

1 MICHAEL N. FEUER (SBN 111529)
 2 City Attorney
 3 GABRIEL S. DERMER (SBN 229424)
 4 Assistant City Attorney
 5 **ARLENE N. HOANG** (SBN 193395)
 6 Deputy City Attorney
 7 **RUTH M. KWON** (SBN 232569)
 8 Deputy City Attorney
 9 200 N. Main Street, City Hall East, Room 675
 Los Angeles, CA 90012
 Telephone (213) 978-7508/6952; Facsimile (213) 978-7011
 arlene.hoang@lacity.org/ruth.kwon@lacity.org

10 Attorneys for Defendant
 11 CITY OF LOS ANGELES

12 **UNITED STATES DISTRICT COURT**
 13
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 REX SCHELLENBERG, an individual,
 16
 17 Plaintiff,
 18 vs.
 19 THE CITY OF LOS ANGELES, a
 20 municipal entity; Does 1-10,
 21 Defendant.

Case No.: CV 18-07670 CAS (PLAx)

**NOTICE OF MOTION AND
 MOTION OF DEFENDANT CITY
 OF LOS ANGELES TO EXTEND
 TIME TO RESPOND TO THE
 INITIAL COMPLAINT [DKT. 1],
 AND TO STRIKE THE FIRST
 AMENDED COMPLAINT [DKT.
 13]; MEMORANDUM OF POINTS
 AND AUTHORITIES;
 DECLARATIONS OF GABRIEL
 DERMER AND ARLENE HOANG;
 [Fed.R.Civ.P. 6(b)(1)(B) and 12(f)]**

**Date: March 25, 2019
 Time: 10:00 a.m.
 Courtroom: 8B
 Hon. Christina A. Snyder
 Action Filed: September 3, 2018**

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By: /s/
ARLENE N. HOANG, Deputy City Attorney
Counsel for Defendant CITY OF LOS ANGELES

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Summary of Argument**

3 Plaintiff Rex Schellenberg (“Plaintiff”) is a homeless individual who
4 contends that Defendant City of Los Angeles (“the City”) wrongfully seized his
5 personal property in violation of the United States and California Constitutions,
6 California law and the Americans with Disabilities Act. At the time, the City’s
7 employees were acting under Section 56.11 of the Los Angeles Municipal Code,
8 the operative version of which became effective on April 11, 2016. *See* LAMC §
9 56.11 (“Storage of Personal Property.”)

10 The present motion is the result of a procedural quagmire arising from
11 Plaintiff’s filing an unauthorized “First Amended Complaint” on January 18, 2019
12 (Dkt. 13) – four days before Defendant City of Los Angeles (“the City”) was to
13 respond to Plaintiff’s Initial Complaint pursuant to the parties’ Local Rule 8-3
14 stipulation (Dkt. 12). Although titled “First Amended Complaint,” the pleading is
15 a supplemental complaint that requires leave of Court pursuant to Fed.R.Civ.P.
16 15(d), which Plaintiff did not – and declines to – obtain.

17 Plaintiff’s failure to request the Court’s permission to file his supplemental
18 pleading is significant. While Plaintiff’s Initial Complaint (Dkt. 1) was limited to a
19 single incident – contending the City wrongfully seized his personal property on
20 July 14, 2017 – the unauthorized supplemental Complaint (Dkt. 13) adds four
21 additional incidents, three of which purportedly occurred after September 3, 2018,
22 the filing date of Plaintiff’s Initial Complaint. And just as improperly, Plaintiff
23 submitted a Government Claim to the City for these four additional incidents while
24 the current lawsuit was pending even though it is settled law in California that the
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1 Government Claims Act requires the submission and denial of a government claim
2 as a “condition precedent” to the filing of any lawsuit.

3 On January 23, 2019, Deputy City Attorneys Arlene Hoang and Ruth Kwon
4 were assigned to represent the City in this matter, which was the day after the
5 City's deadline to respond to Plaintiff's Initial Complaint lapsed under the parties’
6 L.R. 8-3 stipulation, but after the “First Amended Complaint” had been filed.
7 Despite the City’s meet and confer efforts, Plaintiff has declined to seek leave of
8 Court to file a supplemental pleading. Good cause exists for an Order (a)
9 extending the time for the City to respond to Plaintiff’s Initial Complaint to April
10 8, 2019, (14 days after the hearing on this motion is to be heard) and (b) striking
11 the First Amended Complaint improperly filed by Plaintiff on January 18, 2019.¹

12 **Procedural History and Statement of the Facts**

13 Plaintiff filed his Initial Complaint on September 3, 2018, contending that on
14 July 14, 2017, the City wrongfully seized and destroyed certain of his personal
15 belongings in violation of the United States and California Constitutions,
16 California law, and Americans with Disability Act. (Dkt. 1.) On November 29,
17 2018, Plaintiff served the City with his Complaint. (Dkt. 11.) Pursuant to the
18 parties’ Local Rule 8-3 stipulation, the City’s responsive pleading to the Initial
19 Complaint was due January 22, 2019. (Dkt. 12).

