

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 RAFAEL MATEOS SANDOVAL, et al.,

5 Plaintiffs,

6 v.

7 COUNTY OF SONOMA, et al.,

8 Defendants.

Case No. 11-cv-05817-TEH

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT; DENYING
DEFENDANTS' CROSS-MOTION
FOR PARTIAL SUMMARY
JUDGMENT; DENYING
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

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11 This matter is before the Court on Plaintiffs' motions for partial summary judgment
12 (Docket No. 266) and class certification (Docket No. 265), as well as Defendant County of
13 Sonoma's cross-motion for partial summary judgment (Docket No. 272). Pursuant to Civil
14 Local Rule 7-1(b), the Court found these motions suitable for resolution without oral
15 argument and vacated the hearing. June 19, 2015 Orders (Docket Nos. 276-77). After
16 carefully considering the arguments of the parties in the papers submitted, the Court now
17 GRANTS Plaintiff Mateos-Sandoval's motion for partial summary judgment, DENIES
18 Defendant County of Sonoma's cross-motion for partial summary judgment, and DENIES
19 Plaintiffs' motion for class certification, for the reasons set forth below.

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21 **BACKGROUND**

22 The underlying facts of this case are by now familiar to all involved; the following
23 summary provides the relevant context for these motions. Plaintiffs Rafael Mateos-
24 Sandoval ("Mateos-Sandoval") and Simeon Avendano Ruiz ("Ruiz") challenge the
25 impoundment of their vehicles for driving without a license. Both Plaintiffs had
26 previously been issued driver's licenses in Mexico. Sandoval Dep., Ex. D to Keck Decl. at
27 13 (Docket No. 198); Ruiz Dep., Ex. A to Jackson Decl. at 19 (Docket No. 195). On
28 January 27, 2011, Mateos-Sandoval's truck was seized by the Sonoma County Sheriff's

1 Office and impounded for thirty days under California Vehicle Code section 14602.6,
2 which authorizes the impoundment of the vehicle of a driver who has never been issued a
3 driver’s license. Ex. D to Cook Sandoval Summary Judgment Decl. at 37 (Docket No.
4 185-2). On September 1, 2011, Ruiz’s vehicle was impounded for thirty days under the
5 same provision. Ex. D to Cook Ruiz Summary Judgment Decl. at 32 (Docket No. 187).

6 In October of 2014, on cross-motions for summary judgment, the Court found that
7 the thirty-day impoundment of Plaintiff Ruiz’s vehicle was unreasonable, and therefore
8 violated the Fourth Amendment. October 29, 2014 Order at 19 (Docket No. 205). The
9 Court held that, regardless of the validity of the initial seizure, it was unreasonable to hold
10 Ruiz’s car for thirty days under the facts of his case. *Id.*

11 In February of 2015, the Court denied Ruiz’s motion to certify a class. February 3,
12 2015 Order at 10 (Docket No. 237). The Court found that Ruiz had failed to demonstrate
13 numerosity, commonality, or typicality, as required under Rule 23(a). *Id.* at 3-10. In
14 April, the Court denied Plaintiffs’ motion for leave to amend the complaint in order to
15 narrow the class definition, holding that “such amendment is unnecessary, [and therefore
16 futile,] as the class definition is established, if at all, in the order certifying the class.”
17 April 17, 2015 Order at 4 (Docket No. 260).

18 Mateos-Sandoval now moves for partial summary judgment on the same basis for
19 which partial summary judgment was granted for Ruiz – that the thirty-day impoundment
20 of his vehicle violated the Fourth Amendment, regardless of the validity of its initial
21 seizure. Defendant Sonoma County cross-moves for partial summary judgment on this
22 issue. Both Plaintiffs also move to certify classes of similarly situated individuals against
23 the City of Santa Rosa and County of Sonoma Defendants.

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LEGAL STANDARD

I. Summary Judgment

Summary judgment is appropriate if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is “genuine” if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.* At the summary judgment stage, the court may not weigh the evidence and must view it in the light most favorable to the nonmoving party. *Id.* at 255.

