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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

DAVID R SMITH,  
Plaintiff,  
v.  
COUNTY OF SANTA CRUZ, et al.,  
Defendants.

Case No. 20-cv-00647-BLF

**ORDER GRANTING DEFENDANTS'  
MOTIONS TO DISMISS**

[Re: ECF 13, 26 and 49]

United States District Court  
Northern District of California

This dispute centers on an alleged illegal sawmill and lumber storage operation in the Santa Cruz mountains, an area recently devastated by wildfires. Plaintiff David R. Smith, proceeding pro se, challenges enforcement actions taken against his properties. Mr. Smith is suing the County of Santa Cruz (“the County”); Bryan Hackett and John McSpadden, who acted as administrative hearing officers; Marcus Mendez, a code compliance investigator for the County; Matt Johnston, principal planner for the County; Bruce McPherson, the District Supervisor and member of the Santa Cruz County Board of Supervisors; and Virginia Johnson, Mr. McPherson’s assistant. Defendants have all filed motions to dismiss the claims against them See ECF 13, 26, and 49. The Court held a hearing on August 20, 2020, as to the motions to dismiss filed by Defendant Hackett (Mot. (“Hackett MTD”), ECF 13) and the Defendants other than Defendant McSpadden (Mot., (“County Defendants MTD”), ECF 26). Defendant McSpadden, who had not yet appeared in the case at the time of the hearing, filed his motion to dismiss on August 24, 2020. Mot. (“McSpadden MTD”), ECF 49. The Court received supplemental briefing from the County Defendants, McSpadden, and Smith on October 16, 2020. See ECF 60, 61. The Court addresses all three motions with this order. For the reasons stated below, the Court GRANTS Defendants’ motions to dismiss.

1       **I.     BACKGROUND**

2             Mr. Smith owns multiple parcels of land in the County. Am. Compl. (“FAC”) ¶ 7, ECF 11.  
3     The two relevant properties to this action are APN 085-291-10 (“Parcel 10”) and APN 086-071-51  
4     (“Parcel 51”). Id.

5             Mr. Smith’s issues with Defendants began on April 24, 2019, when Defendant Mendez, a  
6     code compliance investigator for the County, posted a “Notice of Santa Cruz County Code  
7     Violations and Intent to Initiate Enforcement Sanctions,” commonly known as a “red tag,” on  
8     Parcel 10. FAC ¶ 8; Ex. B, Notice (“April 24 Red Tag”) 1, ECF 13-2. The County issued the April  
9     24 Red Tag to Mr. Smith for alleged land use violations stemming from operating an illegal  
10    sawmill and lumber storage on Parcel 10. April 24 Reg Tag 1. The April 24 Reg Tag informed Mr.  
11    Smith that “failure to correct the posted violation(s) within ninety (90) days from the date of this  
12    notice may result in referral to Administrative Hearing for the recovery of enforcement costs,  
13    imposition of civil penalties of up to \$2,500 dollars per violation per day,” among other  
14    consequences. Id.

15            On May 13, 2019, Defendant Mendez acted under a different section of the Santa Cruz  
16    County Code and posted an administrative citation in the amount of \$300 to Parcel 10 for land use  
17    violations stemming from the illegal sawmill and lumber storage. FAC ¶ 9; Ex. C, Admin. Citation  
18    1 (“May 13 Citation”), ECF 13-2. The May 13, 2019 citation instructed Mr. Smith to remove all  
19    stored materials from the property, cease the lumber mill/storage operation, and remove and clean  
20    sawdust from the area. May 13 Citation 1. The May 13 Citation ordered him to remedy the  
21    violation by May 31, 2019. Id.

22            On August 7, 2019, Defendant Mendez issued another administrative citation to Parcel 10,  
23    this one in the amount of \$400, for the continued storage and milling operations without the  
24    required permits. FAC ¶ 10; Ex. D, Admin. Citation 1 (“August 7 Citation”), ECF 13-2. The  
25    August 7 Citation ordered Mr. Smith to remedy the violations by August 31, 2019. Id.

26            On September 11, 2019, Defendant Mendez posted another administrative citation to  
27    Parcel 10, this one in the amount of \$1,000, for continued wood and related equipment materials  
28    storage and milling operations without required permits. FAC ¶ 10; Ex. E, Admin. Citation 1

1 (“September 11 Citation”), ECF 13-2. The September 11 Citation ordered Mr. Smith to remedy  
2 the violations by September 30, 2019. Id.

3 Mr. Smith alleges that the April 24 Red Tag and the three administrative citations were  
4 posted to the wrong property—it was Parcel 51, not Parcel 10, that contained the alleged sawmill  
5 operation. FAC ¶ 12.

6 On November 22, 2019, Mr. Smith had the administrative hearing that was noticed by the  
7 April 24 Red Tag. FAC ¶ 13; Ex. H, Decision of Hearing Officer (“Hackett Decision”), ECF 13-2.  
8 Defendant Hackett was the administrative hearing officer. See Hackett Decision; FAC ¶ 13. Mr.  
9 Smith submitted a motion to dismiss for lack of subject matter jurisdiction based on procedural  
10 grounds, which was denied, and both he and Defendant Mendez testified at the hearing. See  
11 Hackett Decision. Defendant Johnston also testified that a lumbermill in the Santa Cruz Mountains  
12 posed significant potential for fire risk. Id. Mr. Smith conceded that he was aware of the violations  
13 and that he had made efforts to abate the violations. Based on the submitted evidence, Defendant  
14 Hackett found that Mr. Smith knowingly and willfully violated the Santa Cruz County Code  
15 sections as alleged. Id. Mr. Smith never asserted that the April 24 Red Tag and three outstanding  
16 administrative citations noticed the wrong property, which would have potentially given him a  
17 complete defense to the enforcement actions. Mr. Smith was ordered to pay \$1,700 in outstanding  
18 citation penalties (the May 13, August 7, and September 11 administrative citations), \$560 for the  
19 County’s enforcement and abatement costs, and \$2,750 in civil penalties. Id. The decision became  
20 final on January 14, 2020. Id. Defendant Hackett issued an addendum to his January 14 decision  
21 on January 16, 2020, that clarified the factual record but did not affect the ultimate decision on  
22 civil penalties. Ex. I, Addendum, ECF 13-2. The Addendum became effective the day it was  
23 issued, January 16, 2020. Id.

