UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 2:24-cv-07043-JLS-SSC Date: December 09, 2024
Title: Adom Ratner-Stauber v. City of Los Angeles et al

Present: **HONORABLE JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Kelly Davis N/A
Deputy Clerk Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:
Not Present Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING IN PART DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT (Doc. 26)

Before the Court is a Motion to Dismiss First Amended Complaint filed by Defendants City of Los Angeles and Los Angeles Police Department (collectively, the "City"). (Mot., Doc. 26.) Plaintiff Adom Ratner-Stauber ("Plaintiff") opposed, and the City responded. (Opp., Doc. 29; Reply, Doc. 31.) The Court held a hearing on this matter on December 6, 2024. Having considered the parties' papers, and for the following reasons, the Court GRANTS the motion as to Plaintiff's equal protection claim and DENIES the motion in all other respects.

I. BACKGROUND

This putative class action challenges the City's alleged policy and practice of relocating unhoused individuals from public and private property in "more affluent neighborhoods" to property in "less favored" neighborhoods. (First Amended Complaint ("FAC") ¶¶ 19, 21, Doc. 15.) Plaintiff, who owns and manages various residential, commercial, and industrial properties throughout the City, alleges that he and his properties have been subjected to this policy. (*Id.* ¶¶ 12, 19.) Specifically, Plaintiff alleges that the City has physically relocated unhoused individuals to and around nine of

his properties and "informed them they had the legal right to remain there." (*Id.* ¶¶ 19, 31.) The City's relocation actions have allegedly led unhoused individuals to set up encampments near Plaintiff's properties that "block the free flow of vehicular and pedestrian traffic" to his properties. (*Id.* ¶¶ 31, 37, 42, 65, 71, 83, 93, 112.) Plaintiff alleges that the City's relocation actions have created so-called "lawless zones," in which unhoused individuals have trespassed on, committed numerous other crimes on, and damaged Plaintiffs' properties without government intervention. (*Id.* ¶¶ 23–27, 42.) In effect, Plaintiff claims that the City's relocation actions have created "life-threatening conditions" to Plaintiff and his tenants; interfered with the "use and enjoyment of Plaintiff's property"; and "materially and substantially diminished the economic value of Plaintiff's property." (*Id.* ¶¶ 22, 25, 26.)

Plaintiff initiated this action against the City on August 20, 2024, and filed the FAC on October 7, 2024. (Compl., Doc. 1; FAC.) Plaintiff purports to represent a class of "[a]ll Los Angeles residents who have a property interest in property that is or has been intruded on by homeless individuals in the Lawless Zones as a result of Defendants' Relocation Actions, or who have had the ingress and egress to their property blocked or otherwise severely impaired by homeless individuals, their encampments, or other items arising from the Lawless Zones." (*Id.* ¶ 154.) On behalf of that class, Plaintiff asserts three claims under 42 U.S.C. § 1983 for violations of (1) the Takings Clause of the Fifth Amendment, (2) the Equal Protection Clause of the Fourteenth Amendment, and (3) the "state-created danger" doctrine under the Substantive Due Process Clause of the Fourteenth Amendment. (*Id.* ¶¶ 163–86.) In addition, Plaintiff asserts three claims under California law for (4) public nuisance, (5) private nuisance, and (6) inverse condemnation.[1] (*Id.* ¶¶ 187–93.) Plaintiff seeks declaratory relief, a permanent injunction, compensatory damages, and attorneys' fees and costs. (*Id.* at 44.)

[1] The FAC redundantly labels each of Plaintiff's nuisance claims as the "fourth claim for relief," which the Court presumes to be a typo. (FAC at 42, 43.) The Court therefore construes Plaintiff's public and private nuisance claims as two distinct claims under California law.

The City moves to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), arguing that Plaintiff lacks Article III standing to assert his federal claims and that the Court should decline to exercise jurisdiction over his state claims. (Mot. at 15–21.) In the alternative, the City argues that Plaintiff's claims must be dismissed under Rule 12(b)(6). (*Id*. at 21–30.)

