Submitted,

Tuesday, November 23, 2021



Tyler Munson, Pro se

PROOF OF SERVICE

I, Rik Wayne Munson, declare under penalty of perjury, pursuant to the laws of the United States of America, that on this 23rd day of November 2021, I placed the following list of original instruments in the U.S. Mail with postage fully prepaid addressed to:

United States District Court
Ronald V. Dellums Federal Building
& United States Courthouse
1301 Clay Street Suite 400 S
Oakland, CA 94612

1. Defendant's Notice of Removal
2. Defendant's Original Answer and Counter Claims
3. Defendants Memorandum of Law
4. Civil Cover Sheet with filing fee and Exhibits

Photo copies of items 1-3 were placed in the U.S. Mail with postage fully prepaid addressed to:

Napa County Superior Court
Criminal Courthouse
1111 Third Street
Napa, CA 94559

& to:

Allison Haley
Napa County District Attorney
1127 First Street, Suite C
Napa, CA 94559



Rik Wayne Munson

Tuesday, November 23, 2021

California State Transportation Agency

DEPARTMENT OF MOTOR VEHICLES

LICENSING OPERATIONS DIVISION
P.O. BOX 942890, MAIL STATION J-233
SACRAMENTO, CA. 94290-0001
(916) 657-6525



=====
=====

FEB 27, 2018

**AMENDED
ORDER OF REINSTATEMENT**

PLEASE SHOW THIS NUMBER ON
YOUR CORRESPONDENCE

RIK WAYNE MUNSON
218 LANDANA ST
AMERICAN CYN, CALIFORNIA 94503

DRIVERS LICENSE NO. E0626145

THE ACTION TAKEN AGAINST YOUR DRIVING PRIVILEGE UNDER SECTION(S) 13365 OF THE
VEHICLE CODE (V.C.) HAS BEEN SET ASIDE UNDER SECTION 13551 EFFECTIVE FEB 10, 2010.

BEFORE A DRIVER LICENSE CAN BE ISSUED OR RETURNED, A REISSUE FEE OF \$ 55 IS DUE FOR
ACTION(S) AGAINST YOUR DRIVING PRIVILEGE (SECTIONS 14904 - 14906 V.C.). PLEASE INCLUDE
YOUR DRIVER LICENSE NUMBER WITH YOUR PAYMENT.

DEPARTMENT OF MOTOR VEHICLES

Memorandum of Points and Authorities

A routine traffic stop is indisputably a seizure within the meaning of the Fourth Amendment. United States v. Rodriguez-Rodriguez, 550 F.3d 1223, 1226 (10th Cir. 2008) Cited by the 10th Circuit Court of appeals in U.S. v Jose Luis Pena-Montes Dec. 7, 2009.

Defendant was seized without a warrant

A person is seized and thus entitled to challenge the government's action when officers, by physical force or a show of authority, terminate or restrain the person's freedom of movement through means intentionally applied. Florida v. Bostick, 501 U. S. 429, 434; Brower v. County of Inyo, 489 U. S. 593, 597. There is no seizure without that person's actual submission. See, e.g., California v. Hodari D., 499 U. S. 621, 626, n.2.

Arrest without warrant is presumed unlawful

"Any arrest made without a warrant, if challenged by the defendant, is presumptively invalid...the burden is upon the state" to justify it as authorized by statute, and as not violative of constitutional provisions. State v. Mastrian, 171 N.W.2d 695 (1969); Butler v. State, 212 So.2d 577 (Miss 1968)

The burden of showing the arrest was lawful is upon the prosecution

It is true, as stated in Badillo v. Superior Court, 46 Cal.2d 269, 272 [294 P.2d 23]: "... the defendant makes a prima facie case when he establishes that an arrest was made without a warrant ..., and the burden then rests on the prosecution to show proper justification. People v. Holguin, 145 Cal.App.2d 520

In order to show the police contact was valid the prosecution must show the deputy's actions were authorized by statute.

"To be valid, administrative action must be within the scope of authority conferred by the enabling statutes. . . . 'If the court determines that a challenged administrative action was not authorized by or is inconsistent with acts of the Legislature, that action is void.'" (US Ecology, Inc. v. State of California (2001) 92 Cal.App.4th 113, 131-132.) Hamilton v. Gourley (2002), 103 Cal.App.4th 351 [No. C038751. Third Dist. Oct. 31, 2002.]