24 Mr. Smith also alleges that Defendant Mendez stated he was getting pressure to prosecute  
25 the case against Mr. Smith by Defendant McPherson, the County Supervisor. FAC ¶ 31. The  
26 County, according to Mr. Smith, encourages Defendant McPherson to “control” the district he  
27 represents. FAC ¶ 33. Mr. Smith alleges that Defendant Johnson, McPherson’s assistant,  
28 participated in this scheme that deprived Mr. Smith of his right to be free of legislative branch

1 influence upon executive duties. FAC ¶ 12.

2 Mr. Smith's problems with the Defendants did not stop there. Mr. Smith was issued  
3 another administrative citation to for an illegal building on December 10, 2019, after the  
4 administrative hearing as to Parcel 10 but before the decision was released. FAC ¶ 24.<sup>1</sup> Mr. Smith  
5 also alleges that he was issued a Red Tag to Parcel 51 on the same date. FAC ¶ 23; Ex. K, Notice  
6 ("December 10 Reg Tag"), ECF 51-1. This red tag was signed by Defendant Mendez. FAC ¶ 26.  
7 Mr. Smith exercised his right to a protest hearing of the red tag issued to Parcel 51, and that  
8 hearing occurred on January 23, 2020. FAC ¶ 27. Defendant McSpadden was the administrative  
9 hearing officer. FAC ¶ 28. Mr. Smith alleges Defendants Mendez and Johnston withheld the  
10 original prosecution package from McSpadden (seemingly referring to the record as to Parcel 10),  
11 so that it could not be discovered from the aerial photographs that the wrong property was cited.  
12 Id. Mr. Smith alleges that on February 21, 2020, Defendants McSpadden, Mendez, and Johnston  
13 increased the pressure on him with an order to remove a dwelling on Parcel 51, which Mr. Smith  
14 links to the enforcement actions taken against Parcel 10. FAC ¶ 28; Ex. H, Decision and Order  
15 ("McSpadden Protest Hearing Decision"), ECF 50-1.

16 Mr. Smith filed this amended complaint on May 14, 2020. He asserts the following causes  
17 of action:

- 18 1. Denial of equal protection in violation of 42 U.S.C. 1983 against Defendants  
19 McSpadden, Hackett, Mendez, Johnston, and the County;
- 20 2. Excessive fines in violation of the Eighth and Fourteenth Amendments against the  
21 same Defendants;
- 22 3. Separation of powers violation of the California Constitution against Defendants  
23 Mendez, Johnston, Johnson, McPherson, and the County;
- 24 4. Substantive and procedural due process violations of the Fourteenth Amendment and  
25 the California Constitution against Defendants Johnston, Mendez, Hackett, and the  
26 County;

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<sup>1</sup> It's not clear if the December 10 administrative citation was issued to Parcel 10 or Parcel 51.

- 1           5. A Bane Act violation against Defendants Johnston, Mendez, Hackett, and the County;
- 2           6. Retaliatory prosecution in violation of the Fourteenth Amendment against Defendants
- 3           Johnston, Mendez, and the County;
- 4           7. Pursuant to a writ of mandate under California Civ. Proc. Code § 1094.5, an appeal of
- 5           the January 14, 2020 administrative hearing decision based on a lack of subject matter
- 6           jurisdiction against Defendant Hackett and the County;
- 7           8. Pursuant to a writ of mandate under California Civ. Proc. Code § 1094.5, an appeal of
- 8           the February 21, 2020 protest hearing decision based on a lack of subject matter
- 9           jurisdiction against Defendant McSpadden and the County;
- 10          9. Pursuant to a writ of mandate under California Civ. Proc. Code § 1094.5, a request for
- 11          injunctive relief to void the administrative citations, fines, and civil penalties issued
- 12          against Parcel 10, asserted against Defendants Hackett, McSpadden, Mendez,
- 13          Johnston, and the County;
- 14          10. A request for sanctions under 18 U.S.C. § 1621 for perjury committed by Defendant
- 15          Mendez. Mr. Smith also seeks penalties for this alleged perjury against Defendants
- 16          Johnston, McSpadden, and the County.

17       See FAC. Defendant Hackett filed a motion to dismiss the claims against him under the doctrine of  
18       judicial immunity. See Hackett MTD. This is Defendant McSpadden’s primary defense as well.  
19       See McSpadden MTD. The County asserts defenses that are detailed further below.

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21       **II.    LEGAL STANDARD**

22       **A.        Rule 12(b)(6)**

23           “To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
24       accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S.  
25       662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When  
26       considering such a motion, the Court “accept[s] factual allegations in the complaint as true and  
27       construe[s] the pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St.*  
28       *Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). However, the Court need not

1 “accept as true allegations that contradict matters properly subject to judicial notice” or  
2 “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable  
3 inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation  
4 marks and citations omitted). “Threadbare recitals of the elements of a cause of action, supported  
5 by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S.  
6 at 555).

7 **B. Rule 12(b)(1)**

8 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of*  
9 *Am.*, 511 U.S. 375, 377 (1994). As such, a federal court has an independent obligation to ensure  
10 that it has subject matter jurisdiction over a matter. See Fed. R. Civ. P. 12(h)(3); *Snell v.*  
11 *Cleveland, Inc.*, 316 F.3d 822, 826 (9th Cir. 2002). On a motion to dismiss pursuant to Rule  
12 12(b)(1), which challenges a court’s subject matter jurisdiction over a claim, the burden is on the  
13 plaintiff, as the party asserting jurisdiction, to establish that subject matter jurisdiction exists.  
14 *Kokkonen*, 511 U.S. at 377. A facial jurisdictional challenge asserts that even if assumed true, “the  
15 allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction.”  
16 *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).

17 **C. Leave to Amend**

18 In deciding whether to grant leave to amend, the Court must consider the factors set forth  
19 by the Supreme Court in *Foman v. Davis*, 371 U.S. 178 (1962), and discussed at length by the  
20 Ninth Circuit in *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048 (9th Cir. 2009). A district  
21 court ordinarily must grant leave to amend unless one or more of the Foman factors is present: (1)  
22 undue delay, (2) bad faith or dilatory motive, (3) repeated failure to cure deficiencies by  
23 amendment, (4) undue prejudice to the opposing party, or (5) futility of amendment. *Eminence*  
24 *Capital*, 316 F.3d at 1052. “[I]t is the consideration of prejudice to the opposing party that carries  
25 the greatest weight.” *Id.* However, a strong showing with respect to one of the other factors may  
26 warrant denial of leave to amend. *Id.* Dismissal without leave to amend is proper only if it is clear  
27 that “the complaint could not be saved by any amendment.” *Intri-Plex Techs., Inc. v. Crest Group,*  
28 *Inc.*, 499 F.3d 1048, 1056 (9th Cir. 2007) (internal citations and quotations omitted).