II. LEGAL STANDARD

A. Rule 12(b)(1)

"A motion to dismiss for lack of standing under Article III is properly raised in a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1)." *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). "In the absence of standing, a federal court lacks subject matter jurisdiction over the suit." *Righthaven LLC v. Hoehn*, 716 F.3d 1166, 1172 (9th Cir. 2013) (quotations omitted). To establish Article III standing, "a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Ass'n of Irritated Residents v. EPA*, 10 F.4th 937, 943 (9th Cir. 2021) (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 180–81 (2000)). The plaintiff has the burden of establishing standing "with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

B. Rule 12(b)(6)

In deciding a motion to dismiss under Rule 12(b)(6), courts must accept as true all "well-pleaded factual allegations" in a complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). However, "courts 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The

complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. (citing *Twombly*, 550 U.S. at 556). Finally, the Court may not dismiss a complaint without leave to amend unless "it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988) (internal quotation marks omitted).

III. ANALYSIS[2]

At the outset, the Court notes that several arguments the City raises in its motion are directed at Plaintiff's original complaint rather than the FAC. (*See, e.g.*, Mot. at 20–21, 24–25.) Plaintiff's original complaint alleged that the City "allows" unhoused individuals to engage in illegal conduct near his properties, despite Plaintiff's repeated efforts to alert the City to this conduct. (Compl. ¶¶ 3–9, 21–22, 158.) The FAC, however, advances a revised theory challenging the City's affirmative acts of relocating unhoused individuals to and around Plaintiff's properties. (FAC ¶ 3–5, 17–19, 21.) Because the FAC is the operative complaint, the Court addresses only the City's arguments that are directed at the FAC's allegations.

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[2] The City asked the Court to take judicial notice of two Los Angeles Municipal Code sections and several news articles. (Request for Judicial Notice ("RJN"), Doc. 27; Supp. RJN, Doc. 32.) In response, Plaintiff requested the Court grant leave to file a sur-reply and take judicial notice of an NBC4 news article titled "The Big Shuffle: Some Homeless People in LA Being Shuffled From Block to Block." (Sur-Reply Mot., Doc. 38.) The Court need not, and does not, rely on any of these documents or information contained therein in deciding the present motion. As such, the parties' requests for judicial notice and Plaintiff's motion for leave to file a sur-reply (Docs. 27, 32, 38) are DENIED as MOOT.

A. Standing

The Court concludes that Plaintiff has Article III standing to assert his claims.

The City does not dispute that Plaintiff has suffered an injury-in-fact, and rightly so. Plaintiff alleges that the City's relocation actions have led unhoused individuals to—among other things—trespass on, block access to, and damage his properties. (FAC ¶¶ 32–153.) Plaintiff's allegations that his property rights have been violated and that he has suffered financial harm readily satisfy the injury-in-fact requirement.

Plaintiff has also sufficiently alleged that his injuries are fairly traceable to the City's allegedly unlawful relocation actions. The City argues that Plaintiff cannot establish the requisite causal link because unhoused individuals (a) "could have chosen" to move to Plaintiff's properties on their own accord and (b) made independent decisions to commit crimes on Plaintiff's properties. (Mot at 18–19.) But the City's arguments adopt too stringent a standard for causation. A plaintiff need only "establish a 'line of causation' between [the] defendants' action and their alleged harm that is more than 'attenuated.'" *Maya v. Centex Corp.*, 658 F.3d 1060, 1070 (9th Cir. 2011) (quoting *Allen v. Wright*, 468 U.S. 737, 757 (1984)). Here, Plaintiff alleges that the City moved unhoused individuals to and around his properties and even "informed them that they had the legal right to remain" there. (FAC ¶¶ 19, 31.) Accepting Plaintiff's allegations as true, as the Court must at the motion-to-dismiss stage, the City practically directed unhoused individuals to trespass on Plaintiff's properties. In light of these allegations, the fact that unhoused individuals are ultimately independent decisionmakers does not render the causal chain between the City's actions and Plaintiff's harm too weak to support standing.[3]