"Any arrest made without a warrant, if challenged by the defendant, is presumptively invalid...the burden is upon the state" to justify it as authorized by statute, and as not violative of constitutional provisions. State v. Mastrian, 171 N.W.2d 695 (1969); Butler v. State, 212 So.2d 577 (Miss 1968)

A "peace officer" is either delegated with the authority to seize without a warrant or the arrest is not valid. People v. Horvath (1982) 127 Cal.App.3d 398 , 179 Cal.Rptr. 577.

Procedure on arrests for traffic violations is specified in division 17, chapter 2 of the Vehicle Code commencing with section 40300 and not the Penal Code¹.

Vehicle Code §40300 tells us that the exclusive procedures applicable to peace officers who enforce provisions of the vehicle code for offenses not declared to be a felony are those provided by the Vehicle Code. The specific authority provided to a peace officer to arrest without warrant is at Vehicle Code § 40300.5.

40300.5. In addition to the authority to make an arrest without a warrant pursuant to paragraph (1) of subdivision (a) of Section 836 of the Penal Code, a peace officer may, without a warrant, arrest a person when the officer has reasonable cause to believe that the person had been driving while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug when any of the following exists:

(a) The person is involved in a traffic accident.

¹ People v. Wohellben (1968), 261 Cal.App.2nd 461, People v. Superior Court (Simon) (1993), 7 Cal.3d 186

(b) The person is observed in or about a vehicle that is obstructing a roadway.

(c) The person will not be apprehended unless immediately arrested.

(d) The person may cause injury to himself or herself or damage property unless immediately arrested.

(e) The person may destroy or conceal evidence of the crime unless immediately arrested.

California Penal Code §836(a)(1)

Penal Code §836 (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

The above statutes reflect the entire legislative authority delegated to a peace officer for arrest without warrant for Vehicle Code offenses not declared to be a felony as expressed in § 40300.5 (1) "Under the influence" when one of conditions in subsections (a) through (e) can be said to apply or (2) under the authority provided at 836(a)(1) of the Penal Code which requires reasonable cause to believe a crime has been committed in the officers presence.

Those engaged in a highly regulated trade or business, such as the transportation of persons or property for compensation or profit, have a reduced expectation of privacy but none-the-less enjoy the protections of the Fourth Amendment (& Cal. Const. Art. 1 Sect. 13) against arbitrary state interference.

California Vehicle Code § 260:

(a) A “commercial vehicle” is a motor vehicle of a type required to be registered under this code used or maintained for the transportation of persons for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property.

(b) Passenger vehicles and house cars that are not used for the transportation of persons for hire, compensation, or profit are not commercial vehicles. This subdivision shall not apply to Chapter 4 (commencing with Section 6700) of Division 3.

(c) Any vanpool vehicle is not a commercial vehicle.

(d) The definition of a commercial vehicle in this section does not apply to Chapter 7 (commencing with Section 15200) of Division 6.

(Amended by Stats. 2003, Ch. 222, Sec. 1. Effective January 1, 2004.)

Defendant here was arrested for a non-criminal infraction of a civil code regulating the trade or business of transportation of persons or property for compensation or profit, an activity Defendant has never engaged in.

Due process requires Notice and a Meaningful Opportunity to be heard

The question of whether or not the legislature has delegated a peace officer with the authority to arrest without a warrant for a Vehicle Code infraction turns on the substantive nature of such infractions. The authorities are conflicting and the procedures are contradictory and incompatible.

Penal Code §15

A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

- 1. Death;*
- 2. Imprisonment;*

3. Fine;
4. Removal from office; or,
5. Disqualification to hold and enjoy any office of honor, trust, or profit in this State.
(Enacted 1872.)

Penal Code §16.

Crimes and public offenses include:

1. Felonies;
2. Misdemeanors; and
3. Infractions.

Penal Code §19.7

Except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions including, but not limited to, powers of peace officers, jurisdiction of courts, periods for commencing action and for bringing a case to trial and burden of proof. (Added by renumbering Section 19d by Stats. 1989, Ch. 897, Sec. 9.)

