

1 DAVID S. KOSLOW  
30309 Keith Avenue  
2 Cathedral City, California 92234  
Phone Number: (760) 202-6838  
3 Email Address: koslowfineart@gmail.com  
Plaintiff David S. Koslow, Self-Representing  
4  
5  
6  
7

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

OCT 29 2021

C. Martinez

SO1

NOV 09 2021

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF RIVERSIDE

10 DAVID S. KOSLOW, an individual,  
11 Plaintiff,  
12 v.  
13 DATA TICKET, INC., a California Corporation;  
14 CITY OF CATHEDRAL CITY, a California  
15 Charter City; CHARLIE McCLENDON, an  
16 individual; ROBERT RODRIGUEZ, an  
17 individual; SANDRA MOLINA, an individual;  
18 STEVEN ANTHONY NAPOLITANO, an  
19 individual; and DOES 1 through 400, inclusive,  
20 Defendants.

21 THE STATE BAR OF CALIFORNIA, a Public  
22 Corporation,  
23 Defendant/Real Party in  
24 Interest.

) Case No.: CVPS 2103087

) **PLAINTIFF DAVID S. KOSLOW'S**  
) **SECOND AMENDED COMPLAINT FOR**  
) **I. DECLARATORY RELIEF (DEFENDANTS**  
) **DATA TICKET, INC. AND CITY OF**  
) **CATHEDRAL CITY) (CIV. PROC. §1060);**  
) **II. INJUNCTIVE RELIEF (DEFENDANT DATA**  
) **TICKET, INC.) (BUS. & PROF. §6155);**  
) **III. INJUNCTIVE RELIEF (DEFENDANT**  
) **STEVEN ANTHONY NAPOLITANO) (BUS. &**  
) **PROF. §6155); IV. INJUNCTIVE RELIEF**  
) **(DEFENDANTS CITY OF CATHEDRAL CITY,**  
) **CHARLIE McCLENDON, ROBERT**  
) **RODRIGUEZ, AND SANDRA MOLINA) (BUS.**  
) **& PROF. §6155); V. ORDER TRANSFERRING**  
) **PLAINTIFF'S INTEREST IN THIS ACTION TO**  
) **THE STATE BAR OF CALIFORNIA WITH**  
) **ORDER FOR THE STATE BAR TO**  
) **PROSECUTE AS PLAINTIFF/THE REAL**  
) **PARTY IN INTEREST OR AS CO-PLAINTIFF**  
) **(CIV. PROC. §§367, 368.5); AND VI. PUBLIC**  
) **INTEREST FEES (UPON MOTION TO BE**  
) **MADE THEREFOR) (CIV. PROC. §1021.5).**  
) **PRAYER FOR RELIEF.**

) LIMITED CIVIL CASE  
) Complaint filed: June 28, 2021  
) FAC filed<sup>1</sup>: July 12, 2021  
) SAC filed: October 29, 2021  
) Assigned to: PS1  
) TSC: 01/06/2022 (Telephonic)  
) Trial Date: None yet

25  
26  
27  
28 <sup>1</sup> Plaintiff's FAC, filed before service on any Defendant, does not count towards the 3-amendment limit. CIV. PROC. §430.41(e)(1).

1 Self-representing Plaintiff David S. Koslow appears herein and as and for his Second  
2 Amended Complaint (“SAC”) alleges as follows:

3 **PLAINTIFF**

4 1. David S. Koslow (hereinafter, “Plaintiff”) is an individual and a resident, taxpayer,  
5 and voting citizen of, and the owner of a residential property (in which he resides as his sole and  
6 year-round home residence) located within, the City of Cathedral City, County of Riverside,  
7 State of California. Plaintiff and his residential property are subject to the provisions of the  
8 Municipal Code of the City of Cathedral City and the ordinances adopted by, and the contracts  
9 entered into by, Cathedral City’s governing body, its City Council.

10 2. Plaintiff is the “any person” who, by statute, and without being required to show  
11 actual damages for standing to sue, is authorized to seek an order of this Court enjoining a  
12 *violation or threatened violation* of Section 6155 of the California Business & Professions Code  
13 which prohibits an individual, partnership, corporation, association, or *any other entity* from  
14 operating for the direct or indirect purpose, *in whole or in part*, of referring potential clients to  
15 attorneys, unless having first received certification as an authorized Lawyer Referral Service  
16 (“LRS”) by The State Bar of California (“State Bar”). Plaintiff is also the “any person” who is  
17 authorized by Section 6155 to seek an order of this Court enjoining any *attorney* from *accepting*  
18 a referral from an uncertified LRS of such potential clients. BUS. & PROF. §§6155(a), (e).<sup>2</sup>

19 3. Plaintiff is also the complainant in the Complaint filed with The State Bar of  
20 California against Defendant Data Ticket, Inc. (“Defendant Data Ticket”) and Defendant Steven  
21 Anthony Napolitano (“Defendant Napolitano”) alleging their respective violations of Section  
22 6155(a). Plaintiff’s State Bar Complaint was filed via a webpage recently added by the State Bar  
23 to its website by which the State Bar invites, receives, and investigates complaints by members  
24 of the public concerning LRSs. The complaints invited by the State Bar’s webpage may concern  
25 a State Bar certified LRS, an attorney receiving referrals from a State Bar certified LRS, or, as in  
26 the State Bar Complaint submitted by Plaintiff, an LRS *not* certified by the State Bar and an

27 \_\_\_\_\_  
28 <sup>2</sup> BUS. & PROF. §6155 is hereafter referred to simply as “Section 6155.”

1 attorney accepting referrals of clients from an *uncertified* LRS.

2 4. Shortly after Plaintiff filed his State Bar complaint against Defendant Data Ticket and  
3 Defendant Napolitano, the State Bar notified Plaintiff by letter that his Complaint was accepted  
4 for investigation and, if appropriate, prosecution, and that the Complaint was assigned to a  
5 specific State Bar investigator and a specific prosecutor. Plaintiff's State Bar complaint against  
6 these two Defendants is pending.

7 **JAMES H. RAYL (PETITIONER IN RELATED CASE)**

8 5. James H. Rayl ("Mr. Rayl") is a citizen of, and the owner of a residential property and  
9 an adjacent unimproved property both located within, Cathedral City. On February 9, 2021,  
10 Defendant Sandra Molina ("Defendant Molina"), a Code Compliance Officer for Defendant City  
11 of Cathedral City ("Defendant Cathedral City"), cited Mr. Rayl and his two (2) properties for  
12 Municipal Code nuisance violations with orders to abate. Within the strict ten-day appeal  
13 deadline, Mr. Rayl served timely appeals from the two (2) citations thereby perfecting his right  
14 of appeals, with the proceedings numbered by Defendant Cathedral City as Case No. CE 2020-  
15 1241 and Case No. CE-2021-0206, which were subsequently consolidated for hearing.

16 6. Mr. Rayl is the Petitioner in the Related Case now pending in Department PS1 of the  
17 above-entitled Court, the Honorable Kira L. Klatchko presiding, and captioned *James H. Rayl v.*  
18 *City of Cathedral City*, Petition for Writ of Mandate, Case No. CVPS2102433. In his Petition,  
19 Mr. Rayl requests the Court to vacate the Findings and Decision of the purported hearing officer  
20 Defendant Napolitano dated April 23, 2021 because, in part, of Defendant Napolitano's violation  
21 of Section 6155 and his refusal to recuse himself as hearing officer.

22 7. Mr. Rayl also filed a Complaint with the State Bar against Defendant Napolitano for  
23 his violation of the provision of Section 6155 prohibiting lawyers from accepting client referrals  
24 from uncertified LRSs. Mr. Rayl's State Bar Complaint is also pending.

25 **ERIC SCOTT VAIL, CITY ATTORNEY, CATHEDRAL CITY**

26 8. Eric Scott Vail, Esq. ("Mr. Vail"), an individual, is an attorney holding license number  
27 160333 from the State Bar, and since January 1, 2016, the effective date of the "Retainer  
28 Agreement for Legal Services" dated November 30, 2015 between Mr. Vail and Defendant

1 Cathedral City, has been the City Attorney designated by Defendant Cathedral City in the  
2 Retainer Agreement.<sup>3</sup> As pertinent to this SAC, the functions of Mr. Vail as City Attorney  
3 include preparing and/or approving all agreements, contracts, and other legal instruments  
4 required for the proper conduct of the business of Cathedral City, and approving the form of all  
5 contracts and agreements given to Cathedral City. MUN. CODE §2.16.030.C.

6 **ERICA LYNN VEGA, ASSISTANT CITY ATTORNEY, CATHEDRAL CITY**

7 9. Erica Lynn Vega, Esq. (“Ms. Vega”), an individual, is an attorney holding license  
8 number 246644 from the State Bar, and since January 1, 2016, the effective date of the “Retainer  
9 Agreement for Legal Services” dated November 30, 2015 between Mr. Vail and Defendant  
10 Cathedral City, has been the Assistant City Attorney designated by Defendant Cathedral City in  
11 the Retainer Agreement. As pertinent to this SAC, the functions of the Assistant City Attorney  
12 include assisting Mr. Vail, the City Attorney, in the performance of the functions of the City  
13 Attorney enumerated in MUN. CODE §2.16.030.

14 **DEFENDANT/THE REAL PARTY IN INTEREST**

15 **THE STATE BAR OF CALIFORNIA**

16 10. Created by the California State Legislature in 1927, The State Bar of California  
17 (hereafter, the “State Bar”) is a public corporation within the judicial branch of government.  
18 With its offices in Los Angeles and San Francisco, California, the State Bar is the administrative  
19 arm of the California Supreme Court in the regulation of the legal profession.

20 **DEFENDANT DATA TICKET, INC.**

21 11. Defendant Data Ticket is a California for-profit corporation doing business in  
22 Counties throughout the State of California (as well as in one or more other States), including  
23 doing business in the City of Cathedral City, County of Riverside.

24 12. Defendant Data Ticket is a *corporation* which is prohibited from operating for the  
25 direct or indirect purpose, in whole or in part, of referring potential clients to attorneys, without

26  
27 <sup>3</sup> Mr. Vail agreed to provide legal services charged under a not-to-exceed monthly retainer of \$32,250 for specified  
28 covered services and under an hourly rate schedule for his affiliated law firm’s attorneys (ranging as high as  
\$255/hour) and paralegals (as high as \$135/hour) for services not included in the services specified in the not-to-  
exceed monthly retainer.

1 complying with all of the requirements found in Section 6155. BUS. & PROF. §6155(a).

2 13. Defendant Data Ticket's website<sup>4</sup> (<http://www.dataticket.com>) states that the  
3 company is "[a] California corporation, serving [its] clients since 1989." The website states that  
4 Defendant Data Ticket has "400+" clients served across the United States, the clients including  
5 "cities, counties, universities, colleges, and other agencies." As relevant to this Complaint, the  
6 website states that Defendant Data Ticket:

7 **"[P]rovide[s] a full-service Adjudication Department dedicated to ensuring all**  
8 **citations within the adjudication process are handled in a timely manner."**  
9 (Emphases added.)

10 **"[Data Ticket, Inc.] work[s] with Independent Hearing Officers to schedule and**  
11 **perform Hearings."** (Emphases added.)

12 14. Under the title "Code Enforcement Solutions" in the section of Defendant Data  
13 Ticket's website, the following information appears:

14 **"Data Ticket, Inc. has been processing Administrative Citations since 2002. Our**  
15 **approach to Administrative Citations is far different from our approach to Parking**  
16 **Citations. Our staff has spent years working closely with Code Enforcement Officers and**  
17 **Code Enforcement Agencies learning the process inside and out. This knowledge has**  
18 **helped us develop a thorough, efficient system that benefits our Code Enforcement**  
19 **clients. From firework violations to graffiti violations and from weed abatement to**  
20 **noisy animal and animal license citations, our staff and services cover all code**  
21 **enforcement citation needs."** (Emphases added.)

22 15. Under the title "Our Administrative Citation Processing System provides the  
23 following services" on Defendant Data Ticket's website, the following information appears:

24 **"Adjudication Services – We provide a full-service Adjudication Department dedicated**  
25 **to ensuring all citations within the adjudication process are handled in a timely manner.**  
26 **All adjudication matters are provided online, eliminating the need to send document[s]**  
27 **through snail mail. In addition, we work with Independent Hearing Officers to**  
28 **schedule and perform Hearings."** (Emphases added.)

**DEFENDANT STEVEN ANTHONY NAPOLITANO**

16. Defendant Napolitano is an individual and an attorney holding license number  
212472 from the State Bar with his law office located in the City of Manhattan Beach, County of

---

<sup>4</sup> The information from the Data Ticket website presented here was captured on May 24, 2021.  
PLAINTIFF'S SECOND AMENDED COMPLAINT (Page 5 of 31)

1 Los Angeles, State of California. He does business throughout California, including in the City  
2 of Cathedral City.

3 17. Defendant Napolitano is a five-term City Councilman for the City of Manhattan  
4 Beach. As a City Councilman, Defendant Napolitano is required annually to file the public  
5 Statement of Financial Interest (Form 700) required of elected officials by the California Fair  
6 Political Practices Commission (“FPPC”). The public FPPC’s Form 700 requires disclosure of  
7 the identity of each income source but only when the amount of income from the income source  
8 is Ten Thousand Dollars (\$10,000.00) or more. For his Form 700 required by the FPPC for the  
9 calendar year 2019, Defendant Napolitano reported Defendant Data Ticket as an income source.