II. Class Certification

Class certification is governed by Federal Rule of Civil Procedure 23. Rule 23(a) requires that a party seeking certification demonstrate that:

- 1) the class is so numerous that joinder of all members is impracticable;
- 2) there are questions of law or fact common to the class;
- 3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- 4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

While Rule 23(a) does not expressly require a class to be ascertainable, courts have read the rule to imply this additional requirement. In *re* TFT-LCD (Flat Panel) Antitrust Litig., 267 F.R.D. 291, 299 (N.D. Cal. 2010) (abrogated on other grounds by *In re* ATM Fee Antitrust Litig., 686 F.3d 741, 755 n.7 (9th Cir. 2012)).

A party seeking certification must also demonstrate that the suit falls into one of the categories of class actions set out within Rule 23(b). *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001). Subsection (b)(1) allows certification where “prosecuting separate actions . . . would create a risk of: (A) inconsistent or varying adjudications . . . or (B) adjudications . . . that, as a practical matter, would be dispositive

1 of the interests of the other members not parties to the individual adjudications” Fed.
2 R. Civ. P. 23(b)(1). Subsection (b)(2) applies where the defendant acted or failed to act on
3 grounds generally applicable to the proposed class, “so that final injunctive relief or
4 corresponding declaratory relief is appropriate.” Fed. R. Civ. P. 23(b)(2). Subsection
5 (b)(3) applies where “questions of law or fact common to class members predominate over
6 any questions affecting only individual members, and that a class action is superior to
7 other available methods for fairly and efficiently adjudicating the controversy.” Fed. R.
8 Civ. P. 23(b)(3).

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10 **DISCUSSION**

11 **I. The Warrantless Impoundment of Plaintiff Mateos-Sandoval’s Vehicle for**
12 **Thirty Days Violated the Fourth Amendment**

13 **a. The warrantless impoundment of Plaintiff Mateos-Sandoval’s vehicle for thirty**
14 **days was pursuant to Sonoma County Policy**

15 Under *Monell v. Department of Social Services*, a municipal government may be
16 held liable under § 1983 “when execution of a government’s policy or custom, whether
17 made by its lawmakers or by those whose edicts or acts may fairly be said to represent
18 official policy, inflicts the injury.” *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 694
19 (1978). In determining a local government’s § 1983 liability, “[a] court’s task is to
20 ‘identify those who speak with final policymaking authority for the local government actor
21 concerning the action alleged to have caused the . . . violation at issue.’” *McMillian v.*
22 *Monroe Cnty., Ala.*, 520 U.S. 781, 784-85 (1997) (quoting *Jett v. Dallas Ind. Sch. Dist.*,
23 491 U.S.701, 737 (1989)).

24 “[N]ot every decision by municipal officers automatically subjects the municipality
25 to § 1983 liability.” *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986). “The fact
26 that a particular official—even a policymaking official—has discretion in the exercise of
27 particular functions does not, without more, give rise to municipal liability based on an
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1 exercise of that discretion.” Id. at 481-82. Rather, “municipal liability under § 1983
2 attaches where—and only where—a deliberate choice to follow a course of action is made
3 from among various alternatives by the official or officials responsible for establishing
4 final policy with respect to the subject matter in question.” Id. at 483. Evidence that a law
5 enforcement organization had a custom or practice that was ratified by an authoritative
6 policymaker can give rise to municipal liability under § 1983. *Larez v. City of Los*
7 *Angeles*, 946 F.2d 630, 646 (9th Cir. 1991).

8 “Whether a particular official has ‘final policymaking authority’ is a question of
9 state law.” *McMillian*, 520 U.S. at 786 (quotation and citation omitted; emphasis
10 removed). “This is not to say that state law can answer the question for us by, for
11 example, simply labeling as a state official an official who clearly makes county policy.”
12 Id. But a court’s “understanding of the actual function of a governmental official, in a
13 particular area, will necessarily be dependent on the definition of the official’s functions
14 under relevant state law.” Id. This is not a “categorical, ‘all or nothing’” inquiry; rather,
15 the question is “whether governmental officials are final policymakers for the local
16 government in a particular area, or on a particular issue.” Id. at 785.

17 The Sonoma County Defendants argue that they are not final policymakers here,
18 because they were merely enforcing section 14602.6, which is a state law. Summary
19 Judgment Opp’n at 7-8 (Docket No. 272). Defendants’ argument fails, because Sheriff
20 Freitas admitted that he was a Sonoma County Sheriff’s Office policymaker and because
21 the evidence demonstrates that the relevant policy in fact originated with the Sonoma
22 County Sheriff’s Office.