Penal Code §689.

No person can be convicted of a public offense unless by verdict of a jury, accepted and recorded by the court, by a finding of the court in a case where a jury has been waived, or by a plea of guilty. (Emphasis added)

Penal Code §19.6

An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him or her unless he or she is arrested and not released on his or her written promise to appear, his or her own recognizance, or a deposit of bail. (Added by renumbering Section 19c by Stats. 1989, Ch. 897, Sec. 8.) (Emphasis added)

Penal Code §1042.5

*Trial of an infraction shall be by the court, but when a defendant has been charged with an infraction and with a public offense for which there is a right to jury trial and a jury trial is not waived, the court may order that the offenses be tried together by jury or that they be tried separately **with the infraction being tried by the court either in the same proceeding or a separate proceeding as may be appropriate.** (Emphasis added)*

Government Code TITLE 2, DIVISION 3, PART 4, CHAPTER 5.

ARTICLE 1. General Provisions [13950 - 13951]

*(Article 1 added by Stats. 2002, Ch. 1141, Sec. 2.)
13951.*

As used in this chapter, the following definitions shall apply.

(b) (1) "Crime" means a crime or public offense, wherever it may take place, that would constitute a misdemeanor or a felony if the crime had been committed in California by a competent adult.

(2) "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. (Emphasis added)²

One accused of crime is entitled to assistance of counsel at public expense and a jury trial.

CALIFORNIA CONSTITUTION ARTICLE 1 DECLARATION OF RIGHTS

² Section 2331 of Title 18 of the United States Code is the codification of section 804 of the USA Patriot

Act.

SEC. 15. The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, and to be confronted with the witnesses against the defendant. The Legislature may provide for the deposition of a witness in the presence of the defendant and the defendant's counsel. Persons may not twice be put in jeopardy for the same offense, be compelled in a criminal cause to be a witness against themselves, or be deprived of life, liberty, or property without due process of law.

SEC. 16.

Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute...

The Judicial Council of California sponsored the 1967 infraction legislation and hailed their "non-criminal infraction legislation" as a milestone in their 2001 annual report,³ while the "Statewide Caseload Trends" statistics report grouped infractions with misdemeanors in the criminal case category.⁴

Atwater v City of Lago Vista 532 U.S. 318

³ 2001 Annual Report of the Judicial Council of California page 8 under "Milestones" list "1967 Council-sponsored legislation"

⁴ 2013 Annual Report of the Judicial Council of California page 5 and all throughout statistics for traffic and non-traffic infractions are listed with criminal process statistics.

"Criminal: The criminal case category is made up of felonies, misdemeanors, and infractions. The filing totals for the individual case types are as follows: felony filings represented 243,270 cases, misdemeanor filings totaled 1,047,594 cases, and infraction filings accounted for 5,607,727 cases."

Atwater is a case often cited by state appellate courts to conclude that unwarranted arrest for infractions are within constitutional limitations. There are necessary distinctions to be made in these kinds of cases. Lago Vista is in Texas. The opening sentences in Atwater are as follows: (Emphasis added)

*“Texas law makes it a **misdemeanor**, punishable only by a fine, either for a front-seat passenger in a car equipped with safety belts not to wear one or for the driver to fail to secure any small child riding in front. **The warrantless arrest of anyone violating these provisions is expressly authorized by statute**, but the police may issue citations in lieu of arrest.”*

Atwater was stopped for having an unrestrained child in a pickup truck. She argued that she should not have been arrested for a fine only offense. However, the offense for which Atwater was seized was classified as a minor misdemeanor. Misdemeanors are crimes under Texas law regardless of the punishment and the officers’ actions in that case were expressly authorized by statute.

This case is distinguishable from Atwater on every point except the seizure. Atwater’s arrest was authorized by statute and she was entitled to appointed counsel at public expense and a jury trial for the offense for which she was arrested.

In this case the conduct for which Defendant was arrested is non-criminal, Defendant’s arrest was authorized by statute and Defendant is subsequently

deprived of any right to counsel at public expense and deprived of jury trial when even civil tort defendants get a jury trial.

