

Timeline re:
**Homeless Harassment in the City of San Rafael,
and Abuse of Process in Marin County Superior Court**

by Alexandra Wilson

Wednesday, 8–14–2013: My partner Kevin and I became stranded in San Rafael late in the evening. Due to the necessity of survival and lack of funds we found a place to sleep alongside the edge a city park, on a hillside where no one else was present and where the grass grew high.

Thursday, 8–15–2013: Kevin walked to buy coffee in the morning. When he returned to where I slept at approximately 7:10 a.m., **Officer J. Bean (badge #276)** had apparently followed him (unbeknownst to Kevin) and subsequently **accused me of violating the City of San Rafael's ordinance 8.10.090D “Camping in City Parks/Buildings.”**¹

I informed Officer Bean I was *not* camping and that camping is a *recreational* activity. I informed him we were not there for recreational purposes but rather we were homeless and had become stranded the night before, and that we slept there for survival purposes because we had no other option.

Officer Bean responded by informing me that it “looked like camping” to him. He then wrote me a NOTICE TO APPEAR (shown on following page) and **ordered me to sign the notice or he would arrest me**. Under duress, I signed the notice.

Note: It is my position that Officer Bean's actions were an example of **malfeasance**: he ignored my plea and compounded the stressful and dangerous circumstances I was in via misapplying the ordinance in a manner which caused me additional distress and hardship.

Additional note: I did not have a vehicle or phone and was not living in Marin County at the time. If I would have stayed in San Rafael until the court appearance scheduled on 9–5–2013 I would have been in danger of being arrested or cited again for “camping within city limits.”

malfeasance – 1. A wrongful, unlawful, or dishonest act; especially, wrongdoing or misconduct by a public official. — **malfeasant**, *adj.* — **malfeasor**, *n.* ²

Related Case Ruling:

New York Times: “Laws Punishing Homeless People for Sleeping in Public Are Cruel and Unusual, Court Rules” by Mihir Zaveri (Sept. 5, 2018). ³

1 **City of San Rafael, “SAN RAFAEL CITY ORDINANCES – JANUARY 2018”:**
<https://www.marincourt.org/data/UBPS/CitySanRafael.pdf>

2 **Black’s Law Dictionary *Deluxe Tenth Edition* by Henry Campbell Black, Editor in Chief Bryan A. Garner. ISBN: 978-0-314-61300-4**

3 <https://www.nytimes.com/2018/09/05/us/-homeless-sleeping-on-street-ruling.html>

**SAN RAFAEL
POLICE DEPT.**

CITATION
NUMBER

SR 1161209

NOTICE TO APPEAR

Traffic Nontraffic MISDEMEANOR

Date of Violation: 8/15/13 0710
Time: 0710
 AM PM
Day of Week: S M T W T F S
Case No.:

Name (First, Middle, Last): ALEXANDRA DISTANCE WILSON
 Owner's Responsibility (Veh. Code, § 40001)

Address: 16 Ritter St.

City: SAN RAFAEL State: CA ZIP Code: 94901
 Juvenile (Phone No.)

Driver Lic. No.: 75786417 State: CA Class: 4 Commercial: Yes No Age: 1 Birth Date: 04/02

Sex: F Hair: BLN Eyes: BLN Height: 5-10 Weight: 135 Race: W Other Description:

Veh. Lic. No. or VIN: State: COMMERCIAL VEHICLE (Veh. Code, § 15210(b))

Yr. of Veh.: Make: Model: Body Style: Color: HAZARDOUS MATERIAL (Veh. Code, § 353)

Evidence of Financial Responsibility: HAZARDOUS MATERIAL (Veh. Code, § 353)

Registered Owner or Lessee: Same as Driver

Address: Same as Driver

City: State: ZIP Code:

Correctable Violation (Veh. Code, § 40610) Booking Required Misdemeanor or Infraction (Circle)
YES NO Code and Section Description
 8.10.070.D. SEMC. No Camp. M

Speed Approx. P.F./Max Spd. Veh. Lmt. Safe Radar Continuation Form Issued N

Location of Violation(s) at: FAULKNER, 1408 MISSION AVE, SAN RAFAEL, CA City/County of Occurrence: W E

Comments (Weather, Road & Traffic Conditions) Accident S

Violations not committed in my presence, declared on information and belief.
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Arresting or Citing Officer: [Signature] Serial No.: 276 Dates Off: / /
Date: / / Name of Arresting Officer, If different from Citing Officer: Serial No.: Dates Off: / /

WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW
X SIGNATURE: [Signature]

WHEN: ON OR BEFORE THIS DATE: 8/15/13 TIME: 0710 A.M. P.M.
WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE.
WHERE: Marin County Superior Court - Civic Center
RM. C-10 (Floor C) HALL OF JUSTICE
3501 Civic Center Dr., San Rafael, CA 94903
Phone: 1-415-444-7180

To be notified
 You may arrange with the clerk to appear at a night session of the court. SEE REVERSE TR-130
Judicial Council of California
REV. 01-01-04 (Veh. Code, §§ 40500(b), 40513(b), 40522, 40600; Pen. Code, § 853.9)

March 2014: Still homeless and trying to get back on my feet in Nevada County, California, I received a phone call from Collections Manager Erica Hellmold from Marin County Enhanced Court Collections, who informed me I owed \$548 in relation to the citation Officer Bean gave me.

Outraged by this exorbitant fine and confused by the situation because I now thought Marin County was the party who was pressing charges, I informed M(r)s. Hellmold about Officer Bean's malicious action and told her that Marin County needs drop the charges and stop harassing me regarding this issue. She told me that this type of instance “happens all the time,” and that I could contact Legal Aid of Marin to “perform community service” and “get the charges dropped.” M(s)s. Hellmold gave me Legal Aid of Marin's phone number: (628)–253–5755.

I immediately called Legal Aid of Marin and requested they assist me in filing a class action lawsuit regarding *homeless harassment laws* (I was aware this ordinance was being applied to other homeless people after speaking with several on the street following the initial incident). The woman on the phone responded by informing me that “because Legal Aid of Marin is a 501c3 nonprofit corporation,” they are unable to assist with class action lawsuits.

Agitated and distressed, I called Marin County Enhanced Court Collections again and informed M(r)s. Hellmold that if Marin County did not drop the charges, I would file a class action lawsuit against the county for *homeless harassment laws* being enforced by the county. Because M(r)s. Hellmold responded with, “You won't hear from us again,” I hung up the phone under the impression she had deleted the fine from my record much the same as a bank or phone company customer service representative might waive a fee based on their personal discretion. It was not until years, on Friday, 1–11–2019, that I would find out this was not the case.

Friday 1–11–2019: Living in a vehicle in Quartzsite, AZ, I attempted to purchase some food, however my debit card was declined. I checked my account online and saw that my account had somehow gone from \$610 to \$0, so I called my bank and was told that a court ordered hold was placed on my account by California Franchise Tax. My banker gave me their phone number (1-800-658-0047) and reference number CT 1302 7993, and informed me that this was the result of a legal action “beyond of the bank's control.” I was told to contact them for more information or to challenge the hold.

After calling California Franchise Tax, the answering machine message informed me their office was closed until Monday. My money was gone and I didn't know why.

Because my boyfriend and I no longer had access to the \$610 in my account (which was all of our money), we made a cardboard sign requesting passers-by to donate so we could afford to eat. Although this is not an activity we normally do, we had no

other option. Small donations from passers-by are what we survived on for the weekend as we remained stranded in our vehicle as a result of the large sum of money taken from me without **due process** (re: *due process*: I was not provided with **due notice** regarding any motions, orders, penalties, or other actions associated with the alleged debt or case in general.)

due process – 1. The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including **notice** and the right to a fair hearing before a tribunal with the power to decide the case. — aka *due process of law*; *due course of law*.⁴

1. “Due process of law” implies and comprehends the administration of laws equally applicable to all under established rules which do not violate fundamental principles of private rights, and in a competent tribunal possessing jurisdiction of the cause and proceeding by hearing upon notice. *State ex rel. Sweezer v Green, 360 Mo 1249, 232 SW2d 897, 24 ALR2d 340*.⁵

due notice – 1. Sufficient and proper notice that is intended to and likely to reach a particular person or the public; notice that is legally adequate given the particular circumstance. — aka *adequate notice*.⁶

notice of motion – 1. Written certification that a party to a lawsuit has filed a motion or that a motion will be heard or considered by the court at a particular time.... [T]he courts in most jurisdictions require all motions to include a certificate, usually referred to as a certificate of service, indicating that the other parties to the suit have been given notice of the motion’s filing. Notice of any hearing or other submission of the motion must usually be provided to all parties by the party requesting the hearing or submission.⁷

1. A means of bringing a motion on for hearing. A formal notice by one of the parties to an action that a motion described therein will be made before the court at the time and place stated in the notice.⁸

4 **Black’s Law Dictionary *Deluxe Tenth Edition*** by Henry Campbell Black, Editor in Chief Bryan A. Garner. ISBN: 978-0-314-61300-4

5 **Ballantine’s Law Dictionary with *Pronunciations Third Edition*** by James A. Ballantine (*James Arthur 1871-1949*). Edited by William S. Anderson. © 1969 by THE LAWYER’S CO-OPERATIVE PUBLISHING COMPANY. Library of Congress Catalog Card No. 68-30931

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Monday, 1–14–2019: I called California Franchise Tax immediately after I woke up and was informed that the hold on my account came from a debt forwarded to their agency by Marin County Enhanced Court Collections. I was they could not provide me with any other information, and that I would need to contact them at 415-473-3150 to learn about or dispute the alleged court-ordered levy against my account.

“Steve” from Marin County Enhanced Court Collections answered the phone and informed me that the court-ordered debt was associated with the citation Officer Bean gave me on 1–15–2013. I told him I thought the debt was erased by M(r)s. Hellmold in March 2014, and he responded by transferring me to her.

M(r)s. Hellmold informed that she did not erase the fine and that that was a misunderstanding. I asked her if Marin County Enhanced Court Collections ever sent me *notice* regarding the alleged debt. She told me their agency is “not required to send notices,” and to contact Marin County Superior Courthouse (415-444-7070) to find out if they sent me notices.

I then checked my online account for my bank to see if anything had changed since I'd last checked on Friday, and saw that the hold on my account no longer showed, but instead \$610 was extracted from my account in two portions, labeled in my bank statement as follows:

- \$125 Legal Order Fee, LTS J011119000936
- \$485 Legal Order, LTS J011119000936

In a subsequent conversation shortly thereafter M(r)s. Hellmold informed me that the original fine attached to the citation had a **\$300 “civil assessment fee” and a \$15 “failure” fee** attached on Nov. 4, 2013. She also informed me that Marin County Enhanced Court Collections forwarded a court-ordered debt of \$548 against my account to California Franchise Tax on April 8, 2014.

Related Case Ruling:

Courthouse News Service: “Mandatory Court Fees for Poor Californians Ruled Unconstitutional” by Martin Macias jr. (1–9–2019).⁹

Tuesday, 1–15–2019: I called Marin County Superior Courthouse to inquire whether or not I was sent *notice* regarding any actions taken by the court in relation to this case. The female employee who answered told me that “the court was not required to provide notice” and that “the citation Officer Bean gave” me *was* the only notice I was required to be given for any subsequent actions taken within the court related to this case.

Aware I should have received notice of any court actions in accordance with due

⁹ <https://www.courthousenews.com/mandatory-court-fees-for-poor-californians-ruled-unconstitutional/?fbclid=IwAR19s-iHwtTYAB9Rsy1qUHqVlgm0pYHMiruoQ7wnswoQej9nwl25JJF4s-M>

process, I called San Rafael Police Department to request a copy of the original citation (page 2) in order to determine if that citation served as legally sufficient notice for any subsequent court actions; as suspected, *it did not*.

