

1 mandate for violation of California’s Public Records Act (“PRA”); and (10) petition for writ
2 of administrative mandate under California Code of Civil Procedure § 1094. Presently
3 before the Court are four separate Motions to Dismiss, filed by each of the four named
4 Defendants. ECF Nos. 7 (“City’s Mot.”), 9 (“RCDC Mot.”), 19 (“Robles Mot.”), 23 (“UDF
5 Mot.”). All motions have been fully—and separately—briefed. See Oppositions and
6 Replies at ECF Nos. 11, 13, 17, 18, 29, 30, 31, 32. For the reasons set forth below, the
7 Motions to Dismiss are GRANTED with leave to amend in part.¹

8 9 STANDARD

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11 On a motion to dismiss for failure to state a claim under Federal Rule of Civil
12 Procedure 12(b)(6), all allegations of material fact must be accepted as true and
13 construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins.
14 Co., 80 F.3d 336, 337-38 (9th Cir. 1996). Rule 8(a)(2) “requires only ‘a short and plain
15 statement of the claim showing that the pleader is entitled to relief’ in order to ‘give the
16 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell
17 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41,
18 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require
19 detailed factual allegations. However, “a plaintiff’s obligation to provide the grounds of
20 his entitlement to relief requires more than labels and conclusions, and a formulaic
21 recitation of the elements of a cause of action will not do.” Id. (internal citations and
22 quotations omitted). A court is not required to accept as true a “legal conclusion
23 couched as a factual allegation.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
24 Twombly, 550 U.S. at 555). “Factual allegations must be enough to raise a right to relief
25 above the speculative level.” Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright &

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¹ The Court declines to grant these motions based on untimely service. The Court does not
condone Plaintiff’s very long delay in serving all Defendants, but—now that all parties have been properly
served—dismissal with prejudice on those grounds would be overly harsh. Plaintiff is admonished,
however, that any future failure to comply with Court orders or rules may result in future sanctions.

1 Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating that the
2 pleading must contain something more than “a statement of facts that merely creates a
3 suspicion [of] a legally cognizable right of action”).

4 Furthermore, “Rule 8(a)(2) . . . requires a showing, rather than a blanket
5 assertion, of entitlement to relief.” Twombly, 550 U.S. at 555 n.3 (internal citations and
6 quotations omitted). Thus, “[w]ithout some factual allegation in the complaint, it is hard
7 to see how a claimant could satisfy the requirements of providing not only ‘fair notice’ of
8 the nature of the claim, but also ‘grounds’ on which the claim rests.” Id. (citing Wright &
9 Miller, supra, at 94, 95). A pleading must contain “only enough facts to state a claim to
10 relief that is plausible on its face.” Id. at 570. If the “plaintiffs . . . have not nudged their
11 claims across the line from conceivable to plausible, their complaint must be dismissed.”
12 Id. However, “[a] well-pleaded complaint may proceed even if it strikes a savvy judge
13 that actual proof of those facts is improbable, and ‘that a recovery is very remote and
14 unlikely.’” Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

15 A court granting a motion to dismiss a complaint must then decide whether to
16 grant leave to amend. Leave to amend should be “freely given” where there is no
17 “undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice
18 to the opposing party by virtue of allowance of the amendment, [or] futility of the
19 amendment” Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v.
20 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to
21 be considered when deciding whether to grant leave to amend). Not all of these factors
22 merit equal weight. Rather, “the consideration of prejudice to the opposing party . . .
23 carries the greatest weight.” Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183,
24 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that
25 “the complaint could not be saved by any amendment.” Intri-Plex Techs. v. Crest Group,
26 Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006,
27 1013 (9th Cir. 2005); Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir.

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1 1989) (“Leave need not be granted where the amendment of the complaint . . .
2 constitutes an exercise in futility . . .”).

3 4 ANALYSIS

5 6 A. First and Second Causes of Action Under § 1983

7 Plaintiff owns various properties in the City of Roseville. These properties are
8 known as the “Rex Building,” the “Opera House Saloon,” the “Galt Building,” and the
9 “State Building.” Compl. at ¶¶ 5, 35. Both the Galt and State Buildings have commercial
10 and residential tenants. Id. Plaintiff first alleges that the City, RCDC, and Robles fenced
11 off certain property behind the Rex Building, to which Plaintiff has an easement,
12 preventing Plaintiff from using/accessing his easement.² Plaintiff alleges these actions
13 amount to a taking. He additionally claims he was given no notice as to the taking of his
14 property, and no opportunity to be heard in violation of his due process rights.