23 While Defendants maintain that they were not policymakers with respect to the
24 implementation of California Vehicle Code section 14602.6, their responsive pleading
25 undermines this contention. In response to Plaintiff’s allegation that Sheriff Freitas was a
26 Sonoma County Sheriff’s Office policymaker, and as such was responsible for enforcing
27 Office policies regarding the interpretation and/or application of California Vehicle Code
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1 section 14602.6, the County Defendants replied:

2 In response to the allegation . . . County Defendants admit that
3 Defendant Steve Freitas is the Sheriff-Coroner of the County of
4 Sonoma, is a policymaker of the Sonoma County Sheriff's
5 Office on certain issues within the legal purview of the Sheriff,
6 and enforces its policies that are within his legal purview with
7 respect to the application of California law, including but not
8 limited to, California Vehicle Code § 14602.6.

9 County Defendants' Ans. to Third Amended Complaint ¶ 9 (Docket No. 263). It is
10 therefore not in dispute that Sheriff Freitas is a policymaker for the County regarding those
11 aspects of enforcing section 14602.6 that are within his "legal purview."

12 There are two potential "policies" at issue for purposes of this motion: the policy of
13 impounding vehicles of drivers with foreign licenses under the purported authority of
14 section 14602.6, and the policy of keeping a vehicle so impounded for thirty days.
15 Defendants do not discuss the former policy, except to argue that any such policy
16 regarding the former is irrelevant to the latter. Summary Judgment Opp'n at 11. However,
17 this argument ignores the fact that one of the statutory grounds for releasing a vehicle early
18 is "[w]hen the vehicle was seized under [section 14602.6] for an offense that does not
19 authorize the seizure of the vehicle." Cal. Veh. Code § 14602.6(d)(1)(D). Defendants'
20 policy regarding whether 14602.6 authorized the impoundment of Plaintiff's vehicle is
21 therefore directly relevant to whether the vehicle would be kept for thirty days.

22 The Court concludes that Sonoma County had a local policy of interpreting section
23 14602.6 to authorize impoundment for vehicles driven by a driver who previously had
24 been issued a license in a foreign jurisdiction. At his deposition, Sheriff Freitas testified
25 that he interpreted section 14602.6 to apply to people who had been issued a driver's
26 license in a foreign jurisdiction. Ex. A to Cook Reply Decl. at 25-26 (Docket No. 273). In
27 response to the question of whether he understood that interpretation to be "the policy" at
28 the time of Mateos-Sandoval's vehicle's impoundment in January of 2011, he said "Yes."
Id. at 26. He also stated that nothing in the tow hearing report regarding the reasons for

1 denying release of Mateos-Sandoval’s vehicle was contrary to policy. *Id.* at 29.

2 The tow hearing documents further buttress this conclusion. Among the reasons
3 listed for denying Plaintiff’s request to have his vehicle released prior to the thirty-day
4 period, Sergeant Eaton noted that a Mexican driver’s license was not valid in California for
5 residents, and also mentioned that the vehicle had been lawfully towed in accordance with
6 state law and Sonoma County policy. *Post Storage Hearing Report, Ex. B to Cook Reply*
7 *Decl.* at 26. One month later, after Plaintiff’s counsel appealed the decision, Defendants
8 issued another report affirming their decision, noting in relevant part that “the tow and
9 impound . . . were done legally and within policy.” *Id.* at 27. Finally, months later, in
10 response to a complaint lodged by Plaintiff’s counsel, Sergeant Larry Doherty of the
11 Sonoma County Sheriff’s Office affirmed the decision that had been made not to release
12 Plaintiff’s vehicle prior to the thirty-day period, noting that “the deputies acted properly, in
13 accordance with state laws and our policies.” *Letter from Sgt. Doherty, Ex. E to Cook*
14 *Reply Decl.* at 35.

15 The Court has already determined that the “never been licensed” provision in
16 section 14602.6 cannot be interpreted to apply to a driver who received a license in a
17 foreign jurisdiction. *December 6, 2012 Order at 18-19 (Docket No. 50)*. Defendants’
18 position that Mateos-Sandoval’s vehicle was held for thirty days pursuant to California
19 Vehicle Code section 14602.6, even though the section did not apply to him, therefore was
20 a result of their own policy or practice of interpreting California Vehicle Code section
21 14602.6, rather than state law itself.

