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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ROGER GIFFORD,

Plaintiff,

v.

PETER KAMPA, et al.,

Defendants.

No. 2:17-CV-2421-TLN-DMC

FINDINGS AND RECOMMENDATIONS

Plaintiff, who is proceeding pro se, brings this civil action.¹ Pending before the Court is Defendants’ motion to dismiss, ECF No. 86. The matter has been submitted on the record without oral argument.

In considering a motion to dismiss, the Court must accept all allegations of material fact in the complaint as true. See Erickson v. Pardus, 551 U.S. 89, 93-94 (2007). The Court must also construe the alleged facts in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); see also Hosp. Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976); Barnett v. Centoni, 31 F.3d 813, 816 (9th Cir. 1994) (per curiam). All ambiguities or doubts must also be resolved in the plaintiff’s favor. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). However, legally conclusory statements, not supported by actual

¹ This case is related to Gibbs v. Hanson, et al., 2:21-cv-0119-TLN-DMC. See ECF No. 70 (related-case order).

1 factual allegations, need not be accepted. See Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949-50 (2009).
2 In addition, pro se pleadings are held to a less stringent standard than those drafted by lawyers.
3 See Haines v. Kerner, 404 U.S. 519, 520 (1972).

4 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement
5 of the claim showing that the pleader is entitled to relief” in order to “give the defendant fair
6 notice of what the . . . claim is and the grounds upon which it rests.” Bell Atl. Corp v. Twombly,
7 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). However, in order
8 to survive dismissal for failure to state a claim under Rule 12(b)(6), a complaint must contain
9 more than “a formulaic recitation of the elements of a cause of action;” it must contain factual
10 allegations sufficient “to raise a right to relief above the speculative level.” Id. at 555-56. The
11 complaint must contain “enough facts to state a claim to relief that is plausible on its face.” Id. at
12 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the
13 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
14 Iqbal, 129 S.Ct. at 1949. “The plausibility standard is not akin to a ‘probability requirement,’ but
15 it asks for more than a sheer possibility that a defendant has acted unlawfully.” Id. (quoting
16 Twombly, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a
17 defendant’s liability, it ‘stops short of the line between possibility and plausibility for entitlement
18 to relief.” Id. (quoting Twombly, 550 U.S. at 557).

19 In deciding a Rule 12(b)(6) motion, the Court generally may not consider materials
20 outside the complaint and pleadings. See Cooper v. Pickett, 137 F.3d 616, 622 (9th Cir. 1998);
21 Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994). The Court may, however, consider: (1)
22 documents whose contents are alleged in or attached to the complaint and whose authenticity no
23 party questions, see Branch, 14 F.3d at 454; (2) documents whose authenticity is not in question,
24 and upon which the complaint necessarily relies, but which are not attached to the complaint, see
25 Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001); and (3) documents and materials
26 of which the court may take judicial notice, see Barron v. Reich, 13 F.3d 1370, 1377 (9th Cir.
27 1994).

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1 Finally, leave to amend must be granted “[u]nless it is absolutely clear that no
2 amendment can cure the defects.” Lucas v. Dep’t of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per
3 curiam); see also Lopez v. Smith, 203 F.3d 1122, 1126 (9th Cir. 2000) (en banc).

4 5 **I. BACKGROUND**

6 **A. First Amended Complaint**

7 This matter was previously before the Court on various motions challenging
8 Plaintiff’s first amended complaint. In the first amended complaint, Plaintiff named the
9 following as defendants:

10 Peter Kampa

11 Robert Puckett, Sr.

12 Patricia Slote

13 Melissa Tulleo

14 Robert Winston

15 Julie Bowles

16 Clint Dingman

17 Ernest Goff

18 Kevin Dixon

19 The Hornbrook Community Services District (HCSD)

20 The Hornbrook Community Bible Church (HCBC)

21 Steven Crittenden

22 Duke Martin

23 James Soares

24 See ECF No. 17.

25 Defaults were entered as to Defendants Slote, Dixon, HCBC, Crittenden,
26 Martin, and Soares on May 23, 2019, see ECF Nos. 29, 30, 31, 32, 33, and 34 (Clerk’s entries
27 of default), and Plaintiff’s motions for default judgment have been denied, see ECF No 82
28 (District Judge order adopting findings and recommendations). Defendant Winston has been

1 dismissed. See ECF No. 82.

2 On March 25, 2021, the Court issued findings and recommendations
3 recommending that Plaintiff’s first amended complaint be dismissed with further leave to
4 amend as to some claims and with prejudice as to other. See ECF No. 71. The Court noted:

5 . . . Plaintiff alleges his claims arise under the First,
6 Fourth, and Fourteenth Amendments to the United States Constitution,
7 as well as various federal statutes, including the Clean Water Act and the
8 Safe Drinking Water Act. See id. [ECF No. 17] at 1. Plaintiff also
9 alleges various state law claims. See id.

10 * * *

11 Plaintiff collectively refers to Defendants Puckett,
12 Tulleo, and Slote, who are alleged to be former members of the board
13 of directors of Defendant HCSD, as the “Board Defendants.” Id. at 3.
14 Plaintiff collectively refers to Defendants Bowles, Dingman, Winston,
15 Goff, Kampa, and Dixon, who are alleged to be employees and/or
16 contractors of Defendant HCSD, as the “employee and contractor
17 Defendants.” ECF No. 17, pg. 3. According to Plaintiff: “The ‘Board
18 Defendants’ took wrongful actions in their official capacities as public
19 officials and officers, and/or under color of law of their positions, and
20 also failed to properly supervise, train, and/or control, the HCSD
21 employee and contractor Defendants. . . .” Id.

22 ECF No. 71, pgs. 2-3.

23 The Court further noted that the first amended complaint contained no specific
24 allegations as to Defendant Tulleo, who Plaintiff alleged to be among the Board Defendants.
25 See id. at 3. As to those individual defendants against whom defaults were not entered and
26 who have not been dismissed, the Court outlined Plaintiff’s specific allegations as follows:²

27 Defendant Robert Puckett, Sr.

28 Plaintiff alleges Defendant Puckett was the president of
the HCSD board and initiated the “common plan” which was ratified by
Defendants Tulleo, Winston, Kampa, Dingman, Goff, and Dixon. ECF
No. 17, pg. 6. According to Plaintiff, this “common plan” was adopted
to allow for operation of the HCSD in an “unsafe manner which failed to
comply with Federal, State, and Local laws; and to create, institute, and
enforce policies, customs, and practices, all in violation of Federal, State,
and local laws. . . .” Id.

² Because Defendant HCSD can only have acted through its officers and directors, allegations against whom are outlined herein, the Court does not include a summary of Plaintiff’s allegations against HCSD. The Court focuses on Plaintiff’s allegations against the non-defaulting individual defendants who remain in the action – Puckett, Bowles, Dingman, Goff, and Kampa. The Court provides this detailed summary of Plaintiff’s prior pleading to allow for comparison with the current operative pleading.