Wednesday, 1–16–2019: Upon calling, “Chris” (employee number 1186) from Superior County Superior Courthouse informed me that they have “no record” of a case number associated with my case, and that “all records” associated with the case “were destroyed.” Appalled and perplexed by this, I asked about a copy of the court order associated with the alleged debt, and she informed me they destroy records “after 5 years” of the initial incident (citation). They have no record of the court order. I asked to speak with a Supervisor regarding this and was transferred to “Melissa.” I left a message and have not received a call back.

Wednesday, 1–23–2019: I called Bank of America (“BOA”) customer service (800-432-1000) to request a copy of documentation received by them from California Franchise Tax (hoping to find the name and position of officer who presented to BOA documentation regarding levy placed against my account). Employee “Julian from Texas” (no employee number) informed that he would file a complaint on my behalf regarding “consumer protection protocol” which needs to be implemented to protect consumers from having their accounts drop to zero instantly without notice and without any way to appeal. Julian informed me that I cannot be provided with documentation received by BOA from California Franchise Tax, however he did provide me with Confirmation Number CD 915 836 877 and informed me I may learn more from California Franchise Tax via providing them with my Confirmation Number (which serves a similar function as a case number).

Friday 1–25–2019: Employee “Yvette G. “ informed me that California Franchise Tax received notice of the alleged “court-ordered debt” from Marin County Enhanced Court Collections on April 9, 2014. I asked her if California Franchise Tax had a copy of the alleged court order, and she informed me they do not. I asked her what *verification process* California Franchise Tax has in place to verify “court-ordered debts” are legitimate, and she informed me there is no such process. I informed her that Marin County Superior Courthouse had no record of the alleged court order associated with the debt, and that I lost the money from my account due to negligence on behalf of California Franchise Tax. I requested an address in which I might send a *demand letter* to, and she provided me with the following:

California Franchise Tax
P.O. Box 1328
Rancho Cordova, CA 95741

I also asked Yvette how I might go about having the money refunded into my account. She said Marin County Enhanced Court Collections would need to forward a notice to California Franchise Tax in order for me to receive a refund.

Friday, 1–25–2019: I called Erica Hellmold to request documentation related to my case, including a copy of the alleged court order. M(r)s. Hellmold informed me the agency does not possess any records they can provide me, and that they are not shown a copy of any court orders. “Judicial Officers” simply send over notice that a court-ordered debt allegedly exists; Marin County Enhanced Court Collections has no verification process in place. When I informed M(r)s. Hellmold that I was told by Chris at Marin County Superior Courthouse that they did not have a case number or *any records* regarding the alleged case against me (see Wednesday, 1–16–2019), and she told me that a “Records Retention Act” allows a court to destroy the records, and that Marin Superior Courthouse has a “general rule” of destroying after 5 years.

I asked M(r)s. Hellmold about the process Marin County Enhanced Court Collections has in place regarding *informing California Franchise Tax to refund my money*, and she suggested three ways in which this could potentially happen:

1. Contact Legal Aid of Marin and inform them I live out of state. Ask if they can assist via appearing in the local Community Court on my behalf. (I have not received a call back from Legal Aid of Marin yet, and their answering machine directs callers to “only leave *one* message.”)
2. If there is a Community Court where I live, request that that write a letter on my behalf to the Marin County Community Court. (There is not a community court where I currently live.)
3. (can't remember this one but it also did not sound viable in my situation – I will need to review the recorded phone call.)

Marin County Superior Court
P.O. Box 4988
San Rafael CA 94913

FORMS OF RELIEF I AM SEEKING:

1. Officer Bean (*see page 1*) should be charged with malfeasance, **malicious prosecution**, and reckless endangerment. (Note that I could not have stayed in San Rafael until the court appearance without risk of being ticketed and/or arrested again.)
2. Whether or not the City of San Rafael's *City Council* intended for the ordinance to be used to target homeless persons should be brought into question; if the City condones the officer's actions, the city should be charged with Aiding and Abetting and reckless endangerment.
3. Marin County Superior Court ought be charged with **abuse of process**.
4. California Franchise Tax ought be charged with negligence and court-ordered to

create a verification process re: court orders (see page 6).