[3] Though the City also challenges traceability on the grounds that Plaintiff has not plausibly alleged the existence of an "official" relocation policy, this argument is misplaced. (Mot. at 16–17.) A plaintiff need not point to an official municipal policy to establish standing; a

Finally, Plaintiff's injuries are redressable: the declaratory and injunctive relief he seeks would prohibit the City from relocating unhoused individuals to his properties, and the monetary damages he seeks would compensate him for the harm to his properties. (*Id.* at 44; Opp. at 10.)

B. Rule 12(b)(6)

Satisfied that Plaintiff has Article III standing to assert his claims, the Court next considers whether Plaintiff has adequately stated each of his claims.

1. Municipal Liability

Under *Monell*, municipalities may be held liable under section 1983 only for "constitutional violations resulting from official county policy or custom." *Benavidez v. County of San Diego*, 993 F.3d 1134, 1153 (9th Cir. 2021) (citing *Monell v. Dep't of Social Servs. of City of New York*, 436 U.S. 658, 694 (1978)). To prevail on such a claim, a plaintiff must show that (1) the municipality has a policy; (2) the policy amounts to deliberate indifference to the plaintiff's constitutional right; and (3) the policy is the "moving force" behind the constitutional violation. *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011).

As to the first element, Plaintiff alleges that the City maintains a policy of "relocating homeless encampments from wealthier, more influential neighborhoods to less exclusive, affluent, and influential property such as Plaintiff's." (FAC ¶ 4 (cleaned

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plaintiff need only demonstrate the defendant committed some wrongful act that is fairly traceable to the plaintiff's harm. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Because this argument instead goes to whether Plaintiff has adequately stated his claims for municipal liability, *see Monell v. Dep't of Social Servs. of City of New York*, 436 U.S. 658, 690–91 (1978), the Court addresses it in the next section. *See* Section III.B.1, *infra.*

up).) The City avers that this policy is not specific enough, noting that the FAC does not identify the "approximate dates of relocation, approximate number of people relocated, [and] where they were relocated from." (Mot. at 18, 22.) Yet the City cites no authority, and the Court is unaware of any, suggesting that these granular details must be pled to state a claim for municipal liability in accordance with Rule 8. Fed. R. Civ. P. 8. Rather, the City's argument seems to invite the Court to impermissibly import Rule 9(b)'s heightened standard—namely, that claims sounding in fraud must be pled with "particularity"—to its analysis under Rule 8. *See* Fed. R. Civ. P. 9(b). The Court declines to do so.

Next, Plaintiff has sufficiently alleged that the City's relocation policy amounts to deliberate indifference. The City likens this case to *Herd v. County of San Bernardino*, in which the district court found the plaintiffs' allegations of deliberate indifference inadequate because they were "conclusory" and did "not show that the alleged deficiencies were 'obvious and the constitutional injury was likely to occur.'" 311 F. Supp. 3d 1157, 1168 (C.D. Cal. 2018) (quoting *Johnson v. Baca*, 2013 WL1213158, at *13 (C.D. Cal. Sept. 24, 2013)). In contrast, the FAC here contains detailed facts supporting Plaintiff's allegations of deliberate indifference. For example, given Plaintiff's allegations that the City has moved unhoused individuals to his properties and informed them that they could stay there, surely the City should have known that trespass was likely to result from its actions. (FAC ¶¶ 19, 31.) Plaintiff further alleges that the City has "intentionally, knowingly, and/or recklessly created dangerous life-threatening conditions for Plaintiff." (*Id.* ¶ 31.) To support this allegation, the FAC details several instances in which Plaintiff notified the City about the various crimes that unhoused individuals had committed on his properties; yet, the City allegedly refused to take any enforcement action to prevent further harm. (*See id.* ¶¶ 39, 40, 65, 76.) Taken together, Plaintiff's allegations plausibly rise to the level of deliberate indifference.