10 18. Defendant Napolitano, as an *attorney*, is prohibited from *accepting* a referral of  
11 potential client(s) from an *individual, partnership, corporation, association, or any other entity*  
12 operating for the direct or indirect purpose, in whole or in part, of referring potential clients to  
13 attorneys without complying with the certification requirements found in Section 6155. BUS. &  
14 PROF. §6155(a).

15 19. Defendant Napolitano maintains a law practice website<sup>5</sup> which advertises his legal  
16 services. On his professional website, Defendant Napolitano advertises, in pertinent part:

17 **“Steve is a highly trained Administrative Hearing Officer for city, county, and state**  
18 **agencies throughout California. Steve has conducted thousands of hearings,**  
19 **including in-person, written, phone, and online, regarding administrative citations**  
20 **and municipal code violations for a wide variety of matters.”** (Emphases added.)<sup>6</sup>

21 **“Steve Napolitano has over twenty-five years of experience in law, dispute**  
22 **resolution, government, public policy and more.”** (Emphases added.)

23 **“Steve has provided a full range of legal services, including adjudication, advocacy**  
24 **and counsel in both the private and public sectors on a wide variety of matters.”**  
25 (Emphases added.)

26 **“Steve is currently serving his fifth term as Mayor/City Councilmember for the City**  
27 **of Manhattan Beach. He has also served as Chief of Staff to Long Beach City**  
28 **Councilwoman Stacy Mungo and Senior Deputy to L.A. County Supervisor Don**

---

<sup>5</sup> The URL for Defendant Napolitano’s professional website is <https://www.napolitanolaw.org>.

<sup>6</sup> Statements from Mr. Napolitano’s law practice website were captured on May 24, 2021.

1 **Knabe. Steve has written and reviewed legislation and public policy and has**  
2 **advised many elected officials on both. He has a long track record of success on**  
3 **issues of economic development, public safety, infrastructure, education,**  
4 **homelessness, transportation, the arts and many others.”** (Emphases added.)

5 **“Steve has established an extensive network of relationships with federal, state and**  
6 **local leaders across Southern California and knows the procedures and processes**  
7 **required to get any job done.”** (Emphases added.)

8 20. Defendant Napolitano’s website statements promote his extensive experience of  
9 “performing” as Hearing Officer in Code Enforcement appeals and similar hearings. All or most  
10 of these “performances” were the result of referrals of clients made to Defendant Napolitano by  
11 Defendant Data Ticket.

12 21. Defendant Napolitano’s website statements promote his claims of close connections  
13 with government, governmental agencies, and government officials. These claims establish  
14 *prima facie* his unsuitability to “perform” as Hearing Officer in Code Enforcement and similar  
15 appeals in which citizens (like Mr. Rayl) assert government misconduct.

16 22. Because Defendant Data Ticket is not a certified LRS, it does not comply with the  
17 consumer protection regulations adopted by the State Bar applicable to certified LRSs. As a  
18 result, Defendant Data Ticket does not enforce the State Bar’s LRS consumer protection  
19 regulations on its “panel” of referral lawyers, including Defendant Napolitano. In fact,  
20 Defendant Data Ticket repeatedly advertises that the lawyers to whom it refers clients are  
21 “independent.”

## 22 **DEFENDANT CATHEDRAL CITY**

23 23. Defendant Cathedral City is a California Charter City located in Riverside County.  
24 Defendant Cathedral City is a “local agency.” GOV’T §54951.

25 24. Defendant Cathedral City is a contractual client of Defendant Data Ticket. See  
26 paragraph 50, *infra*. By contract, Defendant Data Ticket refers Defendant Cathedral City to  
27 attorneys who “perform” as Hearing Officers in Code Enforcement appeal hearings like the  
28 hearing at issue in the Petition for Writ of Mandate, *Rayl v. City of Cathedral City*.

29 25. Defendant Cathedral City is an *entity* which is prohibited from operating for the

1 direct or indirect purpose, in whole or in part, of referring potential clients to attorneys, without  
2 complying with all of the requirements found in Section 6155 of the California Business &  
3 Professions Code. BUS. & PROF. §6155(a).

4 26. The violations of Section 6155 by Defendant Data Ticket and Defendant Napolitano  
5 were aided and abetted by, coordinated by, collaborated with, enabled by, endorsed by, approved  
6 by, adopted by, permitted by, countenanced and ratified (through action and inaction) by  
7 Defendant Cathedral City, Defendant Charlie McClendon (“Defendant McClendon”), Defendant  
8 Robert Rodriguez (“Defendant Rodriguez”), and Defendant Molina. CIV. §2310; PENAL §31.

9 27. Defendant McClendon, Defendant Rodriguez, and Defendant Molina deliberately  
10 ignored, subverted, and violated provisions of the City of Cathedral City’s Municipal Code  
11 (“Municipal Code”) to enable the violation of Section 6155 by Defendant Data Ticket and  
12 Defendant Napolitano. In doing so, these three (3) Defendants and Defendant Cathedral City  
13 ceased to be mere “clients” of Defendant Data Ticket and, instead, became partners and joint  
14 venturers in Defendant Data Ticket’s violations of Section 6155.

15 **DEFENDANT CHARLIE MCCLENDON**

16 28. Defendant McClendon is an individual. He is, and at all times pertinent to the SAC  
17 has been, employed as the City Manager for Defendant Cathedral City. He is responsible to  
18 “[c]ontrol, order and give directions to all department heads who are subject to his . . .  
19 appointment and removal authority, and to subordinate officers.” MUN. CODE §2.08.060.C. As  
20 City Manager for the Defendant City, he has non-delegable responsibility to ensure that the  
21 Defendant City’s contract with Defendant Data Ticket complies with all applicable  
22 Constitutional due process requirements, state statutes, and local and City codes and regulations.  
23

24 29. Defendant McClendon is an *individual* prohibited from operating for the direct or  
25 indirect purpose, in whole or in part, of referring potential clients to attorneys, without  
26 complying with all of the requirements found in Section 6155. BUS. & PROF. §§6155(a).

27 30. The violations of Section 6155 by Defendant Data Ticket and Defendant Napolitano  
28 were aided and abetted by, coordinated by, collaborated with, enabled by, endorsed by, approved



1 by, adopted by, permitted by, countenanced and ratified (both by action and inaction) by  
2 Defendant McClendon. CIV. §2310; PENAL §31.

3 **DEFENDANT ROBERT RODRIGUEZ**

4 31. Defendant Rodriguez is an individual. At all times pertinent to the SAC, Defendant  
5 Rodriguez has been employed as the Director of Planning, Building, and Code Compliance of  
6 Defendant Cathedral City. As a department head, he supervises Defendant Molina. Defendant  
7 McClendon, the City Manager, who is responsible to “[c]ontrol, order and give directions to all  
8 department heads . . . ,” supervises Defendant Rodriguez. MUN. CODE §2.08.060.C.

9 32. Defendant Rodriguez is an *individual* prohibited from operating for the direct or  
10 indirect purpose, in whole or in part, of referring potential clients to attorneys, without  
11 complying with all of the requirements of Section 6155. BUS. & PROF. §§6155(a).

12 33. As the Director of Planning, Building, and Code Compliance of the Defendant City,  
13 Defendant Rodriguez has non-delegable responsibility for ensuring that all hearings, for which  
14 citizen appellants are entitled, comply with the due process guarantees contained in the City’s  
15 Municipal Code, and the due process guarantee of Hearing Officers whose actions and authority  
16 as arbitrators are legitimate under all applicable Federal, State and Municipal laws.

17 34. The violations of Section 6155 by Defendant Data Ticket and Defendant Napolitano  
18 were aided and abetted by, coordinated by, collaborated with, enabled by, endorsed by, approved  
19 by, adopted by, permitted by, countenanced and ratified (both by action and inaction) by  
20 Defendant Rodriguez. CIV. §2310; PENAL §31.

21 **DEFENDANT SANDRA MOLINA**

22 35. Defendant Molina is an individual.

23 36. Defendant Molina is, and at all times pertinent to the SAC has been, employed as the  
24 Code Compliance/Development Manager of the Defendant Cathedral City.

25 37. As the Code Compliance/Development Manager of the Defendant City, she is  
26 responsible for the issuance of citations and, in the event of an appeal from a citation, is  
27 responsible for submitting the appeal - ***NOT*** to Defendant Data Ticket – but, in accordance with  
28 the Municipal Code, to the hearing officer who then is responsible under the Municipal Code to

1 schedule and prepare the notice of hearing for the Appeals hearings at which the City's  
2 appellants are entitled by due process of law to have their matters heard by fair, qualified,  
3 unbiased, impartial, and duly selected (that is, lawfully selected) Hearing Officers for the  
4 resolution of their disputes with the Defendant Cathedral City..

5 38. Since the commencement of her employment with Defendant Cathedral City,  
6 Defendant Molina has continuously and knowingly and willfully violated the City's Municipal  
7 Code provisions which strictly regulate both the form, the origin, and the distribution and service  
8 of hearing notices. She has done so for the sole purpose of concealing from the City appellants  
9 the statutory, Municipal Code, and Constitutional due process illegality of the attorneys  
10 "performing" as Hearing Officers to whom Defendant Cathedral City has been unlawfully  
11 referred by Defendant Data Ticket.

12 39. Defendant Molina is an *individual* prohibited from operating for the direct or indirect  
13 purpose, in whole or in part, of referring potential clients to attorneys, without complying with  
14 all of the requirements found in Section 6155 of the California Business & Professions Code.  
15 BUS. & PROF. §6155(a).

16 40. The violations of Section 6155 by Defendant Data Ticket and Defendant Napolitano  
17 were aided and abetted by, coordinated by, collaborated with, enabled by, endorsed by, approved  
18 by, adopted by, permitted by, countenanced and ratified (both by action and inaction) by  
19 Defendant Molina. CIV. §2310; PENAL §31.

20 41. Notwithstanding her actual knowledge of the timely objections made by Mr. Rayl to  
21 Defendant Napolitano's "performance" as hearing officer in Mr. Rayl's City appeal hearing, at  
22 the hearing, Defendant Molina made no objection to the hearing proceeding, and, instead, gave  
23 her testimony notwithstanding Mr. Rayl's demand for Defendant Napolitano's recusal. She was  
24 neither reprimanded nor disciplined by Defendant McClendon (City Manager) or by her direct  
25 supervisor Defendant Rodriguez for her failure to object to Defendant Napolitano's refusal to  
26 recuse himself. When the Decision was rendered by Defendant Napolitano, Defendant Molina,  
27 with the full knowledge and consent of Defendant McClendon and Defendant Rodriguez, caused  
28 the purported Decision to be served on Mr. Rayl as if it were legally valid.

1           42. Defendant Molina knew that both of the two hearing notices to Mr. Rayl that she  
2 (rather than the hearing officer) prepared were defective under the Municipal Code. Neither  
3 Defendant McClendon nor Defendant Rodriguez reprimanded or disciplined her for the two (2)  
4 defective hearing notices, and Defendant McClendon and Defendant Rodriguez thereby ratified,  
5 adopted, endorsed, and approved her misconduct. Defendant Molina’s misconduct is therefore  
6 chargeable to each of them and to the Defendant Cathedral City.

7                           **THE THREE CATHEDRAL CITY DEFENDANTS**

8           43. Defendant McClendon, Defendant Rodriguez, and Defendant Molina (collectively  
9 referred to as the “Three Cathedral City Defendants”), in their violations of the Municipal Code  
10 alleged herein, and by their respective individual and/or collective approvals, permissions,  
11 ratifications through action and/or inaction, have aided and abetted Defendant Data Ticket and/or  
12 Defendant Napolitano and therefore have, under color of City law, subjected City appellants to  
13 the deprivation of their due process rights secured by the U.S. Constitution and laws including,  
14 without limitation, their right to fair and impartial hearing officers lawfully appointed in  
15 accordance with the Municipal Code, and not by the Contract between Defendant Data Ticket  
16 and Defendant Cathedral City (Exhibit “A” hereto) which, by its clause of exclusivity and other  
17 provisions, unlawfully purports to supersede the protections accorded citizen City appellants by  
18 the Municipal Code. 42 U.S.C. §1983.

19           44. At all times pertinent to this Complaint, McClendon, Rodriguez, and Molina had  
20 actual and constructive knowledge that Defendant Data Ticket was operating as an illegal LRS  
21 and that Defendant Napolitano was accepting client referrals from an illegal LRS..

