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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 8679 TROUT, LLC,

No. 2:10-cv-01569-MCE-EFB

12 Plaintiff,

13 v.

MEMORANDUM AND ORDER

14 NORTH TAHOE PUBLIC UTILITIES  
15 DISTRICT, NORTH TAHOE PUBLIC  
16 UTILITIES DISTRICT BOARD OF  
17 DIRECTORS, and DOES 1 THROUGH  
18 10,

Defendants.

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21 The instant litigation arises over Plaintiff's proposed  
22 conversion of a mobile home park from a rental facility to a  
23 resident-owned park. The property owner, 8679 Trout, LLC,  
24 ("Plaintiff") commenced this litigation in the Placer County  
25 Superior Court against North Tahoe Public Utility District and  
26 North Tahoe Public Utility District Board of Directors  
27 ("Defendants"). Defendants promptly removed.

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1 Presently before this Court are two motions<sup>1</sup>: (1) Plaintiff's  
2 Motion for Partial Remand to the state court; and (2) Defendants'  
3 12(b) (6) Motion to Dismiss for failure to state a claim upon  
4 which relief can be granted. For the reasons set forth below,  
5 Plaintiff's Motion to Remand will be granted in part and, as a  
6 result, Defendants' Motion to Dismiss is moot.

7  
8 **BACKGROUND**<sup>2</sup>  
9

10 Plaintiff owns land and improvements in the North Tahoe  
11 Public Utility District ("NTPUD"). Since late 2006, Plaintiff  
12 has operated a rental only mobile home park known as "Denny's  
13 Mobilehome Park" ("Park"), consisting of seven mobile home units.  
14 This arrangement has been in place for approximately thirty  
15 years. Beginning in early 2006, Plaintiff communicated to  
16 Defendants its intention to convert the individual units within  
17 the Park from a rental only facility owned by Plaintiff to  
18 resident ownership with common ownership of the common  
19 facilities.

20 Plaintiff asserts that Defendants led it to believe that the  
21 only additional improvement required was the installation of a  
22 separate service line, and that the conversion would be a  
23 "continuation of service" from the Defendants' standpoint.

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26 <sup>1</sup> Because oral argument was not determined to be of material  
27 assistance, the Court ordered this matter submitted on the  
28 briefing. E.D. Local Rule 230(g).

<sup>2</sup> The factual assertions in this section are based on the  
allegations in Plaintiff's Complaint unless otherwise specified.

1 In the Spring of 2009, Plaintiff contacted Defendants to obtain  
2 confirmation of service, or a "service letter," for its petition  
3 to Placer County for conversion. Defendants stated that they did  
4 not require an application for service, and that such conversions  
5 were commonly done in other circumstances without physical  
6 changes to the property. Therefore, Plaintiff began drafting  
7 CC&R language to enumerate the requirements for viability of the  
8 future owners according to Defendants' specifications.

9 On October 22, 2009, Plaintiff avers that Defendants altered  
10 their position and revised their requirements to include new  
11 sewer and water service to each individual unit within the Park  
12 before receiving service. Plaintiff further contends that  
13 Defendants advised it to make a variance request on December 15,  
14 2009. An adjudicatory meeting on the variance was held before  
15 the Development and Planning Committee on February 22, 2010  
16 despite repeated requests for a delay or withdrawal of its  
17 application. At the hearing, Defendants' staff recommended  
18 denial of the variance unless new water and sewer lines were  
19 connected to each individual unit. The board denied Plaintiff's  
20 application. A subsequent meeting was scheduled before the NTPUD  
21 Board on March 9, 2010 to consider the variance. Plaintiff again  
22 requested continuance of the hearing; however, that request along  
23 with Plaintiff's request for a variance was denied.

24 On June 7, 2010, Plaintiff filed the present action, which  
25 alleges both state and federal claims, to wit: (1) declaratory  
26 relief for violation of California Government Code § 656427.5;  
27 (2) inverse condemnation under both the United States and  
28 California Constitutions; and (3) violation of 42 U.S.C. § 1983.