5. Bank of America ought provide sufficient notice to customers when a levy is issued against an account so that customers have time to set up a payment plan or challenge the levy. Having an account drop to zero without notice (see page 3) endangers citizens and enables abuses of process occurring within the system.
6. A class action lawsuit against the State of California on behalf of citizens affected by *homeless harassment laws* and mandatory fines associated with them within the past several years.
7. Restitution and a public letter of apology from the city of San Rafael and Marin County. Please include compensation for time lost and stress and hardship caused by having to deal with the aftermath of the initial malicious prosecution caused by Officer Bean.

malicious prosecution – 1. The institution of a criminal or civil proceeding for an improper purpose and without probable cause. * The tort requires proof of four elements:

- (1) the initiation or continuation of a lawsuit;
- (2) lack of probable cause for the lawsuit's initiation;
- (3) malice; and
- (4) favorable termination of the original lawsuit. *Restatement (Second) of Torts §§ 674-81B (1977).*

2. The tort claim resulting from the institution of such a proceeding. * Once a wrongful prosecution has ended in the defendant's favor, he or she may sue for tort damages. — aka (in the context of civil proceedings) *malicious use of process*; (archaically) *malicious institution of civil proceedings*.¹⁰

1. A criminal prosecution begun in malice, without probable cause to believe it can succeed, and finally ending in failure. **34 Am J1st Mal Pros § 2.**

An action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein. ***Shedd v Patterson, 302 III 355, 134 NE 705, 26 ALR 1004; 34 Am J1st Mal Pros § 2.***¹¹

1. A criminal prosecution or civil suit commenced maliciously and without probable cause. After the termination of such a prosecution or suit in the defendant's favor, the defendant has the right to bring an action against the original plaintiff for the tort of "malicious prosecution."¹²

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¹² ***Ballantine's Law Dictionary Legal Assistant Edition*** by Jack Ballantine (*James Arthur 1871-1949*).

abuse of process — 1. The improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process's scope. — aka *abuse of legal process*; *malicious abuse of process*; *malicious abuse of legal process*; *wrongful process*; *wrongful process of law*.¹³

1. The malicious perversion of a regularly issued civil or criminal process, for a purpose, and to obtain a result not lawfully warranted or properly attainable thereby, and for which perversion an action will lie to recover the pecuniary loss sustained. **1 Am J2d Abuse P § 1.**

Malicious use of process is the employment of process for its ostensible purpose, but without reasonable or probable cause, whereas the malicious abuse of process is the employment of a process in a manner not contemplated by law, or to effect a purpose which such a process is not intended by law to effect. **1 Am J2d Abuse P § 2.**¹⁴

1. The use of legal process in a manner not contemplated by the law to achieve a purpose not intended by the law.¹⁵

Excerpt from Martin L. Newell's *A Treatise on the Law of Malicious Prosecution, False Imprisonment, and the Abuse of Legal Process* 7 (1892):

“Distinction between a malicious use and a malicious abuse of process. — There is a distinction between a malicious use and a malicious abuse of legal process. An abuse of legal process is where the party employs it for some unlawful object, not for the purpose which it is intended by law to effect; in other words, it is a perversion of it. For example, if a man is arrested, or his property seized, in order to extort from him, even though it be to pay a just claim, other than that in suit, or to compel him to give up possession of a deed or anything of value not the legal object of the process, it is settled there is an action for such malicious abuse of process. It is not necessary to prove that the action in which the process issued has been determined or to aver that it was sued out without probable cause.”

Excerpt from 52 Am. Jur. 2d Malicious Prosecution § 2, at 187 (1970):

“The distinction between an action for malicious prosecution and an action for abuse of process is that a malicious prosecution consists in maliciously causing process to be issued, whereas an abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect the improper use of a regularly issued process. For instance, the initiation of vexatious civil proceedings known to be groundless is not abuse of process, but is governed by substantially the same rules as the malicious prosecution of criminal proceedings.”

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