22 The Court finds that the County had a policy of applying section 14602.6 to drivers
23 such as Mateos-Sandoval, who had been issued a license in a foreign jurisdiction, and that
24 this policy was the moving force of his injury. Because section 14602.6 requires a law
25 enforcement organization to release a vehicle when the section does not authorize its
26 impoundment, the Court finds it irrelevant whether the County also had a policy of
27 keeping vehicles for the full thirty-days or releasing them early on a discretionary basis.

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1 Whether or not Defendants had a policy of releasing some vehicles early, they incorrectly
2 interpreted section 14602.6 to authorize them to keep Mateos-Sandoval's vehicle for thirty
3 days, and that policy was the moving force behind the injury at issue in this motion.

4 For the reasons discussed above, the Court finds that the County Defendants were
5 policymakers with respect to the application of California Vehicle Code section 14602.6 to
6 drivers such as Plaintiff Mateos-Sandoval, and, further, that the impoundment of Plaintiff's
7 vehicle for thirty days was done pursuant to Defendant's policy. The County Defendants
8 are therefore subject to potential liability under § 1983.

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10 **b. The Fourth Amendment applies to the prolonged impoundment of Plaintiff's**
11 **vehicle**

12 The Court previously held that the Fourth Amendment applies to Plaintiffs' claims.
13 October 29, 2014 Order at 5-8 (Docket No. 205). The County Defendants recognize this,
14 yet they spend five pages of briefing arguing that the Fourth Amendment does not apply in
15 this case.¹ Summary Judgment Opp'n at 16-21. The County has not provided a
16 convincing basis for the Court to alter its prior decision. The County's recent Ninth
17 Circuit cases only considered seizures of the person, not seizures of property. Summary
18 Judgment Opp'n at 16-19 (citing *Gant v. Cnty. of Los Angeles*, 772 F.3d 608 (9th Cir.
19 2014); *Tatum v. Moody*, 768 F.3d 806 (9th Cir. 2014); *Rivera v. Cnty. of Los Angeles*, 745
20 F.3d 384 (9th Cir. 2014)). The Court does not read *Payton v. New York*, 445 U.S. 573
21 (1980), a decision that recognized Fourth Amendment protections for seizures of the
22 person, as limiting Fourth Amendment protections for seizures of property in this case. As
23 the Court previously held, the cases of *United States v. Place*, 462 U.S. 696 (1983), *United*
24 *States v. Sullivan*, 753 F.3d 845 (9th Cir. 2014), and *United States v. Dass*, 849 F.2d 414

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26 _____
27 ¹ Although Defendants effectively ask the Court to reconsider its prior order, they did not
28 file an administrative motion requesting leave to file a motion for reconsideration, as
required by Civil Local Rule 7-9(a). Nonetheless, the Court considers, and rejects,
Defendants' argument.

1 (9th Cir. 1988) demonstrate that the Fourth Amendment applies to the prolonged detention
2 of validly seized property, at least in the Ninth Circuit. October 29, 2014 Order at 5-6.
3 These cases do not rely on the “full-blown seizure” distinction that Defendants attempt to
4 manufacture. *Id.* at 7-8. Plaintiff Mateos-Sandoval may therefore bring this claim under
5 the Fourth Amendment.

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7 **c. The thirty-day impoundment of Plaintiff Mateos-Sandoval’s vehicle violated the**
8 **Fourth Amendment**

9 This Court previously held that the thirty-day impoundment of Ruiz’s vehicle was
10 unreasonable, and therefore violated the Fourth Amendment. October 29, 2014 Order at
11 17. As discussed below, the facts of Mateos-Sandoval’s impoundment are similar to those
12 presented by Ruiz in the previous cross-motions for partial summary judgment, and, in
13 some places, even more favorable for Mateos-Sandoval. Thus, the Court comes to the
14 same conclusion here: the thirty-day impoundment of Mateos-Sandoval’s vehicle was
15 unreasonable and violated the Fourth Amendment.