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### III. DISCUSSION

#### A. Request for Judicial Notice

Defendant Hackett requests that the Court take judicial notice of certain adjudicative facts, see ECF 13-2, and of the following documents: 1) the April 24 Red Tag and associated photographs; 2) the May 13 Citation and associated photographs; 3) the August 7 Citation and associated photographs; 4) the September 11 Citation and associated photographs; 5) a September 28, 2019 report issued by Defendant Mendez detailing the violations of the County Code he witnessed on his April 24, May 13, August 7, and September 11 visits to Parcel 10; 6) a notice of administrative hearing scheduled for October 25, 2019, that was mailed to Mr. Smith and the corresponding proof of service; 7) the January 14, 2020 decision by Defendant Hackett, which emanated from the November 22, 2019 administrative hearing; 7) the January 16, 2020 addendum to Defendant Hackett's decision; 8) the motion to dismiss the case against Parcel 10 submitted by Mr. Smith ahead of the November 22, 2019 administrative hearing; and 9) the County's response to Mr. Smith's motion. Id. Defendant Hackett also asks the Court to take judicial notice of Mr. Smith's original and amended complaint. Id. The County Defendants ask that the Court additionally take judicial notice of Santa Cruz County Ordinance No. 5328 and select provisions of the Santa Cruz County Code. See Decl. of Ryan Thompson, ECF 26-1. Defendant McSpadden asks that the Court take judicial notice of February 21, 2020 decision and order regarding the January 23, 2020 protest hearing and his May 28, 2020 decision and order on request for reconsideration regarding his February 21 order. Decl. of Ryan Thompson, ECF 50. Defendant McSpadden also asks the Court to take judicial notice of Mr. Smith's petition for administrative mandamus under California Civ. Proc. Code § 1094.5, filed in Santa Cruz County Superior Court on August 21, 2020. Id. Finally, Defendant McSpadden asks the Court to take judicial notice of the December 10 Red Tag. Ex. K, ECF 57-1.

The Court may take judicial notice of documents referenced in the complaint, as well as matters in the public record. See *Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001), overruled on other grounds by *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1125–26 (9th

1 Cir. 2002). Public records, including judgments and other court documents, are proper subjects of  
2 judicial notice. See, e.g., *United States v. Black*, 482 F.3d 1035, 1041 (9th Cir. 2007). In addition,  
3 the Court may take judicial notice of matters that are either “generally known within the trial  
4 court’s territorial jurisdiction” or “can be accurately and readily determined from sources whose  
5 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). However, “[j]ust because the  
6 document itself is susceptible to judicial notice does not mean that every assertion of fact within  
7 that document is judicially noticeable for its truth.” *Khoja v. Orexigen Therapeutics, Inc.*, 899  
8 F.3d 988, 999 (9th Cir. 2018). Further, “Rule 201 permits a court to notice an adjudicative fact if it  
9 is ‘not subject to reasonable dispute.’ *Id.* (internal quotation and citation omitted). “But a court  
10 cannot take judicial notice of disputed facts contained in such public records.” *Id.*

11 The Court declines to judicially notice Defendant Hackett’s facts at this stage of the  
12 litigation, but the Court finds Defendants’ request for judicial notice of documents proper, not for  
13 their underlying truth, but because Plaintiff references the requested documents in the complaint,  
14 and the remaining documents are matters in the public record.

## 15 **B. Claims against Defendant Hackett**

### 16 **1. Constitutional Claims One, Two, and Four**

17 Mr. Smith brings claims one (equal protection), two (excessive fines), and four  
18 (substantive and procedural due process) against Defendant Hackett. Defendant Hackett, an  
19 attorney in private practice who was appointed by the County to be the administrative hearing  
20 officer at the November 22, 2019 administrative hearing, asserts a defense of judicial immunity.  
21 Hackett MTD 13–19. He contends that all of the claims asserted against him emanate from the  
22 hearing, and he is absolutely immune from suit for actions he took in this judicial role. *Id.*  
23 Alternatively, if the Court does not find him eligible for absolute immunity, Defendant Hackett  
24 argues he is entitled to quasi-judicial immunity. Hackett MTD 15. Mr. Smith claims that  
25 Defendant Hackett is not entitled to judicial immunity because he lacked jurisdiction to conduct  
26 the hearing. Opp’n (“Hackett Opp’n”) 3, ECF 25.

27 “It is well established that state judges are entitled to absolute immunity for their judicial  
28 acts.” *Swift v. California*, 384 F.3d 1184, 1188 (9th Cir. 2004). “When judicial immunity is



1 extended to officials other than judges, it is because their judgments are ‘functionally comparable’  
2 to those of judges — that is, because they, too, ‘exercise a discretionary judgment’ as part of their  
3 function.” Id. (quoting *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 436 (1993)). “The  
4 relevant test now is whether the official is ‘performing a duty functionally comparable to one for  
5 which officials were rendered immune at common law.’” Swift, 384 F.3d at 1190 (quoting *Miller*  
6 *v. Gammie*, 335 F.3d 889, 897 (9th Cir. 2003)).

7 Federal administrative hearing officers and administrative law judges are protected by  
8 judicial immunity because their role is “functionally comparable” to that of a judge. *Butz v.*  
9 *Economou*, 438 U.S. 478, 513 (1978). Recently, a court in this district granted judicial immunity  
10 to an administrative hearing officer in the City of Oakland presiding over a hearing regarding the  
11 towing and scrapping of a truck. *Lei v. City of Oakland*, No. 18-CV-03061-LB, 2018 WL  
12 7247172, at \*5 (N.D. Cal. Nov. 5, 2018). “Because Mr. Villegas was serving in a quasi-judicial  
13 role, he is entitled to quasi-judicial immunity” Id. Another court in this district, in *Burnell v.*  
14 *Marin Humane Soc’y*, extended absolute judicial immunity to a hearing officer presiding over the  
15 administrative proceedings adjudicating the Marin Humane Society’s seizure of four horses. No.  
16 14-CV-05635-JSC, 2015 WL 4089844, at \*3 (N.D. Cal. July 6, 2015). The Court found that facts  
17 alleging that the officer was not qualified to serve in that role were related to his role as a hearing  
18 officer and likewise barred by absolute immunity. Id. “Plaintiffs sue Burnham solely in his  
19 capacity as an administrative hearing officer; as he made findings and fact and conclusions of law  
20 in this regard and therefore served an adjudicative role, he is entitled to absolute judicial  
21 immunity.” Id. at \*3 (citing *Demoran v. Witt*, 781 F.2d 155, 156 (9th Cir. 1985)). California has  
22 similarly extended judicial immunity to judges and persons acting in a judicial or quasi-judicial  
23 capacity. *Stahl v. Klotz*, 440 F. Supp. 3d 1113, 1119 (E.D. Cal. 2020) (citing *Howard v. Drapkin*,  
24 222 Cal. App. 3d 843, 852 (Cal. Ct. App. 1990)).