1 Plaintiff claims Defendant Puckett's conduct resulted in
2 undercharging and waiving fees and charges for certain customers,
3 failing to impose and collect the "standby fee" as to each parcel, and
4 failing to comply with provisions of the California Water Code. Id.
5 Plaintiff also claims Defendant Puckett conspired with Defendant
6 Winston to "approve Winston's intervention in several HCSD
7 administrative matters, and/or Siskiyou County Superior Court matters
8 being prosecuted by Plaintiff and other persons, as well as matters in the
9 Third District Court of Appeals, without any BOD [board of directors]
10 approval prior to Winston's appearing therein." Id. at 6-7. Plaintiff
11 alleges these appearances violated provisions of the California Business
12 and Professions Code. See id. at 7.

13 Plaintiff alleges the "Board Defendants, Kampa,
14 Dingman, Goff, Dixon, and Winston" acted to allow defendant Dingman
15 to "work on, and operate (including by the addition of chemicals to the
16 water supply) the HCSD water production, treatment, and distribution
17 facilities without any certification, or license to do so," in violation of
18 provisions of the California Health and Safety Code. ECF No. 17, pg. 7.
19 Plaintiff adds:

20 . . . These same Defendants agreed, conspired, and
21 acted to allow Dingman to occupy and utilize for his personal
22 purposes, the water production, treatment facilities, and real
23 property of the HCSD free of charge, and without
24 compensation for the costs incurred to the HCSD and the
25 public by his doing so."

26 Id.

27 Plaintiff further claims the Board Defendants conspired with Defendant
28 Winston to "wrongfully and corruptly have the HCSD divert public
funds to Winston for former Board member Michelle Hanson's private
legal fees in Siskiyou County Superior Court cases. . . ." Id.

Finally, Plaintiff outlines a number of allegations of
further wrongdoing on the part of Defendant Puckett, including: an
unpermitted and improperly altered septic system; derelict vehicles
leaking toxic oils and fluids onto the ground and public streets, rivers,
and creeks; decrepit sheds, lean-tos, outbuildings, trailers, fifth wheels,
"and the like in a manner harboring rodents and vermin"; improperly
stored pesticides, rodenticides, and fungicides in trailers in which
Defendant Puckett permits people to live; maintaining a fire hazard in
the form of an improperly modified residential electrical system; and
maintaining large amounts of debris. Id. at 7-8.

* * *

Defendant Julie Bowles

Plaintiff claims Defendant Bowles was an officer and
employee of Defendant HCSD, serving as its treasurer. See id. at 15.
According to Plaintiff: "No agreement exists to indemnify Bowles
pursuant to Govt. Code § 995 (or otherwise) in her contract with the
HCSD." Id. Plaintiff alleges Defendant Bowles collaborated with other
defendants in the "improper conduct of illegally non- and/or improperly
agendized, and/or non-public meetings by improperly meeting with them

1 individually and serially, as a group (or portions thereof) via personal
2 contact. . . . for the purpose of discussing official HCSD-related ‘public
3 business,’ including how HCSD funds would be (improperly) diverted to
4 Winston, Bowles, and Dingman; which HCSD customers should get
5 (wrongfully) reduced and/or waived fees and charges and how to alter the
6 billing to affect and conceal those reductions and waivers; and, how to
7 submit time sheets and ‘pay stubs’ for Dingman that were in excess of his
8 contracted rate of pay and hours, and/or which contained false claims for
9 hours and/or jobs worked (and how to prevent all those documents, and
10 the associated timesheets, from being revealed to Plaintiff, and the
11 public).” Id. Plaintiff further claims Defendant Bowles improperly
12 diverted public funds to friends and acquaintances. See id.

13 Plaintiff alleges:

14 These accts by Bowles in the operation of the HCSD
15 was part of the conspiracy with the Board Defendants to
16 cause disruption and upset of the operation of the HCSD, and
17 of Plaintiff’s position and duties as a Director and Secretary,
18 and was undertaken in part as retaliation for Plaintiff’s
19 complaints to the HCSD Board and government agencies
20 about violation of law concerning the HCSD’s operations, and
21 Bowles’ lack of competence.

22 ECF No. 17, pgs. 15-16.

23 Finally, Plaintiff alleges Defendant Bowles submitted
24 \$2,250.00 worth of false claims for payment for services for HCSD she
25 did not perform. See id. at 16.

26 Defendant Clint Dingman

27 Plaintiff alleges Defendant Dingman was the “Systems
28 Trainee” and “Shift Operator” for defendant HCSD’s water production
and treatment facilities. See id. According to Plaintiff, Defendant
Dingman lacked the certifications for this position required under state
law. See id. Plaintiff claims the Board Defendants, Kampa, Goff, and
Dixon “conspired, agreed, and acted to wrongfully provide
compensation, benefits, indemnification, and/or other pecuniary and/or
non-pecuniary benefits to Dingman which were not contractually
specified, and/or which were granted outside of an agendized, public
meeting of the Board of the HCSD. . . .” Id. In particular, Plaintiff
complains that other defendants allowed Defendant Dingman “to reside,
with his dog, at the HCSD water plant, while also utilizing that facility
for his personal purposes (including as a dog run – permitting the animal
to defecate all over the property without Dingman cleaning it up), to
store belongings, etc – all without any payment by Dingman for those
uses.” Id. Plaintiff further contends Defendant Dingman and other
defendants conspired to arrange for Defendant Dingman to receive
payments for services he did not actually perform. See id. at 16-17.

Finally, Plaintiff alleges Defendant Dingman conspired
with other defendants to carry out the “common plan.” Id. at 17.

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Defendant Ernest Goff

According to Plaintiff, Defendants Goff and Dixon “represented themselves as independent contractors, as the Chief Systems Operator(s) for the HCSD, as agents of the HCSD and Board Defendants, and supervisors of Dingman.” Id. at 18. Plaintiff claims that, in these capacities, Defendant Goff and Dixon “had a duty to regularly inspect, oversee, supervise, perform, and directly control the daily operations of the water treatment plant and distribution system as provided by Federal and Sate law. . . .” Id. (emphasis in original). Plaintiff alleges Defendants Goff and Dixon are liable to him for failing to do so. See ECF No. 17, pg. 18.

Plaintiff further claims:

During the times material to this complaint, Goff and Dixon acted in concert with the Board Defendants, Bowles, and Dingman to extract improper payments from the HCSD, to create and distribute false public documents and reports to state enforcement agencies concerning the operation of the HCSD, to operate the HCSD in a manner contrary to law and thus causing a nuisance *per se* to Plaintiff and the public, and to wrongfully prevent inspections and oversight of the HCSD facilities. Goff and Dixon, despite their insistence as being classified “contractors” to the HCSD, also wrongfully obtained indemnification, defense, and other expenses of public money from the HCSD to which they were not entitles, and which were thus improper gifts of public funds.

Id. at 18-19.

Plaintiff alleges that the actions of Defendants Goff and Dixon were ratified by Slote, Puckett, Kampa, and the HCSD. See id. at 19.