22           45. Section 6155 authorizes the Court to issue injunctions against uncertified LRSs and  
23 attorneys who accept referrals from uncertified LRSs. Although Section 6155 makes no mention  
24 of injunctions against *clients* of the lawyers who accept uncertified LRS referrals, the conduct of  
25 the Defendant City and the Three Cathedral City Defendants in subverting and violating the  
26 Municipal Code in order to enable the illegal actions of Defendant Data Ticket and Defendant  
27 Napolitano are so egregious and go so far beyond the actions of a mere “client” that these  
28 subversions and violations are *de facto* actions of co-conspirators, partners, and/or joint venturers

1 in the illegal conduct of Defendant Data Ticket and Defendant Napolitano. In arranging for a  
2 lawyer to “perform” as hearing officer, the Defendant City and the Three Cathedral City  
3 Defendants have a duty under the Municipal Code to arrange for a hearing officer to act as a  
4 Third Party Neutral not only on behalf of Defendant City, as appellee, but also on behalf of the  
5 citizen, as appellant. On behalf of Defendant City as appellee, Defendant City was referred  
6 unlawfully by Defendant Data Ticket to lawyers, for example in Mr. Rayl’s case, to Defendant  
7 Napolitano. However, at the same time, the Defendant Cathedral City, in its role of facilitator  
8 for the hearing (and *not* in its role as appellee), was acting on behalf of citizen appellants. In  
9 acting on behalf of the citizen appellants, Defendant Cathedral City and the Three Cathedral City  
10 Defendants operated, as co-conspirators, partners, or joint venturers with Defendant Data Ticket,  
11 to violate Section 6155.

12 46. The Three Cathedral City Defendants, individually and collectively, are individuals  
13 who operate for the direct or indirect purpose, *in whole or in part*, of referring potential clients  
14 (the citizen appellants) to attorneys, without having received certification as an authorized  
15 Lawyer Referral Service (“LRS”) by The State Bar of California (“State Bar”).

16 47. The Defendant Cathedral City is an *entity* which operates for the direct or indirect  
17 purpose, *in whole or in part*, of referring potential clients (the citizen appellants) to attorneys,  
18 without having received certification as an authorized Lawyer Referral Service (“LRS”) by The  
19 State Bar of California (“State Bar”).

20 **DEFENDANTS DOES 1 THROUGH 400, INCLUSIVE**

21 48. The true names and legal capacities, whether individual, corporate, associate, or  
22 otherwise of the defendants sued herein under the fictitious names of DOES 1 through 400,  
23 inclusive, are unknown to Plaintiff, who therefore sues said defendants by such fictitious names.  
24 Each fictitiously named defendant is responsible in some manner for the violations of law and/or  
25 civil liabilities herein alleged. Plaintiff will amend his Complaint to show the true names and  
26 capacities of such defendants, as well as the manner in which each fictitious defendant is  
27 responsible for the violations of law and/or civil liabilities herein alleged, when these facts are  
28 ascertained.

1 49. Whenever in this complaint reference is made to any act of any corporate or local  
2 agency Defendant, unless otherwise stated, such allegation shall be deemed to mean that such  
3 corporate or local agency Defendant did the acts alleged in the complaint through its officer,  
4 directors, agents, employees, and/or representatives while they were acting within the actual or  
5 ostensible scope of their authority.

6 **THE CONTRACT BETWEEN DEFENDANTS**

7 **CATHEDRAL CITY AND DATA TICKET.**

8 50. On June 20, 2013, Defendant Cathedral City entered into that certain "Scope of  
9 Service and Performance Agreement" with Defendant Data Ticket, Inc., a true and correct copy  
10 of which is attached hereto and marked Exhibit "A" and fully incorporated herein by this  
11 reference thereto. (Exhibit "A" is hereafter referred to as the "DTI Contract.").

12 51. In Defendant Data Ticket's Response to Plaintiff's Requests for Admissions, Set  
13 One, served by Defendant Data Ticket (late) on September 27, 2021, Brock Westcott, Chief  
14 Operating Officer of Defendant Data Ticket, admitted on behalf of Defendant Data Ticket the  
15 genuineness of the DT Contract attached here and marked Exhibit "A."

16 52. The initial term of the DTI Contract was five years. It has automatically been  
17 renewed for one (1) year periods after the initial five-year term. The DTI Contract is currently  
18 still in effect.

19 53. Since January 1, 2016, when they became Defendant Cathedral City's City Attorney  
20 and Assistant City Attorney, respectively, neither Mr. Vail nor Ms. Vega have ever informed and  
21 advised Defendant Cathedral City's City Council that the DTI Contract is void and  
22 unenforceable for any of the reasons set forth in Plaintiff's First Cause of Action for Declaratory  
23 Relief. Instead, Defendant Cathedral City contends that the DTI Contract is valid and  
24 enforceable. A controversy therefore exists which the Court is requested to resolve by  
25 Declaratory Relief.

26 54. Sometime before April 15, 2008, and ending in March, 2021, Mr. Vail was also the  
27 City Attorney for the City of Hemet ("Hemet"). As Hemet's City Attorney, on or around April  
28 15, 2008, he "Approved as to Form" an agreement between Hemet and Defendant Data Ticket

1 (then dba Revenue Experts, Inc.), mis-titled as a “Consultant Services” Agreement. The April  
2 15, 2008 Agreement was actually an agreement for Defendant Data Ticket to provide *non-*  
3 consultancy services, including the lawyer referral services which are in dispute in this litigation.  
4 On or around June 17, 2010, Mr. Vail, as Hemet City Attorney, “Approved as to Form” an  
5 Agreement mistitled (again) as a First Amendment to “Consultant Services” Agreement between  
6 Hemet and Data Ticket, Inc. (then, still, dba Revenue Experts, Inc., a California corporation).  
7 Then, on or around October 28, 2016, Mr. Vail “Approved as to Form” an agreement between  
8 Hemet and Defendant Data Ticket, Inc., this time correctly titled “Scope of Service and  
9 Performance Agreement.” Hemet’s October 28, 2016 agreement with Defendant Data Ticket  
10 (hereafter, the “Hemet Contract”) provided an initial five-year term with one-year automatic  
11 renewals. The DTI Contract and the Hemet Contract are essentially identical, with identical  
12 provisions.

13 55. On September 20, 2021, by a declaration made under oath, Brook Westcott, Chief  
14 Operating Officer of Defendant Data Ticket, in response to Plaintiff’s Request for Admission of  
15 Genuineness of Document, verified that the document entitled “Scope of Service and  
16 Performance Agreement” between Data Ticket and Defendant Cathedral City and dated June 20,  
17 2013, is authentic. The document that Mr. Westcott verified as authentic is the “Scope of  
18 Service and Performance Agreement,” the DTI Contract, attached to this SAC as Exhibit “A.”

19 56. Defendant Data Ticket advertises on its website that it has contracts with local  
20 agencies throughout California. One of those local agencies is the City of Hemet. Another is  
21 Defendant Cathedral City.

22 57. Plaintiff will request leave to amend this SAC to add the City of Hemet and also,  
23 when discovered, each additional entity or local agency with which Defendant Data Ticket has  
24 entered into contracts similar or identical to the DTI Contract.

25 58. Section 6155 of the California Business & Professions Code is an expression of  
26 public policy of the State of California. The DTI Contract is contrary to California public policy.

27 59. Because Section 6155 is an unfair business practice, and therefore a misdemeanor  
28 offence, the DTI Contract is contrary to public policy. BUS. & PROF. §§17200 et seq.

1 60. Because the DTI Contract was entered into by the Defendant Cathedral City without  
2 the bidding process required by the Municipal Code, the DTI Contract is illegal, null, and void.  
3 MUN. CODE §§ 3.12.100, 3.12.120.

4 61. Because the DTI Contract was entered into by the Defendant Cathedral City without  
5 the bidding process required by the California Public Contract Code, the DTI Contract is illegal,  
6 null, and void. PUB. CONT. §§20100 et seq.

7 62. Because the DTI Contract violates the due process provisions of the Municipal Code,  
8 it is violative of public policy and, under color of state law, deprives citizen appellants of their  
9 due process rights under the U.S. and State Constitutions. 42 U.S.C. §1983.

10 **I.**

11 **PLAINTIFF’S FIRST CAUSE OF ACTION**  
12 **AGAINST DEFENDANT DATA TICKET**  
13 **AND DEFENDANT CATHEDRAL CITY**  
14 **FOR DECLARATORY RELIEF**  
15 **(CIV. PROC. §1060 et seq.)**

16 63. As and for his First Cause of Action For Declaratory Relief as against Defendant  
17 Cathedral City and Does 1 through and including Does 200, Plaintiff alleges as follows:

18 64. Plaintiff incorporates herein paragraphs 1 through and including 62, inclusive, as if  
19 set forth in full herein.

20 65. Plaintiff is a “person interested under a written instrument . . . or under a contract, or  
21 who desires a declaration of his . . . rights or duties with respect to another, or in respect to, in,  
22 over or upon property . . . .” This litigation concerns an actual controversy relating to the legal  
23 rights and duties of the Plaintiff and the Defendant Cathedral City.” Therefore, Plaintiff is  
24 entitled to bring this original action in this Superior Court “for a declaration of his . . . rights and  
25 duties in the premises, including a determination of any question of construction or validity  
26 arising under the instrument or contract.” Plaintiff “may ask for a declaration of rights or duties,  
27 either alone or with other relief, and the court may make a binding declaration of these rights or  
28

1 duties, whether or not further relief is or could be claimed at the time. The declaration may be  
2 either affirmative or negative in form and effect, and the declaration shall the force of a final  
3 judgment. The declaration may be had before there has been any breach of the obligation in  
4 respect to which said declaration is sought.”

5 CIV. PROC. §1060.

6 66. The introductory section of Title 13 of the Municipal Code of Defendant Cathedral  
7 City states:

8 “The purposes of this title [13] are to provide a just, equitable and practicable method for  
9 preventing, discouraging and/or abating certain conditions which endanger the life, limb,  
10 health, property, safety or welfare of the general public and to provide city staff with  
11 precise enforcement regulations that can be effectively applied and administered in a fair,  
expedient, and cost-efficient manner. CATHEDRAL CITY, CA. MUN. CODE Title 13,  
Chapter 13.10 (Purpose), §13.10.010 (Ord. 504 § 2, 1999).<sup>7</sup>

12 67. MUN. CODE §13.80.025 et seq. lists the conditions Cathedral City defines as “public  
13 nuisances.” Some of these conditions are related to properties (including residential properties),  
14 and some are unrelated to properties.

15 68. MUN. CODE §13.90.010 et seq. mandates how a Cathedral City code inspection  
16 officer must serve a property owner (including a residential property owner) with a notice of  
17 public nuisance and an order to abate.

18 69. Once a notice of public nuisance and of an order to abate is served in accordance  
19 with the Municipal Code, the property owner (including a residential property owner) has only  
20 ten (10) calendar days from the date of service of the notice in which to appeal the notice of  
21 public nuisance and of an order to abate by filing with Cathedral City a notice of appeal. MUN.  
22 CODE §13.90.120 et seq.

23 70. If service of the notice is filed within the ten-day deadline, the property owner’s  
24 notice of appeal invests the owner with a right to an administrative hearing before “the  
25 administrative hearing officer. “ MUN. CODE §13.90.100.

26 \_\_\_\_\_  
27 <sup>7</sup> The Cathedral City Municipal Code is hereafter referred to as “MUN. CODE” followed by the number of the  
28 applicable section (e.g., MUN. CODE §13.10.010). The Cathedral City Municipal Code may be viewed on an  
Internet browser at the following URL: <http://qcode.us/codes/cathedralcity/>.



1 71. The “city clerk or designee shall present any appeal filed pursuant to this chapter to  
2 the administrative appeals officer upon receipt of such appeal.” MUN. CODE §13.90.150.

3 72. Upon receipt from the city clerk of the appeal, the *administrative appeals officer*<sup>8</sup>  
4 ***schedules*** the public nuisance administrative appeal hearing. And as soon as practicable *after*  
5 *the hearing officer schedules the hearing*, the hearing officer “shall” prepare a notice of  
6 administrative appeals hearing (“hearing notice”), which “shall be in substantially the same form  
7 as follows:

8 “You are hereby notified that a hearing will be held before the Administrative Appeals  
9 Officer at \_\_\_\_\_ on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at the hour of  
10 \_\_\_\_\_ upon the Notice of Public Nuisance and Order to Abate served upon you. You  
11 may be present at the hearing. You may be, but need not be, represented by an attorney.  
12 You may present any relevant evidence at the hearing and you will be given a full  
13 opportunity to cross-examine all witnesses testifying against you.”

14 MUN. CODE §13.100.040.

15 73. The “appeals officer” gives ***a copy*** of the MUN. CODE §13.100.040 hearing notice to  
16 the city clerk who “shall,” at least ten calendar days prior to the date scheduled for the appeal  
17 hearing, cause “***a copy*** of said notice” to be delivered to each appellant personally or by certified  
18 mail. The city clerk also provides “***a copy*** of said hearing notice ***to***” the code compliance officer  
19 who issued the notice of public nuisance and of an order to abate.