16 As the Court previously noted, in evaluating whether a prolonged seizure of
17 property is reasonable under the Fourth Amendment, a court will “balance ‘the nature and
18 quality of the intrusion on the individual’s Fourth Amendment interests against the
19 importance of the governmental interests alleged to justify the intrusion.’” *Sullivan*, 753
20 F.3d at 855 (9th Cir. 2014) (quoting *Place*, 462 U.S. at 703). “Such determinations are
21 made on a case-by-case basis.” *Sullivan*, 753 F.3d at 855.

22 The Court previously recognized that “[a]n individual has a significant interest in
23 possessing the vehicle he owns,” because, “[f]or many people, the use of a car is essential
24 for such necessary activities as getting to work and purchasing food.” Oct. 29, 2014 Order
25 at 17-18. At the same time, the Court recognized that a resident of California who lacks a
26 valid driver’s license cannot legally drive in the state, and so such individuals have a
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1 “somewhat reduced interest in the possession of [their] vehicle[s] . . . at least until [they]
2 obtain[] a California license.” Id. at 18.

3 A comparison between the facts of the two Plaintiffs’ scenarios illustrates why it
4 was unreasonable to impound Mateos-Sandoval’s vehicle in this case. Both Plaintiffs
5 appear to have been residents of California without a valid California license. Ex. A Part 1
6 to Jackson Decl. at 19 (Docket No. 195-1); see also Ex. B to Cook Reply Decl. at 31. Both
7 Plaintiffs used their vehicles to drive to work. Ex. A Part 2 to Jackson Decl. at 17 (Docket
8 No. 195-2); see also Ex. D to Keck Decl. at 54 (Docket No. 198). At the time of his
9 September 1, 2011 traffic stop and subsequent vehicle impoundment, Ruiz had never
10 applied for a California driver’s license, and the Mexican license he was carrying at the
11 time had been expired for over a year and a half. Ex. A Part 1 to Jackson Decl. at 6, 12.
12 Mateos-Sandoval, on the other hand, had previously attempted to obtain a California
13 license, and was carrying a valid Mexican license at the time of his vehicle’s
14 impoundment. Ex. D to Keck Decl. at 47; see also Sonoma County Sheriff’s Office
15 Vehicle Release Authorization, Ex. D to Cook Sandoval Summary Judgment Decl. at 35
16 (Docket No. 185-2).

17 Additionally, both Plaintiffs promptly contested the impoundment of their vehicles
18 by seeking a tow hearing. Ruiz challenged the impoundment of his vehicle in person at the
19 Santa Rosa Police Department on September 2, 2011, and was informed by the front
20 counter without having held a tow hearing that his vehicle would not be released for thirty
21 days. Santa Rosa Police Department Record, Ex. D to Jackson Decl. at 1-3 (Docket No.
22 195-3). Likewise, Mateos-Sandoval attempted to retrieve his vehicle prior to the thirty-day
23 impoundment period and was repeatedly denied a tow hearing. After multiple attempts
24 and with the assistance of his attorney, Mateos-Sandoval was eventually given a tow
25 hearing which was conducted over the phone on February 2, 2011 – six days after his
26 vehicle’s January 27, 2011 impoundment. Ex. C to Cook Reply Decl. at 33. Counsel
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1 requested the release of Plaintiff’s vehicle on several grounds, all of which were denied.
2 Id.

3 After the thirty-day period, Ruiz paid the administrative and storage fees and took
4 possession of his vehicle. Ex. D to Cook Ruiz Summary Judgment Decl. at 33 (Docket
5 No. 187). Mateos-Sandoval had his friend take possession of the vehicle after paying
6 roughly \$2,000 in fees. Sonoma County Sheriff’s Office Vehicle Release Authorization,
7 Ex. D to Cook Sandoval Summary Judgment Decl. at 35-37.

8 Finally, Ruiz had a few blemishes on his driving record at the time of his
9 impoundment, such as driving without a license, driving with a child outside of a seatbelt,
10 and not coming to a complete stop at a stop sign. Ex. A Part 1 to Jackson Decl. at 10, 13;
11 see also Ex. A Part 2 to Jackson Decl. at 5. There is no evidence that Mateos-Sandoval
12 had anything other than a clean driving record at the time of his vehicle’s impoundment.
13 Summary Judgment Reply at 4-5.

14 In short, for virtually all of the factors that the Court has considered, the thirty-day
15 impoundment of Mateos-Sandoval’s vehicle was even more unreasonable than the
16 impoundment of Ruiz’s. The Court has already determined that the thirty-day
17 impoundment of Ruiz’s vehicle violated the Fourth Amendment. After considering the
18 individual circumstances of the thirty-day impoundment of Mateos-Sandoval’s vehicle, the
19 Court concludes that this impoundment also violated the Fourth Amendment. Plaintiff’s
20 motion for partial summary judgment is therefore GRANTED, and the County
21 Defendants’ cross-motion for partial summary judgment is DENIED.

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23 **II. Plaintiffs Fail to Satisfy the Rule 23(a) Requirements for Class Certification**

24 In this renewed motion for class certification, Plaintiffs still have not satisfied Rule
25 23(a)’s requirements. The party seeking certification carries the burden of demonstrating
26 that Rule 23 has been satisfied. Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2551
27 (2011). “A party seeking class certification must affirmatively demonstrate his compliance
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1 with the Rule—that is, he must be prepared to prove that there are in fact sufficiently
2 numerous parties, common questions of law or fact, etc.” *Id.* (emphasis in original).
3 “[C]ertification is proper only if the trial court is satisfied, after a rigorous analysis, that the
4 prerequisites of Rule 23(a) have been satisfied.” *Id.* (quotation omitted).

5 As discussed below, Plaintiffs satisfy the numerosity requirement of Rule 23(a) for
6 their proposed “Impound Without a Warrant” classes, but not for their proposed sub-
7 classes. They also fail to meet the commonality and typicality requirements of Rule 23(a).
8 As a result, the Court does not reach the questions of whether Plaintiffs also meet the
9 adequacy requirement of Rule 23(a), or the judicially created ascertainability requirement,
10 or whether the proposed classes would meet any of the requirements of Rule 23(b).

11
12 **a. Plaintiffs’ proposed classes are numerous but the proposed sub-classes are not**

13 Plaintiffs must show that the class is sufficiently numerous that joinder would be
14 impracticable. Fed. R. Civ. P. 23(a)(1). “The ultimate issue in evaluating this factor is
15 whether the class is too large to make joinder practicable, but courts generally find that the
16 numerosity factor is satisfied if the class comprises 40 or more members and will find that
17 it has not been satisfied when the class comprises 21 or fewer.” *Celano v. Marriott Intern.,*
18 *Inc.*, 242 F.R.D. 544, 549 (N.D. Cal. 2007) (citation omitted). Although Plaintiffs do not
19 need to “show the number of potential class members with certainty[,] . . . any common
20 sense inferences that plaintiffs urge the court to make [must] be based upon something
21 other than rank speculation untethered to real facts.” *Id.* at 550. A class may be divided
22 into subclasses that are each treated as a class. Fed. R. Civ. P. 23(c)(5). If the court
23 divides the class into subclasses then each subclass must independently meet the class
24 action requirements. *Bates v. United Parcel Service*, 204 F.R.D. 440, 443 (N.D. Cal.
25 2001) (citation omitted).

26 Here, Plaintiffs demonstrate that the Sonoma County “Impound Without Warrant”
27 class and the Santa Rosa “Impound Without Warrant” class, defined below, are both plenty
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1 numerous. The proposed classes are identical except for the named defendant:

2 “All persons whose vehicles were seized and impounded by
3 [either the Sonoma Sheriff’s Department or the Santa Rosa
4 Police Department] without a warrant and under the purported
5 authority of § 14602.6, at any time from December 2, 2009, up
6 through the present, where (a) the vehicle’s driver was issued a
7 citation from driving without a valid license (Cal. Veh. Code
§ 12500), and (b) the driver was not driving on a suspended,
revoked or restricted driver’s license, or driving while
intoxicated. Class damages exclude damages for the vehicle’s
initial seizure and removal from the street.”

8 Class Cert. Mot. at 2 (Docket No. 265-1).

9 Plaintiffs produce public records indicating that 1,157 vehicles were impounded by
10 Sonoma County officials for thirty days pursuant to § 14602.6(a)(1) where the driver was
11 unlicensed but not driving on a suspended or revoked license, or driving while intoxicated.
12 Cook Class Cert. Decl. ¶ 8 (Docket No. 265-2). For Santa Rosa, the number of vehicles is
13 1,290. Id. ¶ 12. These numbers are well above the 40-member threshold that courts
14 generally use to evaluate numerosity.