Defendant Peter Kampa

Plaintiff alleges Defendant Kampa was the General Manager of the HCSD and, as such, was the direct supervisor of Dingman, Goff, and Dixon. See id. at 20. According to Plaintiff, Defendant Kampa is liable because he “agreed, assisted, aided, and abetted Slote, Puckett, Goff, Dixon, Dingman, and the HCSD in the common plan to create, file with the State Water Board, and distribute, false public records, consisting of documents, logs, and reports concerning the operation of the HCSD and its facilities.” Id. Plaintiff additionally claims: “At no time has Kampa actually performed any of his General Manager duties within the boundaries of the HCSD, instead simply ignoring those duties in favor of using the phone to make calls to the HCSD Board meetings as well as *ex parte communications* via phone and email to the individual Board members, Goff, Dixon, Dingman, and/or Winston in violation of the Brown Act, and to plan and/or facilitate such violations by the other Defendants.” Id. at 20-21.

ECF No. 71, pgs. 3-8.

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1 Plaintiff alleged the facts set forth in the first amended complaint gave rise to 14
2 federal “counts” (collectively styled as Plaintiff’s First Claim for Relief) and 25 state law
3 “counts” (collectively styled as Plaintiff’s Second Claim for Relief). See ECF No. 17, pgs. 31-
4 44. In the March 25, 2021, findings and recommendations, the Court recommended that
5 Plaintiff’s federal claims be dismissed as follows:

- 6 a. Plaintiff’s due process claims be dismissed with leave to amend;
- 7 b. Plaintiff’s equal protection claims be dismissed with leave to
8 amend;
- 9 c. Plaintiff’s retaliation claim be dismissed with leave to amend;
- 10 d. Plaintiff’s claims relating to the denial of the right to vote be
11 dismissed with leave to amend;
- 12 e. Plaintiff’s federal statutory claims be dismissed with prejudice;
13 See ECF No. 71, pg. 29.

14 The Court further recommended that Plaintiff’s claims against Defendant
15 Winston be dismissed with prejudice. See id. Finally, the Court recommended that
16 Defendants’ motions to dismiss Plaintiff’s state law claims be denied without prejudice to
17 renewal at a later date should the Court determine that Plaintiff states a cognizable federal
18 claim and elects to exercise supplemental jurisdiction over state law claims. See id.

19 The District Judge adopted the March 25, 2021, findings and recommendations
20 in full on September 23, 2021. See ECF No. 82. In doing so, the District Judge directed
21 Plaintiff to file a second amended complaint within 30 days of the date of the September 23,
22 2021, order. See id.

23 **B. Second Amended Complaint**

24 On October 25, 2021, the Court granted Plaintiff an extension of time to file a
25 second amended complaint as directed by the District Judge. See ECF No. 84. Plaintiff timely
26 filed his second amended complaint on December 20, 2021. See ECF No. 85. As with the
27 first amended complaint, Plaintiff continues to name the following: (1) Kampa; (2) Puckett;
28 (3) Slote; (4) Tulleo; (5) Bowles; (6) Dingman; (7) Crittenden; (8) Martin; (9) Soares; (10)
and HCSD. See id. at 1.

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1. General Allegations

As with the original and first amended complaints, Plaintiff alleges that the facts outlined in the second amended complaint give rise to claims under the First, Fourth, and Fourteenth Amendments to the United States Constitution. See id. He also asserts claims under 42 U.S.C. §§ 1983, 1985, 1986, 1988, and 2000e. See id. Plaintiff asserts various state law claims under this Court’s supplemental jurisdiction. See id. Though Plaintiff’s federal statutory claims have been dismissed with prejudice, Plaintiff again alleges violations of the Clean Water Act and the Safe Drinking Water Act. See id. at 4.

The gravamen of Plaintiff’s allegations appears to be summarized in paragraph 11 of the second amended complaint as follows:

11. Based on their shared resentment of the lawyer fees they incurred from defending against Plaintiff’s actions in Court, his assistance to other with their legal actions against the District (by serving papers, appearing as a witness, and the like), as well as Plaintiff’s criticisms of their actions regarding the HCSD that Plaintiff expressed at Board meetings, in emails and letters to the HCSD and its Officers, and by complaints to government agencies, the Board Defendants, the HCSD, and HCSD employee Defendants herein each and all stated, and/or agreed with statements made by individual Board Defendants, to the effect that they would exclude Plaintiff from any opportunity to participate in, or bid on, and public works for the HCSD “because of the lawsuits” he had filed against the HCSD, its officers, and employees.

Id. at 5-6.

Plaintiff alleges Defendants acted in a “coordinated matter” to discriminate against Plaintiff with respect to bidding for public contracts offered by HCSD for various jobs and services. See id. at 6. Plaintiff also alleges that Defendants would not allow Plaintiff to “hook up the property upon which he resides, nor residences for which he provides contracting services, to the HCSD water system on the same terms and conditions as all of the other parcels with connections to the water mains in the District. . . .” Id. Plaintiff concludes Defendants’ alleged conduct was retaliatory. See id. at 7.

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1 2. Allegations as to Individual Defendants

2 Plaintiff then outlines his allegations as to each named defendant as follows:

3 a. Puckett

4 In very general terms, Plaintiff alleges that Defendant Puckett “initiated the
5 common plan” between February 15, 2017, and November 29, 2017. See id. at 8. According
6 to Plaintiff, though without supporting details, Defendant Puckett’s conduct was “aided,
7 abetted, encouraged, and ratified” by other named defendants, Tulleo, Kampa, Dingman, and
8 Goff. See id. Plaintiff claims this resulted in operation of the HCSD in an unsafe manner in
9 violation of federal, state, and local laws. See id. Plaintiff claims without specificity that fees
10 and charges were improperly waived for certain customers. See id.

11 Next, Plaintiff alleges that Puckett conspired with other Board Defendants to
12 approve attorney Robert Winston’s “intervention in several HCSD administrative, and/or
13 Siskiyou County Superior Court, matters being prosecuted by Plaintiff and other persons. . . .”
14 Id. Plaintiff claims this was done without approval of the HCSD board in violation of the
15 Brown Act and California Government Code § 61045. See id.

16 Finally, Plaintiff alleges:

17 20. During times material to this complaint, Puckett initiated
18 the common plan and actively solicited and obtained agreement with the
19 other Board Defendants to wrongfully ignore and *de facto* deny without
20 any hearing, Plaintiff’s repeated requests to hook up property upon
21 which he resides, and residences for which he provides contracting
22 services, to the HCSD water system on the same terms and conditions as
23 all of the other connections in the District. The agreement Puckett
24 engendered was further that Plaintiff would be denied, without any
25 opportunity for a hearing, his right to consideration of, and to actual
26 indemnification of, medical costs incurred by Plaintiff for injuries
27 sustained while undertaking duties as a Director of the HCSD. At the
28 time Puckett undertook to create and implement this plan, and to recruit
the other Defendants therein by obtaining their agreements to do so,
Puckett knew that the disparate treatment against Plaintiff concerning
refusal to indemnify his medical costs, and in refusing to permit him to
hook up his own and others’ residences to the HCSD water system,
served no legitimate government purpose, and so acted arbitrarily,
capriciously, and recklessly, without any concern for harms that might
befall Plaintiff. Puckett thereafter used his position as President of the
HCSD to control the agendas of the Board’s meetings to make sure that
the objects of the agreement were achieved by assuring that Plaintiff’s
issues never came before the Board of Directors at any public meeting,
and by refusing to allow any discussion of Plaintiff’s issues when he

1 raised them himself at public meetings of the Boards.

2 Id. at 10.

3 b. Slote

4 Plaintiff alleges that Defendant Slote was a member of the Board of Directors of
5 HCSD. See id. According to Plaintiff, and in very general and unspecific terms, Slote “acted
6 in concert with, aided, and abetted the other Defendants (and thus the HCSD), to act in concert
7 to engage in that conduct set forth in the sections pertaining to Defendants Puckett, Tulleo,
8 Dingman, Kampa, the HCSD, Goff, and Bowles.” Id. Plaintiff states that Slote held unlawful
9 non-public meetings of the HCSD board in violation of state law by way of “daisy chain”
10 and/or “spoke and wheel” meetings. Id. Plaintiff claims Slote wasted public funds. See id. at
11 11.

12 Next, Plaintiff alleges Slote acted without HCSD board authorization to ratify
13 improper pay increases, hours, and payments to Defendant Dingman which were not in
14 compliance with Dingman’s contract with the district. See id. Again without detail, Plaintiff
15 claims Slote “undertook this wrongful conduct by creating and engaging in an unofficial, non-
16 Board-authorized ‘review’ of those increases of pay and hours to Dingman. . . .” Id.
17 According to Plaintiff:

18 25. These actions by Slote resulted in Dingman, during the tie
19 material to this complaint, wrongfully being paid excessive wages, false
20 claims for hours purportedly – but not actually – worked, and other
21 payments that were not part of his contract for employment. These
improper payments served no legitimate or reasonable public/
governmental purpose.

22 Id. at 12.

23 Plaintiff alleges that Slote’s “wrongful acts” were part of an “agreement and
24 plan between her, Puckett, Tulleo, Dingman, and Kampa, to take joint action to permit
25 Dingman to falsely claim additional pay that he was not entitled to. . . .” Id.

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1 Plaintiff further claims that Slote colluded with other defendants to permit and
2 encourage the unsanitary and unlawful operation of water treatment facilities. See id. at 13.
3 Plaintiff does not say who specifically the “other defendants” were, or how they allegedly
4 colluded.

5 Finally, Plaintiff claims:

6 29. Slote, in cooperation and agreement with the other Board
7 Defendants, and Kampa, acted to wrongfully deny Plaintiff access to, or
8 inclusion on, the list of contractors for jobs relating to upkeep,
9 expansion, and/or repair of the HCSD water system, and other public
10 works jobs, pursuant to provisions of the Public Contracts Code, and
11 Uniform Construction Costs Accounting Act as adopted by the HCSD.
12 Slote did so because of Plaintiff’s protected actions in filing legal actions
13 in the Courts; because of complaints Plaintiff made to various State of
14 California agencies concerning improperly administration and operation
15 of the HCSD; and because of Plaintiff’s outspoken opposition to the
16 actions and conduct of the Board and HCSD employees he expressed to
17 the Slote and the other Board Members at open and public meetings of
18 the HCSD Board of Directors. Plaintiff knows this is so because Slote,
19 at one public meeting, specifically stated angrily that Plaintiff would
20 “never” be allowed to do any work for the HCSD “because of all the
21 lawsuits” Plaintiff has filed against the District. When Slote made that
22 statement, the other Board Defendants present at the meeting indicated
23 their agreement.

24 Id.

25 c. Bowles

26 Plaintiff states that Bowles was the Bookkeeper for HCSD. See id. at 17. As
27 with the defendants discussed above, Plaintiff alleges Defendant Bowles “aided, abetted, and
28 assisted” the Board Defendants to hold improper non-public meetings of the HCSD. Id. The
gravamen of Plaintiff’s contentions against Bowles are set forth in paragraph 42 of the second
amended complaint as follows:

42. Bowles agreed to, collaborated with, aided, abetted, and
assisted the Board Defendants, Goff, Dingman, and Kampa, with the
Board Defendants’ wrongful conduct herein, and in diverting HCSD
funds to friends and acquaintances by: failing to properly impose fees,
assessments [footnote omitted], and charges to certain customers
[footnote omitted] via billing and otherwise [footnote omitted] as well as
altering and falsifying records concerning those customers’ accounts
(including deletion of past due amounts, penalties, fees, etc.); and,
willfully concealing and destroying those public records. All of this

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1 conduct was performed without any legitimate or reasonable public
2 purpose.

3 Id. at 18.

4 d. Dingman

5 Plaintiff alleges that Dingman was an officer, agent, and employee of the HCSD
6 as the “purported ‘Systems Trainee’ and ‘Shift Operator’ of the HCSD water production and
7 treatment facilities. . . .” Id. at 18. Plaintiff claims that Dingman “failed to obtain and
8 maintain. . . certifications required of a water treatment operator.” Id. Plaintiff also alleges
9 that Dingman, the Board Defendants, Kampa, and Goff “conspired, agreed, and acted to
10 wrongfully provide compensation, benefits, indemnification, and/or other pecuniary and/or
11 non-pecuniary benefits to Dingman. . . .” Id. at 19. Plaintiff complains that Dingman was
12 allowed to live with his dog at the water treatment and facility. See id. Plaintiff adds that, as
13 part of this conspiracy, Dingman was paid for hours he did not work. See id. Again, Plaintiff
14 does not describe the details of the alleged conspiracy.

15 At paragraphs 49 and 50 of the second amended complaint, Plaintiff contends:

16 49. At all times relevant herein, Dingman agreed to, assisted,
17 aided, and abetted, Goff, Kampa, Board Defendants, and HCSD’s
18 common plan to create, file with the State Water Board, and distribute,
19 false public records, documents, logs, and reports concerning the
20 operation of the HCSD and its facilities. Kampa, Dingman, and the
21 HCSD, also wrongfully failed to create, maintain, and file with the State,
22 various required records, testing and treatment logs, and other
23 documents, while not actually performing the work and duties mandated
24 by law to make the HCSD system safe and functional – all of which
25 resulted in lack of water capacity, poor water quality, incorrectly treated
26 water, and water that was toxic due to Chlorine.

27 50. Dingman’s wrongful operation of the water production,
28 treatment, and distribution facility of the HCSD [footnote omitted], in
matters contrary to law, and while not having the proper Treatment
Operator’s Certificate from the State of California, in conspiracy with,
and as directed by the Board Defendants, Kampa, and Goff, was
willfully negligent, unlawful, and a nuisance *per se* [footnote omitted].

29 Id. at 20.

30 e. Goff

31 Plaintiff states that Goff “represented himself” as the Chief Systems Operator
32 for the HCSD and, as such, as Dingman’s supervisor. Id. Plaintiff alleges that “Goff acted in

1 concert with the Board Defendants, Bowles, Kampa, and Dingman to extract improper
2 payments from the HCSD for duties he was supposed to perform but did not. . . .” Id. Plaintiff
3 further alleges that Goff operated HCSD facilities in a manner inconsistent with law, causing a
4 nuisance. See id. According to Plaintiff, Goff did so “with the agreement, ratification, and
5 assistance of Slote, Puckett, Kampa, and the HCSD. . . .” Id. at 20-21.

6 The gravamen of Plaintiff’s claim against Goff appears to be set forth in
7 paragraph 57:

8 57. Goff knowingly permitted Dingman to operate the HCSD
9 water production, treatment, and distribution facilities in an unsafe
10 manner, and in a way that was contrary to Federal, State [footnote
11 omitted], and local laws. Goff failed to actually supervise or direct
12 Dingman during the performance of any of the tasks Dingman performed
13 for the HCSD. Goff failed to maintain proper logs and documentation of
14 water use and/or the water treatment and distribution systems of the
15 HCSD; failed to provide for an undertake testing of the “cross-
16 connections” to the HCSD distribution system as required by law; failed
17 to give notice to Plaintiff, the public and to the State concerning multiple
18 occasions Dingman caused Chlorine to exceed the maximum
19 contaminant level as set by the State of California while also assisting
20 Dingman in hiding those events form the public and from the State
21 Water Resources Control Board; and, knowingly permitted Dingman to
22 conduct water treatment and distribution activities/operations at the
23 HCSD water plant and otherwise, while Dingman did not have
24 certifications required by the State.

25 Id. at 21-22.

26 f. Kampa

27 Plaintiff states that Kampa was the General Manager of the HCSD and direct
28 supervisor of Dingman and Goff. See id. at 22. According to Plaintiff, despite being
responsible for the day-to-day operations of the HCSD, Kampa “simply us[ed] the phone from
his residence in Southern California to make calls to HCSD Board meetings, the individual
Board members, Goff, and Dingman.” Id. As with the other individual defendants, Plaintiff
alleges in general terms that Kampa “agreed with, assisted, aided, abetted, Slote, Puckett, Goff,
Dingman, and the HCSD in the common plan to create, file with the State Water Board, and
distribute, false public records, consisting of documents, logs, and reports concerning the
operation of the HCSD and its facilities.” Id. at 22-23. Plaintiff does not state which records
were false or otherwise describe with any particularity the alleged conspiracy. Plaintiff claims

1 Kampa ignored his General Manager obligations. See id. at 23.

2 According to Plaintiff:

3 62. As the General Manager for the HCSD, Kampa had a
4 mandatory duty imposed by law to regularly inspect, oversee, supervise,
5 and provide for the direct control by properly State-certified personnel, the
6 daily operation of the water treatment plant and distribution system as
7 mandated by Federal and State laws [footnote omitted], and the HCSD
8 Bylaws. Kampa failed to perform those duties by: failing to maintain and
9 provide for the use of the “creek diversion” of the HCSD and associated
10 water rights, thus jeopardizing the HCSD’s diversion rights with the State
11 [footnote omitted]; failing to supervise and direct Dingman concerning the
12 maintenance and safety of the water plant and surrounding area; failing to
13 require that Dingman obtain and maintain Water Treatment and/or
14 Distribution Operator certifications from the State of California while
15 Dingman was operating the HCSD’s facilities as was required by law;
16 failing to timely and properly respond to deficiency notices by the State
17 Water Board; and, failing to timely, and/or properly (or, sometimes, at all)
18 respond to CPRA requests by Plaintiff in the manner provided by law
19 concerning the public records of the HCSD’s operations. Kampa also
20 charged the HCSD for supposed “General Manager” services relating to
21 these duties, but without actually providing them as promised.

22 Id.

23 g. Crittenden

24 Plaintiff claims Crittenden is a member of the HCSD board. See id. at 24.
25 Plaintiff alleges that Crittenden “engaged in improper, *ex parte* ‘spoke and wheel,’ ‘daisy
26 chain’ meetings, and other wrongful, corrupt, conduct with Puckett and Slote, and through
27 them Bowles and Dingman, in order to agree and act with them to obtain legally impermissible
28 gifts of public funds to the benefit of HCBC [Hornbrook Community Bible Church], and
himself, in the form of unlawfully reduced and/or waived water rates, fees, and charges.” Id.
Plaintiff asserts that Crittenden conspired with other defendants to obtain reduced water rates
for the church and the attached parsonage. See id. at 24-25. Once again, Plaintiff does not
allege any specific facts relating to a conspiracy.

h. Martin

Plaintiff alleges that Martin is a resident of Siskiyou County, a water customer
of the HCSD, and owner of Crossroads Mini Storage and adjoining residential property. See
id. at 25. As with Crittenden, Plaintiff alleges that Martin conspired with other defendants to
obtain reduced water rates. See id. Plaintiff claims this amounted to a gift of public funds.

1 See id. at 26. Martin is not alleged to be a state actor.

2 i. Soares

3 Plaintiff alleges that Soares is a resident of Siskiyou County, an HCSD water
4 customer, and owner of at least one rental property within the boundaries of the district. See
5 id. As with Crittenden and Martin, Plaintiff contends that Soares conspired with other
6 defendants in order to obtain improper gifts of public funds in the form of reduced and/or
7 waived water fees. Soares is not alleged to be a state actor.

8 3. Legal Theories

9 As in the original and first amended complaint, Plaintiff alleges various federal
10 and state law theories of relief, which Plaintiff calls “Counts.” See id. at 31-49. In doing so,
11 Plaintiff incorporates all earlier allegations. See id. at 31-32. Plaintiff’s federal law claims are as
12 follows:³

- | | | |
|----|------------|---|
| 13 | Count I | Violation of right to free speech, association, and petition. |
| 14 | Count II | Deprivation of right to due process (against HCSD, Board Defendants, Bowles, Kampa, and Dingman). |
| 15 | Count III | Violation of procedural due process. |
| 16 | Count IV | Deprivation of rights to due process and equal protection. |
| 17 | Count V | Deprivation of right to due process (against Hornbrook Community Bible Church and Crittenden). |
| 18 | Count VI | Deprivation of right to due process – gifts of public funds to Dingman. |
| 19 | Count VII | Retaliation (against HCSD, Board Defendants, and Kampa). |
| 20 | Count VIII | Violation of § 1985 (against HCSD, Board Defendants, and Kampa). |
| 21 | Count IX | Violation of § 1985 (against HCSD, Board Defendants, Kampa, Dingman, and Bowles). |
| 22 | Count X | Civil conspiracy to violate civil rights. |
| 23 | | |
| 24 | | |
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25 Id. at 31-42.

26 Plaintiff’s state law claims are as follows:⁴

27 ³ Plaintiff refers to all of his federal claims as the “First Claim for Relief”

28 ⁴ Plaintiff refers to all of his state law claims as the “Second Claim for Relief.”

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- Count I Violation of HCSD bylaws
 - Count II Willful negligence; negligence.
 - Count III Retaliation in employment (against Board Defendants, Kampa, and HCSD).
 - Count IV Gifts of public funds.
 - Count V Gifts of public funds (against Board Defendants); false claims and fraud (against Dingman).
 - Count VI Gifts of public funds (against Goff and Bowles).
 - Count VII Gifts and waste of public funds (Doe Defendants).
 - Count VIII Violation of Article 1, section 2, of the California Constitution.
 - Count IX Unfair business practices (against Bowles).
 - Count X Unfair business practices (against Goff).
 - Count XI Unfair business practices (against Kampa).
 - Count XII Negligence.
 - Count XIII Unfair business practices (against Hornbrook Community Bible Church).
 - Count XIX⁵ Civil conspiracy.
 - Count XX Violation of California Public Records Act (against HCSD, Board Defendants, and Kampa).
 - Count XXI Purported official acts of the Board Defendants are void.
 - Count XXII Improperly unbilled fees and charges; gifts/waste of public funds.
 - Count XXIII Gifts of public funds (against Board Defendants, Martin, Bowles, and Soares).
 - Count XXIV Violation of the Bane Act (against HCSD, Board Defendants, and Kampa).
 - Count XXV State law claims; exemplary damages.
- Id. at 42-49.

⁵ The second amended complaint contains no state law “counts” XIV through XVIII.

1 **II. PLAINTIFF’S LITIGATION HISTORY**⁶

2 Roger Gifford, the plaintiff in this case, and Kimberly Olson are frequent litigants
3 in the Eastern District of California as well as the Siskiyou County Superior Court, which has
4 declared Olson and Gifford to be vexatious litigants primarily based on frivolous lawsuits
5 alleging mismanagement of HSCD by its directors, officers, and others. With respect to
6 Plaintiff’s allegations against HCSD and related defendants, the following actions are pending in
7 the Eastern District in addition to the instant action:

8 Olson v. Hornbrook Community Services District, et al.,
9 2:15-CV-0646-KJM-DMC.

10 Olson v. Slote, et al.,
11 2:16-CV-0956-KJM-EFB.

12 Olson v. Hornbrook Community Services District, et al.,
13 2:19-CV-2127-KJM-DMC.

14 Gifford v. Hanson, et al.,
15 2:21-CV-0119-TLN-DMC.

16 Each of these actions raises claims against HCSD, its former and/or current board
17 members, and others regarding alleged mismanagement of HCSD. For whatever reason, the
18 allegations in these actions are strikingly similar. Additionally, the format, wording, phrases
19 used, organization, and styling of claims in all of the pleadings filed by Olson and Gifford in
20 these cases are nearly identical. The instant action has been related to Gifford v. Hanson, et al.
21 See ECF No. 70 (related-case order).

22 The related case, Gifford v. Hanson, et al., proceeds on a complaint which is
23 nearly identical to the original complaint in the instant action. On March 3, 2022, the
24 undersigned issued findings and recommendations in the related case recommending that the
25 original complaint be dismissed with leave to amend. See ECF No. 28 in case no. 2:21-CV-0119-
26 TLN-DMC. The matter is currently before the District Judge.

27 ⁶ **Error! Main Document Only.** The Court may take judicial notice pursuant to
28 Federal Rule of Evidence 201 of matters of public record. See U.S. v. 14.02 Acres of Land, 530
F.3d 883, 894 (9th Cir. 2008). Thus, this court may take judicial notice of state court records, see
Kasey v. Molybdenum Corp. of America, 336 F.2d 560, 563 (9th Cir. 1964), as well as its own
records, see Chandler v. U.S., 378 F.2d 906, 909 (9th Cir. 1967). The Court’s discussion in this
section is based on judicially noticed state and federal court records.

1 Other active pending cases filed by Olson and Gifford are:

2 Gifford v. Hornbrook Fire Protection District, et al.,
3 2:16-CV-0596-DAD-DMC.

4 Olson v. Bynum, et al.,
5 2:20-CV-2481-TLN-KJN.

6 Olson v. Puckett, et al.,
7 2:21-CV-1482-KJM-DMC.

8 Gifford v. Dingman, et al.,
9 2:21-CV-1726-KJM-DMC.

10 The last two cases listed above – Olson v. Puckett, et al. and Gifford v. Dingman,
11 et al. – illustrate how Olson and Gifford appear to file cases in tandem. Olson initiated her
12 lawsuit in Olson v. Puckett, et al. in August 2021 on allegations that HCSD and its officers and/or
13 directors improperly disconnected her water service. See ECF No. 1 in case no. 2:21-CV-1482-
14 KJM-DMC. Among Olson’s allegations is the contention that a vehicle was unlawfully towed
15 from her property in order to allow for access to equipment connecting Olson’s home to the
16 district’s water supply. See id. Apparently, that vehicle belonged to Gifford, who a month later
17 filed his own lawsuit, captioned Gifford v. Dingman, et al., in September 2021 on virtually
18 identical allegations as those presented in Olson v. Puckett, et al. See ECF No. 1 in case no. 2:21-
19 CV-1726-KJM-DMC. As with other Olson/Gifford actions, the complaints in Olson v. Puckett,
20 et al. and Gifford v. Dingman, et al. bear striking similarities in form, organization, phrases used,
21 and legal theories presented.⁷

22 In addition to these active pending cases, Olson and Gifford have, collectively,
23 filed nine prior actions,⁸ none of which resulted in a judgment in favor of either Olson or Gifford,
24 and only one of which survived past the pleading stage. Closed cases filed by Olson and Gifford
25 are:

26 ⁷ Defendants have filed a motion to dismiss in Olson v. Puckett, et al., which has
27 been submitted on the record without oral argument and is pending. See ECF No. 47 in case no.
28 2:21-CV-1482-KJM-DMC. Defendants’ response to the complaint in Gifford v. Dingman, et al.
is due in September 2022. See ECF No. 34 in case no. 2:21-CV-1726-KJM-DMC.

⁸ In another action filed by Olson, Gifford was a named defendant, apparently
because Gifford was serving at the time in some capacity with the HCSD. Gifford is also a
defendant in Olson v. Hornbrook Community Services District, et al., case no. 2:15-CV-0646-
KJM-DMC, in which Olson seeks approval of a “settlement” with Gifford.