1 Defendants removed to this Court on June 21, 2010. Plaintiff  
2 filed its Motion to Remand on July 21, 2010 requesting that this  
3 Court remand the state claims and stay the federal causes of  
4 action. Through its motion, Plaintiff contends that a state  
5 court must adjudicate the takings claims before they are ripe for  
6 federal court review. Defendants filed an Amended Motion to  
7 Dismiss on July 29, 2010.

## 8 9 **STANDARD**

### 10 **A. Motion to Dismiss**

11  
12 On a motion to dismiss for failure to state a claim under  
13 Rule 12(b)(6), all allegations of material fact must be accepted  
14 as true and construed in the light most favorable to the  
15 nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,  
16 337-38 (9th Cir. 1996). Federal Rule of Civil Procedure 8(a)(2)  
17 requires only "a short and plain statement of the claim showing  
18 that the pleader is entitled to relief," in order to "give the  
19 defendant fair notice of what the...claim is and the grounds upon  
20 which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957).  
21 While a complaint attacked by a Rule 12(b)(6) motion to dismiss  
22 does not need detailed factual allegations, a plaintiff's  
23 obligation to provide the "grounds" of his "entitlement to  
24 relief" requires more than labels and conclusions, and a  
25 formulaic recitation of the elements of a cause of action will  
26 not do. Bell Atl. Corp. v. Twombly, 2007 U.S. LEXIS 5901, 20-22  
27 (U.S. 2007) (internal citations and quotations omitted).

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1 Factual allegations must be enough to raise a right to relief  
2 above the speculative level. Id. at 21 (citing 5 C. Wright & A.  
3 Miller, Federal Practice and Procedure § 1216, pp. 235-236 (3d  
4 ed. 2004) ("The pleading must contain something more...than...a  
5 statement of facts that merely creates a suspicion [of] a legally  
6 cognizable right of action").

7 If the court grants a motion to dismiss a complaint, it must  
8 then decide whether to grant leave to amend. The court should  
9 "freely give[]" leave to amend when there is no "undue delay, bad  
10 faith[,] dilatory motive on the part of the movant,...undue  
11 prejudice to the opposing party by virtue of...the amendment,  
12 [or] futility of the amendment...." Fed. R. Civ. P. 15(a); Foman  
13 v. Davis, 371 U.S. 178, 182 (1962). Generally, leave to amend is  
14 only denied when it is clear that the deficiencies of the  
15 complaint cannot be cured by amendment. DeSoto v. Yellow Freight  
16 Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992).

## 17

### 18 **B. Motion to Remand**

## 19

20 A defendant may remove any civil action from state court to  
21 federal district court if the district court has original  
22 jurisdiction over the matter. 28 U.S.C. § 1441(a). Generally,  
23 district courts have original jurisdiction over civil actions in  
24 two instances: (1) where there is complete diversity between the  
25 parties, or (2) where a federal question is presented in an  
26 action arising under the Constitution, federal law, or treaty.  
27 28 U.S.C. §§ 1331 and 1332.

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1 The removing party bears the burden of establishing federal  
2 jurisdiction. Ethridge v. Harbor House Rest., 861 F.2d 1389,  
3 1393 (9th Cir. 1988). Furthermore, courts construe the removal  
4 statute strictly against removal. Gaus v. Miles, Inc., 980 F.2d  
5 564, 566 (9th Cir. 1992) (citations omitted). If there is any  
6 doubt as to the right of removal in the first instance, remand  
7 must be granted. See Gaus, 980 F.2d at 566. Therefore, if it  
8 appears before final judgment that a district court lacks subject  
9 matter jurisdiction, the case shall be remanded to state court.  
10 28 U.S.C. § 1447(c).

11 The district court determines whether removal is proper by  
12 first determining whether a federal question exists on the face  
13 of the plaintiff's well-pleaded complaint. Caterpillar, Inc. v.  
14 Williams, 482 U.S. 386, 392 (1987). If a complaint alleges only  
15 state law claims and lacks a federal question on its face, then  
16 the federal court must grant the motion to remand. See 28 U.S.C.  
17 § 1447(c); Caterpillar, 482 U.S. at 392. Nonetheless, there are  
18 rare exceptions when a well-pleaded state law cause of action  
19 will be deemed to arise under federal law and support removal.  
20 They are "... (1) where federal law completely preempts state law,  
21 (2) where the claim is necessarily federal in character, or  
22 (3) where the right to relief depends on the resolution of a  
23 substantial, disputed federal question." ARCO Env'tl. Remediation  
24 L.L.C. v. Dep't of Health & Env'tl. Quality of Mont., 213 F.3d  
25 1108, 1114 (9th Cir. 2000) (internal citations omitted).