15 Plaintiffs also move to certify a “Foreign License” sub-class for each of the main
16 classes that include the additional requirement that “the driver, as of the date of the seizure,
17 had been issued a driver’s license from any jurisdiction, foreign or domestic.” Class Cert.
18 Mot. at 5. Plaintiffs seek to make the sub-classes “opt-in” classes whereby “prospective
19 class members can attest whether the vehicle’s driver had been issued a foreign license.”
20 Id. Under such an approach, it would be unclear until after certification whether the sub-
21 classes would independently meet the numerosity requirement. Plaintiffs assert that, “it is
22 reasonable to assume the number [of sub-class members] is well in excess of that needed
23 for class certification.” Id. In actuality, Plaintiffs are not aware of any potential class
24 members (other than Ruiz and Mateos-Sandoval) that fit into their proposed sub-classes.
25 Id. at 8. Plaintiffs’ assumption that the sub-classes are numerous is based on nothing more
26 than “rank speculation” and, thus, Plaintiffs have failed to demonstrate that the sub-classes
27 are numerous.

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1 Therefore, Plaintiffs have demonstrated numerosity as required by Rule 23(a)(1) for
2 the “Impound Without Warrant” classes but have failed to show numerosity for the sub-
3 classes.

4
5 **b. Plaintiffs fail to show commonality**

6 Plaintiffs have failed to show that “there are questions of law or fact common to the
7 class.” Fed. R. Civ. P. 23(a)(2). As the Supreme Court made clear in the Wal-Mart case,
8 commonality requires “a common contention . . . that is capable of classwide resolution —
9 which means that determination of its truth or falsity will resolve an issue that is central to
10 the validity of each one of the claims in one stroke.” Wal-Mart, 131 S. Ct. at 2551.
11 “[W]hether a search and seizure is unreasonable within the meaning of the Fourth
12 Amendment depends upon the facts and circumstances of each case.” Miranda v. City of
13 Cornelius, 429 F.3d 858, 864 (9th Cir. 2005) (quoting Cooper v. California, 386 U.S. 58,
14 59 (1967)).

15 In Miranda v. Bonner, 2012 WL 10972131 (C.D. Cal. Jan. 31, 2012), the court
16 refused to certify a class of individuals challenging impound decisions for lack of
17 commonality. Id. at *5. Applying Wal-Mart, the court held that “other than alleging that
18 they have all suffered from a violation of the same [impoundment] statute, Plaintiffs have
19 not demonstrated that a class-wide proceeding will generate common answers.” Id.
20 “Similar to the plaintiffs in Wal-Mart, the purported class here seeks to sue Defendants
21 about hundreds, if not thousands, of impoundment decisions all at once, each of which
22 requires a detailed factual analysis of the reasonableness of the impound.” Id.

23 Plaintiffs’ theory is that Defendants’ Fourth Amendment justifications for the
24 warrantless thirty-day impoundments, as distinguished from the vehicle’s initial seizure
25 and removal from the street, will not turn on the individual circumstances underlying an
26 officer’s decision to seize the vehicle and remove it from the street. Mot. at 2. Plaintiffs,
27 however, continually fail to acknowledge that the circumstances of each impoundment and
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1 subsequent decision to release a vehicle are different in each case.

2 For potential class members such as Ruiz and Mateos-Sandoval, it was
3 unreasonable for the City or County to hold their vehicles for thirty days, only to return
4 them after that time; these plaintiffs had friends or agents with valid California driver's
5 licenses available to take possession of the vehicle at the time of impoundment or shortly
6 thereafter, and they did not have serious violations on their driving record. See supra;
7 October 29, 2014 Order at 1-3. However, for other potential class members, it might not
8 have been unreasonable for the City to impound a vehicle for thirty days, for instance if the
9 owner of the car had never been licensed to drive in any jurisdiction, did not have a
10 California-licensed driver available to take possession of the car, and had a driving record
11 that included multiple, dangerous violations. The fact that this single question of Fourth
12 Amendment reasonableness could be answered differently for these different potential
13 class members demonstrates that Plaintiffs have not shown commonality.