1 Olson v. Kennard, et al.,
2:00-CV-0872-WBS-GGH.
2 Dismissed for failure to comply with court order.

3 Olson v. Lemos, et al.,
2:06-CV-1126-TLN-CMK.
4 Voluntarily dismissed at pleading stage.

5 Olson v. City of Etna, et al.,
2:08-CV-0882-FCD-EFB.
6 Voluntarily dismissed shortly after scheduling order issued.

7 Olson v. Commissioner of Social Security,
2:11-CV-2059-MCE-CMK.
8 Dismissed for failure to state a claim.

9 Gifford v. Siskiyou County Sheriff, et al.,
2:11-CV-2484-KJM-CMK,
10 Voluntarily dismissed at pleading stage.

11 Gifford v. Hornbrook Community Services District, et al.,
2:15-CV-1274-MCE-AC.
12 Dismissed for failure to state a claim.

13 Gifford v. Puckett, et al.,
2:16-CV-0955-KJM-GGH.
14 Dismissed for failure to state a claim.

15 Olson v. Rural Community Assistance Corp., et al.,
2:21-CV-0700-KJM-AC.
16 Voluntarily dismissed.

17 Olson v. Carter, et al.,
2:21-CV-0929-JAM-CKD.
18 Voluntarily dismissed at screening stage

19 20 **III. SUMMARY OF DEFENDANTS' ARGUMENTS**

21 Defendants⁹ argue that Plaintiff's second amended complaint should be
22 dismissed in its entirety for failure to state a claim consistent with the pleading requirements of
23 Rule 8. See ECF No. 86. More specifically, Defendants contend as follows with respect to
24 Plaintiff's federal claims: (1) Plaintiff cannot bring an action directly under the United States
25 Constitution; (2) Plaintiff cannot state a claim for violation of his First Amendment rights; (3)
26 Plaintiff cannot establish a claim for violation of procedural due process; (4) Plaintiff cannot

27
28 ⁹ Moving defendants are: HCS D, Kampa, Puckett, Tulleo, Bowles, Dingman, Slote, Dixon, and Goff.

1 establish any equal protection claims; (5) Plaintiff's claims based on alleged gifts of public
2 funds fail because Plaintiff presents no facts establishing that the disbursements of funds were
3 not rationally related to a public purpose; and (6) Plaintiff has not pleaded any facts to
4 establish a violation of his right to vote. See id. at 5-8. Defendants also argue that Plaintiff
5 cannot maintain any federal statutory claims. See id. at 8. The Court, however, does not
6 consider this argument because the District Judge has dismissed Plaintiff's federal statutory
7 claims with prejudice. See ECF No. 82.

8 As to Plaintiff's state law claims, Defendants argue: (1) HCSD and its
9 employees are immune under California Government Code § 820.2; (2) Plaintiff has pleaded no
10 facts suggesting Defendants were negligent; (3) Plaintiff has pleaded no facts to support a claim
11 for nuisance against HCSD, the Board Defendants, Dingman, or Goff; (4) Plaintiff's state law
12 claims for retaliation in employment fail because Plaintiff was not an HCSD employee; and
13 (5) Plaintiff's state law claims based on alleged gifts of public funds fail as a matter of law. See
14 ECF No. 86, pgs. 8-10.

15 IV. DISCUSSION

16 The Court finds Plaintiff's non-compliance with Federal Rule of Civil
17 Procedure 8's pleading standards to be dispositive of the pending motion to dismiss.

18 Rule 8's pleading requirements are not met by a "complaint that contains
19 conclusion or surmise and requires a court to decide whether events not pleaded could be
20 imagined in a plaintiff's favor." Levin v. Miller, 763 F.3d 667, 671 (7th Cir. 2014). Rather, in
21 order to establish plausibility, allegations in a complaint "may not simply recite the elements of a
22 cause of action but must contain sufficient allegations of underlying facts to give fair notice and
23 to enable the opposing party to defend itself effectively." Eclectic Props. E., LLC v. Marcus and
24 Millichap Co., 751 F.3d 990, 996 (9th Cir. 2014 (internal quotation and citation omitted)).
25 ". . . [T]he factual allegations that are taken as true must plausibly suggest an entitlement to relief,
26 such that it is not unfair to require the opposing party to be subjected to the expense of discovery
27 and continued litigation." Id. While pleadings of pro se litigants are held to less rigid standards
28 than those drafted by attorneys, see Haines v. Kerner, 404 U.S. 519, 520-522 (1972), even pro se

1 pleadings “must meet some minimum threshold in providing a defendant with notice of what it is
2 that it allegedly did wrong,” Brazil v. United States Dept. of Navy, 66 F.3d 193, 199 (9th Cir.
3 1995).

4 Although the Federal Rules adopt a flexible pleading policy, a complaint must give
5 fair notice and state the elements of the claim plainly and succinctly. See Jones v. Community
6 Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree
7 of particularity overt acts which defendants engaged in that support Plaintiff’s claim. See id. The
8 allegations must be short and plain, simple and direct, and describe the relief Plaintiff seeks. See
9 Fed. R. Civ. P. 8(a); Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002); Galbraith v.
10 County of Santa Clara, 307 F.3d 1119, 1125 (9th Cir. 2002).

11 In Olson v. Slote, et al., which proceeds on an amended complaint against HCSD
12 and others that is almost identical to the amended complaint currently before the Court in the
13 instant action, Judge Brennan observed as follows in recommending Plaintiff’s first amended
14 complaint be dismissed without further leave to amend:

15 As explained below, the first amended complaint suffers from the
16 same deficiencies as plaintiff’s original complaint, and it too must be
dismissed for failure to state a claim.

17 * * *

18 Plaintiff’s first amended complaint asserts claims under 42 U.S.C.
19 §§ 1983, 1985, 1986; 1988; Title II of the Americans with Disabilities Act
20 (“ADA”), 42 U.S.C. §§ 12131, *et seq.*, the Safe Drinking Water Act, 42
21 U.S.C. §§ 300f *et seq.*; the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*; 18
22 U.S.C. § 1513, as well as more than 20 state law claims. ECF No. 7. The
23 claims are brought against 16 defendants, including the Hornbook
Community Services District (“HCSD”) and its directors, agents, and
customers; the Hornbook Community Bible Church and its employees;
Basic Labs; and the law firm of Kirsher, Winston & Boston. *Id.* The crux
of the amended complaint is that defendants participated in grand a
conspiracy to mismanage HCSD.

24 Like her earlier complaint, plaintiff’s amended complaint fails to
25 comply with Rule 8. Rather than providing a short and plain statement for
26 each of plaintiff’s claims, the 58-page amended complaint consists largely
27 of vague and conclusory allegations concerning various events that
28 allegedly occurred from 2004 through 2017. Further muddling the matter,
numerous allegations in the amended complaint that appear unrelated, or
only tangentially related, to plaintiff’s dispute with the defendants’ alleged
mismanagement of HCSD. *See, e.g., id.* ¶¶ 15, 18 (alleging HCSD
directors permitted defendant Dingman and his dog to occupy a water

1 treatment facility for personal use and storage); ¶ 17 (alleging that
2 defendant Puckett stored hazardous material on his property).