20 MUN. CODE §13.100.050. (Emphases added.)

21 74. Of great significance to this SAP, the Municipal Code limits the authority of the  
22 appeals officer as follows:

23 **Limitations on authority of appeals officer.** The appeals officer’s authority to hear and  
24 consider appeals shall be limited to passing on only those appeals pertaining to matters  
25 within his or her subject matter jurisdiction. The appeals officer shall consider at the  
26 hearing on the appeal only those matters or issues which were specifically raised by the  
27 appellant in his or her appeal and which are relevant to the issues of the hearing. *The*  
28 *appeals officer shall not have the authority to waive any requirements of the municipal*  
*code and/or any applicable statutes, rules, codes or regulations, except as otherwise*  
*provided in this chapter.* MUN. CODE §13.100.020 (Emphases added.)

---

<sup>8</sup> In the City’s Municipal Code, the administrative appeals officer is sometimes referred to as the “hearing officer,”  
sometimes as the “appeals officer.”

1           75. The form of the notice of the appeals hearing required by the Municipal Code<sup>9</sup>  
2 creates a reasonable expectation on the part of any City appellant that the appeals officer will be  
3 a lawyer providing legal services as a Third Party Neutral under The State Bar of California's  
4 Rules of Professional Conduct Rule 2.4 (Lawyer as Third-Party Neutral) and complying with the  
5 Ethics Standards for Neutral Arbitrators in Contractual Arbitration adopted by the Judicial  
6 Council, effective July, 2002, and amended and reorganized, effective January 1, 2003, pursuant  
7 to statutory authorization found at HEALTH & SAFETY §1285.85 *et seq.*

8           76. Most of the Municipal Code provisions cited herein were adopted in 1999 and, with a  
9 few exceptions not relevant to this litigation, have continued unchanged to the present day.  
10 From 1999 and continuing to June 20, 2013, the hearing officers were selected in accordance  
11 with widely accepted, judicially normative, long-standing procedures, practices, and standards of  
12 national arbitration associations like the American Arbitration Association, to ensure that the  
13 selection of hearings officers were compliant with minimal standards of due process as defined  
14 by case law and the U.S. and California State Constitutions. In the period *prior to* June 20, 2013  
15 (the effective date of the DTI Contract, Exhibit "A"), upon notification of the filing of an appeal  
16 by a City appellant, the Desert Bar Association (hereafter, "DBA") would send by letter to  
17 Cathedral City and to the City appellant(s) a list containing the names of three (3) lawyers. The  
18 DBA letter would invite (but not require) each party to "strike off" one name (only) from the list  
19 of three names. Following the parties' responses, the DBA would make the choice of the name  
20 of a single lawyer from the names not stricken off the list by either or both parties to serve as the  
21 Third Party Neutral.

22           77. The Municipal Code does not contain any provision which provides guidance how  
23 the appeals officer is to be selected. However, due process guarantees of the U.S. Constitution  
24 and the California State Constitution apply once a City appellant has perfected an appeal by  
25 timely service of a notice of appeal. The form of the *hearing notice* to City appellants required  
26 by the Municipal Code (suggesting that the City appellant be represented in the hearing *by a*

27 \_\_\_\_\_  
28 <sup>9</sup> MUN. CODE §13.100.040 contains the required form of the notice of the appeals hearing.  
PLAINTIFF'S SECOND AMENDED COMPLAINT (Page 18 of 31)

1 lawyer) creates a reasonable expectation on the part of the City appellant that the appeals officer  
2 will be a lawyer providing legal services as a Third Party Neutral under The State Bar of  
3 California's Rules of Professional Conduct Rule 2.4 (Lawyer as Third-Party Neutral) (hereafter,  
4 referred to as "TPN" or "TPNs") and complying with California Rules of Court, Ethics  
5 Standards for Neutral Arbitrators in Contractual Arbitration. Broadly, this means that the TPN  
6 will be fair and impartial without financial ties or obligations to either party, and that the process  
7 by which and by whom the TPN was selected will be transparent.

8 78. The provisions in the DTI Contract includes terms under which Defendant Data  
9 Ticket agrees to supply hearing officers for the City appeals hearings.

10 79. The DTI Contract contains no severability clause. For that reason, invalidity of any  
11 one or more of its terms requires invalidation of the entirety of the DTI Contract.

12 80. The DTI Contract violates California public policy as expressed by and in Section  
13 6155.

14 81. The DTI Contract fails to comply with the public bidding process for Cities in  
15 contracting for services. PUB. CONT. §§20100 et seq.

16 82. The DTI Contract fails to comply with the public bidding process for Defendant  
17 Cathedral City in contracting for services. MUN. CODE §§ 3.12.100, 3.12.120.

18 83. Provisions contained in the DTI Contract violate controlling provisions of the  
19 Municipal Code. By way of example, only, and not exhausting the violative provisions:

20 a. DTI Contract Paragraph 1.7 violates MUN. CODE §13.90.150 because Defendant Data  
21 Ticket is not designated by the Municipal Code to take any part in the process by which a citizen  
22 is notified of the right to administrative review;

23 b. DTI Contract Paragraph 1.8 violates Muni Code MUN. CODE §§13.90.150,  
24 13.100.040, and 13.100.050;

25 c. DTI Contract Paragraph 7.3 (requiring the Defendant Cathedral City grant Defendant  
26 Data Ticket exclusivity) violates MUN. CODE §13.100.020, by altering, without authority,  
27 provisions of the Municipal Code and obligating the Defendant Cathedral City to be referred in  
28

1 all appeal cases to the lawyers in the panel of lawyers selected by Defendant Data Ticket to  
2 “perform” as hearing officers in City appeal hearings; and

3 d. Because Defendant Cathedral City is responsible for arranging the hearing officer to  
4 “perform” in City appeal hearings, the City is arranging both for itself and for the citizen City  
5 appellant. DTI Contract Paragraph 7.3 (exclusivity) establishes that Defendant Cathedral City  
6 creates a partnership and/or joint venture with Defendant Data Ticket under which both  
7 Defendant Cathedral City and Defendant Data Ticket are Lawyer Referral Services (“LRSs”)  
8 which have never been certified by the State Bar and are therefore in violation of BUS. & PROF.  
9 §6155. The reciprocal “hold harmless” provisions of DTI Contract Paragraphs 8.2.A. and 8.2.B  
10 establish a partnership and/or joint enterprise between Defendant Cathedral City and Defendant  
11 Data Ticket and illegally delegates long-established by the Municipal Code and non-delegable  
12 City governmental functions to Defendant Data Ticket.

13 84. Paragraph 9.1 allows Defendant Data Ticket to engage subcontractors “as permitted  
14 by law” to perform the services under the DTI Contract, and the subcontractors are deemed  
15 agents of Defendant Data Ticket. Those subcontractors include the lawyers, including Defendant  
16 Napolitano, on the “panel” of lawyers maintained by Defendant Data Ticket to receive referrals  
17 of clients from Defendant Data Ticket.

18 85. The Exhibit “A” to the DTI Contract lists as among the Services provided under the  
19 DTI Contract “[a]ll adjudication services, including placing citations on a hearing hold,  
20 scheduling each hearing, and scheduling letter to the Appellant,” and, for Administrative  
21 Hearings, “Data Ticket’s independent, certified, insured hearing officers will be provided to the  
22 City to perform in-person, phone, and written hearings” at \$85.00 per hour. Further descriptions  
23 of these so-called “Certified and Trained Officers” supplied by Defendant Data Ticket under the  
24 DTI Contract are found in the addenda to the DTI Contract titled “Administrative Citation  
25 Processing & Collection Services,” “Administrative Citation Processing and Collections  
26 Process,” “Administrative Citation Adjudication Process,” and a graphical flow-chart captioned  
27 “Administrative Citation Process.” These provisions violate MUN. CODE §§13.90.150,  
28 13.100.040, 13.100.050, and 13.100.020.

1 86. At the next to last page of the main body of the DTI Contract, the following appears:

2  
3 “The Hearing Officer will be an impartial official with previous experience in holding  
4 hearings and training on Municipal Code Enforcement and who has been trained  
5 according the [sic] requirements for administrative hearings as mandated by the  
6 California legislature and has additional training from the adjudication manual. The  
7 Hearing Officer will not be compensated on a commission basis and there will be no  
8 connection between decisions and compensation for the job. Hearing Officers will be  
9 subject to review by the Agency (Defendant Cathedral City) at the Agency’s expense.  
10 “The only responsibilities to be borne by the Agency are the provision of space for the in-  
11 person hearings to be held on a bi-monthly basis, the referral of the original citations and  
12 any requested supporting documentation for hearings, and the occasional appearance at a  
13 court hearing. The Company will provide forms, notices, correspondence, scheduling,  
14 documentation, database updates, tracking, reporting, banking, a toll-free number for  
15 violator questions, web site access, the Hearing Officer and all software and hardware  
16 required to handle the job efficiently and effectively. We are confident that the Agency  
17 will enjoy the benefits of this unique service.”

18 87. Beginning June 20, 2013, Defendant Cathedral City began violating and continued to  
19 violate the provisions of the Municipal Code.

20 88. Beginning with the start of her employment (sometime after June 20, 2013),  
21 Defendant Molina began violating and continued to violate the provisions of the Municipal  
22 Code.

23 89. Beginning with the start of her employment, Defendant Molina began requesting  
24 Defendant Data Ticket for Defendant Cathedral City to be referred to specific lawyers within the  
25 “panel” of lawyers maintained by Defendant Data Ticket to “perform” as hearing officers.

26 90. Beginning with the start of her employment, Defendant Molina learned that the  
27 “panel” of lawyers maintained by Defendant Data Ticket to “perform” as hearing officers were  
28 very few, sometimes only one or two lawyers, and she communicated to the scheduling clerk for  
29 Defendant Data Ticket which one of them – specifically Defendant Napolitano – was her  
30 preference to receive the referral of Defendant Cathedral City to “perform” as hearing officer.

31 91. In the City appeals in which Mr. Rayl was the citizen appellant, and without  
32 informing Mr. Rayl, Defendant Molina asked Defendant Data Ticket’s scheduler specifically to  
33 refer Defendant Cathedral City to Defendant Napolitano for Mr. Rayl’s hearing, because  
34 Defendant Molina was happy with prior decisions issued by Mr. Napolitano in favor of

1 Defendant Cathedral City and because Defendant Molina was unhappy with the appeal filed by  
2 Mr. Rayl which questioned her conduct as a Code Enforcement Officer.

3 92. Defendant Molina's violation of the above-cited provisions of the Municipal Code  
4 were knowing and willful and intended to gain an unfair advantage over the citizen appellants  
5 and to deprive them of due process.

6 93. On occasions, and without the knowledge or consent of the citizen appellants,  
7 Defendant Molina requested Defendant Data Ticket for Defendant Cathedral City to be referred  
8 to Defendant Napolitano, one of the lawyers in the "panel" of lawyers maintained by Defendant  
9 Data Ticket to "perform" as hearing officers.

10 94. By way of example only, and not by way of limitation, Defendant Molina was  
11 informed not once but twice by Mr. Rayl that the hearing notices she served on Mr. Rayl violated  
12 the hearing notice provisions of the Municipal Code.

13 95. Both the purpose and the effect of Defendant Molina's violations of the hearing  
14 notice provisions of the Municipal Code were to conceal from Mr. Rayl, and, in other appeals, to  
15 conceal from those cases' citizen appellants, the existence of the DTI Contract and the selection  
16 of the hearing officers through referrals of Defendant Cathedral City by Defendant Data Ticket  
17 to lawyers on the "panel" of attorneys selected by Defendant Data Ticket.

18 96. Defendant Rodriguez and Defendant McClendon, and each of them, were also  
19 informed not once but twice by Mr. Rayl that the hearing notices that Defendant Molina served  
20 on Mr. Rayl violated the hearing notice provisions of the Municipal Code. Both Defendant  
21 Rodriguez and Defendant McClendon, and each of them, knew that the purpose and the effect of  
22 Defendant Molina's violations of the hearing notice provisions of the Municipal Code were to  
23 conceal from Mr. Rayl, and, in other appeals, to conceal from those cases' citizen appellants, the  
24 existence of the DTI Contract and the referral of Defendant Cathedral City by Defendant Data  
25 Ticket to lawyers on the "panel" of attorneys selected by Defendant Data Ticket.

26 ///

27 ///

28 ///

1 **II.**

2 **PLAINTIFF'S SECOND CAUSE OF ACTION**

3 **AGAINST DEFENDANT DATA TICKET**

4 **FOR INJUNCTIVE RELIEF**

5 **(BUS. & PROF. §6155)**

6 97. As and for Plaintiff's Second Cause of Action against Defendant Data Ticket for  
7 injunctive relief, Plaintiff incorporates herein paragraphs 1 through and including 96, inclusive,  
8 as if set forth in full herein.

