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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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RAILROAD 1900, LLC, a Delaware
limited liability company,

 Plaintiff,

 v.

CITY OF SACRAMENTO, a municipal
entity,

 Defendant.

No. 2:21-cv-01673 WBS DB

ORDER RE: DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

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Plaintiff Railroad 1900, LLC ("Railroad 1900") brings
this action against defendant the City of Sacramento ("City"),
alleging violations of due process (Claims 1-2), municipal
liability for unconstitutional customs and policies (Claim 3),
and various state law claims (Claims 4-7). The core of
plaintiff's claims challenges the City's alleged failure to
enforce anti-camping and other ordinances against homeless
individuals in the area surrounding plaintiff's property.
(Second Am. Compl. ("SAC") (Docket No. 34).) The City now moves

1 for summary judgment. (Mot. for Summ. J. ("MSJ") (Docket No.
2 47).)

3 I. Factual Background

4 Plaintiff owns commercial real estate at 1900, 1955,
5 and 1957 Railroad Drive in Sacramento, California, which
6 plaintiff acquired in May 2018. (Eaton Decl. (Docket No. 55-6) ¶
7 2.) In December 2017, shortly before plaintiff purchased the
8 property, the City opened an emergency homeless shelter on
9 Railroad Drive. (Id. ¶ 3.) The City closed it around April
10 2019. (Id.)

11 At around the time the shelter closed, Railroad Drive
12 experienced a surge in homeless encampments and abandoned
13 vehicles. (Id. ¶ 6 and Ex. 1.) Plaintiff has since suffered
14 extensive property damage and economic loss, inflicted
15 principally by the homeless population encamped in Railroad
16 Drive. (Id. ¶ 15.) From 2019 to the present, plaintiff has
17 contacted the City hundreds of times, repeatedly requesting that
18 the City enforce its laws and ordinances on Railroad Drive. (Id.
19 ¶ 10 and Ex. 4.) A significant portion of plaintiff's requests
20 concerned vehicles on Railroad Drive that were either wrecked or
21 being used as shelter by homeless individuals. (Mendez Decl.
22 (Docket No. 47-4) Ex. C.)

23 The City has various units and divisions that process
24 complaints and concerns about Sacramento's homeless population.
25 One is the Sacramento Police Department's Impact Unit. (Heinlein
26 Decl. (Docket No. 47-6) ¶ 2.) The Impact Unit responds to
27 complaints of illegal activity in and around encampments. (Id.)
28 It is also responsible for enforcing Sacramento's Critical

1 Infrastructure Ordinance (S.C.C. c. 8.140) and the Sidewalk
2 Obstructions and Pedestrian Interference Ordinance (id. c.
3 12.24), which prohibit camping on or otherwise obstructing
4 sidewalks and critical city infrastructure. (Id. ¶¶ 3-6.) In
5 that capacity, the Impact Unit seeks voluntary removal of
6 encampments in violation of city ordinances; as a second resort,
7 it will move individuals and their possessions forcibly. (Id.)

8 Another City entity that interacts with the homeless
9 population is the Department of Community Response ("DCR"). DCR
10 employees are trained to answer various emergency calls,
11 including those regarding homeless encampments. (Worrall Decl.
12 (Docket No. 47-5) ¶ 3.) DCR does not provide sterile needles for
13 homeless individuals to use. (Id. ¶ 5.) DCR provides trash bags
14 to homeless individuals when they indicate they want to clean
15 their area. (Id.) During high temperatures, DCR will hand out
16 individual water bottles to homeless individuals, but not as a
17 regular service or at large scale. (Id.)

18 Another City entity is the Community Development
19 Department, which has a Code Compliance Division ("Code
20 Compliance"). (Mendez Decl. ¶¶ 1-2.) Code Compliance
21 administers a vehicle abatement program. This program seeks to
22 tow and dispose of vehicles that are a public nuisance. (Id. ¶
23 3.) Nuisance vehicles include those vehicles are abandoned,
24 wrecked, dismantled, or otherwise illegally parked. (Id.) If
25 Code Compliance receives a complaint about an unmoved vehicle,
26 Code Compliance tags it, then tows it 72 hours later if it
27 remains unmoved. (Id. ¶ 4.)