3 As drafted, it is nearly impossible to discern the specific claims
4 plaintiff intends to allege against each of the 17 named defendants, as well
5 as the particular facts supporting each claim. Plaintiff purports to assert 17
6 federal causes of action, many setting forth multiple claims within the
7 same cause of action. For instance, plaintiff's 17th "count" is entitled
8 "Violation of Fourth Amendment." *Id.* at 42. But the allegations provided
9 in connection with that cause of action do not implicate the Fourth
10 Amendment. Instead, the single paragraph supporting that claim alleges
11 defendants violated California's Brown Act, Cal. Gov't Code §§ 54950, *et*
12 *seq.* and plaintiff's right to due process by holding "non-agendized"
13 HCSD board meetings that included segments that were not open to the
14 public. [footnote omitted]. *Id.* ¶ 127. Further, each of plaintiff's claims
15 confusingly seek to incorporate by reference various sections of the
16 complaint. Indeed, the amended complaint includes a section entitled
17 "Incorporation of Factual Allegations into Counts," under which plaintiff
18 explains that she seeks to incorporate earlier sections of the complaint into
19 her claims. *Id.* at 7. As previously explained to plaintiff, proceeding in this
20 fashion renders it impossible for the court and defendants to ascertain the
21 factual basis for each particular claim.

22 * * *

23 But even if the court were able to ascertain plaintiff's claims, as
24 well as the specific allegations purporting to support each claim, dismissal
25 would still be warranted. Despite spanning 58 pages, the amended
26 complaint is nearly devoid of specific factual allegation. Instead, it is
27 replete with redundant legal statements and vague and conclusory
28 allegations that fail to support a cognizable legal claim. *See, e.g., id.* ¶ 105
(alleging defendants, "in acting as set forth above in manners adverse to
Plaintiff, did so willfully, with intent to interfere with, impede, coerce
Plaintiff into abandoning, and in retaliation for, her exercise of statutory and
constitution rights to speak freely, petition the government, and courts, for
redress of grievances; and her attempt to assert the right to vote . . . [,]
violated Plaintiff's First Amendment rights to assemble with the other
electors"), ¶ 113 ("Defendants HCSD and Board Defendants
improperly conspired with, were unduly influenced, and engaged in
corrupt activity with Defendants HCBC, Crittenden, and Bowels, in order
to utilize the Board Defendants authority under color of State law, for the
HCBC and Crittenden to wrongfully receive gifts of public funds").

ECF No. 8, pgs. 2-4, in case no. 2:16-CV-0956-KJM-EFB.¹⁰

The undersigned includes Judge Brennan's analysis here for two reasons. First, it
demonstrates the close similarity among the various pending Olson and Gifford actions alleging
mismanagement of HCSD pursuant to some kind of grand scheme. Second, Judge Brennan's
analysis applies plainly and point by point to the instant action, again because the complaints filed

¹⁰ Judge Brennan's findings and recommendations were issued on September 25, 2020. Olson filed objections on October 2, 2020, and the matter is pending before the District Judge.

1 by Olson and Gifford are so similar, as discussed below.

2 As in Olson v. Slote, et al., Plaintiff's complaint here, which is 53 pages long (and
3 seven pages longer than the first amended complaint), is largely written in vague and conclusory
4 legal terms, such as "aided and abetted," which are repeated throughout and which concern wide
5 range of events occurring throughout 2017. Also mirroring Olson v. Slote, et al., the complaint
6 here contains a number of tangential and seemingly unrelated allegations. In Olson v. Slote, et
7 al., Plaintiff alleges in the instant case that Dingman was improperly permitted to live on district
8 property with his dog. See ECF No. 85, pg. 19. Gifford makes the exact same claim in Gifford v.
9 Kampa, et al., see ECF No. 85, pg. 19, in case no. 2:17-CV-2421-TLN-DMC (Gifford's second
10 amended complaint), and Olson makes the exact same claim in Olson v. Hornbrook Community
11 Services istrict, et al., see ECF No. 1., pg. 16, case no. 2:19-CV-2127-KJM-DMC.

12 The precise fit of Judge Brennan's analysis in Olson v. Slote, et al. to this case is
13 further illustrated in the context of the number of claims raised and the way they are presented.
14 Here, Plaintiff raises 10 federal claims (some having already been dismissed), many with various
15 sub-claims, and 20 state law claims, also with sub-claims. And as in Olson v. Slote, et al.,
16 Plaintiff here attempts to incorporate other sections of her pleading by reference into the various
17 federal and state law claims. The undersigned agrees with Judge Brennan's conclusion that
18 "proceeding in this fashion renders it impossible for the court and defendants to ascertain the
19 factual basis for each particular claim." ECF No. 8, pg. 3, in case no. 2:16-CV-0956-KJM-EFB.

20 Plaintiff's complaint here is bereft of specific factual allegations explaining who
21 did what, when, how, and why. Nor does the complaint here link any specific facts to specific
22 defendants and the specific elements of the legal theories asserted. Even allowing a wide range of
23 latitude because Plaintiff is proceeding pro se, the Court simply cannot find that Plaintiff's
24 complaint complies with Rule 8 such that Defendants have received fair notice sufficient to
25 answer.

26 Plaintiff's failure to comply with Rule 8 alone justifies dismissal of her complaint.
27 See Schmidt v. Hermann, 614 F.2d 1221, 1223 (9th Cir. 1980) (upholding the dismissal of a
28 complaint where it was "impossible to designate the cause of action or causes of action attempted

1 to be alleged in the complaint.”); In re Sagent Tech., Inc., 278 F.Supp.2d 1079, 1094 (N.D. Cal.
2 2003) (“[T]he complaint fails to state a claim because plaintiffs do not indicate which individual
3 defendant or defendants were responsible for which alleged wrongful act.”); see also McHenry v.
4 Renne, 84 F.3d 1172, 1177-78 (9th Cir. 1996) (affirming Rule 8 dismissal of complaint that was
5 “argumentative, prolix, replete with redundancy, and largely irrelevant” and providing an
6 example of a properly pleaded claim, which could be “read in seconds and answered in minutes”).

7 The Court has previously advised Plaintiff of the defects in his pleading and
8 provided Plaintiff an opportunity to amend. As outlined in detail above, Plaintiff’s allegations
9 have not materially changed in such a way as would provide the defendants faire notice. In short,
10 the Rule 8 violation persists. The undersigned recommends that Plaintiff’s second amended
11 complaint be dismissed without further leave to amend.

12 13 V. CONCLUSION

14 Based on the foregoing, the undersigned recommends that Defendants’ motion to
15 dismiss, ECF No. 86, be granted and that this action be dismissed in its entirety with prejudice for
16 failure to state a claim upon which relief can be granted.

17 These findings and recommendations are submitted to the United States District
18 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
19 after being served with these findings and recommendations, any party may file written objections
20 with the Court. Responses to objections shall be filed within 14 days after service of objections.
21 Failure to file objections within the specified time may waive the right to appeal. See Martinez v.
22 Ylst, 951 F.2d 1153 (9th Cir. 1991).

23
24 Dated: August 30, 2022



25 DENNIS M. COTA
26 UNITED STATES MAGISTRATE JUDGE