Lastly, Plaintiff has adequately pled that the City's relocation policy is the "moving force" behind his injuries. The Court recognizes that the "moving force" standard under *Monell* is even more stringent than the causation requirement for Article III standing, as the former requires Plaintiff to establish *both* "causation-in-fact and proximate causation." *Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir. 2008). Nevertheless, Plaintiff has met this heightened burden of proof. Proximate causation can be "established not only by some kind of direct personal participation in the deprivation, but also by setting in motion a series of acts by others which the [government] actor knows or reasonably should know would cause others to inflict the constitutional injury." *Lacey v. Maricopa County*, 693 F.3d 896, 915 (9th Cir. 2012) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743–44 (9th Cir. 1978)). Here, Plaintiff alleges that the City "knew or should have known" that moving unhoused individuals to and around his properties "would result in" harms including "trespass, arson, theft, physical threats to Plaintiff and his tenants." (FAC ¶ 20.) Though the Court appreciates the City's argument that unhoused individuals made independent decisions to commit crimes on Plaintiff's properties, at a minimum, the City should have foreseen that moving unhoused individuals to and around Plaintiff's properties would result in trespass. (Mot. at 19.)

In sum, the Court finds that Plaintiff's allegations, if proven, would support a claim for municipal liability.

i. First Claim: Unlawful Taking

The Takings Clause, which applies to local governments through the Fourteenth Amendment, provides that private property shall not be taken for public use without just compensation. U.S. Const. amend. V; *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021). To establish an unlawful taking, a plaintiff must first demonstrate a protected property interest under California law. *See Ward v. Ryan,* 623 F.3d 807, 810 (9th Cir. 2010) ("[P]roperty rights are 'created and their dimensions are defined by existing rules

or understandings that stem from an independent source as state law.'") (quoting *Bd. of Regents of State Coll. V. Roth*, 408 U.S. 564, 577 (1972)). If a state-created property right is established, a plaintiff must then show that "the property right has been abridged improperly (taken without just compensation)[,]" which is a "question of federal law." *Vandevere v. Lloyd*, 644 F.3d 957, 963–64 (9th Cir. 2011) (emphasis omitted).

The Court finds that Plaintiff has sufficiently stated a takings claim. Plaintiff's takings theory is that the City has deprived him of the right to access his properties. (FAC ¶¶ 165–68; Opp. at 20.) California law recognizes that "an owner of property abutting upon a public street has a property right in the nature of an easement in the street." *Bacich v. Bd. of Control*, 23 Cal. 2d. 343, 349–50 (1943). A "substantial impairment" of a property owner's right to access "constitutes a [regulatory] taking" entitling the property owner to compensation. *In re United States*, 67 F. 4th 1006, 1010 (9th Cir. 2023) (quoting *Breidert v. Southern Pacific Co.*, 61 Cal. 2d. 659, 664 (1964)). Plaintiff alleges that, due to the City's relocation actions, unhoused individuals have "materially and substantially blocked and/or impaired access to" Plaintiff's properties, resulting in "catastrophic economic harm to the value" of those properties. (FAC ¶¶ 167–68.)

The Court agrees with Plaintiff that *Hunters Capital LLC v. City of Seattle*, 499 F. Supp. 3d 888, 903–04 (W.D. Wash. 2020) ("*Hunters Capital I*"), is instructive, as the plaintiffs there asserted a similar takings theory. (*See* Opp. at 20–21.) *Hunters Capital* concerned the Capital Hill Occupying Protest ("CHOP"), a 16-block area of Seattle that was temporarily occupied by civil rights protesters following the death of George Floyd. *Hunters Capital I*, 499 F. Supp. 3d at 893. The plaintiffs alleged that during the summer of 2020, the City of Seattle had "allowed and encouraged CHOP participants to block access from the plaintiffs' properties to streets and other public rights-of-way, resulting in the deprivation of all or nearly all economic use of their properties." *Id.* at 903–04 (cleaned up). Washington law, like California law, has long recognized a property

owner's right of access to a public right-of-way. *See id.* at 903. The district court thus held that the plaintiffs had stated a viable takings claim, as they had plausibly alleged that the City's conduct was "causally related to the private misconduct" and "sufficiently direct and substantial to require compensation under the Fifth Amendment." *Id.* at 904 (quoting *Nat'l Bd. of Young Men's Christian Ass'ns v. United States*, 395 U.S. 85, 93 (1969)).