15 With respect to the City and RCDC, because there is no respondeat superior
16 liability for municipal entities under Section 1983 (Board of Bryan County v. Brown,
17 520 U.S. 397, 403 (1997)), a local government entity may be held liable under Section
18 1983 only for constitutional injuries inflicted by edicts or acts that may be fairly said to
19 represent official policy or custom. Monell v. Dep’t of Social Servs., 436 U.S. 658, 694
20 (1978). In other words, in order to state a claim against the City or RCDC, Plaintiff must
21 allege that the actions taken against him were part of a policy or custom.³ Nowhere in
22 Plaintiff’s Complaint does he allege facts supporting such a claim. For that reason,

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24 ² It is not entirely clear whether the easement runs behind the Rex Building or another of Plaintiff’s
properties, but it appears this claim relates to the Rex Building. See Compl. at ¶ 14.

25 ³ RCDC additionally claims it cannot be held liable under Section 1983 because it is a nonprofit
26 public benefit corporation, and not a governmental entity. Because Plaintiff fails to allege a proper Monell
27 claim, the Court need not address this argument. However, the Court notes that under certain
28 circumstances a corporation acting on behalf of a municipality may be held liable under Section 1983.
Moreover, Plaintiff alleges that Robles took actions on behalf of RCDC as an agent of the City, and further
alleges that there is a unity of interest between Roseville and RCDC such that they should be treated as
one entity.

1 Plaintiff's First and Second Causes of Action against the City and RCDC are
2 DISMISSED with leave to amend.

3 As for Robles, Plaintiff alleges that he was at all times acting within the scope of
4 his employment with the City. Compl. at ¶ 9. Plaintiff further alleges that "all actions
5 attributable to the RCDC were made by Robles." Id. at ¶ 18. Official-capacity suits are
6 simply an alternative to suing the municipality of which the individual is an officer.
7 Hafer v. Melo, 502 U.S. 21, 25 (1991). As such, Plaintiff must allege facts supporting his
8 allegation that the constitutional deprivation he suffered was part of a policy or custom
9 per Monell, which he has failed to do. Id. Alternatively, to the extent Plaintiff intends to
10 plead that Robles acted in his personal capacity, the Complaint fails as well. First,
11 paragraph nine of the Complaint, cited above, indicates Robles acted in his official
12 capacity. Second, even excepting paragraph nine, Plaintiff has failed to allege facts
13 indicating that Robles himself personally did anything, nor does the Court have the
14 impression that Robles personally erected the fence around the subject property. For
15 those reasons, Defendant Robles' Motion to Dismiss is GRANTED with leave to amend.⁴

16 **B. Fifth, Sixth, and Seventh Causes of Action for Quiet Title and Nuisance**

17 Plaintiff's Fifth and Sixth Causes of Action against RCDC seek to quiet title to the
18 easement. His Seventh Cause of Action against RCDC asserts that blocking his access
19 to the easement amounts to a private nuisance that must be enjoined.⁵ RCDC asserts,
20 and Plaintiff does not deny, that it is no longer the owner of the lot on which the
21 easement sits. Rather, the lot is now owned by 110 Pacific Street, LLC. RCDC was the
22 sole member of that LLC until March 2018, when it was replaced by the new CEO of
23 RCDC. Plaintiff does not oppose dismissal and instead seeks to amend his Complaint to
24 add 110 Pacific Street LLC as the proper Defendant. The Motion is therefore GRANTED
25 with leave to amend these three causes of action as requested.

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27 ⁴ In light of this ruling, the Court need not and does not address the City's exhaustion argument.

28 ⁵ Because these claims are directly related to Plaintiff's claims under Section 1983, the Court will exercise supplemental jurisdiction over them and consider the merits of Defendant's Motion to Dismiss.