28 In the past five years, Code Compliance has received

1 around 20,000 abandoned vehicle complaints per year. (Mendez
2 Decl. ¶ 6.) Around 10% of complaints ultimately ended in vehicle
3 abatement. (Id. ¶ 5.) Code Compliance employs around 12 to 15
4 enforcement officers. (Id. ¶ 6.) Due to the sheer volume of
5 complaints and abandoned vehicles, Code Compliance utilizes a
6 triage system that prioritizes complaints posing possible life
7 and safety concerns. (Id. ¶ 7.)

8 On March 19, 2020, Sacramento County's Public Health
9 Officer issued a stay-at-home order due to the arrival of the
10 COVID-19 pandemic. (Mendez Decl. ¶ 8 and Ex. A.) The order did
11 not prevent the performance of "Essential Governmental Functions"
12 as determined by each governmental entity. (Id. Ex. A § 10(e).)

13 On June 1, 2021, the Public Health Officer issued
14 another order, this time advising local governments against
15 citing homeless individuals living in vehicles during community
16 spread of COVID-19, except where encampments pose a public safety
17 hazard or threaten critical infrastructure. (Id. Ex. B ¶ 6.)
18 The order expired two weeks later, on June 15, 2021. (Id. Ex. B
19 ¶ 7.)

20 In response to these two orders, Code Compliance did
21 not tow any nuisance vehicles being used as shelter between March
22 19, 2020 and June 15, 2021, except in cases involving public
23 safety concerns. (Id. ¶ 10.) Notwithstanding the orders, Code
24 Compliance responded to complaints about nuisance vehicles not
25 used for shelter. (Id. ¶¶ 12-13.) Code Compliance specifically
26 responded to complaints from plaintiff about nuisance vehicles on
27 Railroad Drive on thirteen occasions between January and
28

1 September of 2021.¹ (Id. ¶ 12.)

2 II. Legal Standard

3 Summary judgment is proper “if the movant shows that
4 there is no genuine dispute as to any material fact and the
5 movant is entitled to judgment as a matter of law.” Fed. R. Civ.
6 P. 56(a). A material fact is one that could affect the outcome
7 of the suit, and a genuine issue is one that could permit a
8 reasonable trier of fact to enter a verdict in the non-moving
9 party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
10 248 (1986).

11 The movant bears the initial burden of demonstrating
12 the absence of a genuine issue of material fact as to the basis
13 for the motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323
14 (1986). The moving party can satisfy its burden by presenting
15 evidence that negates an essential element of the nonmoving
16 party's case. Celotex Corp., 477 U.S. at 322-23. Alternatively,
17 the movant can demonstrate that the non-moving party cannot
18 provide evidence to support an essential element upon which it
19 will bear the burden of proof at trial. Id. The burden then
20 shifts to the non-moving party to set forth specific facts to
21 show that there is a genuine issue for trial. See id. at 324.
22 Any inferences drawn from the underlying facts must, however, be
23 viewed in the light most favorable to the non-moving party. See
24 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
25 587 (1986).

27 ¹ What constituted a “response,” and whether it involved
28 towing any vehicles, is left unclear. (See Eaton Decl. ¶ 12.)

1 III. Evidentiary Objections

2 Plaintiff and the City assert various evidentiary
3 objections against each other's statements of material facts.
4 (Docket Nos. 55-3, 56-2.)

5 As a preliminary matter, the court will disregard any
6 objections that are duplicative of the summary judgment standard.
7 Under Federal Rule of Evidence 401, evidence is relevant if it
8 "has any tendency to make a fact more or less probable" and that
9 fact "is of consequence in determining the action." Fed. R.
10 Evid. 401. The action before the court now is a motion for
11 summary judgment. On summary judgment, the court determines
12 whether the evidence presented, viewed in the light most
13 favorable to the non-moving party, creates a "genuine dispute as
14 to any material fact" that must be resolved at trial. Fed. R.
15 Civ. P. 56(a). The court must therefore consider, and only
16 consider, evidence bearing on (1) facts that are (2) material.
17 If the evidence offered does not bear on a material fact (e.g.,
18 comprises baseless speculation, bears on a legal conclusion, or
19 bears on a fact not necessary to dispose of any claim), it is by
20 definition not relevant to the present action for summary
21 judgment. Sandoval v. Cnty. of San Diego, 985 F.3d 657, 665 (9th
22 Cir. 2021) ("[O]bjections for relevance are generally unnecessary
23 on summary judgment because they are "'duplicative of the summary
24 judgment standard itself.' . . . [P]arties briefing summary
25 judgment motions would be better served to 'simply argue' the
26 import of the facts reflected in the evidence rather than
27 expending time and resources compiling laundry lists of relevance
28 objections.") (citing Burch v. Regents of Univ. of Cal., 433 F.

1 Supp. 2d 1110, 1119 (E.D. Cal. 2006) (Shubb, J.)).

2 Additionally, "if the contents of a document can be
3 presented in a form that would be admissible at trial -- for
4 example, through live testimony by the author of the document --
5 the mere fact that the document itself might be excludable
6 hearsay provides no basis for refusing to consider it on summary
7 judgment." Id. at 666.

8 Accordingly, the court will overrule plaintiff's
9 objections to portions of the City's declarations and exhibits
10 attached to them.² Every declarant represents that they have
11 personal knowledge of the facts stated within their declaration
12 and that they are able to competently testify to them at trial.
13 (See Mendez Decl. ¶ 1; Worrall Decl. ¶ 1; Heinlein Decl. ¶ 1.)
14 Further, every declarant is employed in a managerial/oversight
15 capacity at their respective organizations, and on this basis
16 attests to their organization's policies, reports, and data.
17 (Id.) Absent any challenges to the substantive authenticity or
18 reliability of these declarations, the court will not exclude
19 them from its analysis of plaintiff's claims. Plaintiff would be
20 better served if its counsel centered on meaningful problems with
21 the content of the evidence and allowed the court to focus on the
22 merits of its arguments.

23 IV. Discussion

24 Plaintiff brings federal and state claims against the
25 City. The federal claims (Claims 1-3) are brought under Section

26 ² The City's evidentiary objections to plaintiff's
27 declaration and exhibits bear on facts that are not material to
28 the court's disposition of plaintiff's claims.

1 1983 and allege substantive due process violations. The court
2 previously dismissed these claims with leave to amend because
3 plaintiff failed to allege any affirmative acts by the City that
4 could confer plaintiff with standing to sue.³ (See Order (Docket
5 No. 27).)

6 A. Due Process (Claim 1)

7 It is well established that, as a general principle,
8 plaintiffs cannot sue the government for failing to enforce its
9 laws. Allen v. Wright, 468 U.S. 737, 754 (1984) (“[The Supreme
10 Court] has repeatedly held that an asserted right to have the
11 Government act in accordance with law is not sufficient, standing
12 alone, to confer jurisdiction on a federal court.”); see also
13 Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973) (“[A] private
14 citizen lacks a judicially cognizable interest in the prosecution
15 or nonprosecution of another.”) (citing Younger v. Harris, 401
16 U.S. 37, 42 (1971)).

17 The court previously dismissed this claim with leave to
18 amend for lack of a cognizable judicial controversy. (See Order
19 at 2-6.) To the extent that plaintiff’s due process claim is
20 still predicated on the City’s alleged failure to perform any

21 ³ Previously, the court dismissed the federal claims in
22 the initial complaint with leave to amend. Those federal claims
23 were all brought under Section 1983, alleging violations of Due
24 Process (Claims 1, 3), Equal Protection (Claim 2), Uncompensated
25 Taking (Claim 4) and Monell (Claim 5). (Docket No. 1.) The
26 court declined supplemental jurisdiction over the state law
27 claims. (Order.) Plaintiff then amended its complaint. (Docket
28 No. 30.) Thereafter, the parties stipulated to a second amended
complaint, which dropped the Equal Protection and Uncompensated
Taking claims. (SAC.) The second amended complaint is the
operative complaint. The City did not move to dismiss the second
amended complaint.

1 affirmative act, the court still lacks jurisdiction to adjudicate
2 it.⁴ Accordingly, the court will dismiss plaintiff's Due Process
3 claim.

4 B. State-Created Danger (Claim 2)

5 Plaintiff also alleges that the City committed
6 affirmative acts that placed plaintiff at risk of danger, and
7 accordingly invokes the state-created danger doctrine. The
8 state-created danger doctrine provides an exception to the
9 general rule denying plaintiffs standing to sue the government
10 for failure to act against third parties. Specifically, it opens
11 the government to liability for a failure to act against a third
12 party if the plaintiff can show that (1) the government, by some
13 affirmative conduct, exposed the plaintiff to danger from that
14 third party, and (2) the affirmative conduct was with "deliberate
15 indifference to a known or obvious danger." Murguia v. Langdon,
16 61 F.4th 1096, 1111 (9th Cir. 2023); Patel v. Kent Sch. Dist.,
17 648 F.3d 965, 974 (9th Cir. 2011)).

18 1. Applicability of State-Created Danger Doctrine

19 Before challenging the merits of plaintiff's state-
20 created danger argument, the City argues that there is no triable
21 issue as to a state-created danger because neither party is an
22 individual. (MSJ at 9.) This argument lacks merit. First, "[a]
23 corporation has rights under the Fourteenth Amendment and may
24 bring § 1983 claims when its rights are violated." SOC, Inc. v.

25
26 ⁴ Any allegations of affirmative acts or concerted
27 policies of inaction are properly raised under plaintiff's state-
28 created danger and Monell claims, respectively, and are addressed
below.

1 Las Vegas Metro. Police Dep't, 319 F. App'x 488, 489–90 (9th Cir.
2 2009) (recognizing corporate right to occupational liberty). See
3 also Grosjean v. Am. Press Co., 297 U.S. 233, 244 (1936) (“[A]
4 corporation is a ‘person’ within the meaning of the equal
5 protection and due process of law clauses [of the Fourteenth
6 Amendment]”). The court is not aware of, and the City
7 fails to provide, any authority that suspends these rights upon
8 invocation of the state-created danger doctrine.

9 Second, “municipalities and other local government
10 units . . . [are] among those persons to whom § 1983 applies.”
11 Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978); see
12 also Bd. of Cnty. Comm'rs v. Brown, 520 U.S. 397, 403 (1997);
13 Hyun Ju Park v. City & Cnty. of Honolulu, 952 F.3d 1136, 1141
14 (9th Cir. 2020) (“A municipality may be held liable as a ‘person’
15 under 42 U.S.C. § 1983 when it maintains a policy or custom that
16 causes the deprivation of a plaintiff’s federally protected
17 rights.”). The City offers no arguments why an application of
18 the state-created danger doctrine exempts state entities from the
19 class of persons to whom § 1983 applies. See also Sinclair v.
20 City of Seattle, 61 F.4th 674 (9th Cir. 2023) (affirming
21 recognition and denial on merits of plaintiff’s claim against
22 city under state-created danger doctrine); Reed v. City of
23 Emeryville, 568 F. Supp. 3d 1029 (N.D. Cal. 2021) (recognizing
24 and denying on merits the same).

25 Accordingly, the court will proceed to the merits of
26 plaintiff’s state-created danger claim.

27 2. Affirmative Acts

28 Plaintiff alleges that the City placed plaintiff in a

1 more dangerous position than it otherwise would have faced by the
2 following affirmative acts: (1) opening and then closing a
3 homeless shelter along Railroad Drive; (2) providing sustenance
4 and support to homeless individuals residing near Railroad Drive;
5 and (3) affirmatively refusing to enforce laws along Railroad
6 Drive, essentially designating it a "containment zone." (See
7 generally Opp'n (Docket No. 5).) The court addresses each in
8 turn.

9 i. Homeless Shelter

10 Plaintiff fails to show that there is a triable issue
11 on whether the City closed the homeless shelter with deliberate
12 indifference to a known or obvious danger to plaintiff.
13 Deliberate indifference is "a stringent standard of fault,
14 requiring proof that a municipal actor disregarded a known or
15 obvious consequence of his action." Bryan Cnty. v. Brown, 520
16 U.S. 397, 410 (1997). See also Patel v. Kent Sch. Dist., 648
17 F.3d 965, 974 (9th Cir. 2011) ("deliberate indifference requires
18 a culpable mental state.") (citing L.W. v. Grubbs, 92 F.3d 894,
19 898-900 (9th Cir. 1996)). The state actor must "actually intend[
20] to expose the plaintiff to such risks without regard to the
21 consequences to the plaintiff." Grubbs, 92 F.3d at 899 (internal
22 quotation marks omitted).

23 In this case, even assuming the City's actual knowledge
24 of the condition that would befall Railroad Drive upon the
25 shelter's closure, plaintiff fails to establish a genuine issue
26 of deliberate indifference because it introduces no evidence
27 probative of the City's "culpable mental state" regarding the
28 shelter's closure. See Patel, 638 F.3d at 974. In fact,

1 plaintiff offers no evidence at all even bearing on the question
2 of why the City closed the shelter. See Hunters Cap., LLC v.
3 City of Seattle, 650 F. Supp. 3d 1187 (W.D. Wash. 2023) (granting
4 summary judgment in part because "Plaintiffs have presented no
5 evidence from which a reasonable jury could conclude that the
6 City acted with deliberate indifference to expose Plaintiffs to
7 certain unreasonable risks, and actually intended to expose them
8 to such risks, without regard to the consequences to them.>").

9 Accordingly, the City's closing of the shelter cannot
10 serve as the factual predicate for plaintiff's state-created
11 danger claim.

12 ii. Sustenance/Support

13 No reasonable trier of fact could conclude that DCR's
14 provision of trash bags and water bottles to the homeless placed
15 plaintiff in greater danger. Providing trash bags to homeless
16 individuals who express a desire to clean up after themselves in
17 fact implies the mitigation of the precise kind of danger for
18 which plaintiff seeks to hold the City accountable.

19 Even if the court were to construe this form of aid as
20 a danger to plaintiff, plaintiff submits no evidence that the
21 City's policy of providing trash bags and water bottles and
22 allowing non-profit private entities to give homeless individuals
23 food and other comfort is anything other than a generalized
24 policy applicable across Sacramento, as opposed to applicable
25 specifically to the homeless population around plaintiff's
26 property. See Sinclair v. City of Seattle, 61 F.4th 674, 682
27 (9th Cir. 2023) ("[A]ny danger the City created or contributed to
28 . . . affected all [] visitors [to city precinct] equally; the

1 danger was not specifically directed at [plaintiffs]" and claim
2 therefore dismissed).

3 Accordingly, there is no genuine issue as to whether
4 such generalized, rudimentary aid can ground a successful state-
5 created danger claim.

6 iii. Affirmative Non-Enforcement

7 As the court previously explained in its order
8 dismissing the original complaint, "[i]nserting the word
9 'refusal' . . . does not transform an omission into an
10 affirmative act." Estate of Gonzales v. Hickman, ED 05-cv-660
11 MMM (RCx), 2006 WL 4959780, at *14 (C.D. Cal. Jan. 30, 2006).
12 Ninth Circuit precedent recognizing claims for state-created
13 danger makes clear that the official conduct in question must be
14 affirmative in a more literal sense. See, e.g., Hernandez v.
15 City of San Jose, 897 F.3d 1125, 1133-35 (9th Cir. 2018)
16 (directing rally attendees toward violent crowd and then
17 physically blocking them). To the extent that plaintiff shows
18 instances of the City refusing or failing to respond to its
19 requests for code enforcement, they cannot support a state-
20 created danger claim as a matter of law.⁵

21 ⁵ Such a showing would also preclude standing to sue, as
22 discussed in the standing analysis regarding plaintiff's first
23 claim, supra, at § IV.A. However, a concerted policy or custom
24 of inaction may be an affirmative act for which the City may be
25 liable. See Brown v. Lynch, 831 F.3d 1146, 1152 (9th Cir. 2016)
26 ("A 'policy' is a deliberate choice to follow a course of action
27 A plaintiff can prevail by pointing to both policies of
28 'action' and of 'inaction.'") (citations omitted); Horton by
Horton v. City of Santa Maria, 915 F.3d 592, 604 (9th Cir. 2019)
(" [C]onstitutional deprivations may occur not . . . as a result
of actions of the individual officers, but as a result of the
collective inaction of the municipal defendant.") (citations
omitted). To the extent that plaintiff alleges a sustained,

1 Accordingly, the court will grant summary judgment on
2 this claim.

3 C. Municipal Liability for Custom or Practice (Claim 3)

4 “In order to establish municipal liability, a plaintiff
5 must show that a ‘policy or custom’ led to the plaintiff’s
6 injury.” Castro v. Cnty. of Los Angeles, 833 F.3d 1060, 1073
7 (9th Cir. 2016) (en banc) (quoting Monell v. Dep’t of Soc.
8 Servs., 436 U.S. 658, 694 (1978)). See also Gordon v. Cnty. of
9 Orange, 6 F.4th 961, 974 (9th Cir. 2021) (“An unconstitutional
10 policy need not be formal or written to create municipal
11 liability under Section 1983; however, it must be so permanent
12 and well settled as to constitute a custom or usage with the
13 force of law.”) (internal quotation marks and citation omitted).

14 Plaintiff alleges that the City adopted a policy of
15 non-enforcement around plaintiff’s property, compelled by the
16 City’s interpretation of the Ninth Circuit case Martin v. City of
17 Boise, 902 F.3d 1031 (9th Cir. 2018), opinion amended and
18 superseded on denial of reh’g, 920 F.3d 584 (9th Cir. 2019).⁶

19 (Opp’n at 8.) However, the undisputed facts do not permit a
20 reasonable factfinder to conclude that the City adopted a policy
21 to categorically “preclude[] it from prosecuting any homeless
22 persons or even being able to relocate the homeless persons

23 _____
24 affirmative policy or custom of inaction, the court addresses it
in its discussion of plaintiff’s Monell claim below.

25 ⁶ The Ninth Circuit in Martin held, in relevant part,
26 that “the Eighth Amendment prohibits the imposition of criminal
27 penalties for sitting, sleeping, or lying outside on public
28 property for homeless individuals who cannot obtain shelter.”
Id. at 1048.

1 outside of the area surrounding Railroad Drive or to clean up the
2 debris, including abandoned and burned vehicles, left in their
3 wake.”⁷ (See Eaton Decl. ¶ 8.) While the City might not be
4 doing as much as plaintiff would reasonably expect it to do in
5 prosecuting crimes committed by homeless persons, the undisputed
6 facts show that the City has in place official policies for
7 triaging and prioritizing the countless complaints it receives
8 from its citizens stemming from the homelessness crisis, with
9 resolutions up to and including clearing encampments and towing
10 vehicles deemed to be a nuisance.⁸ (See Worrall Decl. ¶¶ 7-8 and
11

12 ⁷ Plaintiff also cites to its correspondence with
13 Sacramento Police Sergeant William Wann for the proposition that
14 the City, pursuant to Martin, directed all of its enforcement
15 agencies “to stop policing and enforcing the laws around
16 Plaintiff’s Property.” (Opp’n at 15 (Wann writing “Soon, I think
17 we will be sending social workers out to try to connect the
18 campers with services and my team will only be needed when there
19 is a nexus to some criminal activity. We are pretty much there
20 now.”).) In context, Wann merely informs plaintiff of the Police
21 Department’s shrinking purview (“Code Enforcement, Parking
22 Enforcement, Animal Control, Arson Investigations and probably
23 more stuff is not part of the Police Department”) and explains
24 that “I think the days are gone in which we consider tents to be
25 a police problem if they are only an eye sore.” (Eaton Decl. Ex.
26 4, 1900RR_000900 (emphasis added).) He further explains that if
27 tents are on plaintiff’s private property, then the Police
28 Department will help remove them. (Id.)

22 ⁸ At best, plaintiff’s evidence shows that Sacramento
23 politicians use Martin to deflect complaints from its
24 constituents about inadequate code enforcement. (See Eaton Decl.
25 Ex. 2, RR1900_000184 (email from mayor’s office stating “Martin
26 V. Boise[] places restrictions on moving people experiencing
27 homelessness, which includes people living in their vehicles,
28 unless there is adequate shelter space available There
are exceptions to this which include updates to essential
infrastructure as well as public safety concerns.”),
RR1900_000186 (email from councilmember’s office stating “we are
still subject to the Martin v. Boise decision, which limits our
ability to enforce anticamping ordinances without providing

1 Exs. B, C.)

2 Neither do the undisputed facts permit the conclusion
3 that the City maintained a municipal custom of inaction that
4 rises to the level of a constitutional violation. Instead, the
5 record shows the City taking at least some affirmative actions to
6 respond to plaintiff's complaints. For example, Code Compliance
7 responded to complaints from plaintiff about Railroad Drive on 13
8 occasions in 2021. (See Mendez Decl. ¶¶ 12-13.) The record also
9 shows, for instance, that the City conducted a vehicle sweep of
10 Railroad Drive on January 2021, during which several vehicles
11 were either towed, marked for tow, or voluntarily removed (see
12 Eaton Decl. Ex. 4, 1900RR_000420); removed an abandoned vehicle
13 from the Railroad Drive cul-de-sac on December 2020 (see id.,
14 1900RR_000490); and had Jose Mendez, Code Enforcement Manager for
15 the City of Sacramento, respond personally to plaintiff's
16 complaints and promise to send code enforcement officers out to
17 Railroad Drive (see id., 1900RR_000545; see also Mendez Decl. ¶
18 13).

19 These responses may be far from what plaintiff had a
20 right to expect from the City for its tax dollars, but they
21 negate any contention that the City was accustomed to inaction
22 "so permanent and well settled as to constitute a custom or usage
23 with the force of law." Gordon, 6 F.4th at 974. Accordingly,
24 there is no triable issue on whether the City implemented an
25 unconstitutional policy or custom of non-enforcement pursuant to
26 Monell, and the court will grant summary judgment on this claim.

27 shelter options for the unhoused population.").

1 D. State Law Claims (Claims 4-7)

2 After initially dismissing plaintiff's federal claims,
3 the court concluded that the balance of judicial economy,
4 convenience, fairness, and comity factors weighed strongly in
5 favor of declining supplemental jurisdiction over plaintiff's
6 state law claims. (See Order at 14-15; see also Carnegie-Mellon
7 Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988).) Nothing since
8 has changed significantly to disturb this analysis, including the
9 still-predominant comity interest in referring decisions on
10 complex questions of California statutory and constitutional law
11 to California courts.⁹ Accordingly, the court will again decline
12 supplemental jurisdiction over plaintiff's state law claims
13 pursuant to 28 U.S.C. § 1367(c).

14 IT IS THEREFORE ORDERED that the City's motion for
15 summary judgment be, and the same hereby is, GRANTED on its
16 federal claims brought under Section 1983 (Claims 1-3). Claims
17 4-7 are DISMISSED pursuant to the provisions of 28 U.S.C. §
18 1367(c), without prejudice to plaintiff's right to refile its
19 remaining state law claims in state court.

20 Dated: November 14, 2023


21 WILLIAM B. SHUBB
22 UNITED STATES DISTRICT JUDGE
23
24
25

26 ⁹ See also California v. Sacramento, No. 23-cv-8658
27 (Sacramento Super. Ct. Sept. 19, 2023), filed by the Sacramento
28 County District Attorney against the City and bringing similar
state law claims in response to Sacramento's homelessness crisis.