26 If the district court determines that removal was improper,  
27 then the court may also award the plaintiff costs and attorney  
28 fees accrued in response to the defendant's removal.

1 28 U.S.C. § 1447(c). The court has broad discretion to award  
2 costs and fees whenever it finds that removal was wrong as a  
3 matter of law. Balcorta v. Twentieth-Century Fox Film Corp., 208  
4 F.3d 1102, 1106 n.6 (9th Cir. 2000).

## 6 DISCUSSION

### 7 A. Takings Claim

#### 8 1. Relevant Law

9  
10 The takings clause of the Fifth Amendment "bars Government  
11 from forcing some people alone to bear burden which, in all  
12 fairness and justice, should be borne by the public as a whole."  
13 Guggenheim v. City of Goleta, 582 F.3d 996 (9th Cir. 2009)  
14 (quoting Lingle v. Chevron U.S.A. Inc., 544 U.S. 528 (2005)).

15 There exist two categories of regulatory action that constitute a  
16 *per se* "taking" under the Fifth Amendment: (1) where government  
17 requires an owner to suffer a permanent physical invasion of his  
18 or her property; and (2) where a regulation completely deprives  
19 an owner of all beneficial economic use of his or her property.  
20 Lingle, 544 U.S. at 538 (internal citations and quotations  
21 omitted). Outside of these two relatively narrow categories,  
22 regulatory takings challenges are governed by the standard set  
23 forth in Penn Cent. Transp. Co. v. City of New York, 438 U.S.  
24 104, 124 (1978). Federal courts have not developed a "'set  
25 formula' for determining when 'justice and fairness' require that  
26 economic injuries caused by public action be compensated by the  
27 government, rather than remain disproportionately concentrated on  
28 a few persons." Id. at 124.

1 Several factors have been identified as having great significance  
2 in determining whether a government action merits compensation  
3 under the Fifth Amendment: (1) the economic impact on the  
4 claimant; (2) the extent to which the regulation has interfered  
5 with distinct investment-backed expectations; and (3) the  
6 character of the governmental action. Id. Penn Central "turns,  
7 in large part...upon the magnitude of a regulation's economic  
8 impact and the degree to which it interferes with legitimate  
9 property interests." Id. at 540.

10 Moreover, a federal takings claim is not ripe until two  
11 conditions are met: (1) the plaintiff has received a "final  
12 decision" regarding the development of the property; and (2) the  
13 plaintiff has been denied compensation by the state. Williamson  
14 County Regional Planning Comm'n v. Hamilton Bank, 473 U.S. 172  
15 (1985). A federal takings claim is not "ripe" until a plaintiff  
16 has sought compensation through state procedures provided for  
17 doing so. Spoklie v. Montana, 411 F.3d 1051 (9th Cir. 2005).  
18 This requirement applies to both facial challenges as well as "as  
19 applied" challenges. Southern Pacific Trans. Co. v. City of Los  
20 Angeles, 922 F.2d 498 (9th Cir. 1990). When a state provides "an  
21 adequate procedure for compensation, until this procedure has  
22 been exhausted and the plaintiff denied compensation, no taking  
23 has occurred." Macri v. King County, 126 F.3d 1125 (9th Cir.  
24 1997) abrogated on other grounds by Crown Point Dev., Inc. v.  
25 City of Sun Valley, 506 F.3d 851 (9th Cir. 2007). As ripeness is  
26 a "threshold jurisdictional question," should a court find a  
27 claim to be unripe for failing to satisfy the Williamson  
28 analysis, "the correct disposition is dismissal."