25 The Court finds that Defendant Hackett was serving in a quasi-judicial role and is entitled  
26 to quasi-judicial immunity. In his role as hearing officer, then authorized by Santa Cruz County  
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1 Code (“County Code”) § 1.12.070(D)(5)(a)<sup>2</sup>, he had the authority to conduct hearings, to issue  
2 subpoenas, to receive evidence, to administer oaths, to rule on questions of law and the  
3 admissibility of evidence, to prepare a record of the proceedings, and to issue enforcement orders  
4 with regard to violations of the Code. Id.

5 As to Mr. Smith’s arguments that no judicial immunity should apply because Defendant  
6 Hackett lacked jurisdiction, the Supreme Court has directed that “the scope of the judge’s  
7 jurisdiction must be construed broadly where the issue is the immunity of the judge. A judge will  
8 not be deprived of immunity because the action he took was in error, was done maliciously, or was  
9 in excess of his authority; rather, he will be subject to liability only when he has acted in the ‘clear  
10 absence of all jurisdiction.’” *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978) (quoting *Bradley v.*  
11 *Fisher*, 13 Wall. 335, 351 (1872)). To illustrate: If a probate judge, with jurisdiction only over  
12 trusts and estates, presided over a criminal case, that would be acting in the clear absence of  
13 jurisdiction. *Stump*, 435 U.S. at 357 n.7 (citing *Bradley*, 13 Wall. at 352). But if a criminal court  
14 judge convicted a defendant of a nonexistent crime, that would be merely in excess of authority  
15 and still covered by judicial immunity. *Stump*, 435 U.S. at 357 n.7 (citing *Bradley*, 13 Wall. at  
16 352). With those guideposts, the Court finds that Defendant Hackett is entitled to quasi-judicial  
17 immunity, and since no amendment to the complaint could defeat his immunity, claims one, two,  
18 and four against him are DISMISSED WITH PEJUDICE.

## 19 2. Claim Five: Bane Act Violation

20 In claim five, Mr. Smith asserts a Bane Act violation against Defendant Hackett. FAC ¶¶  
21 55–58. The Bane Act civilly protects individuals from conduct aimed at interfering with rights that  
22 are secured by federal or state law, where the interference is carried out “by threats, intimidation  
23 or coercion.” *Reese v. County of Sacramento*, 888 F.3d 1030, 1040 (9th Cir. 2018). For a Bane Act  
24 claim, the plaintiff must allege : “(1) defendants interfered with plaintiff’s constitutional rights by  
25 threatening or committing violent acts; (2) that plaintiff reasonably believed that if she exercised  
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27 <sup>2</sup> The Santa Cruz County Code has been amended since Defendant Hackett issued his decision,  
28 and the relevant section is now § 1.12.070(B)(6). The substance of the County Code regarding the  
duties of hearing officers remains the same.

1 her constitutional rights, defendants would commit violence against her; (3) plaintiff was harmed;  
 2 and (4) defendants' conduct was a substantial factor in causing plaintiff's harm." Tolosko-Parker  
 3 v. County of Sonoma, Nos. C 06-06841 CRB, C 06-06907 CRB, 2009 WL 498099, at \*5 (N.D.  
 4 Cal. Feb. 26, 2009).

5 Here, Mr. Smith alleges that Defendant Hackett violated his federal and state rights by  
 6 ordering a civil penalty to become a tax. FAC ¶ 57. Nowhere in the FAC, though, does Mr. Smith  
 7 allege any threats, intimidation, or coercion that would lead to violence. Based on the facts in the  
 8 first amended complaint, it is not plausible that Mr. Smith could allege any such threats,  
 9 intimidation, or coercion leading to violence. For this reason, the Bane Act claim against  
 10 Defendant Hackett is DISMISSED WITH PREJUDICE.

### 11 **3. Claim Seven: Cal. Civ. Proc. Code § 1094.5 Writ of Mandate**

12 Mr. Smith names Defendant Hackett in claim seven, brought as a writ of mandate under  
 13 Cal. Civ. Proc. Code § 1094.5. The Court recognizes that though Defendant Hackett is named, the  
 14 County is the real party in interest. The Court will address the timeliness of Mr. Smith's writ claim  
 15 regarding the January 14, 2020 Hackett hearing decision here, which also applies to the County.

16 The January 14, 2020 hearing decision includes a notice that the decision is subject to  
 17 judicial review "pursuant to Section 53069.4 of the Government Code only if an appeal is filed  
 18 with the Santa Cruz Superior Court Clerk, together with the applicable appeal fee, within 20 days  
 19 after service of the decision of the Hearing Office." See Hackett Decision. The cited statute, Cal.  
 20 Gov't Code § 53069.4(b)(1), offers alternative procedures for challenging a final administrative  
 21 decision: a petition for writ of mandate pursuant to California Civ. Proc. Code §§ 1094.5 or  
 22 1094.6, or a de novo appeal to the superior court. *Martin v. Riverside County Dept. of Code*  
 23 *Enforcement*, 83 Cal. Rptr. 3d 624, 627 (Cal. Ct. App. 2008). California Civ. Proc. Code §  
 24 1094.6(b) provides that "Any such petition shall be filed not later than the 90th day following the  
 25 date on which the decision becomes final." *Id.* Defendant Hackett's decision was final the day it  
 26 was issued, January 14, 2020. Mr. Smith did not file his petition until May 14, 2020, well outside  
 27 his ninety-day window. Claim seven is untimely. Therefore, Defendant Hackett's motion to  
 28 dismiss Mr. Smith's seventh claim for an appeal of the January 14, 2020 hearing decision is

1 GRANTED, and the claim is DISMISSED WITH PREJUDICE.

2 **4. Claim Nine: Cal. Civ. Proc. Code § 1094.5 Writ of Mandate**

3 Mr. Smith brings claim nine as a writ of mandate under Cal. Civ. Proc. Code § 1094.5 and  
4 requests injunctive relief and monetary damages. FAC ¶¶ 80-84. In addition to bringing this claim  
5 against Defendant Hackett, Mr. Smith also brings it against Defendants McSpadden, Mendez,  
6 Johnson, and the County. Id. This claim lumps together the separate administrative orders issued  
7 by Defendant Hackett in January 2020 and Defendant McSpadden on February 21, 2020. Mr.  
8 Hackett argues this claim should be dismissed as to him because the writ of mandate does not  
9 provide a basis for liability against him and, even if it did, this is an impermissible collateral attack  
10 the administrative order he issued. Hackett MTD 27–29.

11 As further explained when analyzing this claim as it is asserted against the County  
12 Defendants, the Court declines to take supplemental jurisdiction over this claim. Although  
13 Defendant Hackett may have a valid statute of limitations defense to this claim, the Court will not  
14 split the claim in order to rule on Hackett’s defense. Accordingly, this claim is DISMISSED  
15 WITHOUT PREJUDICE.

16 **5. Conclusion**

17 As the Court detailed above, all claims against Defendant Hackett have been DISMISSED.

18 **C. Claims against Defendants Mendez, McPherson, Johnston, Johnson, and the**  
19 **County (collectively “County Defendants”)**

20 Mr. Smith asserts several claims against the County Defendants, and the Court will address  
21 each count in turn.

22 **1. Claim One: Equal Protection against Defendants Mendez, Johnston, and**  
23 **the County**

24 For an equal protection “class of one” claim, Mr. Smith must show that he has been  
25 intentionally treated differently from others similarly situated, and there is no rational basis for the  
26 difference in treatment. Bd. of Trs. of Leland Stanford Junior Univ. v. County of Santa Clara, No.  
27 18-cv-07650-BLF, 2019 WL 5087593, at \*5 (N.D. Cal. Oct. 10, 2019) (citing Village Of  
28 Willowbrook v. Olech, 528 U.S. 562 (2000) and Gerhart v. Lake County, 637 F.3d 1013, 1022 (9th

1 Cir. 2011)). “To be considered similarly situated, the plaintiff and her comparators must be prima  
2 facie identical in all relevant respects or directly comparable in all material respects.” Stanford,  
3 2019 WL 5087593, at \*5 (citing *Jardine-Byrne v. Santa Cruz County*, No. 5:16-CV-03253-EJD,  
4 2017 WL 5525900, at \*4 (N.D. Cal. Nov. 17, 2017)). “Strict enforcement of the similarly-situated  
5 requirement is a vital way of minimizing the risk that, unless carefully circumscribed, the concept  
6 of a class-of-one equal protection claim could effectively provide a federal cause of action for  
7 review of almost every executive and administrative decision made by state actors.” Stanford,  
8 2019 WL 5087593, at \*5 (citing *Warkentine v. Soria*, 152 F. Supp. 3d. 1269, 1294 (E.D. Cal.  
9 2016)).

10 Mr. Smith alleges that Defendants treated him differently than other citizens found to be in  
11 violation of county ordinances. FAC ¶ 39. As an example of another citizen similarly situated to  
12 him, Mr. Smith alleges a property owner was given five years to clean up a private vehicle storage  
13 yard while he was given three months to remove a large quantity of lumber stemming from his  
14 sawmill operation. FAC ¶ 17.

15 The County Defendants argue, and this Court agrees, that the private vehicle storage yard  
16 and Mr. Smith’s sawmill and lumber yard are not “prima facie identical in all relevant respects or  
17 directly comparable in all material respects.” Opp’n (“County Opp’n”) 8, ECF 33. The potential  
18 fire hazard difference between the two operations makes it impossible to consider them prima  
19 facie identical. Accordingly, the Court DISMISSES count one, and, since Mr. Smith has already  
20 had an attempt at amendment, the dismissal is WITH PREJUDICE.

21 **2. Claim Two: Excessive Fines against Defendants Mendez, Johnston, and the**  
22 **County**

23 Mr. Smith invokes both the Eighth and Fourteenth Amendments for his excessive fines  
24 claim. It is properly analyzed under the Eighth Amendment. See *County of Sacramento v. Lewis*,  
25 523 U.S. 833, 842 (1998) (“Because we have always been reluctant to expand the concept of  
26 substantive due process...where a particular Amendment provides an explicit textual source of  
27 constitutional protection against a particular sort of government behavior, that Amendment, not  
28 the more generalized notion of substantive due process, must be the guide for analyzing these

1 claims.”) (internal quotations and citations omitted).

2 Under the excessive fines clause of the Eighth Amendment, “[a] fine is unconstitutionally  
3 excessive if (1) the payment to the government constitutes punishment for an offense, and (2) the  
4 payment is grossly disproportionate to the gravity of the defendant’s offense.” *United States v.*  
5 *Mackby*, 261 F.3d 821, 829 (9th Cir. 2001). Similarly, Article 1, Section 17 of the California  
6 Constitution states, “[c]ruel or unusual punishment may not be inflicted or excessive fines  
7 imposed.” Cal. Const. art. I, § 17. “This section is a state equivalent to the Eighth Amendment.”  
8 *Brownlee v. Burluson*, No. CIV S-04-1330, 2006 WL 2354888, \*7 (E.D. Cal. 2006)  
9 (recommending summary judgment on the California claim “[b]ecause this court finds that all  
10 defendants are entitled to summary judgment on [the] Eighth Amendment Claim”); see also *In re*  
11 *Alva*, 92 P.3d 311, 333 (Cal. 2004) (“We see no basis to find a different meaning of ‘punishment’  
12 for state purposes than would apply under the Eighth Amendment.”); *People ex rel. Lockyer v.*  
13 *R.J. Reynolds Tobacco Co.*, 37 Cal. 4th 707, 420-22 (Cal. 2005) (considering federal and state  
14 case law together in determining what factors were relevant to the constitutional “evaluation of the  
15 fine assessed against the defendant.”). The Court therefore will interpret both provisions together.

16 Mr. Smith clarified in his opposition to Defendant Hackett’s motion to dismiss that his  
17 excessive fines claim only challenges the \$1,700 in outstanding citation penalties. Hackett Opp’n  
18 3–4. He also confirmed this at the August 20, 2020 hearing.<sup>3</sup>

19 The statute of limitations has run on this claim. Mr. Smith would have needed to challenge  
20 this within his ninety-day window to challenge the January 14, 2020 Hackett Decision.  
21 California’s 1094.5 writ procedures provide an opportunity for the review of constitutional claims.  
22 *Kenneally v. Lungren*, 967 F.2d 329, 332–33 (9th Cir.1992) (examining the California writ of  
23 mandate procedure under Cal. Civ. Proc. Code § 1094.5 and holding that “[t]his statutory  
24 framework provides a meaningful opportunity for [plaintiff] to present his constitutional claims  
25 for independent judicial review prior to the [agency’s] decision becoming effective”); see also *San*

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26  
27 <sup>3</sup> If Mr. Smith were to challenge the \$2,750 in civil penalties, that challenge would be moot. Mr.  
28 Smith offered no factual allegations that the civil penalty was added to the secured tax roll, and a  
February 25, 2020 change to the Santa Clara County Code prevents civil penalties from being  
added to the secured tax roll. Ex. F, Santa Cruz County Code § 12.070(B)(6)(d)(v), ECF 26-1.

1 Jose Silicon Valley Chamber of Commerce Political Action Comm. v. City of San Jose, 546 F.3d  
 2 1087, 1095 (9th Cir. 2008). Because there was not a timely challenge to the January 14, 2020  
 3 Hackett Decision, that decision, along with the penalties imposed, is final. Accordingly, claim two  
 4 is DISMISSED WITH PREJUDICE.

5 **3. Claim Three: Separation of Powers Violation against Defendants Mendez,**  
 6 **Johnston, Johnson, McPherson, and the County**

7 Mr. Smith alleges a separation of powers challenge under Article III, Section 3 of the  
 8 California Constitution. “The separation of powers doctrine limits the authority of one of the three  
 9 branches of government to arrogate to itself the core functions of another branch.” Carmel Valley  
 10 Fire Prot. Dist. v. State, 20 P.3d 533, 538 (Cal. 2001) (citations omitted). “The doctrine, however,  
 11 recognizes that the three branches of government are interdependent, and it permits actions of one  
 12 branch that may ‘significantly affect those of another branch.’” Id. (quoting Superior Court v.  
 13 County of Mendocino, 913 P.2d 1046, 1051 (Cal. 1996)).

14 Mr. Smith does not allege that Defendant McPherson, the County Supervisor, personally  
 15 cited his property in his official capacity. Rather, he alleges that Defendant Mendez, the code  
 16 compliance investigator was “pressured” to (lawfully) issue administrative citations. County  
 17 Opp’n 5. What Mr. Smith is essentially asking this Court to do is find constituent services illegal.  
 18 Elected officials can, and should, listen and respond to concerns of their constituents. Defendant  
 19 McPherson (aided by his assistant, Defendant Johnson) did nothing unlawful when he allegedly  
 20 encouraged the other County Defendants to enforce the County Code as written. According to the  
 21 County Code, Mr. Smith could have been cited every day he was in violation. See Santa Cruz  
 22 Code section 1.13.020(A)(1) (“Any person violating any provision of the Santa Cruz Code or  
 23 applicable State code may be issued an administrative citation by an enforcement officer as  
 24 provided in this chapter. (1) Each and every day a violation of the Santa Cruz County Code or  
 25 applicable State code exists constitutes a separate and distinct offense for which an administrative  
 26 citation may be issued.”). Instead, the relevant parcel, Parcel 10, was cited three times (May 13,  
 27 August 7, September 11). Plaintiff has failed to allege facts sufficient to support this claim for  
 28 separation of powers. Thus, claim three is DISMISSED WITH PREJUDICE.

1                                   **4. Claim Four: Due Process violation against Defendants Mendez, Johnston,**  
2                                   **and the County**

3           Mr. Smith brings due process claims under both the Fourteenth Amendments and Article I,  
4 Sections 7 and 15 of the California Constitution. Section 15 involves the defendant’s rights in a  
5 criminal case and is not applicable here.

6           Regarding his procedural due process claims, Mr. Smith states, “Defendants violated his  
7 procedural due process rights by ordering a civil penalty to become a tax in violation of his state  
8 constitutional right to be free from illegal taxation. The purpose was to place Smith under pressure  
9 to pay the county civil penalty or lose his property at auction.” FAC ¶ 51. However, a procedural  
10 due process claim is not cognizable when “there is an available state remedy.” *Lake Nacimiento*  
11 *Ranch Co. v. County of San Luis Obispo*, 841 F.2d 872, 879 (9th Cir. 1987). Here, Mr. Smith  
12 failed to take advantage of either of his state law remedy options in a timely fashion: an appeal  
13 filed with the Santa Cruz Superior Court Clerk, pursuant to Section 53069.4 of the Government  
14 Code, or a Section 1094.5 writ of mandate. Mr. Smith exercised neither remedy, and his federal  
15 procedural due process claim fails. His claim under the California Constitution is untimely and  
16 fails as well.

17           As for Mr. Smith’s substantive due process claims, “[t]o establish a violation of  
18 substantive due process, a plaintiff is ordinarily required to prove that a challenged government  
19 action was clearly arbitrary and unreasonable, having no substantial relation to the public health,  
20 safety, morals, or general welfare.” *Kim v. United States*, 121 F.3d 1269, 1273 (9th Cir. 1997)  
21 (internal citation and quotation omitted). Only official conduct that “shocks the conscience” and  
22 violates the “decencies of civilized conduct” is cognizable. *County of Sacramento*, 523 U.S. at  
23 846. Under the California Constitution, a substantive due process violation requires some form of  
24 outrageous or egregious conduct constituting “a true abuse of power.” *Galland v. City of Clovis*,  
25 16 P.3d 130, 150 (Cal. 2001).

26           Mr. Smith argues that the County Defendants deprived him of his constitutionally  
27 protected property interest and engaged in conduct that was arbitrary and in violation of his  
28 substantive due process rights. FAC ¶ 52. His argument in opposition to the County Defendants’



1 motion focuses on his monetary penalties and what he claims was an illegal tax. County Opp'n 3–  
 2 4. These arguments were addressed and rejected above in the discussion regarding claim two for  
 3 excessive fines. Mr. Smith has not alleged any facts that rise of the level of “shocking the  
 4 conscience” or “a true abuse of power,” and he has not shown that he could do so by further  
 5 amendment. Accordingly, claim four is DISMISSED WITH PREJUDICE.

6 **5. Claim Five: Bane Act Violation against Defendants Mendez, Johnston, and**  
 7 **the County**

8 The Court discussed the elements for a Bane Act claim above when dismissing the claim  
 9 against Defendant Hackett. The County Defendants argue that mere speech alone, unless the  
 10 speech reasonably threatens violence, is insufficient to state a claim under the Bane Act. County  
 11 Defendants MTD 18; see also Cal. Civ. Code § 52.1(k). Under Section 52.1(k), speech alone is  
 12 insufficient to state a claim except if the speech itself threatens violence against a specific person,  
 13 and that person reasonably fears that, because of the speech, violence will be committed against  
 14 them or their property and that the person threatening violence has the apparent ability to carry out  
 15 the threat. Cal. Civ. Code § 52.1(k). Mr. Smith has not plead any facts suggesting violence in his  
 16 amended complaint, and he did not respond to the County Defendants’ arguments in his  
 17 opposition brief. Accordingly, claim five is DISMISSED WITH PREJUDICE.

18 **6. Claim Six: Retaliatory Prosecution against Defendants Mendez, Johnston,**  
 19 **and the County**

20 Mr. Smith argues that the County Defendants issued the December 10 Red Tag to Parcel  
 21 51 in retaliation for exercising his right to defend himself on the April 24 Red Tag to Parcel 10.  
 22 FAC ¶ 62. This claim also fails.

23 To properly allege a First Amendment retaliation violation, the plaintiff must allege facts  
 24 showing that the actions of the defendants deterred or chilled the plaintiff’s speech and such  
 25 deterrence was a substantial or motivating factor in the defendant’s conduct. *Lacey v. Maricopa*  
 26 *County*, 693 F.3d 896, 916 (9th Cir. 2012). Mr. Smith does not need to show that his speech was  
 27 actually inhibited or suppressed. *Id.* (citing *Mendocino Env’t. Ctr. v. Mendocino County*, 192 F.3d  
 28 1283, 1300 (9th Cir. 1999)). Rather, the Court considers “whether an official’s acts would chill or

1 silence a person of ordinary firmness from future First Amendment activities.” Lacey, 693 F.3d at  
2 916 (citing Mendocino, 192 F.3d at 1300). Mr. Smith must allege facts ultimately enabling him to  
3 “prove the elements of retaliatory animus as the cause of injury,” with causation being  
4 “understood to be but-for causation.” Lacey, 693 F.3d at 917 (quoting Hartman v. Moore, 547  
5 U.S. 250, 260 (2006)). “It may be dishonorable to act with an unconstitutional motive and perhaps  
6 in some instances be unlawful, but action colored by some degree of bad motive does not amount  
7 to a constitutional tort if that action would have been taken anyway.” Hartman, 547 U.S. at 260.

8 The only connection Mr. Smith has made between the two administrative proceedings  
9 against two different parcels is that the hearing date as to the April 24th Red Tag was close in time  
10 to the issuance of the December 10 Red Tag. Mr. Smith argues that the December 10 Red Tag was  
11 posted “a mere 18 days” after the hearing on the April 24 Red Tag. County Opp’n 5. This time  
12 nexus, according to Mr. Smith, “renders a high probability that the enforcement action was  
13 retaliatory for exercising free speech.” Id.

14 The County Defendants cite Kolstad v. County of Amador, No. CIV 2:13–01279, 2013 WL  
15 6065315 (E.D. Cal Nov. 14, 2013), which also involved contested county code enforcement  
16 actions for land use violations. County Defendants MTD 16. The county’s motion to dismiss was  
17 granted because “Plaintiffs’ allegations cannot support an inference that, but for their protected  
18 activity, defendants would not have threatened enforcement, because plaintiffs allege that  
19 defendants took the same actions before and after the protected activity.” Id. at \*6. Kolstad,  
20 though, involves actions taken against one property. Here, Mr. Smith alleges that after defending  
21 himself against enforcement actions on Parcel 51, the County Defendants started enforcement  
22 actions against Parcel 10.

23 However, the Court agrees with the County Defendants when they argue that the County  
24 code enforcement team cannot be expected to forgo enforcing the County Code as to Mr. Smith  
25 simply because Mr. Smith was involved in a prior code enforcement administrative hearing.  
26 County Defendants MTD 17. Mr. Smith has not alleged any animus on the part of the County  
27 Defendants that served as but-for causation leading them to target Parcel 10. In fact, in the  
28 February 21, 2020 protest hearing, Mr. Smith admitted to facts that amount to an admission that he

1 had violated the County ordinances cited in the December 10 Red Tag. McSpadden Protest  
2 Hearing Decision 4. This claim is simply implausible.

3 Mr. Smith has failed to allege the elements of retaliatory animus as the but-for cause of  
4 injury, and he has not provided any argument suggesting he could cure the deficiencies by  
5 amendment. Therefore, is claim is DISMISSED WITH PREJUDICE.

6 **7. Claim Seven: Cal. Civ. Proc. Code § 1094.5 Writ of Mandate on the**  
7 **Hackett Decision against the County**

8 For the reasons the Court discussed above in regard to this claim as it was asserted against  
9 Defendant Hackett, this claim is time barred due to Mr. Smith’s failure to file his writ within  
10 ninety days of Defendant Hackett’s decision. Accordingly, it is DISMISSED WITH PREJUDICE.

11 **8. Claim Eight: Cal. Civ. Proc. Code § 1094.5 Writ of Mandate on the**  
12 **McSpadden Protest Hearing Decision against the County**

13 All of the federal claims are being dismissed from this case, and only claims eight and  
14 nine, under a Section 1094.5 writ of mandate, remain. The Court exercises its discretion and  
15 declines to take supplemental jurisdiction of these two claims.

16 The Court has original jurisdiction “of all civil actions arising under the Constitution, laws,  
17 or treaties of the United States.” 28 U.S.C. § 1331. The Court can properly exercise supplemental  
18 jurisdiction “over all other claims that are so related to claims in the action within such original  
19 jurisdiction that they form the same case or controversy under Article III of the United States  
20 Constitution.” 28 U.S.C. § 1367(a). The doctrine of supplemental jurisdiction “is a doctrine of  
21 discretion, not of plaintiff’s right.” *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726  
22 (1966); see also *Action Embroidery Corp. v. Atlantic Embroidery, Inc.*, 368 F.3d 1174, 1181 (9th  
23 Cir. 2004) (“Like our sister circuits, we hold that the actual exercise of personal pendent  
24 jurisdiction in a particular case is within the discretion of the district court.”).

25 Section 1367(c) outlines when it is appropriate for a federal court to decline to exercise  
26 supplemental jurisdiction:

- 27 (1) the claim raises a novel or complex issue of State law,  
28 (2) the claim substantially predominates over the claim or claims over which the district

1 court has original jurisdiction,

2 (3) the district court has dismissed all claims over which it has original jurisdiction, or  
3 (4) in exceptional circumstances, there are other compelling reasons for declining  
4 jurisdiction.

5 28 U.S.C. § 1367(c). The Court finds that it is appropriate to decline supplemental jurisdiction  
6 here under factors one, two, and three.

7 First, the writ claim involves interpretations of multiple parts of the Santa Cruz County  
8 Code, two different land use enforcement schemes (the Red Tags and administrative citations),  
9 County administrative hearing procedures. The Court has no hesitation finding these issues are  
10 complex issues of state law. Second, since there are no remaining federal claims, the writ claims  
11 not only substantially predominate, but they consist of the entire case. And third, the Court has  
12 dismissed all the claims over which it has original jurisdiction. Other courts in this district have  
13 made the same choice with California writ of mandate claims. *Patel v. City of Long Beach*, 786 F.  
14 App'x 126, 127 (9th Cir. 2019) (affirming the district court had ample discretion to decline  
15 supplemental jurisdiction over writ claim when one Fourth Amendment claim remained);  
16 *Tomlinson v. County of Monterey*, No. C-07-00990 RMW, 2007 WL 2298038, at \*2 (N.D. Cal.  
17 Aug. 8, 2007) (declining supplemental jurisdiction over writ of mandate claim); *Clemes v. Del*  
18 *Norte Cty. Unified Sch. Dist.*, 843 F. Supp. 583, 596 (N.D. Cal. 1994), overruled on other grounds  
19 by *Maynard v. City of San Jose*, 37 F.3d 1396, 1403-04 (9th Cir. 1994) (declining supplemental  
20 jurisdiction over a writ claim despite retaining federal statutory claims); see also *Spielbauer v.*  
21 *County of Santa Clara*, No. C 04-02265 JW, 2004 WL 2663545, at \*3 (N.D. Cal. Nov. 17, 2004)  
22 (“Mandamus proceedings ... are actions that are uniquely in the interest and domain of state courts.  
23 It would be entirely inappropriate for a federal court, through exercise of its supplemental  
24 jurisdiction, to impose itself upon such proceedings. Considerations of federalism and comity ...  
25 loom large in the case of state mandamus proceedings.”) (internal citations omitted).

26 The Court is also aware that Mr. Smith has filed a writ of mandate in state court  
27 challenging a reconsideration of the McSpadden protest hearing decision that was issued after this  
28 lawsuit was filed. Ex. J, Petition for Administrative Mandate, ECF 50-3. The Court will DISMISS  
Mr. Smith’s claim eight WITHOUT PREJUDICE since there is a parallel state action.

1                                   **9. Claim Nine: Cal. Civ. Proc. Code § 1094.5 Writ of Mandate against**  
 2                                   **Defendants Mendez, Johnston, and the County**

3                   For the reasons detailed in claim eight above, the Court declines supplemental jurisdiction  
 4 on this claim and dismisses it WITHOUT PREJUDICE. The Court notes that it did not decline  
 5 supplemental jurisdiction over claim seven asserting a writ of mandate solely against the January  
 6 14, 2020 Hackett decision because the entire claim was time barred. As to claim nine, Mr. Smith  
 7 has merged the claim against Defendant Hackett, the County Defendants, and Defendant  
 8 McSpadden, and thus the Court has not split the claim in order to address Defendant Hackett’s  
 9 separate defense. Rather, the Court defers to the state court to determine whether this claim is  
 10 viable against either hearing officer or any of the County Defendants.

11                                   **10. Claim Ten: Perjury against Defendants Mendez, Johnson, and the County**

12                   Finally, Mr. Smith asserts a perjury claim. Federal criminal statutes “provide no basis for  
 13 civil liability.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980); see also *Sepehry-Fard v.*  
 14 *Bank of New York Mellon, N.A.*, No. 12-CV-1260-LHK, 2012 WL 4717870, at \*4 (N.D. Cal. Oct.  
 15 2, 2012) (“there is no private cause of action for perjury, 18 U.S.C. § 1621”) (internal citation and  
 16 quotation omitted). Accordingly, this claim is DISMISSED WITH PREJUDICE. Due to the  
 17 nature of its deficiency, the identity of the Defendant does not change the outcome, so the claim is  
 18 DISMISSED WITH PREJUDICE as to Defendant McSpadden as well.

19                                   **D. Claims against Defendant McSpadden**

20                                   **1. Constitutional Claims**

21                   Mr. Smith brings claim one, equal protection, and claim two, excessive fines, against  
 22 Defendant McSpadden. Counsel indicated limited representation as to claims eight and nine only  
 23 and does not address these claims in his motion to dismiss.

24                   The Court will sua sponte address these claims against Defendant McSpadden. As the  
 25 Court noted above, the equal protection claim fails because Mr. Smith has failed to state a claim  
 26 upon which relief can be granted and has had an adequate opportunity to address the issue. The  
 27 claim fails regardless of who the claim is asserted against. Thus, the Court sua sponte dismisses  
 28 this claim against McSpadden WITH PREJUDICE.

1           Regarding claim two for excessive fines, Mr. Smith argues in his opposition to Defendant  
2 McSpadden’s motion to dismiss that the February 21, 2020 McSpadden protest hearing decision  
3 consisted of two cases: the December 10 Red Tag and the December 10 administrative citation.  
4 Opp’n (“McSpadden Opp’n”) 4, ECF 54. Mr. Smith admits that “the second claim lacks clarity  
5 and is easily conflated with the first.” Id. While Mr. Smith directs the court to paragraphs 24, 28,  
6 and 29 of the amended complaint, the Court is unconvinced that he has properly pled this claim.  
7 Additionally, the Court has reviewed the McSpadden protest decision and does not see any  
8 mention of the December 10 administrative citation. See McSpadden Protest Hearing Decision.

9           The February 21, 2020 McSpadden protest hearing decision did not result in any monetary  
10 penalties against Mr. Smith. Therefore, Mr. Smith has failed to allege any facts to state a claim for  
11 excessive fines against Defendant McSpadden, and he has not shown that he could do so by  
12 further amendment. Claim two as to Defendant McSpadden is **DISMISSED WITH PREJUDICE**.

## 13                           **2. Writ of Mandate Claims**

14           Defendant McSpadden is named in claims eight and nine, which the Court is declining to  
15 exercise supplemental jurisdiction over since there is a parallel state proceeding. As the Court  
16 noted above, these claims are **DISMISSED WITHOUT PREJUDICE** to allow litigation in state  
17 court.

## 18                           **IV. ORDER**

19           For the foregoing reasons, **IT IS HEREBY ORDERED** that the motions to dismiss filed by  
20 Defendants at ECF Nos. 13, 26 and 49 are **GRANTED**. Claims one, two, three, four, five, six, and  
21 seven, and ten are **DISMISSED WITH PREJUDICE**. Claims eight and nine are **DISMISSED**  
22 **WITHOUT PREJUDICE** to allow litigation in state court.

23

24 Dated: October 28, 2020

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BETH LABSON FREEMAN  
United States District Judge