9 98. Defendant Data Ticket illegally operates for the direct or indirect purpose, in whole  
10 or in part, of referring its Code Enforcement clients (including Defendant City) to attorneys.

11 99. Defendant Data Ticket is additionally in violation of Section 6155, subsec. (b) which  
12 provides that a "referral service shall not be owned or operated, in whole or in part, directly or  
13 indirectly, by those lawyers to whom, individually or collectively, more than 20 percent of  
14 referrals are made."

15 **III.**

16 **PLAINTIFF'S THIRD CAUSE OF ACTION**

17 **AGAINST DEFENDANT NAPOLITANO**

18 **FOR INJUNCTIVE RELIEF**

19 **(BUS. & PROF. §6155)**

20 100. As and for Plaintiff's Third Cause of Action against Defendant Napolitano, Plaintiff  
21 incorporates herein paragraphs 1 through and including 99, as if set forth in full herein.

22 101. Defendant Napolitano accepts and accepted referrals from Defendant Data Ticket,  
23 an uncertified, and therefore illegal, LRS.

24 102. Section 6155(a) specifically provides that "no attorney shall accept a referral" of  
25 potential clients from a lawyer referral service that is not in compliance with §6155. Each such  
26 acceptance is a separate violation of §6155.

27 103. At all times pertinent hereto, Defendant Napolitano had actual and constructive  
28

1 notice that Defendant Data Ticket was an illegal LRS.

2 104. On or about April 27, 2021, Defendant City served on Mr. Rayl the “Administrative  
3 Hearing Decision and Order” signed by Defendant Napolitano on April 23, 2021 (“Defendant  
4 Napolitano’s Order”), in which the following appears:

5 “Prior to the hearing, **Appellant notified the City, the Hearing Officer, and**  
6 **DataTicket, Inc. [sic], the City’s contract citation processor, of his objections to the**  
7 **process, the Hearing Officer, and the ability of Data Ticket to assign the Hearing**  
8 **Officer to this case.** Appellant filed a complaint regarding the Hearing Officer and his  
assignment by DataTicket, Inc. to the California State Bar, demanding the recusal of the  
Hearing Officer.” (Emphases added.)

9 **IV.**

10 **PLAINTIFF’S FOURTH CAUSE OF ACTION**

11 **AGAINST DEFENDANT CITY OF CATHEDRAL CITY,**  
12 **DEFENDANT McCLENDON, DEFENDANT RODRIGUEZ,**  
13 **AND DEFENDANT MOLINA FOR INJUNCTIVE RELIEF**

14 **(BUS. & PROF. §6155)**

15 105. As and for Plaintiff’s Fourth Cause of Action against Defendant Cathedral City and  
16 against the Three Cathedral City Defendants, Plaintiff incorporates herein paragraphs 1 through  
17 and including 104, inclusive, as if set forth in full herein.

18 106. In violation of Section 6155, Defendants Cathedral City, an entity, and the  
19 Defendants McClendon, Rodriguez, and Molina, individuals, operate for the direct or indirect  
20 purpose, in whole or in part, of referring clients (i.e., City appellants) to attorneys (i.e.,  
21 Defendant Data Ticket’s panel of lawyers).

22 **V.**

23 **PLAINTIFF’S FIFTH CAUSE OF ACTION**

24 **FOR ORDER COMPELLING**

25 **THE STATE BAR OF CALIFORNIA**

26 **TO PROSECUTE THIS CIVIL ACTION**

27 **AS THE REAL PARTY IN INTEREST**



1 107. As and for Plaintiff's Fifth Cause of Action against Defendant/The Real Party In  
2 Interest State Bar, Plaintiff incorporates herein paragraphs 1 through and including 106,  
3 inclusive, as if set forth in full herein.

4 108. Protection of the public is the highest priority for the State Bar in exercising its  
5 licensing, regulatory, and disciplinary functions. CAL. BUS. & PROF. CODE §6001.1.<sup>10</sup>

6 109. As part of its statutory mandate to protect the public, the State Bar is required to  
7 ensure that a lawyer referral services (an "LRS") must be registered with and certified by the  
8 State Bar as meeting minimum standards set forth by the State Bar [§6155, subd. (a)(1), (f)]. An  
9 LRS is deemed registered with the State Bar only when certified by the State Bar. An uncertified  
10 LRS is illegal.

11 110. The Rules of the State Bar<sup>11</sup> set forth the minimum standards for LRSs. (See State  
12 Bar Rules for Lawyer Referral Services, Title 3, Division 5, Ch. 3, Rule 3.800 *et seq.*, as  
13 approved by the California Supreme Court, effective January 21, 2014). The LRS minimum  
14 standards are designed to protect California consumers from unqualified and unscrupulous  
15 attorneys.

16 111. Included among the certification requirements for an LRS are that its attorney  
17 panelists each maintain a specified level of errors and omissions insurance [§6155, subd. (f)(6),  
18 Rule 3.823(C)(1)]; that there are a minimum number of attorneys on each panel [Rule 3.823(B)];  
19 that the LRS establish panel membership eligibility qualifications and criteria and refer to  
20 consumers only attorneys qualified to provide legal services to the public [Rules 3.801(B),  
21 3.822(B)(1), 3.823(A), and 3.824]; that the governing committee for an LRS must comply with  
22 certain duties and obligations, including that it establish criteria for subject matter and general  
23 panel membership and evaluate members at least once every two (2) years, establish and assess  
24 compliance with the referral procedures, and annually survey a random sample of clients to  
25 determine client satisfaction with services and fees [Rules 3.822(B)]; that it maintain appropriate

---

26  
27 <sup>10</sup> The State Bar Act refers to the California *Business & Professions Code Div. 3 - Professions and Vocations*  
*Generally, Ch. 4 - Attorneys* (Bus. & Prof. Code §§ 6000 *et seq.*)

28 <sup>11</sup> All "Rule" references are to the Rules of the State Bar, unless otherwise stated.

1 technology and safeguards to ensure accurate referrals [Rule 3.8261(C)]; that it comply with  
2 publicity requirements (Rule 3.829); and that it monitor fees charged to clients [Rule 3.820.(D)].

3 112. The Legislature has made solicitation for or on behalf of an attorney unlawful  
4 except when done in a manner that is regulated and compliant with minimum standards for an  
5 LRS certified by the State Bar [§§ 6152, subd. (a)(1), 6155, subd. (a)(1)]. Accordingly, attorneys  
6 may not accept referrals of potential clients from an LRS unless the LRS is operating in  
7 conformity with State Bar minimum standards [§6155, subd. (a)(1)].

8 113. To enforce §6155, the State Bar of California (“State Bar” or “Real Party in  
9 Interest”) is statutorily empowered not only to obtain injunctive relief, but to enforce civil  
10 penalties for each violation of §6155, and to receive recoupment of its reasonable expenses  
11 [pursuant to §6156, subd. (b)]. In addition, the State Bar’s Standards For Attorney Sanctions For  
12 Professional Misconduct, provides, at Standard 2.13 (Criminal Conviction for Specific  
13 Misdemeanors), subd. (b): “Disbarment or actual suspension [of a California licensed attorney] is  
14 appropriate for final conviction of a misdemeanor specified in Business & Professions Code  
15 sections 6128 – 6130 and 6153 - **6155.**” (Emphasis added.) Because the State Bar has by statute  
16 the primary responsibility and the full range of remedies for enforcement of §6155, including  
17 remedies not available to Plaintiff, and to avoid contradictory results between this litigation and  
18 any action by the State Bar, the State Bar is the Real Party of Interest and a necessary party to  
19 this litigation.

20 114. The State Bar has primary responsibility for enforcement of Section 6155. Unlike  
21 Plaintiff, the State Bar, in its enforcement of Section 6155, may (in addition to injunctive relief)  
22 obtain civil penalties of \$2,500 per unlawful referral and reimbursement of the State Bar’s  
23 reasonable expenses of investigation.

24 115. Because a licensed attorney is required by statute to cooperate with State Bar  
25 investigations of that attorney’s conduct, the State Bar has this additional advantage over  
26 Plaintiff in obtaining the information required to seek injunctive relief.

27 116. Plaintiff’s authority under Section 6155(e) does not create a *qui tam* action, as  
28

1 Section 6155(e) only authorizes injunctive remedies and no private rewards to Plaintiff.

2 117. There is no administrative proceeding established by statute or case law which  
3 Plaintiff is required to exhaust before bringing suit against the State Bar to compel it to transfer  
4 into this action as Plaintiff or co-Plaintiff herein.

5 **VI.**

6 **PLAINTIFF'S SIXTH CAUSE OF ACTION**

7 **AGAINST ALL DEFENDANTS FOR**

8 **PUBLIC INTEREST LEGAL FEES**

9 **(CIV. PROC. §1021.5)**

10 118. Plaintiff incorporates herein paragraphs 1 through and including 117, inclusive, as if  
11 set forth in full herein.

12 119. Upon Motion to be brought by Petitioner under California Code of Civil Procedure  
13 §1021.5, Petitioner seeks "public interest legal fees." This action will result in the enforcement  
14 of an important right affecting the public interest. A significant benefit, whether pecuniary or  
15 nonpecuniary, will have been conferred on the general public or a large class of persons, namely  
16 all persons who contest (by appeals or other administrative review hearings and proceedings)  
17 citations, tickets, and similar disputed Governmental action for which Defendant Data Ticket  
18 illegally provided or provides lawyer referral services. The necessity and financial burden of  
19 private enforcement, or of enforcement by one public entity against another public entity, are  
20 such as to make the award of public interest legal fees appropriate. Such fees should not in the  
21 interest of justice be paid out of the recovery, if any. In accordance with §1021.5, no claim for  
22 these public interest legal fees is required first to be presented to the City under California  
23 Government Code §900 seq.

24 **PRAYERS FOR RELIEF**

25 WHEREFORE, the Court is requested to enter JUDGMENT in favor of Plaintiff and to  
26 make the following ORDERS:

27 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**I.**

**ON PLAINTIFF DAVID S. KOSLOW'S FIRST CAUSE OF ACTION**  
**FOR DECLARATORY RELIEF AGAINST DEFENDANT DATA TICKET, INC.**  
**AND DEFENDANT CITY OF CATHEDRAL CITY (CIV. PROC. §1060).**

1. For an order declaring the "Scope of Service and Performance Agreement" (attached to this Complaint and marked Exhibit "A") (the "DTI Contract") initially dated June 20, 2013 for a five-year term, and automatically renewed thereafter for one-year terms, and still in effect, and not including in its terms a severability clause, is null and void in its entirety and of no effect, and stating the grounds therefore, including, without limitation:

(a) Violation of California public policy as expressed by and in BUS. & PROF. §6155;

(b) Violation of California public policy as expressed by and in BUS. & PROF. §§17200

*et seq.*;

(c) Violation of California laws requiring public bidding process by Cities for contracting for services, PUB. CONT. §§20100 *et seq.*;

(d). Violation of Municipal Code provisions requiring public bidding process by Cathedral City for contracting for services, MUN. CODE §§ 3.12.100, 3.12.120; and

(e). Violations of the provisions of the Municipal Code defining and controlling the role and responsibilities of the hearing officer.

2. For an order requiring Defendant Cathedral City, at its sole expense, to serve (by first class mail to their last known addresses) a copy of the Court's Order of Declaratory Relief, along with an Appeals Fee Refund Claim Notice in a form submitted by Plaintiff and approved by the Court, upon all citizen appellants in the Defendant Cathedral City's Code Enforcement appeals that were initiated and/or conducted during the period during which Data Ticket, operating as an illegal LRS, referred Defendant Cathedral City to attorneys to "perform" as hearing officers.

**II.**

**ON PLAINTIFF DAVID S. KOSLOW'S SECOND CAUSE OF ACTION**  
**FOR INJUNCTIVE RELIEF AGAINST**  
**DEFENDANT DATA TICKET, INC. (BUS. & PROF. §6155).**

1  
2 1. Pursuant to Business & Professions Code §6155(e), for preliminary and permanent  
3 injunctions enjoining Defendant Data Ticket, Inc., its directors, officers, employees, agents,  
4 independent contractors, partners, associates and representatives, and any successors and/or  
5 assigns of all or substantially all of its assets, and each of them (hereafter, collectively,  
6 “Defendant Data Ticket”), from operating for the direct or indirect purpose, in whole or in part,  
7 of referring potential clients to attorneys without having first been certified as a Lawyer Referral  
8 Service by The State Bar of California;

9 2. Pursuant to Business & Professions Code §6155(e), for orders preliminarily and  
10 permanently enjoining Defendant Data Ticket from holding itself out to the public, through any  
11 manner of advertising, including by publishing or maintaining a website, as offering services of  
12 referring potential clients to attorneys without Defendant Data Ticket having first been certified  
13 as a Lawyer Referral Service by The State Bar of California; and

14 3. For an order directing the Clerk of the Court to serve by first class mail a copy of the  
15 Court’s Order of Injunction against Defendant Data Ticket upon the State Bar, and upon the  
16 District Attorneys for each of the California Counties in which Defendant Data Ticket is doing  
17 business, for investigation and prosecution and collection of civil penalties (\$2,500 per unlawful  
18 referral) for violations of Business & Professions Code §6155(e).