1 Southern Pacific, 922 F.2d at 508 (citing Lai v. City and County  
2 of Honolulu, 841 F.2d 301, 303 (9th Cir. 1988)).

## 3 4 **2. Analysis**

5  
6 As an initial matter, this Court concludes that Plaintiff's  
7 allegations present an "as applied" challenge to the Defendants'  
8 conduct. This is because Plaintiff does not challenge a local  
9 government ordinance as unconstitutional on its face, but rather  
10 takes issue with the actions taken by local governmental entities  
11 in denying both his application for a conversion and a variance.  
12 (Complaint ¶ 20.) A claim is a facial challenge in circumstances  
13 where a plaintiff's grievance derives entirely from the existence  
14 of the statute itself. Hacienda Valley Mobile Estates v. City of  
15 Morgan Hill, 353 F.3d 651, 656 (9th Cir. 2003). By its very  
16 nature, a facial challenge "does not involve a decision applying  
17 the statute or regulation. Id. at 655. "As applied" challenges  
18 occur where the ordinance is not the sole basis for the  
19 challenge. Id. at 656. The distinction is critical as facial  
20 challenges are exempt from the "final decision" prong of the  
21 Williamson analysis. Id. at 655. In the instant case, because  
22 Plaintiff alleges an "as applied" challenge, both prongs of the  
23 ripeness requirement must be satisfied.

24 To satisfy the "final decision" requirement, a plaintiff  
25 must show that local decision-makers have been provided with an  
26 "opportunity to review at least one reasonable development  
27 proposal before...a challenge to land use will be considered  
28 ripe." Southern Pacific Trans. Co., 922 F.2d at 503.

1 A final decision requires at least: (1) the rejection of a  
2 development plan, and (2) a denial of a variance. Kinzli v. City  
3 of Santa Cruz, 818 F.2d 1449, 1454 (9th Cir. 1987). Plaintiff in  
4 the instant case has clearly met this requirement. Several  
5 judgments by local decision-making entities have been rendered  
6 regarding the proposed conversion of the Park. (Complaint ¶¶ 14,  
7 15, 16.) Plaintiff has submitted proposals, plans, and has had  
8 numerous conversations with the pertinent individuals and  
9 governmental bodies to establish the proposal as meaningful.  
10 (Complaint ¶¶ 12, 13, 14.) Moreover, Plaintiff petitioned for,  
11 and was denied, a variance. (Complaint ¶ 14.) Therefore, the  
12 question turns to whether Plaintiff has met the second prong of  
13 the Williamson analysis.

14 In order for federal courts to evaluate whether a local  
15 entity's action constitutes an unconstitutional and uncompensated  
16 taking, however, it is also necessary to determine what  
17 compensation is available. Southern Pacific, 922 F.2d at 506.  
18 As the Southern Pacific court explains, if a compensation claim  
19 remains available, that defeats the contention that the action is  
20 unconstitutional and a violation of the takings clause. Id.  
21 (quoting Larson v. Domestic & Foreign Corp., 337 U.S. 682  
22 (1949)). When determining whether such compensation was  
23 available, courts look to the time when the alleged taking took  
24 place. Id. (quoting Williamson, 473 U.S. at 194-195). It is  
25 well established that California had procedures available in  
26 2009, the time of the alleged taking, to compensate property  
27 owners in instances of unconstitutional takings. See, e.g.,  
28 Koppling v. City of Whittier, 8 Cal. 3d 39 (Cal. 1972).

1 Because Defendants removed this litigation from state court,  
2 Plaintiff was denied the opportunity to seek state reimbursement.  
3 As ripeness is a threshold jurisdictional question, Defendants  
4 cannot confer jurisdiction to this Court by removal. Therefore,  
5 Plaintiff has yet to satisfy the requirements under the  
6 Williamson analysis to make its claim ripe for federal court  
7 adjudication. Although the claim was ripe when it was originally  
8 filed in state court, it became unripe the moment that Defendants  
9 removed it. A state action is "not complete until the state  
10 fails to provide adequate compensation for the taking."  
11 Williamson, 473 U.S. at 195. In the instant case, California has  
12 not "failed" to compensate the Plaintiff.

13 Therefore, Plaintiff's Fifth Amendment takings claim is  
14 dismissed without prejudice for lack of jurisdiction.

15  
16 **B. Section 1983 Claim**

17 **1. Relevant Law**  
18

19 In addition to the unconstitutional takings claim, the  
20 Complaint also alleges that Defendants acted "under color of a  
21 statute, ordinance, regulation, custom, or usage of state law" in  
22 violating Plaintiff's "substantive due process rights."