Statutes do not trump constitutions

A theory of amendment by implication not only guarantees ambiguity but also embraces the notion that the legislature can do by implication what they cannot do directly, and that is to amend the constitution by statute.

Jury trial is guaranteed to one accused of crime by California Constitution Article 1 section 16 and the constitution does not depend upon Penal Code 689 for its validity. If infractions are not crimes then they are civil. While there are specific criminal statutes listed in the Vehicle Code, the substantive nature of the code is civil regulatory. Companies engaged in the transportation of persons or property for gain, are the class of travelers regulated. Defendant has never been so engaged.

Further Defendant says Naught.

FILED

NOV 24 2021

CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA
OAKLAND OFFICE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

TYLER WAYNE MUNSON,

Defendant.

Case No. 21-cv-09155-JSC

**ORDER SETTING INITIAL CASE
MANAGEMENT CONFERENCE
AND ADR DEADLINES**

United States District Court
Northern District of California

IT IS HEREBY ORDERED that this action is assigned to the Honorable Jacqueline Scott Corley. When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, the Notice of Assignment of Case to a United States Magistrate Judge for Trial, and all other documents specified in Civil Local Rule 4-2. Plaintiffs or removing parties must file a consent or declination to proceed before a magistrate judge within 14 days of the filing of the complaint or the removal. All other parties must file a consent or declination within 14 days of appearing in the case. All parties who have made an appearance must file a consent or declination within 7 days of the filing of a dispositive motion or the case will be reassigned to a district court judge. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients shall familiarize themselves with that rule and with the material entitled "Dispute Resolution Procedures in the Northern District of California" on the Court ADR Internet site at <http://www.cand.uscourts.gov/adr>. A limited number of printed copies are available from the Clerk's Office for parties in cases not subject to the court's Electronic Case Filing program (ECF).

IT IS FURTHER ORDERED that plaintiff or removing defendant serve upon all

parties the brochure entitled "Consenting To A Magistrate Judge's Jurisdiction In The Northern District Of California", additional copies of which can be downloaded from the court's Internet website: <http://www.cand.uscourts.gov>.

CASE SCHEDULE – ADR MULTI-OPTION PROGRAM

| Date | Event | Governing Rule |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| 11/24/2021 | Notice of Removal Filed | |
| 2/3/2022 | *Last day to: <ul style="list-style-type: none"> • meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan | FRCivP 26(f) & ADR L.R.3-5 |
| | <ul style="list-style-type: none"> • file ADR Certification signed by Parties and Counsel (form available at http://www.cand.uscourts.gov) | Civil L.R. 16-8(b) & ADR L.R. 3-5(b) |
| 2/17/2022 | **Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule 26(f) Report and file Case Management Statement per Standing Order re Contents of Joint Case Management Statement (also available at http://www.cand.uscourts.gov) | FRCivP 26(a) (1) Civil L.R. 16-9 |
| 2/24/2022 | INITIAL CASE MANAGEMENT CONFERENCE (CMC) at 1:30 PM in: Courtroom E, 15th Floor Phillip Burton Federal Building 450 Golden Gate Avenue San Francisco, CA 94102 | Civil L.R. 16-10 |

* If the Initial Case Management Conference is continued, unless otherwise ordered this deadline is continued to 21 days in advance of the Initial Case Management Conference.

** If the Initial Case Management Conference is continued, unless otherwise ordered this deadline is continued to 7 days in advance of the Initial Case Management Conference.

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

**CIVIL STANDING ORDER FOR
MAGISTRATE JUDGE JACQUELINE SCOTT CORLEY**
(Revised February 23, 2016)

Parties shall comply with the procedures in the Federal Rules of Civil or Criminal Procedure, the Northern District of California's Local Rules and General Orders, and this standing order, all of which are available at <http://www.cand.uscourts.gov>. The parties' failure to comply with any of the rules or orders may be grounds for monetary sanctions, dismissal, entry of judgment, or other appropriate sanctions.

CALENDAR DATES

Civil motions are heard on Thursday at 9:00 a.m. During the months when Judge Corley is on criminal duty, the Court may move any Thursday 9:00 a.m. motions to Thursday afternoon.