The City contends that *Hunters Capital* is distinguishable, as the plaintiffs there alleged that the mayor of Seattle had provided material support (*i.e.,* medical equipment, sanitation facilities, and concrete barriers) that helped block access to public rights-of-way. (Reply at 12.) Granted, there are no allegations in this case that the City provided "tangible" support to unhoused individuals in obstructing Plaintiff's right of access. But such allegations are unnecessary to establish that the City's conduct was causally related to the private misconduct here, as Plaintiff alleges that the City *brought* the unhoused individuals to and around his properties in the first place. (FAC ¶ 19.)

The Court therefore DENIES the City's motion as to Plaintiff's takings claim.

ii. Second Claim: Equal Protection Violation

The Equal Protection Clause of the Fourteenth Amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." *City of Cleburn v. Cleburn Living Ctr.*, 473 U.S. 432, 439 (1985). Although an equal protection violation typically requires proof of membership in an identifiable class, *see Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1134 (9th Cir. 2003), a plaintiff can state a viable equal protection claim by demonstrating that he was discriminated against as a "class of one." *See Engquist v. Oregon Dep't of Agriculture,* 553 U.S. 591, 601 (2002). To plead a class-of-one claim, a plaintiff must allege facts showing that the defendant "intentionally, and without rational basis, treated the plaintiff differently from others

similarly situated." *North Pacifica, LLC v. City of Pacifica*, 526 F.3d 478, 486 (9th Cir. 2008). A class-of-one plaintiff bears the burden of showing that he is similarly situated to the proposed comparator "in all material respects." *SmileDirectClub, LLC v. Tippins*, 31 F.4th 1110, 1123 (9th Cir. 2022).

Plaintiff alleges that the City's relocation actions favor property owners who are more affluent and politically influential than Plaintiff but who are otherwise similarly situated to Plaintiff in all other respects. (FAC ¶¶ 21, 172.) The Court finds Plaintiff's allegations deficient for several reasons.

As the City points out, the FAC does not identify the allegedly similarly-situated property owners. (Mot. at 16.) Nor does the FAC offer any facts supporting the notion that any property owners are similarly situated to Plaintiff. Plaintiff has thus failed to allege the required "extremely high degree of similarity" between him and those to whom he compares himself in order to state a class-of-one equal protection claim. *See SmileDirectClub*, 31 F. 4th at 1123 (quoting *Clubside, Inc. v. Valentin*, 468 F.3d 144, 159 (2d Cir. 2006)); *see also Ventura Mobilhome Communities Owners Ass'n v. City of San Buenaventura*, 371 F.3d 1046, 1055 (9th Cir. 2004) (affirming dismissal of an equal protection claim after noting that "[a]side from conclusory allegations, Appellant has not identified other similarly situated property owners or alleged how they are treated differently").

More critically, Plaintiff's equal protection claim is in essence a complaint that the City removes unhoused individuals from certain private property but not others. The City's selective enforcement of its laws against some unhoused individuals but not against others does not constitute an equal protection violation. *See Railroad 1990, LLC v. City of Sacramento*, 604 F. Supp. 3d 968, 978 (E.D. Cal. 2022) ("While it may be unfair for a city to afford businesses and residents in certain areas the benefit of enforcing

local laws while denying that benefit to those in other areas, as plaintiff argues, it does not amount to a violation of equal protection.")