23 (Complaint ¶¶ 29, 30.) By denying the proposal and the variance  
24 in an "arbitrary and capricious manner," Plaintiff contends,  
25 Defendants interfered with Plaintiff's property rights.

26 (Complaint ¶ 28.)

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1 "All as applied challenges to regulatory takings, whether  
2 based on the just compensation clause, the due process clause or  
3 the equal protection clause, possess the same ripeness  
4 requirement." Southern Pacific, 922 F.2d at 507; see also  
5 Herrington v. County of Sonoma, 857 F.2d 567, 569 (9th Cir. 1988)  
6 (holding that federal courts apply the same ripeness standards to  
7 equal protection and substantive due process claims). The  
8 Southern Pacific and Herrington decisions interpreted the Supreme  
9 Court's holding in MacDonald, supra, in which two prerequisites  
10 for stating a regulatory takings claim were established:  
11 "(1) that the regulation has gone so far that it has 'taken'  
12 plaintiff's property, and (2) that any compensation tendered is  
13 not 'just.'" 477 U.S. at 349-350 (internal citations and  
14 quotations omitted). The state's action is not complete until it  
15 fails to provide adequate compensation for the unconstitutional  
16 taking. Id. Therefore, a court is unable to determine if a  
17 municipality has failed to provide "just compensation" if it does  
18 not know what compensation it intends to provide. Id.

## 19 20 **2. Analysis**

21  
22 The record establishes that Plaintiff has yet to exhaust the  
23 available state procedures. Although this matter was initially  
24 filed in the Placer County Superior Court, which is the  
25 appropriate venue, Defendants removed to this Court before  
26 Plaintiff had the opportunity to exhaust the state procedures  
27 available to compensate unconstitutional property takings.

28 ///

1 The moment Defendants removed the matter from state court, the  
2 takings claim became unripe. Plaintiff readily admits that it  
3 must return to state court to adjudicate this matter before a  
4 proper proceeding may take place in federal court. (Pl.'s Mot.  
5 to Remand, 8:2-4.)

6 Accordingly, this Court dismisses without prejudice  
7 Plaintiff's § 1983 claim for lack of jurisdiction.  
8

9 **C. Plaintiff's Additional State Claim**  
10

11 In addition to the federal claims, Plaintiff also requests a  
12 judicial determination of the respective rights and duties of  
13 Plaintiff and Defendants with respect to California law,  
14 Government Code § 66427.5, and the Defendants' actions denying  
15 the "will serve" letter and variance. (Complaint ¶ 20.) A  
16 federal court may remand pendant claims if "in exceptional  
17 circumstances, there are other compelling reasons for declining  
18 jurisdiction." 28 U.S.C. § 1367(c)(4). In determining such  
19 "compelling reasons," courts may consider "values of economy,  
20 convenience, fairness, and comity." Executive Software N. Am. v.  
21 U.S. Dist. Court, 24 F.3d 1545, 1557 (9th Cir. 1994). Having  
22 dismissed both of Plaintiff's federal claims, all that remain is  
23 Plaintiff's state law cause of action. Should Plaintiff choose  
24 to re-file the dismissed claims in state court, it would make  
25 sense in terms of judicial economy and convenience to have all  
26 claims adjudicated concurrently in the same tribunal.

27 Accordingly, this Court will remand Plaintiff's pendant  
28 state law declaratory relief claim.

1 **CONCLUSION**

2

3 Plaintiff's Fifth Amendment and § 1983 claims are unripe

4 under the "just compensation" prong of the Williamson analysis.

5 The Court accordingly dismisses said claims, without prejudice,

6 for lack of federal jurisdiction. Moreover, Plaintiff's state

7 cause of action for declaratory relief is REMANDED to the Placer

8 County Superior Court for further adjudication. Because

9 Defendants' Motion to Dismiss (ECF No. 16) has been rendered moot

10 by the above actions, that Motion is DENIED.

11 Each side will bear its own fees and costs. The Clerk is

12 directed to close the file.

13 IT IS SO ORDERED.

14 Dated: September 7, 2010

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16 MORRISON C. ENGLAND, JR.

17 UNITED STATES DISTRICT JUDGE

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