Civil case management and status conferences are heard on Thursdays at 1:30 p.m. Pretrial conferences are at 2:00 p.m.

SCHEDULING

Parties should notice motions (other than discovery motions) pursuant to the local rules. Parties need not reserve a hearing date, but should confirm the Court's availability at <http://www.cand.uscourts.gov>. For scheduling questions, please contact Judge Corley's Courtroom Deputy, Ada Means at (415) 522-2015 or jsccrd@cand.uscourts.gov.

Parties seeking to appear telephonically at a hearing or case management conference must submit a written request to do so at least three days before the scheduled hearing.

CONSENT CASES

In civil cases that are randomly assigned to Judge Corley for all purposes, the parties should file their written consent to the assignment of a United States Magistrate Judge for all purposes, or their written declination of consent, as soon as possible. If a party files a dispositive motion (such as a motion to dismiss or a motion for remand), the moving party must file the consent or declination simultaneously with the motion.

In no event shall the consent or declination be filed later than the deadlines specified in Civil Local Rule 73-1(a)(1) and (2).

CHAMBERS COPIES AND PROPOSED ORDERS

Under Civil Local Rule 5-1(b) parties must lodge an extra paper copy of any filing and

mark it as a copy for “Chambers.” This includes chambers copies of Case Management Conference Statements. However, the parties do not need to submit chambers copies for stipulations, pro hac vice applications, and similar non-motion filings. Parties only need to submit chambers copies of other documents that (1) are related to a pending motion and/or discovery dispute and (2) exceed ten pages when combined. (For example, if a motion is 8 pages and a supportive declaration is 5 pages, chambers copies are required. However, if there is a 20-page stipulation and proposed order, no chambers copy is required.)

All chambers copies should be double-sided (when possible), three-hole punched along the left side of the page, and should bear the ECF filing “stamp” (case number, docket number, date, and ECF page number) along the top of the page. All exhibits shall be clearly delineated with labels along the right side. If the filing includes exhibits over two-inches thick, the parties shall place the chambers copy in a binder. In a case subject to electronic filing, chambers copies must be submitted by the close of the next court day following the day the papers are filed electronically. The chambers copies shall be marked “Chambers Copy” and submitted to the Clerk’s Office, in an envelope marked with “Magistrate Judge Corley,” the case number, and “Chambers Copy.”

Any stipulation or proposed order in a case subject to e-filing should, in addition to being e-filed, be submitted by email to jscpo@cand.uscourts.gov as a word processing attachment on the same day the document is e-filed. This email address should only be used for this stated purpose unless otherwise directed by the Court.

CIVIL CASE MANAGEMENT

No later than seven (7) days before the initial case management or status conference, the parties shall file a Joint Case Management Statement in full compliance with the Northern District of California’s general standing order for civil cases entitled “Contents of Joint Case Management Statement,” a copy of which is attached hereto.

Parties may not continue a case management, status, or pretrial conference without Court approval. Each party shall be represented in person at the Case Management Conference by counsel (or a party if in pro se), who shall be (1) prepared to address all of the matters referred to in the Northern District of California’s general standing order on Joint Case Management Statements; and (2) have full authority to enter stipulations and make admissions pursuant to that order. Permission for a party to attend by telephone may be granted, in the Court’s discretion, upon written request made in advance of the hearing if the Court determines that good cause exists to excuse personal attendance, and that personal attendance is not needed in order to have an effective conference. The facts establishing good cause must be set forth in the request.

All hearings, case management, status and pretrial conferences are audio recorded; court reporters are usually not provided. Parties may request a copy of either the audio recording (on CD) or a transcription of the audio recording or the court reporter’s

transcript if applicable by following the procedures set forth at <http://cand.uscourts.gov/transcripts>.

Amended Pleadings

If a party files an amended pleading, they shall concurrently file a redlined or highlighted version comparing the amended pleading to the prior operative pleading.

Documents filed on ECF

All exhibits to motions and/or discovery disputes should be separately filed on ECF (For example, if the motion is Docket No. 30, and the declaration with 10 exhibits is Docket No. 31, Exhibit A would be filed as Docket No. 31-1, Exhibit B would be Docket No. 31-2, and so on). All exhibits shall also be filed in a searchable OCR format where possible.