1 **C. Additional State Law Causes of Action**

2 Plaintiff's Third Cause of Action for violation of the UCL against the City and
3 RCDC relates to a city-sponsored musical festival held behind the Opera House Saloon,
4 which Plaintiff contends improperly competes with his Opera House business. His
5 Fourth Cause of Action against the City for a violation of the California Constitution deals
6 with the City's charging of Plaintiff for water use under both a metered system and per
7 residential unit at the Galt and State Buildings. Plaintiff's Eighth Cause of Action seeks a
8 writ of mandate against the City, RCDC, and Robles, compelling them to respond to his
9 public records request pursuant to California's PRA. His Ninth Cause of Action is for a
10 writ of administrative mandate. It is asserted against the City and asks the Court to set
11 aside two building code violations the City issued to Plaintiff. It appears these code
12 violations relate to activities on or near Plaintiff's Rex Building. Plaintiff's Tenth Cause of
13 Action is for a writ of mandate under California Code of Civil Procedure § 1085 against
14 the City and UDF related to the City's sale of 401 Oak Street to UDF without first making
15 an offer to purchase the property to Plaintiff pursuant to California's Surplus Land Act.

16 Under 28 U.S.C. § 1367, "the district courts shall have supplemental jurisdiction
17 over all other claims that are so related to claims in the action within such original
18 jurisdiction that they form part of the same case or controversy" The causes of
19 action arising under state law as summarized above are in no way related to Plaintiff's
20 claims arising under Section 1983. Rather, most of these claims deal with a different
21 property altogether and with entirely separate alleged conduct by Defendants. Indeed,
22 the Ninth Cause of Action is the only one explicitly dealing with the Rex Building (the
23 property at issue in Plaintiff's Section 1983 claims), and the subject building code
24 violations have nothing to do with the easement at issue above. To the extent Plaintiff's
25 PRA Cause of Action is somehow related to the Rex Building, the basis of that relation is
26 not clear to the Court. Moreover, an action arising under California's PRA is more
27 uniquely situated to be addressed by the state court, who no doubt has more experience
28 handling such matters. See Curiel v. Barclays Capital Real Estate Inc., CIVS093074

1 FCD/KJM, 2010 WL 729499, at *1 (E.D. Cal. Mar. 2010) (the “primary responsibility for
2 developing and applying state law rests with the state courts”). The same is true of
3 Plaintiff’s other state claims.

4 Because Plaintiff’s Third, Fourth, Eighth, Ninth, and Tenth Causes of Action in no
5 way form part of the same case or controversy as his claims that arise under federal law
6 (the First and Second Causes of Action), the Court is without jurisdiction over those
7 claims and they must be DISMISSED without leave to amend, but without prejudice to
8 refiling in the appropriate state court.

9 **D. Motions to Strike**

10 The City and Robles additionally move to strike certain allegations in the FAC.
11 The Court may strike from a pleading “an insufficient defense or any redundant,
12 immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). Motions to strike
13 are a drastic remedy and generally disfavored. 5 Charles Alan Wright & Arthur R. Miller,
14 Federal Practice and Procedure § 1380 (3d ed. 2004). Immaterial matter is that which
15 has no essential or important relationship to the claim for relief or the defenses being
16 pled. Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev’d on other*
17 *grounds*, 510 U.S. 517, 114 S. Ct. 1023 (1994) (internal citations and quotations
18 omitted). A matter is impertinent if the statements do not pertain, and are not necessary,
19 to the issues in question. Id. “Scandalous” matters “cast a cruelly derogatory light on a
20 party or other person.” In re 2TheMart.com, Inc. Sec. Litig., 114 F. Supp. 2d 955, 965
21 (C.D. Cal. 2000).

22 Plaintiff’s allegation in the First Cause of Action alleging that Robles has violated
23 California Government Code § 1099(b) are hereby STRICKEN as they are immaterial to
24 Plaintiff’s causes of action, impertinent to the issues in question in this action, and
25 potentially scandalous. If Plaintiff chooses to file an amended complaint as directed
26 above, such references should be omitted. The City’s remaining requests to strike are
27 rendered moot by the Court’s ruling on its Motion to Dismiss.

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CONCLUSION

For the reasons set forth above, Defendants' Motions to Dismiss, ECF Nos. 7, 9, 19, and 23, are GRANTED with leave to amend in part consistent with the foregoing, and the City's Motion to Strike (ECF No. 7) is GRANTED in part. Not later than twenty (20) days following the date this Memorandum and Order is electronically filed, Plaintiff may, but is not required to, file an amended complaint. If no amended complaint is timely filed, the causes of action dismissed by virtue of this order (other than Plaintiff's Third, Fourth, Eighth, Ninth, and Tenth claims, which may be pursued in state court) will be deemed dismissed with prejudice upon no further notice to the parties.

IT IS SO ORDERED.

Dated: September 25, 2018


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE