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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

VICKI CORONA,

Plaintiff,

v.

CITY OF LOS ANGELES, et al.,

Defendants.

Case No. CV 17-2913-VBF (KK)

ORDER DISMISSING COMPLAINT  
WITH LEAVE TO AMEND

**I.**

**INTRODUCTION**

Plaintiff Vicki Corona (“Plaintiff”), proceeding pro se and in forma pauperis, filed a Complaint (“Complaint”) pursuant to 42 U.S.C. § 1983 (“Section 1983”) alleging defendants City of Los Angeles, Eric Garcetti, and Does 1 through 10 (“Defendants”) violated her Fourth, Fifth, and Fourteenth Amendment rights. Plaintiff also raises state law claims, as well as violations of Sections 80.07 and 80.10 of the Los Angeles Municipal Code.<sup>1</sup> As discussed below, the Court dismisses the Complaint with leave to amend.

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<sup>1</sup> While the Court has the authority to exercise supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367, it must first have original jurisdiction over related federal claims. As discussed below, Plaintiff has failed to state any federal law claims. Thus, the Court declines to address the remaining state law claims at this time.



1 alleges the Ordinances impairs her “freedom to travel and park without licensing,  
2 registration, etc.” Id. at 6. Lastly, Plaintiff appears to allege a violation under the  
3 Fourteenth Amendment’s Equal Protection Clause because the Ordinance  
4 specifically targets homeless individuals living in their car. Id. at 3, 6.

5 Plaintiff additionally raises state law claims for (1) fraud because her car does  
6 not fall under the definition of “motor vehicle” and thus is not subject to the  
7 Ordinance; and (2) extortion because the Ordinance threatens fines and force for  
8 “infractions which are not crime and are not arrestable offenses.” Id. at 8, 10.  
9 Lastly, Plaintiff claims the Ordinance violates Sections 80.07 and 80.10 of the Los  
10 Angeles Municipal Code, which require sign postings to inform Los Angeles  
11 residents of the Ordinance. Id. at 7-11.

12 As a result of these claims, Plaintiff seeks injunctive relief and \$500,000 in  
13 punitive damages. Id. at 13.

### 14 III.

#### 15 **STANDARD OF REVIEW**

16 As Plaintiff is proceeding in forma pauperis, the Court must screen the  
17 Complaint and is required to dismiss the case at any time if it concludes the action  
18 is frivolous or malicious, fails to state a claim on which relief may be granted, or  
19 seeks monetary relief against a defendant who is immune from such relief. 28  
20 U.S.C. § 1915(e)(2)(B); see Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir.  
21 1998).

22 In determining whether a complaint fails to state a claim for screening  
23 purposes, the Court applies the same pleading standard from Rule 8 of the Federal  
24 Rules of Civil Procedure (“Rule 8”) as it would when evaluating a motion to  
25 dismiss under Federal Rule of Civil Procedure 12(b)(6). See Watison v. Carter,  
26 668 F.3d 1108, 1112 (9th Cir. 2012). Under Rule 8(a), a complaint must contain a  
27 “short and plain statement of the claim showing that the pleader is entitled to  
28 relief.” Fed. R. Civ. P. 8(a)(2).

1 A complaint may be dismissed for failure to state a claim “where there is no  
2 cognizable legal theory or an absence of sufficient facts alleged to support a  
3 cognizable legal theory.” Zamani v. Carnes, 491 F.3d 990, 996 (9th Cir. 2007)  
4 (citation omitted). In considering whether a complaint states a claim, a court must  
5 accept as true all of the material factual allegations in it. Hamilton v. Brown, 630  
6 F.3d 889, 892-93 (9th Cir. 2011). However, the court need not accept as true  
7 “allegations that are merely conclusory, unwarranted deductions of fact, or  
8 unreasonable inferences.” In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th  
9 Cir. 2008) (citation omitted). Although a complaint need not include detailed  
10 factual allegations, it “must contain sufficient factual matter, accepted as true, to  
11 ‘state a claim to relief that is plausible on its face.’” Cook v. Brewer, 637 F.3d  
12 1002, 1004 (9th Cir. 2011) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct.  
13 1937, 173 L. Ed. 2d 868 (2009)). A claim is facially plausible when it “allows the  
14 court to draw the reasonable inference that the defendant is liable for the  
15 misconduct alleged.” Cook, 637 F.3d at 1004 (citation omitted).

16 “A document filed pro se is to be liberally construed, and a pro se complaint,  
17 however inartfully pleaded, must be held to less stringent standards than formal  
18 pleadings drafted by lawyers.” Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir.  
19 2008) (citation omitted). “[W]e have an obligation where the p[laintiff] is pro se,  
20 particularly in civil rights cases, to construe the pleadings liberally and to afford the  
21 p[laintiff] the benefit of any doubt.” Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir.  
22 2012) (citation omitted).

23 If the court finds the complaint should be dismissed for failure to state a  
24 claim, the court has discretion to dismiss with or without leave to amend. Lopez v.  
25 Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Leave to amend should be granted  
26 if it appears possible the defects in the complaint could be corrected, especially if  
27 the plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103,  
28 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear a complaint

1 cannot be cured by amendment, the court may dismiss without leave to amend.  
2 Cato, 70 F.3d at 1107-11; see also Moss v. U.S. Secret Serv., 572 F.3d 962, 972 (9th  
3 Cir. 2009).

#### 4 IV.

### 5 DISCUSSION

#### 6 **A. PLAINTIFF FAILS TO STATE FIFTH AND FOURTEENTH** 7 **AMENDMENT DUE PROCESS CLAIMS FOR DEPRIVATION OF** 8 **PROPERTY AGAINST DEFENDANTS**

##### 9 **1. Applicable Law**

10 The Due Process Clause of the Fifth and Fourteenth Amendments  
11 guarantees that “[n]o person shall . . . be deprived of life, liberty, or property,  
12 without due process of law.” U.S.C.A. Const. Amend. V, XIV. “[I]ndividuals  
13 must receive notice and an opportunity to be heard before the Government  
14 deprives them of property.” United States v. James Daniel Good Real Prop., 510  
15 U.S. 43, 48, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993). There are two types of “per  
16 se” takings: (1) permanent physical invasion of the property, Loretto v.  
17 Teleprompter Manhattan CATV Corp., 458 U.S. 419, 426, 102 S. Ct. 3164, 73 L.  
18 Ed. 2d 868 (1982); and (2) a deprivation of all economically beneficial use of the  
19 property, Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1015-16, 112 S. Ct. 2886,  
20 120 L. Ed. 2d 798 (1992).

##### 21 **2. Analysis**

22 Here, Plaintiff appears to allege the Ordinance violates her due process right  
23 because it deprives Plaintiff of one of her car’s central attributes – namely its  
24 function of providing her with shelter. Compl. at 5. However, Plaintiff fails to  
25 allege facts that the Ordinance deprives her of “*all* economically beneficial use of  
26 the property.” See Lucas, 505 U.S. at 1015-16 (emphasis added). Significantly,  
27 Plaintiff does not allege the Ordinance prevents Plaintiff from using her car as a  
28

1 mode of transportation. Thus, Plaintiff has failed to state a Fifth or Fourteenth  
2 Amendment deprivation of property claim.

3 **B. PLAINTIFF FAILS TO STATE AN UNCONSTITUTIONAL**  
4 **INFRINGEMENT ON HER RIGHT TO TRAVEL CLAIM AGAINST**  
5 **DEFENDANTS**

6 **1. Applicable Law**

7 The “freedom to travel throughout the United States has long been  
8 recognized as a basic right under the Constitution.” Dunn v. Blumstein, 405 U.S.  
9 330, 338, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972) (quoting United States v. Guest,  
10 383 U.S. 745, 758, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966)). A state law implicates  
11 the right to travel when it actually deters such travel, *see, e.g., Shapiro v.*  
12 Thompson, 394 U.S. 618, 629, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969) (overruled  
13 on other grounds), when impeding travel is its primary objective, *see Zobel v.*  
14 Williams, 457 U.S. 55, 62, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982); Shapiro, 394  
15 U.S. at 628–31, or when it uses “any classification which serves to penalize the  
16 exercise of that right.” Dunn, 405 U.S. at 340 (quoting Shapiro, 394 U.S. at 634);  
17 Attorney Gen. of N.Y. v. Soto-Lopez, 476 U.S. 898, 903, 106 S. Ct. 2317, 90 L. Ed.  
18 2d 899 (1986). However, there is no “fundamental right to drive” and “burdens  
19 on a single mode of transportation do not implicate the right to interstate travel.”  
20 Miller v. Reed, 176 F.3d 1202, 1205 (9th Cir. 1999) (finding that state’s  
21 requirement drivers provide social security number to obtain a driver’s license and  
22 subsequent denial of a driver’s license to plaintiff because he refused to provide the  
23 information number did not violate his constitutional right to travel).

24 Furthermore, pursuant to their police powers, states have the right to  
25 regulate their roads and “the federal government has no constitutional authority to  
26 interfere with a state’s exercise of its police power except to the extent the state’s  
27 action intrudes on any of the spheres in which the federal government itself enjoys  
28 the power to regulate.” United States v. Snyder, 852 F.2d 471, 475 (9th Cir. 1988);

1 see also Mackey v. Montrym, 443 U.S. 1, 17, 99 S. Ct. 2612, 61 L. Ed. 2d 321 (1979)  
2 (holding a state’s interest in public safety includes a “paramount interest . . . in  
3 preserving the safety of its public highways).

## 4 **2. Analysis**

5 Here, Plaintiff fails to state a claim based on the infringement of her  
6 fundamental right to travel. Plaintiff alleges the Ordinance denies her the  
7 “freedom to travel and park without licensing, registration, etc.” Compl. at 6.  
8 However, pursuant to its police powers, states have the authority to regulate their  
9 roads, which includes issuing ordinances regulating when and where people may  
10 park and requiring individuals drive with the proper licensing. See Snyder, 852  
11 F.2d at 475. Furthermore, Plaintiff has failed to present any facts which show (1)  
12 the Ordinance has actually deterred her ability to travel; (2) the primary objective  
13 of the Ordinance is to impede travel; or (3) the Ordinance uses “any classification  
14 which serves to penalize the right to travel.” See Shapiro, 394 U.S. at 629. Rather,  
15 Plaintiff has merely alleged a “burden on a single mode of transportation.” Miller,  
16 176 F.3d at 1205. Thus, Plaintiff has failed to state a claim for unconstitutional  
17 infringement on her right to travel.

## 18 **C. PLAINTIFF FAILS TO STATE A FOURTEENTH AMENDMENT** 19 **EQUAL PROTECTION CLAIM**

### 20 **1. Applicable Law**

21 “The Equal Protection Clause of the Fourteenth Amendment commands  
22 that no State shall ‘deny to any person within its jurisdiction the equal protection of  
23 the laws,’ which is essentially a direction that all persons similarly situated should  
24 be treated alike.” City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432,  
25 439, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985) (quoting Plyler v. Doe, 457 U.S. 202,  
26 216, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982)). In order to state a Section 1983  
27 equal protection claim, plaintiffs must allege they were treated differently from  
28 others who were similarly situated without a rational basis or discriminated against

1 based on their membership in a protected class. See Serrano, 345 F.3d at 1082  
2 (requirements for Section 1983 equal protection claim based on membership in  
3 protected class); Gallo v. Burson, 568 F. App'x 516, 517 (9th Cir. 2014) (affirming  
4 district court dismissal of inmate's equal protection claim). "Similarly situated"  
5 persons are those "who are in all relevant aspects alike." Nordlinger v. Hahn, 505  
6 U.S. 1, 10, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992).

7 **2. Analysis**

8 Here, Plaintiff's Equal Protection claim fails. Plaintiff's Equal Protection  
9 claim is premised on the fact that the Ordinance targets and discriminates against  
10 homeless individuals. As a preliminary and general matter, homeless individuals  
11 are not a protected class. See Nails v. Haid, No. SACV 12-0439-GW-SS, 2013 WL  
12 5230689, at \*3 (C.D. Cal. Sept. 17, 2013). To the extent Plaintiff attempts to allege  
13 the Ordinance discriminates against homeless *women* specifically, she has failed to  
14 provide sufficient facts to state a claim for gender discrimination caused by the  
15 Ordinance on its face, or as applied to her and other homeless women. See  
16 Isaacson v. Horne, 716 F.3d 1213, 1231 (9th Cir. 2013) ("[T]he facial versus as-  
17 applied distinction is relevant when a claimed statutory defect applies to a sub-  
18 category of the people affected by the law, and the court must determine whether  
19 that particular sub-category may challenge the statute as a whole, including its  
20 application to people who are not similarly situated."). Because Plaintiff has failed  
21 to present facts of how the Ordinance treats her differently than any other similarly  
22 situated individuals, Plaintiff's Equal Protection claim must be dismissed.

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1 **D. PLAINTIFF FAILS TO STATE A FOURTH AMENDMENT**  
2 **UNLAWFUL SEARCH AND SEIZURE CLAIM AGAINST**  
3 **DEFENDANTS**

4 **1. Applicable Law**

5 The Fourth Amendment prohibits “unreasonable searches and seizures.”  
6 Heien v. N. Carolina, \_\_\_ U.S. \_\_\_, 135 S. Ct. 530, 534, 190 L. Ed. 2d 475 (2014).  
7 However, “visual observation by a law enforcement officer situated in a place  
8 where he has a right to be is not a search within the meaning of the fourth  
9 amendment.” United States v. Orozco, 590 F.2d 789, 792 (9th Cir. 1979) (quoting  
10 United States v. Coplen, 541 F.2d 211, 214 (9th Cir. 1976), cert. denied, 429 U.S.  
11 1073, 97 S. Ct. 810, 50 L. Ed. 2d 791 (1977)). Because anyone walking past a vehicle  
12 can generally see inside, there is no reasonable expectation of privacy protected by  
13 the Fourth Amendment. See id.; Katz v. United States, 389 U.S. 347, 351-52, 88 S.  
14 Ct. 507, 19 L. Ed. 2d 576 (1967); United States v. Martinez-Fuerte, 428 U.S. 543,  
15 558, 96 S. Ct. 3074, 49 L. Ed. 2d 1116 (1976) (holding visual inspection of a car does  
16 not implicate the Fourth Amendment provided the inspection is “limited to what  
17 can be seen without a search”).