Motions to File Under Seal

Parties are reminded that court proceedings are presumptively public, and no document shall be filed under seal without request for a court order that is narrowly tailored to cover only the document, the particular portion of the document, or category of documents for which good cause exists for filing under seal. If a party wishes to file a document under seal, that party shall first file an administrative motion to seal in accordance with Local Rule 79-5.

The parties need not file paper copies of the administrative motion to seal with the clerk's office. The parties only need to submit chambers copies of the administrative motion to seal and related filings. Chambers copies should include all material — both redacted and unredacted — so that the chambers staff does not have to re-assemble the whole brief or declaration, although chambers copies should clearly delineate which portions are confidential (via highlighting). Chambers copies with confidential materials will be handled like all other chambers copies of materials without special restriction, and will typically be recycled, not shredded. **If the parties wish to dispose of documents filed under seal in some other way, they must expressly indicate as much in their sealing motion and make arrangements to pick up the documents upon disposition of the motion.**

CIVIL DISCOVERY

Parties should be mindful of the December 1, 2015 amendments to the Federal Rules of Civil Procedure, and in particular, the directive in Rule 1 that the Rules “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding”, and the proportionality requirements for discovery under Rule 26(b)(1).

Discovery disputes referred from a district court judge and those which occur in cases which are assigned to Judge Corley for all purposes through consent of the parties shall follow the same procedures as set forth below:

Upon referral from a District Judge or upon the development of an impasse with respect to discovery in a pending case assigned to Judge Corley, the parties must first meet and confer. That is, counsel for each party shall meet and confer in person, or, if counsel are located outside the Bay Area, by telephone, to attempt to resolve their dispute informally. A mere exchange of letters, e-mails, telephone calls or facsimile transmissions does not satisfy the meet and confer requirement.

If the parties are unable to resolve their dispute informally after a good faith effort, **including meet and confer efforts conducted by lead counsel**, the parties have two options:

- 1) If the dispute is straightforward, or the parties believe some initial informal guidance from the Court may help the parties resolve their dispute without the need for briefing, the parties may contact Judge Corley's Courtroom Deputy, Ada Means at (415) 522-2015 to arrange a telephonic conference with Judge Corley. Judge Corley generally reserves time on Thursday afternoons from 2:00 p.m. – 4:00 p.m. for hearing such matters.
- 2) For more complex disputes, the parties shall prepare a joint statement of not more than five pages (12-point or greater font) stating the nature and status of the dispute and attesting to their good faith meet and confer efforts. Issue-by-issue, the joint letter shall describe each unresolved issue, summarize each party's position with appropriate legal authority, and provide each party's final proposed compromise before addressing the next issue. It is preferable that the parties file a separate letter for each dispute. Where necessary, the parties may submit supporting declarations and documentation of up to 12 pages. Parties are expected to plan for and cooperate in preparing the joint letter so that each side has adequate time to address the arguments.

The parties are strongly encouraged to submit a joint statement, but in the rare instances when a joint statement is not possible, each side may submit a statement of not more than two pages (12-point font or greater).

The joint statement or individual statements shall be e-filed (unless the case is exempt from e-filing requirements) and chambers copies submitted as required herein. Whether joint or individual, the statement must be filed under the Civil Events category of "Motions and Related Filings > Motions – General > Discovery Letter Brief."

Upon review of the parties' submission[s], the Court will advise the parties of how the Court intends to proceed. The Court may issue a ruling or schedule a telephone conference or in person conference with the parties, and at such conference may issue rulings, order more

formal briefing, or set further hearing dates. The Court may also order the parties to come to the courthouse to meet and confer in good faith.

Protective Orders

If parties believe a protective order is necessary, they shall, where practicable, use one of the model stipulated protective orders (available at <http://cand.uscourts.gov/stipprotectorder>). If the parties' proposed protective offer differs materially from the model protective order, the parties shall file a statement explaining each modification to the model order, along with a redline version comparing the proposed protective order with the model order.