Accordingly, the Court GRANTS the City's motion as to Plaintiff's equal protection claim and DISMISSES this claim. Though the Court has trouble envisioning a viable equal protection claim in these circumstances, Plaintiff is nonetheless granted leave to amend this claim if he can do so in good faith.

iii. Third Claim: State-Created Danger

"The Due Process Clause of the Fourteenth Amendment provides that "[n]o State shall ... deprive any person of life, liberty, or property without due process of law." *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 194 (1989). As a general rule, "members of the public have no constitutional right to sue state [actors] who fail to protect them against harm inflicted by third parties." *L.W. v. Grubbs*, 974 F. 2d 119, 121 (9th Cir. 1992). One exception to this rule is the state-created danger doctrine, under which a local government may violate substantive due process if "it affirmatively places [a plaintiff] in danger by acting with deliberate indifference to a known or obvious danger." *Sinclair v. City of Seattle*, 61 F.4th 674, 680 (9th Cir. 2023). To prevail on a state-created danger claim, a plaintiff must establish that "(1) a state actor's affirmative actions created or exposed him to 'an actual, particularized danger [that he] would not otherwise have faced,' (2) that the injury he suffered was foreseeable, and (3) that the state actor was deliberately indifferent to the known danger." *Id.* (citing *Hernandez v. City of San Jose*, 897 F.3d 1125, 1133–34 (9th Cir. 2018)).

The Court concludes that Plaintiff has sufficiently alleged a state-created danger claim. Plaintiff alleges that the City's *affirmative* actions of moving unhoused individuals to and around his properties have exposed him and his tenants to dangers he would not otherwise have faced. (FAC ¶ 19.) These dangers allegedly include crimes

such as trespass, "physical and verbal assaults, fires, urination, defecation, public sex acts, solicitation, prostitution, [and] open drug use." (*Id.* ¶¶ 19, 24.) As to foreseeability, the City argues that a "general knowledge of a risk" that unhoused individuals "commit[] crimes is insufficient." (Mot. at 27–28.) But Plaintiff's allegations of foreseeability are not so limited. Rather, Plaintiff alleges that the City relocated unhoused individuals to and near his properties; informed them that they could stay there; was alerted to the criminal activity taking place on Plaintiff's properties on numerous occasions; and yet refused to take any action to protect Plaintiff and his tenants from that harm. (FAC ¶¶ 19, 31, 39, 40, 65, 76.) Finally, the Court has already concluded that Plaintiff has plausibly alleged deliberate indifference for the purposes of stating a municipal liability claim. *See* Section III.B.1 *supra*. For the same reasons discussed therein, the Court finds that Plaintiff has shown that the City was deliberately indifferent to the dangers it created.

Therefore, the City's motion is DENIED as to Plaintiff's state-created danger claim.

2. State Claims

The City also moves to dismiss Plaintiff's state claims for nuisance and inverse condemnation. As a preliminary matter, the City contends that California law immunizes it from liability for its allegedly wrongful actions. (Mot. at 27–28.) This argument is a non-starter. The City points to California Government Code § 820.2, which shields public employees from liability for injuries resulting from a discretionary act or omission, "whether or not such discretion be abused." Cal. Govt. Code § 820.2. But Plaintiff has not named any public employee as a defendant in this lawsuit, meaning that § 820.2 is inapplicable. *Id.* Insofar as the City relies on California Government Code § 815, which shields public entities from liability under certain circumstances, the California Supreme Court has long recognized that § 815 does not bar nuisance actions against a public entity. *See Nestle v. Santa Monica*, 6 Cal. 3d 920, 937 (1972). And the City has cited no

authority to suggest a different conclusion would be appropriate with respect to an inverse condemnation action against a public entity.[4] The Court therefore turns to the City's arguments that Plaintiff has not plausibly stated his state claims.

i. Fourth and Fifth Claims: Public and Private Nuisance

"A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons." Cal. Civ. Code § 3480. A private nuisance is "a civil wrong based on disturbance of rights in land"; the injury suffered must be "specifically referable to the use and enjoyment of [the plaintiff's] land." *Mendez v. Rancho Resort Partners, LLC*, 3 Cal. App. 5th 248, 262 (2016) (quotation omitted). "A long-standing principle of California nuisance law is that liability only 'extends to damage which is proximately or legally caused by the defendant's conduct, not to damage suffered as a proximate result of the independent intervening acts of others.'" *Schonbrun v. SNAP, Inc.*, 2022 WL 2903118, at *9 (C.D. Cal. Mar. 15, 2022) (citing *Martinez v. Pac. Bell*, 225 Cal. App. 3d 1557, 1565 (1990)).