19 **III.**

20 **ON PLAINTIFF DAVID S. KOSLOW’S THIRD CAUSE OF ACTION**

21 **FOR INJUNCTIVE RELIEF AGAINST**

22 **DEFENDANT NAPOLITANO (BUS. & PROF. §6155).**

23 1. Pursuant to Section §6155(e), for preliminary and permanent injunctions enjoining  
24 Defendant Napolitano from accepting any referrals from LRSs not certified by the State Bar; and

25 2. For an order directing the Clerk of the Court to serve by first class mail a copy of the  
26 Court’s Order of Injunction against Defendant Napolitano on the State Bar.

27 ///

28 ///

1 IV.

2 ON PLAINTIFF DAVID S. KOSLOW'S FOURTH CAUSE OF ACTION  
3 FOR INJUNCTIVE RELIEF AGAINST DEFENDANT CITY OF CATHEDRAL CITY,  
4 DEFENDANT CHARLIE McCLENDON, DEFENDANT ROBERT RODRIGUEZ,  
5 AND DEFENDANT SANDRA MOLINA (BUS. & PROF. §6155).

6 1. Pursuant to Business & Professions Code §6155(e), for preliminary and permanent  
7 injunctions enjoining Defendant Cathedral City, Defendant McClendon, Defendant Rodriguez,  
8 and Defendant Molina from operating for the direct or indirect purpose, in whole or in part, of  
9 referring potential clients to attorneys without having first been certified as a Lawyer Referral  
10 Service by The State Bar of California; and

11 2. For an order directing the Clerk of the Court to serve by first class mail a copy of the  
12 Court's Order of Injunction against these four Defendants upon the State Bar, and upon the  
13 District Attorneys for Riverside County, for investigation and prosecution and collection of civil  
14 penalties (\$2,500 per unlawful referral) for violations of Business & Professions Code §6155(e).

15 V.

16 ON PLAINTIFF DAVID S. KOSLOW'S FIFTH CAUSE OF ACTION  
17 AGAINST THE STATE BAR OF CALIFORNIA  
18 FOR ORDER OF TRANSFER TO THE STATE BAR  
19 AS THE REAL PARTY IN INTEREST  
20 OF PLAINTIFF'S INTEREST IN THIS ACTION  
21 (CIV. PROC. §§367, 368.5)

22 For an Order transferring Plaintiff's Interest in this Action to The State Bar of California  
23 with instructions for the State Bar to prosecute this Action as the Plaintiff/The Real Party In  
24 Interest solely, or as co-Plaintiff with David S. Koslow.

25 ///

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VI.

**ON PLAINTIFF DAVID S. KOSLOW'S SIXTH CAUSE OF ACTION**

**AGAINST ALL DEFENDANTS FOR ORDER AFTER MOTION**

**GRANTING PLAINTIFF PUBLIC INTEREST FEES**

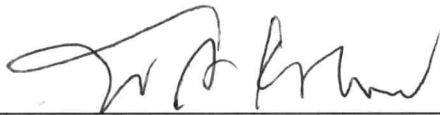
**(CIV. PROC. §1021.5)**

After a grant of Plaintiff's motion for public interest fees, an award of such fees in an amount subject to proof. CIV. PROC. §1021.5.

**AS TO ALL CAUSES OF ACTION**

1. For the Court to retain and exercise continuing jurisdiction over this litigation to ensure Defendants, and each of them, comply with the Court's orders, including the Court's orders of injunctive relief as requested herein; and
2. For the Court to order that Plaintiff be awarded such other, further, different, and additional relief as may to the Court appear to be just and proper.

Dated: October 29, 2021



---

David S. Koslow, Plaintiff

**EXHIBIT "A"**  
**TO PLAINTIFF DAVID S. KOSLOW'S**  
**SECOND AMENDED COMPLAINT**

**"Scope of Service and Performance Agreement"**  
**Between Data Ticket, Inc. and**  
**City of Cathedral City**  
**Dated June 20, 2013**





4600 Campus Drive, Suite 200  
Newport Beach, CA 92660  
949 752 6937 (x) 310 - Phone  
949-752-6033 - Fax  
[MFleming@DataTicket.com](mailto:MFleming@DataTicket.com)

## Scope of Service and Performance Agreement

These services are provided by:

**Data Ticket Inc.**  
a California Corporation  
4600 Campus Drive, Suite 200  
Newport Beach, California 92660  
(hereinafter sometimes referred to as "COMPANY")

FOR:

**CITY OF CATHEDRAL CITY**  
68700 AVENIDA LALO GUERRERO  
CATHEDRAL CITY, CA 92234

(hereinafter sometimes referred to as "AGENCY").

Data Ticket, Inc. intends to provide for the processing of bails, fines and forfeiture thereof, in connection with the issuance of administrative citations and other debts owed and specified by the AGENCY pursuant to AGENCY municipal code and pursuant to the laws of the State of California.

### **ARTICLE I - CITATION PROCESSING**

1.1 Referral and Reconciliation: COMPANY shall receive and process citations received from the AGENCY. COMPANY will provide a reconciliation of the number of citations received from AGENCY.

1.2 Determination of Processable Citations: COMPANY shall screen each citation referred to it by the AGENCY to determine if the citation is processable. If the citation is determined by COMPANY to be unprocessable (e.g., essential processing information is missing), COMPANY shall return the citation to AGENCY for clarification. COMPANY will be paid the contractual rate hereinafter provided, for citations properly returned to the AGENCY as unprocessable.

1.3 Collection and deposit of funds: A direct deposit system shall be employed for all funds



4600 Campus Drive, Suite 200  
Newport Beach, CA 92660  
949 752 6937 (x) 310 - Phone  
949-752-6033 - Fax  
[MFleming@DataTicket.com](mailto:MFleming@DataTicket.com)

received for payment of citations. The AGENCY shall have the choice of jointly owning a bank account with the COMPANY or directing the COMPANY to deposit into an AGENCY account. Deposits shall be made directly into the account by the COMPANY for the collecting AGENCY, with the exception of credit card payments made using VISA, MasterCard and Discover cards belonging to the COMPANY. These payments will be directly deposited into an account held by the COMPANY. Credit card payments are reconciled and remitted on a monthly basis to the AGENCY, but tracked on the citation management software on a daily basis. Citations paid by credit card are marked "paid" real-time immediately upon authorization, thus affording the citizen the opportunity to make payment at any time and have the payment recognized immediately.

1.4 Payment: If the COMPANY deposits into an AGENCY account, the COMPANY will invoice the AGENCY for services rendered. Payment in full shall be due within thirty (30) days after which interest shall be accrued at the rate of 10% (or lower if any statutes, rules or regulations prohibit this rate). If the COMPANY deposits into an account held jointly between the AGENCY and the COMPANY, the COMPANY shall reconcile the account the month following the banking activity, disperse all revenue due the AGENCY, the COMPANY, any tax liability and all refunds and send all supporting documentation to the AGENCY for its records.

1.5 Delinquency Notices for Administrative Citations: In accordance with AGENCY ordinance, delinquency notices will be sent to citizens who are not in compliance and have not paid the fines in full. These notices will indicate future actions to be taken in order to collect the fines owed the Agency.

1.6 Franchise Tax Board Interface: The Franchise Tax Board Interagency Intercept Program will be used as the next collection step in the process. A notice merging all debts owed the AGENCY will be sent to the citizen showing the total amount due the AGENCY for Administrative Citations and demanding payment. If payment is not received in full, social security numbers will be attached to each debt and the debt will be placed with the Franchise Tax Board for collections.

1.7 Contested Citations: In the event a citizen disputes the liability for the outstanding administrative citation, COMPANY will advise the citizen of his/her right to request an administrative review/hearing/court appearance. All contested citations will be forwarded to the reviewing agency, hearing administrator or Court within the prescribed time period so that the matter can be adjudicated. (Municipal Code).

1.8 Administrative Review and Hearing: The COMPANY may schedule administrative reviews/hearings to respond to citizens wishing to contest their citations and offers the option to



4600 Campus Drive, Suite 200  
Newport Beach, CA 92660  
949 752 6937 (x) 310 - Phone  
949-752-6033 - Fax  
[MFleming@DataTicket.com](mailto:MFleming@DataTicket.com)

perform and administer those reviews and hearings. The COMPANY will provide a web site for appeal and toll-free numbers for contestants; correspond with contestants and notify them of decisions; maintain records of dispositions and appeal paperwork and refer all paperwork to Court as required. The COMPANY shall not be responsible for the AGENCY'S failure to provide correct or timely infraction information. The AGENCY shall be responsible to pay the \$25.00 court-filing fee if the review and administrative hearing decisions are overturned by the court.

1.9 Citations Disposed of by Hearing/Court: The COMPANY may be required, as a result of court action, to reduce or cancel, on an individual basis, citations which have been referred to it. COMPANY shall be paid the contractual rate hereinafter provided for processing the citation regardless of the outcome of court action. COMPANY will maintain records indicating any reduction or cancellation of administrative citations as a result of review/hearing/court action. Citations that are dismissed as a result of review/hearing/court decision will have the dismissal processed by the COMPANY promptly after receipt from the review/hearing/court decision.

1.10 Suspension of Processing: COMPANY will suspend processing on any citation referred to it for processing upon written notice to do so by an authorized officer of the AGENCY. COMPANY will promptly return any citation or facsimile properly requested by the AGENCY. COMPANY will maintain records indicating any suspension of citation as a result of AGENCY'S request. COMPANY shall be paid the contractual rate hereinafter provided for processing the citations suspended by the AGENCY.

1.11 Payments by U.S. Mail: It is the citizen's responsibility to ensure that payments are received on or before the date due. The date received by the COMPANY will be the criteria to establish any delinquent fees due.

1.12 Citation System Master File Update: COMPANY will regularly update the citation master file for new citations, payments, reductions, cancellations, dismissals and any other pertinent data.

## **ARTICLE II - PAYMENT PROCESSING**

2.1 Disposition Processing: COMPANY will maintain all citation dispositions for a minimum of two (2) years. Closed citations will remain on-line for a minimum of two (2) years for research and statistical purposes.

2.2 Payments Processing: COMPANY shall process citation payments on a regular basis. Payments shall be immediately posted in one (1) of three (3) following categories:





4600 Campus Drive, Suite 200  
Newport Beach, CA 92660  
949 752 6937 (x) 310 - Phone  
949-752-6033 - Fax  
[MFleming@DataTicket.com](mailto:MFleming@DataTicket.com)

2.7 Revenue Report: A monthly revenue report will list all revenues received during the preceding month.

### **ARTICLE III – WEB SITE**

3.1 Citation Management Web Site: The COMPANY offers a web site for AGENCY review of its database, including all citations and information relating to changes in status.

3.2 Citizen Web Site Access: When the AGENCY has web site access, citizens who receive citations will be able to access the web site to review their individual citations, pay on-line and appeal on-line.

3.3 Web Site Interaction: The web site may be "view only" or "interactive", for the AGENCY depending on requirements of the AGENCY.

3.4 Web Site Reports: Web site reports are available to the AGENCY on a daily, (24/7) schedule.

3.5 Web Site Use: User ID's and passwords will be assigned to the AGENCY.

### **ARTICLE IV – GENERAL**

4.1 Public Inquiries: The COMPANY will respond to reasonable inquiry by telephone or letter of a non-judicial nature. Inquiries of a judicial nature will be referred to the AGENCY for determination.

4.2 COMPANY Limitations: COMPANY will not take legal action or threaten legal action in any specific case without AGENCY'S prior approval.

4.3 Use of Approved Forms: AGENCY shall have the right to reasonable approval of all forms, delinquency notices and correspondence sent by the COMPANY. These must conform to State and local law.

4.4 Books and Records: COMPANY will maintain adequate books or records for citations issued within the AGENCY'S jurisdiction and referred to COMPANY for processing. Such books or records, and related computer processing data, shall be available for reasonable inspection and audit by AGENCY at the COMPANY'S location at reasonable times upon adequate prior notice to COMPANY.



4600 Campus Drive, Suite 200  
Newport Beach, CA 92660  
949 752 6937 (x) 310 - Phone  
949-752-6033 - Fax  
[MFleming@DataTicket.com](mailto:MFleming@DataTicket.com)

4.5 Ownership: All reports, information, and data, including but not limited to computer tapes, discs, or files furnished or prepared by the COMPANY or its subcontractor (collectively the "Materials") are and shall remain exclusively the sole property of COMPANY, and the AGENCY shall acquire no right or title to said Materials. All computer software and systems, related automated and manual procedures, instructions, computer programs, and data storage media containing same, and written procedures performed hereunder (collectively the "System") are and shall remain exclusively the sole property of COMPANY, and the AGENCY shall acquire no right or title to said Systems.