18 **2. Analysis**

19 Here, Plaintiff’s Fourth Amendment unlawful search and seizure claim fails.  
20 Plaintiff does not allege police officers actually searched her car. Rather, she  
21 simply claims the Ordinance “allows government employees to peer through car  
22 windows to determine if someone is living therein” and that employees may  
23 “presume the car is someone’s home if the windows are obscured in any way.”  
24 Compl. at 5. Furthermore, Plaintiff implicitly concedes the vehicles are situated on  
25 public streets and has failed to allege any facts suggesting government employees  
26 were “situated in a place where [they did not have] a right to be.” Id. at 3-4; see  
27 Orozco, 590 F.2d at 792. Thus, because the alleged searches did not constitute  
28 anything more than “visual observation by a law enforcement officer situated in a

1 place where he has a right to be,” Plaintiff has failed to allege a Fourth Amendment  
2 claim. See Orozco, 590 F.2d at 792.

3 V.

4 **LEAVE TO FILE A FIRST AMENDED COMPLAINT**

5 For the foregoing reasons, the Complaint is subject to dismissal. As the  
6 Court is unable to determine whether amendment would be futile, leave to amend  
7 is granted. See Lucas v. Dep’t of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per  
8 curiam).

9 Accordingly, IT IS ORDERED THAT **within twenty-one (21) days** of the  
10 service date of this Order, Plaintiff choose one of the following two options:

11 1. Plaintiff may file a First Amended Complaint to attempt to cure the  
12 deficiencies discussed above. **The Clerk of Court is directed to mail Plaintiff a**  
13 **blank Central District civil rights complaint form to use for filing the First**  
14 **Amended Complaint, which the Court encourages Plaintiff to use.**

15 If Plaintiff chooses to file a First Amended Complaint, Plaintiff must clearly  
16 designate on the face of the document that it is the “First Amended Complaint,” it  
17 must bear the docket number assigned to this case, and it must be retyped or  
18 rewritten in its entirety, preferably on the court-approved form. Plaintiff shall not  
19 include new defendants or new allegations that are not reasonably related to the  
20 claims asserted in the Complaint. In addition, the First Amended Complaint must  
21 be complete without reference to the Complaint or any other pleading, attachment,  
22 or document.

23 An amended complaint supersedes the preceding complaint. Ferdik v.  
24 Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). After amendment, the Court will  
25 treat all preceding complaints as nonexistent. Id. Because the Court grants  
26 Plaintiff leave to amend as to all her claims raised here, any claim raised in a  
27 preceding complaint is waived if it is not raised again in the First Amended  
28 Complaint. Lacey v. Maricopa Cnty., 693 F.3d 896, 928 (9th Cir. 2012).

1           2.       Alternatively, Plaintiff may voluntarily dismiss the action without  
2 prejudice, pursuant to Federal Rule of Civil Procedure 41(a). **The Clerk of Court**  
3 **is directed to mail Plaintiff a blank Notice of Dismissal Form, which the Court**  
4 **encourages Plaintiff to use.**

5           The Court advises Plaintiff that it generally will not be well-disposed toward  
6 another dismissal with leave to amend if Plaintiff files a First Amended Complaint  
7 that continues to include claims on which relief cannot be granted. “[A] district  
8 court’s discretion over amendments is especially broad ‘where the court has  
9 already given a plaintiff one or more opportunities to amend his complaint.’”  
10 Ismail v. County of Orange, 917 F. Supp.2d 1060, 1066 (C.D. Cal. 2012) (citations  
11 omitted); see also Ferdik, 963 F.2d at 1261. Thus, **if Plaintiff files a First**  
12 **Amended Complaint with claims on which relief cannot be granted, the First**  
13 **Amended Complaint will be dismissed without leave to amend and with**  
14 **prejudice.**

15           **Plaintiff is explicitly cautioned that failure to timely file a First**  
16 **Amended Complaint will result in this action being dismissed with prejudice**  
17 **for failure to state a claim, prosecute and/or obey Court orders pursuant to**  
18 **Federal Rule of Civil Procedure 41(b).**

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20 Dated: May 09, 2017

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HONORABLE KENLY KIYA KATO  
23 United States Magistrate Judge  
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