[4] The City does offer citations to *Pacific Bell v. City of San Diego*, 81 Cal. App. 4th 596 (2000), and *Customer Co. v. City of Sacramento*, 10 Cal. 4th 368 (1995). (Mot. at 28–29.) But the concern underlying those cases was that "a party may not avoid the Tort Claims Act statutory immunities by recasting a negligence claim as one for inverse condemnation." *See Pacific Bell*, 81 Cal. App. 4th at 603 (discussing *Customer Co.*). Here, Plaintiff's inverse condemnation claim is *not* premised on property damage arising from negligent conduct; Plaintiff's theory instead is that the City's relocation actions substantially impaired his "right of access to the general system of public streets." *Breidert*, 61 Cal. 2d at 664. *See* Section III.B.2, *supra*. And importantly, *Pacific Bell* clarified that "the immunities provided by the Tort Claims Act do not insulate a public entity from liability for inverse condemnation; the constitutional provisions requiring compensation for property taken or damaged by a public use overrides the Tort Claims Act and its statutory immunities." *See Pacific Bell*, 81 Cal. App. 4th at 603–04.

Plaintiff has adequately pled claims for public and private nuisance. Plaintiff alleges that the City's relocation actions have obstructed public rights of way, impaired the use and enjoyment of his property, and "created the conditions" to allow "rampant crime" and "other health and safety dangers" on and near his property. (FAC ¶¶ 25, 180, 188.) The City argues, yet again, that Plaintiff's claims fail because Plaintiff's injuries were proximately caused by unhoused individuals as opposed to the City. (Mot. at 28.) But, as the Court has explained, Plaintiff's allegations sufficiently establish proximate causation. *See* Section III.B.1, *supra.*

The City's motion is therefore DENIED as to Plaintiff's nuisance claims.

i. Sixth Claim: Inverse Condemnation

The Takings Clause of the California Constitution guarantees real property owners just compensation when their land is "taken or damaged for a public use." Cal. Const., art. I, § 19; U.S. Const., 5th Amend. Although the takings clause in the California Constitution "protects a somewhat broader range of property values" than does its federal counterpart, courts have construed the two clauses as "congruent[]" and applied federal law in analyzing state law inverse condemnation claims. *See San Remo Hotel v. City and County of San Francisco*, 27 Cal. 4th 643, 664 (2002); *Godoy v. Horel,* 2010 WL 890148, *6 (N.D. Cal. Mar. 8, 2010) ("California courts construe the federal and California Takings Clauses in the same manner"); *Shaw v. County of Santa Cruz*, 170 Cal. App. 4th 229, 260 (2008) ("[T]he state takings clause is construed congruently with the federal clause").

Accordingly, the Court's conclusion that Plaintiff has adequately stated a federal takings claim, *see* Section III.B.1.i, *supra*, applies with equal force to Plaintiff's state law inverse condemnation claim, and the City's motion is DENIED as to this claim.

IV. CONCLUSION

For the foregoing reasons, the City's motion to dismiss is GRANTED as to Plaintiff's equal protection claim but DENIED in all other respects. Plaintiff's equal protection claim is DISMISSED WITH LEAVE TO AMEND, if Plaintiff can do so in good faith and in compliance with its Rule 11 obligations. If Plaintiff decides to amend, any amended complaint must be filed within **fourteen (14) days** of this Order. No new claims may be added.

Initials of Deputy Clerk: kd