4.6 Property of AGENCY: All documents, records, discs, files and tapes supplied by AGENCY to COMPANY in performance of this contract are agreed to be and shall remain the sole property of AGENCY. COMPANY agrees to return same promptly to AGENCY no later than sixty (60) days following notice to the COMPANY. The AGENCY shall make arrangements with COMPANY for the transmission of such data to the AGENCY upon payment to COMPANY of any open invoices and the cost of copy and delivery of such information from COMPANY'S computer facilities to AGENCY'S designated point of delivery.

4.7 Confidentiality: In order to enable COMPANY to carry out its work hereunder, to some extent it will have to impart to the AGENCY'S employees information contained in the Materials and Systems (collectively the "CONFIDENTIAL DATA"). The AGENCY agrees that information contained in the data that was marked in writing as "CONFIDENTIAL", "PROPRIETARY" or similarly, so as to give notice of its confidential nature, when submitted to the AGENCY by COMPANY shall be retained by AGENCY in the strictest confidence and shall not be used or disclosed in any form except in accordance with paragraph 4.8 herein below. The AGENCY recognizes that irreparable harm could be occasioned to COMPANY by disclosure of CONFIDENTIAL DATA, which is related to its business, and that COMPANY may accordingly seek to protect such CONFIDENTIAL DATA by enjoining disclosure.

4.8 Consent For Disclosure: No report, information, data, files, or tapes furnished or prepared by COMPANY or its subcontractors, successors, officers, employees, servants, or agents shall be made available to any individual or organization without the prior written approval of AGENCY other than individuals or organization who are reasonably necessary to properly effectuate the terms and conditions of this agreement. This Non-Disclosure obligation shall survive the Termination of this Agreement.

4.9 COMPANY Files: COMPANY shall maintain master files on citations referred to it for processing under this Agreement. Such files will contain records of payments, dispositions, and





4600 Campus Drive, Suite 200  
Newport Beach, CA 92660  
949 752 6937 (x) 310 - Phone  
949-752-6033 - Fax  
[MFleming@DataTicket.com](mailto:MFleming@DataTicket.com)

citations at the beginning of the period, current period activity, and at the end of the period.

- D. A report for issuing AGENCY identifying the citations issued, location, violation by each officer.

#### **ARTICLE VII - TERM OF CONTRACT AND ADDITIONAL SERVICES**

7.1 Term and Renewals: This Agreement shall be for an initial period of five (5) years, commencing as of the last date of signature. Unless notice of termination is made in writing by either party to the other no less than sixty (60) days prior to the end of the scheduled term, this Agreement shall automatically renew for subsequent one (1) year periods. In conjunction with this automatic extension of the terms of this Agreement, COMPANY may give notice of reasonable price adjustments for its processing services. The AGENCY has thirty days to respond in writing to the purposed increase. Unless AGENCY gives notice in writing of its rejection of these price adjustments, the term shall be extended with these price adjustments as stated. If the AGENCY gives notice of its rejection of these price adjustments, unless there is a further written Agreement between the parties, the term of the Agreement shall not be extended and the Agreement shall terminate.

7.2 Cancellation: Upon a material breach or upon ninety (90) days written notice to COMPANY, the AGENCY may cancel or terminate this Agreement. The COMPANY shall have thirty (30) days to cure any material breach or defect set forth in the written termination notice provided by AGENCY.

7.3 Exclusivity: AGENCY agrees to utilize only the services of COMPANY during the term of this Agreement for the processing of the citations referred to above. AGENCY agrees during the term of the Agreement to not directly or indirectly assist a competitor of COMPANY in the performance of the services provided by COMPANY under this Agreement.

7.4 Cost/Process: Please see Exhibit A for all associated Costs and Process Detail.

#### **ARTICLE VIII - CLAIMS AND ACTIONS**

8.1 AGENCY Cooperation: In the event any claim or action is brought against COMPANY relating to COMPANY'S performance or services rendered under this Agreement, COMPANY shall notify the AGENCY, in writing, within ten (10) days, of said claim or action.

8.2 Hold Harmless: COMPANY AND AGENCY agree to the following hold harmless clauses.





4600 Campus Drive, Suite 200  
Newport Beach, CA 92660  
949 752 6937 (x) 310 - Phone  
949-752-6033 - Fax  
[MFleming@DataTicket.com](mailto:MFleming@DataTicket.com)

A. COMPANY agrees to indemnify, defend, and hold harmless the AGENCY and its officers and employees against all claims, demands, damages, costs, and liabilities arising out of, or in connection with, the performance by COMPANY or AGENCY or any of their officers, employees, or agents under this AGREEMENT, excepting only loss, injury, or damage caused solely by the negligent acts or omissions of AGENCY or any of its officers or employees.

B. AGENCY agrees to indemnify, defend, and hold harmless the COMPANY and its officers and employees against all claims, demands, damages, costs, and liabilities for loss, injury, or damage caused solely by the negligent acts or omissions of AGENCY or any of its officers or employees arising out of, or in connection with, the performance by AGENCY or any of its officers or employees under this AGREEMENT.

#### **ARTICLE IX - SUBCONTRACTORS AND ASSIGNMENTS**

9.1 Subcontracting: COMPANY is authorized to engage subcontractors, as permitted by law at COMPANY'S own expense, subcontractors shall be deemed agents of COMPANY.

9.2 Assignments: This contract may not be assigned without the prior written consent of the AGENCY. It is understood and acknowledged by the parties that the COMPANY is uniquely qualified to perform the services in this agreement.

#### **ARTICLE X - INDEPENDENT COMPANY**

10.1 COMPANY'S Relationship: COMPANY'S relationship to AGENCY in the performance of this Agreement is that of an independent COMPANY. Personnel performing services under this Agreement shall at all times be under COMPANY'S exclusive direction and control and shall be employees of COMPANY and not employees of the AGENCY. COMPANY shall pay all wages and salaries and shall be responsible for all reports and obligations respecting them relating to social security, income tax withholding, unemployment compensation, worker's compensation, and similar matters. Neither COMPANY nor any officer, agent, or employee of COMPANY shall obtain any right to retirement benefits or other benefits which accrue to employees of AGENCY, and COMPANY hereby expressly waives any claim it might have to such rights.

#### **ARTICLE XI - INSURANCE**

11.1 Insurance Provisions: COMPANY shall provide and maintain at its own expense during the term of this Agreement, the following policy or policies of insurance covering its operations



4600 Campus Drive, Suite 200  
Newport Beach, CA 92660  
949 752 6937 (x) 310 - Phone  
949-752-6033 - Fax  
[MFleming@DataTicket.com](mailto:MFleming@DataTicket.com)

hereunder. Such insurance shall be provided by insurer(s) satisfactory to the AGENCY and certificates of such insurance shall be delivered to the AGENCY on or before the effective date of this Agreement. Such certificates shall specifically identify this Agreement and shall not be canceled, reduced in coverage or limits or non-renewed except after thirty (30) days written notice has been given to the AGENCY.

- A) Comprehensive general liability insurance covering bodily and personal injury and property damage. Limits shall be in an amount of not less than two million (\$2,000,000) dollars per occurrence. Such insurance policies shall name the AGENCY, its officers, agents and employees, individually and collectively, as additionally insured. Such coverage for additional insured shall apply as primary insurance and any other insurance or self-insured retention maintained by the AGENCY its officers, agents and employees shall be excess only and not contributing with insurance provided under said policy.
- B) Comprehensive automobile liability owned, non-owned and hired vehicles with not less than one million (\$1,000,000) dollars combined single limit, per occurrence for property damage and for bodily injury or death of persons. Such insurance shall include the same additional insured and cancellation notice provisions as specified above and may be combined with the comprehensive general liability coverage required above.
- C) Throughout the period of Agreement, COMPANY, at its sole cost, shall maintain in full force and effect a policy of workers' compensation insurance covering all of its employees as required by the labor code of the State of California.

## **ARTICLE XII – ENTIRE AGREEMENT**

12.1 **Integrated Agreement:** This contract is intended by the parties as a final expression of their Agreement and also as a complete and exclusive statement of the terms thereof, any prior oral or written Agreement regarding the same subject matter notwithstanding. This Agreement may not be modified or terminated orally and no modification or any claim or waiver of any of the provisions shall be effective unless in writing and signed by both parties.

12.2 **Law Applicable:** This Agreement shall be construed in accordance with the Laws of the State of California.



4600 Campus Drive, Suite 200  
Newport Beach, CA 92660  
949 752 6937 (x) 310 - Phone  
949-752-6033 - Fax  
[MFleming@DataTicket.com](mailto:MFleming@DataTicket.com)

12.3 Notice to Parties: Any notice required under this Agreement to be given to either party may be given by depositing in the United States mail, postage prepaid, first-class, addressed to the following:

AS TO THE AGENCY:

**CITY OF CATHEDRAL CITY  
68700 AVENIDA LALO GUERRERO  
CATHEDRAL CITY, CA 92234**

AS TO THE COMPANY:

**DATA TICKET, INC.  
A CALIFORNIA CORPORATION  
4600 CAMPUS DRIVE, STE 200  
NEWPORT BEACH, CALIFORNIA 92660**

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year last written below.

AGENCY: THE CITY OF CATHEDRAL CITY

COMPANY: DATA TICKET, INC.

Signature: *Andy Hall*

Signature: *Margaret A. Fleming*

Print Name: Andy Hall

Print Name: Margaret A. Fleming

Title: City Manager

Title: President

Date: May 30, 2013

Date: 6/20/13

**City of Cathedral City Administrative Citation Processing Services  
Proposal****EXHIBIT A**

<b>Manual Administrative Citation Processing:</b>	<b>\$22.00*</b>
<b>Electronic Administrative Citation Processing:</b>	<b>\$15.00**</b>

***Services for the above-mentioned items includes:***

- Citation entry into Data Ticket's Citation Management System
- Keying of responsible party information into the Citation Management System
- Payment processing of checks, cash, money orders, and credit / debit cards
- In-house, bi-lingual Customer Service staff
- Call recording of all inbound and outbound customer service calls
- Interactive Voice Response System available 24/7
- Semi-custom 1<sup>st</sup> Notice of Delinquency to be sent to the responsible party
- In addition to the 1<sup>st</sup> Notice of Delinquency, two additional notices will be sent to the responsible party, at a time frame to be defined by the County
- Notices will include a return envelope in which the responsible party may submit payment
- Notices will be sent via 1<sup>st</sup> Class Mail, for which Data Ticket will be responsible
- All adjudication services, including placing citations on a hearing hold, scheduling each hearing, and sending a scheduling letter to the Appellant
- Custom judgment letter will be sent to the Appellant via Certified Mail
- All letters will be available on the web for County personnel to view and/or re-print at anytime

\*If the City were to opt to use both Parking and Administrative Citation processing services, the fee for manual administrative citation processing will be **\$19.00**

\*\**Electronic File Transmission*

**Administrative Hearings** **\$85.00 per hour**

- Data Ticket's independent, certified, insured hearing officers will be provided to the City to perform in-person, phone, and written hearings.
- Each hearing request will be reviewed, heard or read, and all required research will be performed. The Hearing Officer will enter a judgment into the Citation Processing System for viewing by the City, citizen and Data Ticket.
- The City will not incur any costs associated with mileage or postage
- Data Ticket will work with the City to arrange for the use of a conference room at a City location or the City may elect to have citations heard at a centralized location within the City

**City of Cathedral City Administrative Citation Processing Services  
Proposal****Franchise Tax Board Processing  
SSN Look-up****\$3.00 per SSN**

- This fee will be assessed to lookup a social security number associated with a particular responsible party and address. This charge is charged per unique SSN, not per citation

**FTB Collections****15% of revenue collected**

- This fee is charged if a citation is paid at the Franchise Tax Board. This charge is not combined with any other charge. For example if a citation is rolled to delinquent status and paid at FTB, only the 15% of revenue collected will be charged.

**Third Party Collections****Legal Action Not Required****30% of revenue collected**

- This fee is charged if a citation is paid at the Third Party Collections. This charge is not combined with any other charge. For example if a citation is rolled to delinquent status and paid at Third Party Collections, only the 30% of revenue collected will be charged

**Joint Banking Account Services****\$50.00 per month*****Services for the above-mentioned item includes:***

- Daily deposits of funds to the City's escrow account
- Online, real-time reconciliation reports that tie directly to the bank statement
- Processing of all credit card chargebacks and Insufficient Funds
- Month-end reconciliation of all funds collected
- Disbursement of County / State Surcharges at month-end
- Payment of Data Ticket's invoice
- Disbursement of the net remittance to the City

**Refunds****\$5.00 per issued refund**

- Issuance of all refunds to citizen who are due a refund via 1<sup>st</sup> Class Mail

**Conversion:****\$0.00**

- Data Ticket will convert the citations currently with the City's existing vendor at no cost to the City

**Online Access:****\$0.00*****Services for the above-mentioned item includes:***

- Access via the Internet for the County's citizens and visitors to perform as many functions as the City desires.