14 Plaintiffs seek a holding in line with the ruling in Ruiz and Mateos-Sandoval's
15 cases that the warrantless thirty-day impoundment was unreasonable for an entire class,
16 but Plaintiffs have failed to demonstrate that the factual elements making up the claims of
17 all the class members are sufficiently common to the specific set of facts in Ruiz or
18 Mateos-Sandoval's cases. Plaintiffs argue that once a vehicle is seized and removed from
19 the street pursuant to section 14602.6, a threshold has been crossed and justification for all
20 impounds will be identical. Mot. at 4. The Court rejects this theory. Since the facts
21 surrounding each impound are different, even after the vehicle has been removed from the
22 street, there is not a question here common to all class members that can be resolved with a
23 single stroke. Thus, Plaintiffs have failed to satisfy the requirements of Rule 23(a)(2).

24
25 **c. Plaintiffs fail to show typicality**

26 Plaintiffs have also failed to show that their own claims are typical of the class that
27 they seeks to represent, as required by Rule 23(a)(3). "The test of typicality is whether
28

1 other members have the same or similar injury, whether the action is based on conduct
2 which is not unique to the named plaintiffs, and whether other class members have been
3 injured by the same course of conduct.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617
4 F.3d 1168, 1175 (9th Cir. 2010) (quotation omitted). “The commonality and typicality
5 requirements of Rule 23(a) tend to merge.” *Gen. Tel. Co. Sw. v. Falcon*, 457 U.S. 147,
6 157 n.13 (1982).

7 Where “a major focus of the litigation will be on a defense unique to” the class
8 representative, the representative “fails to satisfy the typicality requirement of Rule 23(a).”
9 *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 509 (9th Cir. 1992).

10 Plaintiffs rely on the theory that because their class definitions do not hinge on the
11 circumstances surrounding the initial seizure and removal of a vehicle and thus, there is no
12 need for a case-by-case consideration of the seizure for each vehicle under the community
13 caretaking exception, they have satisfied the typicality requirement. Mot. at 8. The Court
14 rejected this argument in its discussion regarding commonality, above. While the Court
15 agrees that the community caretaking analysis is of somewhat limited application here,
16 such as in cases where a class member would not have a licensed driver to take possession
17 of the car within the thirty-day impoundment period, this fact alone does not demonstrate
18 typicality.

19 Moreover, Plaintiffs proposed class definition is too broad. The classes include all
20 people who have had their vehicles impounded by Defendants for driving without a valid
21 license pursuant to section 14602.6. Mot. at 2. Despite Plaintiff’s insistence on referring
22 to impounds under section 14602.6 as “30 day impounds,” these classes include not only
23 people who actually had their vehicles held in impound for thirty days but also people who
24 were able to retrieve their vehicles prior to the end of the thirty-day period. Somebody
25 who had her car impounded for fifteen days has not suffered the same injury as somebody
26 who had his car impounded for thirty days; this question goes to more than just damages,
27 because whether a particular prolonged seizure is unreasonable under the Fourth
28

1 Amendment depends on its duration. Moreover, some of the proposed class members may
2 have been able to retrieve their vehicles in a matter of only a few days. Whereas this Court
3 found that the impoundment of Ruiz and Mateos-Sandoval's vehicles for thirty days was
4 unreasonable under their circumstances, the analysis and conclusions may have been
5 different if the impoundments had been for only a few days.

6 Therefore, Plaintiffs have not shown that the claims and injuries of Ruiz and
7 Mateos-Sandoval are typical of the claims and injuries of the other class members. Thus,
8 Plaintiffs fail to meet the requirements of Rule 23(a)(3).

9

10 **d. The Court does not reach the remaining Rule 23 factors**

11 Because Plaintiffs partially fail on one of the first three Rule 23(a) factors, and
12 completely fail on the other two, the Court does not consider whether they would serve as
13 adequate class representatives under Rule 23(a)(4), whether the proposed class members
14 are ascertainable, or whether they can satisfy any of the Rule 23(b) requirements.

15

16 **CONCLUSION**

17 For the reasons stated above, Plaintiff Mateos-Sandoval's motion for partial
18 summary judgment is GRANTED. Defendant County of Sonoma's cross-motion for
19 partial summary judgment is DENIED. Plaintiffs' motion for class certification is
20 DENIED WITH PREJUDICE.

21

22

23 **IT IS SO ORDERED.**

24

25 Dated: 07/09/15

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THELTON E. HENDERSON
United States District Judge