20 On or about November 7, 2018, Plaintiff submitted a Government Claim to
21 the City Clerk alleging that on four occasions in 2018 – July 10, September 6,
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23 ¹ In filing this motion, Defendant recognizes that it is a unique circumstance and
24 that the procedural basis for the motion may not be the appropriate vehicle to
25 obtain the relief sought.

1 September 19 and October 23 – the City purportedly seized Plaintiff’s personal
2 property in violation of the federal and state Constitutions and state law. (Dkt. 13,
3 ¶¶27-37 & 39.) The government claim was denied by operation of law.
4 Significantly, the government claim was submitted two months after Plaintiff filed
5 the present lawsuit.

6 By email dated January 15, 2019, Assistant City Attorney Gabriel Dermer
7 requested additional time (from the January 22, 2019 stipulated deadline) to
8 respond to Plaintiff’s Initial Complaint from counsel for Plaintiff, Carol Sobel.
9 Declaration of Gabriel Dermer (“Dermer Dec.”) ¶¶ 2-3. On that same date, Ms.
10 Sobel responded by email stating in pertinent part “Yes. We are going to file an
11 amended complaint this week, which will start the 20 days running...” Dermer
12 Dec., Ex. 1.

13 On January 18, 2019, Plaintiff’s “First Amended Complaint” was filed
14 (“FAC”). (Dkt. 13). Among other substantive changes, the FAC added four
15 additional incidents in which Plaintiff contends his personal property was seized
16 and destroyed by the City, three of which post-date September 3, 2018, the filing
17 date of Plaintiff’s Initial Complaint. According to the FAC, the City allegedly
18 seized Plaintiff’s personal property on July 10, 2018 (FAC at ¶¶ 27-29), September
19 6, 2018 (FAC at ¶¶ 31-33), September 19, 2018 (FAC at ¶ 34) and October 23,
20 2018. (*Id.*)

21 On January 23, 2019, Deputy City Attorneys Arlene Hoang and Ruth Kwon
22 were assigned to represent the City in the present action (and one additional case
23 filed by Ms. Sobel, *Rebecca Cooley, et al. v. City of Los Angeles*, United States
24 District Court, Central District of California, Case No. 18-09053.) Declaration of
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1 Arlene N. Hoang ('Hoang Dec.'). ¶2. By letter dated January 28, 2019, the City
2 advised counsel for Plaintiff that the FAC was an amended and supplemental
3 pleading that required leave of Court for filing under Fed.R.Civ.P. 15(d). Hoang
4 Dec. ¶3. Through various communications (written and telephonic) thereafter,
5 counsel for the City attempted to informally resolve this matter, but were not able
6 to do so, necessitating the filing of the present motion. Hoang Dec. ¶4.

7 **Argument**

8 **1. The Court should exercise its discretion to extend the deadline for**
9 **the City to respond to the Initial Complaint in this matter.**

10 Fed.R.Civ.P. 6(b) provides in relevant part:

11 “(1) When an act may or must be done within a specified time,
12 the court may, for good cause, extend the time:

13 (A) with or without motion or notice if the court acts, or if a
14 request is made, before the original time or its extension expires; or

15 (B) on motion made after the time has expired if the party failed
16 to act because of excusable neglect.”

17 Under Fed.R.Civ.P. 6(b) the Court has the discretion to enlarge periods of
18 time established by the rules or by a prior court order. *See e.g., Maldonado-Denis*
19 *v. Castillo-Rodriquez*, 23 F.3d 576, 583 (1st Cir. 1994) (the trial court has
20 complete discretion to grant or deny requests for enlarged time to respond to a
21 motion). The courts are liberal in granting requests for enlargement of time when
22 good cause for such enlargement is apparent. *See e.g., 1 Moore’s Federal Practice*,
23 §606[1] et seq. (Matthew Bender, 3rd Ed.) Here, good cause exists to extend the
24 time for the City to file its response to Plaintiff’s Initial Complaint.
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1 As discussed above, and *infra*, the City is in a procedural quagmire as a
2 result of Plaintiff filing an unauthorized pleading mere days before the City’s
3 response to the Initial Complaint was due. The City’s attempts to resolve the issue
4 (i.e., request that Plaintiff file the appropriate motion for leave to file a
5 supplemental pleading) were unsuccessful. The present counsel for the City were
6 assigned to handle this case after the deadline to file the responsive pleading to the
7 Initial Complaint had passed, and were diligent in their efforts in trying to resolve
8 this issue informally. Given that Plaintiff has declined to seek leave to file a
9 supplemental pleading, the sole, authorized pleading currently on file is the Initial
10 Complaint. Good cause therefore exists to extend the time for the City to respond
11 to the Initial Complaint until April 8, 2019, two weeks after the hearing on this
12 motion is heard.