4600 Campus Drive, Suite 200  
Newport Beach, CA 92660  
888-752-0512  
[www.DataTicket.com](http://www.DataTicket.com)

**City of Cathedral City Administrative Citation Processing Services  
Proposal**

**Other:**

- A convenience fee will be assessed to the citizen in the event they choose to pay online or via the IVR or phone
- An administrative fee will be assessed to citizens who wish to participate in a payment plan will be available to citizens. This fee will cover the cost of the payment plan initiation, and the cost of a confirmation letter that is sent to the citizen confirming the details of the payment plan.

**FEEES CHARGED TO THE PATRON**

**Credit/Debit Card Transaction Fee charged to Patron \$3.50**  
**Credit/Debit Card Chargeback Fee charged to Patron \$30.00**  
**Fee for Payment Plan Initiated by Patron \$15.00**



## Data Ticket and Revenue Experts Administrative Citation Processing Overview

Using Data Ticket and Revenue Experts services, the City will have the resources to provide a comprehensive program that will achieve City and Staff goals of:

- **REVENUE DIVERSIFICATION AND PRESERVATION** – Develop a variety of City revenue sources and policies to create a stable revenue base and fiscal policies to support essential City services, regardless of economic climate.
- **PUBLIC SAFETY** – Provide a safe and secure environment for people and property in the community, control the number and severity of fire and hazardous material incidents, and provide protection for citizens who live, work and visit the City.
- **POSITIVE ENVIRONMENT** – Create a positive environment for the development and growth for the City’s future.
- **COMMUNITY IMAGE, NEIGHBORHOOD PRIDE AND CLEANLINESS** – Promote a sense of community pride and foster an excellent image about the City by developing and executing programs which will result in quality development, enhanced neighborhood preservation efforts, including home rehabilitation and neighborhood restoration.

### TYPES OF ADMINISTRATIVE CITATIONS:

**Property Maintenance**

**Illegal Signage**

**Illegal Vendors**

**Business Licenses**

**Health and Safety Codes**

**Building Codes**

**Animal Control**

**False Alarms**

**Graffiti**

**Public Nuisance**

### ***Administrative Citation Processing & Collection Services***

- Processing of Administrative Citations
- Revenue Collection
- Multiple Notices with Varied Verbiage
- Consistent Noticing Sent According to City Requirements
- Data Entry and Citation Tracking of Administrative Citations, Manually or Electronically
- Citation Status Updates Daily
- Citation Tracking
- Toll Free Customer Information for Citizen Inquiry – 24/7
- Toll Free Customer Care Answer Lines
- Secure Web Site access for citation look-up provided for both Citizen and City, 24/7
- Secure Web Site Access for Citizen Payment 24/7
- Visa, MasterCard, Discover and American Express accepted 24/7
- Secure Web Site Access to total database for Agency 24/7
- Agency Access to Reports 24/7 on the Web Site
- Citation Reviews/Hearings Scheduled and held
- Appeals Heard by Certified and Trained Hearing Officers Professionally and Impartially Handled Appeals
- Decisions Sent and Tracked
- Manual payment processing accepted via check, cash or money order
- Deposits Daily
- Bank Account Reconciliation Monthly
- Monthly Reporting, Tracking and Documentation
- Interagency Intercept Program Participation & Interface
- Social Security Number Access for Interagency Intercept Program Participation
- Consolidation of all Debts for Interagency Intercept Program Participation
- Marking, Tracking & Reporting on Interagency Intercept Program Payments
- Handheld Ticket-writers Offered for Complete Automation

### ***Features and Benefits of an Automated Administrative Citation Processing Service***

- Allows Code Enforcement Officers to do their job....Inspect, Warn, Inspect, Cite
- Better productivity by outsourcing labor-intensive paperwork
- More control and consistent follow-through and focus
- Higher compliance and collection rates due to a consistent process
- Cumbersome Court appearances are reduced as Hearing are expedient and efficient
- Redirects revenue from the Court to the City where it belongs
- Provides certified Hearing Officers who understand the importance of Code Enforcement Programs



### ***Administrative Citation Processing and Collections Process***

- The Agency provides warning(s) to citizen regarding violation(s) and a time frame established for compliance.
- The Agency revisits site for compliance, if no compliance the citation is written.
- The citation specifies the violation(s) and informs the violator of the time frame from the date of the citation to pay the violation(s) and/or correct it/them.
- A copy of the citation is sent to The Company for collection on a daily/weekly basis within 7 days of issuance.
- Citations received from the Agency are keyed or entered electronically into The Company citation management database.
- The Violator has (per agency) days to pay or contest (appeal) the citation from the date of issue.
- If paid, payment will be entered on the Company system and deposited in Agency's bank account.
- Upon receipt of the citation for process, if no payment is made within the specified time (by Agency), the Company will mail a first notice of delinquency for payment.
- After (per Agency) days from the date of the first notice, if the citation remains unpaid, the Company will mail a second notice of delinquency for the total amount due (including any added penalties).
- After (per Agency) days from the date of the second notice, if the citation is unpaid, the Company will mail a final notice demanding payment. This notice will indicate the future actions that will be taken to collect the fine including submitting the violator's name to the Franchise Tax Board for collection through the Interagency Intercept Program, and that additional processing cost may be added to the fine.
- After 30 calendar days from the date of the final notice, if the fine is still unpaid, the Company will place the citation on the Interagency Intercept Program list for submission at the appropriate time.
- The Company will then access social security numbers to attach to citations that are eligible for the program.
- All citations attached to the same social security number will be grouped together for submission, with a total amount due showing.
- Citations will be placed in the Program during the Company's normal file transfer to the Franchise Tax Board.
- When the Company places a citation with the Interagency Intercept Program the amount of the fines plus any additional charges will be included on the total amount due by the violator and may be paid in full or in part depending on the amounts available for dispersal.

### ***Administrative Citation Adjudication Process***

- If violator wishes to contest the administrative citation, a toll free number will have been provided on the citation and upon calling the number the violator will be instructed to put their appeal in writing on a form supplied by The Company (or Agency) and post the entire amount of the bail.
- If an appeal is not directed to the Company but received by the Agency, the Agency will forward the appeal to the Company. A review will be scheduled and conducted and the decision will be sent to the citizen.
- When the appeal and bail are received within the time frame allowed, the violator will be scheduled for a hearing. This information will be transmitted to the Agency via fax and email. The violator will be notified that the appeal has been approved to go forward and will be notified of the time, date and place of the hearing.
- If the appeal is not received within the allowable time frame allowed and/or if the entire bail is not posted both the Agency and the violator will be notified that the appeal request has been denied.
- All supporting documentation will be requested by The Company from the Agency (including officer's notes and pictures) for the actual hearing.
- Following the hearing, the citizen will receive written confirmation of the decision of the Hearing Officer sent by certified mail with 10 days of the conclusion of the hearing. The Agency will be notified of the same via fax.
- If the citation is upheld, the information will include further instructions to the violator, including the time frame for a court appeal if the violator desires to continue to contest.
- If the citation is dismissed, the Agency and the violator will be notified and a refund will be generated for the posted bail.
- If there is no further appeal within the time frame allowed, the Agency will be notified of the outcome and the case closed.
- If the violator appeals to the court he is subject to pay the \$25.00 court-filing fee.
- The Company will notify the Agency and all supporting information for the case will be forwarded to the Agency for the court appearance.
- The court decision will be copied to The Company and any refund or correspondence required will be handled. If the court dismisses the citation, the Agency will be responsible for refunding the \$25.00 court-filing fee.
- The system will be updated with the appropriate information and the case closed.
- If there is no response to the notice of delinquency from the violator, the Agency will be notified for a decision on further action. Options include closing the citation unpaid, the Agency filing in small claims court against the violator or notification of the Interagency Intercept Program to attach any state tax returns or lottery winnings that would be paid to the citizen during the year.

**DATA**   
**TICKET** inc.

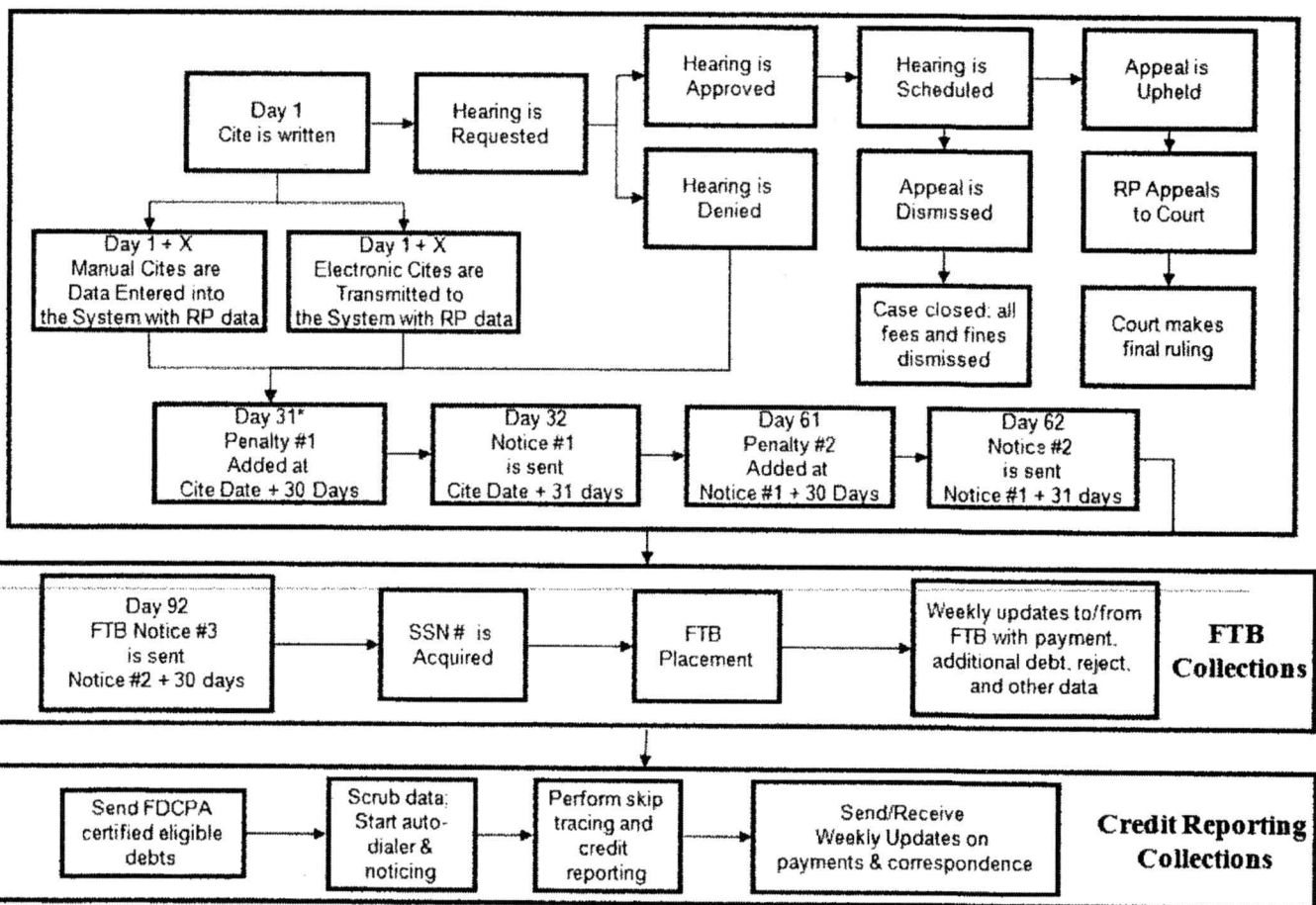
**REVENUE**   
**EXPERTS**

The Hearing Officer will be an impartial official with previous experience in holding hearings and training on Municipal Code Enforcement and who has been trained according to the requirements for administrative hearings as mandated by the California legislature and has additional training from the adjudication manual. The Hearing Officer will not be compensated on a commission basis and there will be no connection between decisions and compensation for the job. Hearing Officers will be subject to review by the Agency at the Agency's expense.

The only responsibilities to be borne by the Agency are the provision of space for the in-person hearings to be held on a bi-monthly basis, the referral of the original citations and any requested supporting documentation for hearings, and the occasional appearance at a court hearing. The Company will provide forms, notices, correspondence, scheduling, documentation, database updates, tracking, reporting, banking, a toll-free number for violator questions, web site access, the Hearing Officer and all software and hardware required to handle the job efficiently and effectively. We are confident that the Agency will enjoy the benefits of this unique service.

**Administrative Citation Process**

The following illustrative provides an overview of the administrative citation processing steps Data Ticket and Revenue Experts employ to increase compliance and collections. This process is customizable for each of our clients and simply serves as an overview of the process as a whole.



\*Citation is considered delinquent