Privilege Logs

If a party withholds material as privileged, *see* Fed. R. Civ. P. 26(b)(5) and 45(d)(2)(A), it must produce a privilege log as quickly as possible, but no later than fourteen days after its disclosures or discovery responses are due, unless the parties stipulate to or the Court sets another date. Privilege logs must contain the following: (a) the subject matter or general nature of the document (without disclosing its contents); (b) the identity and position of its author; (c) the date it was communicated; (d) the identity and position of all addressees and recipients of the communication; (e) the document's present location; and (f) the specific privilege and a brief summary of any supporting facts. Failure to furnish this information promptly may be deemed a waiver of the privilege or protection.

UNREPRESENTED (PRO SE) PARTIES

Parties representing themselves should visit the link titled "Representing Yourself" on the Court's homepage, www.cand.uscourts.gov. The link discusses the Court's "Legal Help Center" which provides free assistance at the San Francisco, Oakland, and San Jose courthouses for unrepresented parties. Parties may visit the Legal Help Centers at the San Francisco and Oakland courthouses or call (415)-782-8982 to make an appointment. Parties can make an appointment to visit the San Jose Legal Help Center by calling 408-297-1480.

IT IS SO ORDERED.


JACQUELINE SCOTT CORLEY
United States Magistrate Judge

**STANDING ORDER FOR ALL JUDGES
OF THE NORTHERN DISTRICT OF CALIFORNIA**

CONTENTS OF JOINT CASE MANAGEMENT STATEMENT

All judges of the Northern District of California require identical information in Joint Case Management Statements filed pursuant to Civil Local Rule 16-9. The parties must include the following information in their statement which, except in unusually complex cases, should not exceed ten pages:

1. Jurisdiction and Service: The basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's counterclaims, whether any issues exist regarding personal jurisdiction or venue, whether any parties remain to be served, and, if any parties remain to be served, a proposed deadline for service.
2. Facts: A brief chronology of the facts and a statement of the principal factual issues in dispute.
3. Legal Issues: A brief statement, without extended legal argument, of the disputed points of law, including reference to specific statutes and decisions.
4. Motions: All prior and pending motions, their current status, and any anticipated motions.
5. Amendment of Pleadings: The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings.
6. Evidence Preservation: A brief report certifying that the parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines"), and confirming that the parties have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action. *See ESI Guidelines 2.01 and 2.02, and Checklist for ESI Meet and Confer.*
7. Disclosures: Whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26, and a description of the disclosures made.
8. Discovery: Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or modifications of the discovery rules, a brief report on whether the parties have considered entering into a stipulated e-discovery order, a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and any identified discovery disputes.
9. Class Actions: If a class action, a proposal for how and when the class will be certified, and whether all attorneys of record for the parties have reviewed the Procedural Guidance for Class Action Settlements.
10. Related Cases: Any related cases or proceedings pending before another judge of this court, or before another court or administrative body.
11. Relief: All relief sought through complaint or counterclaim, including the amount of any damages sought and a description of the bases on which damages are calculated. In addition, any party from whom damages are sought must describe the bases on which it contends damages should be calculated if liability is established.

12. Settlement and ADR: Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including compliance with ADR L.R. 3-5 and a description of key discovery or motions necessary to position the parties to negotiate a resolution.
13. Consent to Magistrate Judge For All Purposes: Whether **all** parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment. ___ Yes ___ No
14. Other References: Whether the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.
15. Narrowing of Issues: Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.
16. Expedited Trial Procedure: Whether this is the type of case that can be handled under the Expedited Trial Procedure of General Order No. 64 Attachment A. If all parties agree, they shall instead of this Statement, file an executed Agreement for Expedited Trial and a Joint Expedited Case Management Statement, in accordance with General Order No. 64 Attachments B and D.
17. Scheduling: Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial.
18. Trial: Whether the case will be tried to a jury or to the court and the expected length of the trial.
19. Disclosure of Non-party Interested Entities or Persons: Whether each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-15. In addition, each party must restate in the case management statement the contents of its certification by identifying any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding. In any proposed class, collective, or representative action, the required disclosure includes any person or entity that is funding the prosecution of any claim or counterclaim.
20. Professional Conduct: Whether all attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.
21. Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.