13 **2. The “First Amended Complaint” is an unauthorized**
14 **supplemental pleading that should be stricken.**

15 Fed.R.Civ.P. 12(f) states: “The court may strike from a pleading an
16 insufficient defense or any redundant, immaterial, impertinent, or scandalous
17 matter. The court may act: (1) on its own; or (2) on motion made by a party either
18 before responding to the pleading or, if a response is not allowed, within 21 days
19 after being served with the pleading.”

20 Rule 15(d) which governs supplemental pleadings provides in relevant part:

21 “On motion and reasonable notice, the court may, on just terms, permit a
22 party to serve a supplemental pleading setting out any transaction, occurrence, or
23 event that happened after the date of the pleading to be supplemented. The court
24 may permit supplementation even though the original pleading is defective in
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1 stating a claim or defense. The court may order that the opposing party plead to the
2 supplemental pleading within a specified time.” (Underlining added.)

3 It is established that a supplemental pleading is used to allege relevant facts
4 occurring after the original pleading was filed. *Id.*; *Cabrera v. City of Huntington*
5 *Park*, 159 F.3d 374, 382 (9th Cir. 1998); *Keith v. Volpe*, 858 F.2d 467, 473-74 (9th
6 Cir. 1988). Conversely, an amended Complaint pursuant to Rule 15(a) typically
7 relates to matters that have taken place prior to the date of the pleading that is
8 being amended. *ConnectU LLC v. Zuckerberg*, 522 F.3d 82, 90 (1st Cir. 2008).
9 Here, Plaintiff’s “First Amended Complaint” alleges three purported incidents that
10 post-date September 3, 2018, the initial filing of the Complaint, and is therefore a
11 supplemental pleading that requires leave of Court to be filed. While “[a]n
12 amended complaint sometimes can be filed ‘as a matter of course,’ ... a
13 supplemental complaint cannot.” *ConnectU, supra*, 522 F.3d at 90. The title of
14 the pleading is not determinative. *United States ex rel Wulff v. CMA, Inc.*, 890
15 F.2d 1070, 1072 (9th Cir. 1989); *Cabrera, supra*, 159 F.3d at 382. Despite sharing
16 this well-settled law that the supplemental pleading required the Court’s
17 permission to be filed, Plaintiff declined to seek leave, requiring that the Amended
18 Complaint be stricken.

19
20 **a. The supplemental pleading is prejudicial to the City, expands the**
21 **case dramatically, and violates the Government Claims Act.**

22 Requiring leave of Court in this case is necessary and important. Plaintiff’s
23 Initial Complaint filed on September 3, 2018, alleges a single event of July 14,
24 2017. (Dkt. 1). The FAC (Dkt. 13) alleges four additional events – July 10, 2018,
25 September 6, 2018, September 19, 2018, and October 23, 2018 – which expands
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1 the nature of the present lawsuit dramatically both for the Court and to the
2 prejudice of the City, which the Court should be able to weigh to determine if a
3 supplemental pleading is valid and appropriate, and is seemingly the intent behind
4 Rule 15(d).

5 Furthermore, the supplemental Complaint improperly seeks to circumvent,
6 and violates, the *pre-filing* exhaustion requirements of Government Claims Act.
7 The Government Claims Act requires a plaintiff to present a claim to the local
8 government entity that purportedly caused the plaintiff's harm. Cal. Gov't Code
9 §915(a). This must be done before filing suit. Cal. Gov't Code §945.4. Any claim
10 relating to injury to person or property must comply with this procedure. Cal.
11 Gov't Code §911.2(a). Here, Plaintiff filed suit on September 3, 2018, and
12 submitted his claim to the City Clerk concerning the alleged 2018 incidents on or
13 about November 7, 2018 –while the lawsuit had been pending for more than two
14 months. This action contravenes the claims presentment requirements of the
15 Government Claims Action which requires a prospective litigant to submit a claim
16 to the City and obtain a denial prior to filing a lawsuit on that claim. “The
17 Legislature’s intent to require the presentation of claims *before* suit is filed could
18 not be clearer.” *City of Stockton v. Superior Court (Civic Partners Stockton)*, 42
19 Cal.4th 730, 746 (2007) (emphasis in original). Plaintiff’s failure to comply with
20 this clear requirement, and instead, attempt to “tack on” four additional alleged
21 incidents to the Initial Complaint further support the striking of the FAC.
22

23 Conclusion

24 Based on the foregoing, Defendant City of Los Angeles respectfully requests
25 that the Court grant its motion in its entirety, and extend the deadline for the City
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