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10  
 11 UNITED STATES DISTRICT COURT  
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 13 WESTERN DIVISION

14 REX SCHELLENBERG, an individual,  
 Plaintiff,  
 15  
 v.  
 16  
 17 THE CITY OF LOS ANGELES, a  
 municipal entity; Does 1-10,  
 18 Defendants.

No. CV 18-07670 CAS (PLAx)

**REPLY OF DEFENDANT CITY OF  
 LOS ANGELES IN SUPPORT OF  
 DEFENDANT’S MOTION TO EXTEND  
 TIME TO RESPOND TO THE INITIAL  
 COMPLAINT [DKT. 1], AND TO  
 STRIKE THE FIRST AMENDED  
 COMPLAINT [DKT. 13];  
 DECLARATION OF RUTH KWON**

Date: March 25, 2019  
 Time: 10:00 a.m.  
 Courtroom: 8B  
 Hon. Christina A. Snyder  
 United States District Judge

Action Filed: September 3, 2018

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The City of Los Angeles (“the City”) brings the underlying Motion requesting the  
4 Court set an April 8, 2019 deadline to respond to the Initial Complaint (Dkt. No. 1) and  
5 striking the “First Amended Complaint” (Dkt. No. 13). Plaintiff has filed a supplemental  
6 complaint without obtaining the Court’s leave via a motion, as required by Rule 15(d) of  
7 the Federal Rules of Civil Procedure (“Rules”).

8 Upon reviewing the unauthorized supplemental complaint,<sup>1</sup> counsel for the City  
9 conferred at length with Plaintiff’s counsel regarding Plaintiff’s need to seek, via motion,  
10 leave of Court to file the supplemental complaint. Declaration of Arlene Hoang (“Hoang  
11 Decl.”), Dkt. 14-1; Declaration of Ruth Kwon (filed concurrently herewith) (“Kwon  
12 Decl.”). Plaintiff declined and insisted that the FAC was an amended complaint filed “as  
13 a matter of right.”

14 Due to Plaintiff’s decision not to seek the Court’s leave, the only pleading on file  
15 as of right was – and continues to be – the Initial Complaint. On February 6, the City  
16 filed the underlying Motion. Plaintiff’s Opposition to the motion (“Opposition” or  
17 “Opp.”; Dkt. No. 16) *concedes* all facts showing that that the “First Amended  
18 Complaint” is actually a “supplemental complaint.” Yet Plaintiff still insists that he need  
19 not seek leave of Court or file a motion.

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21 <sup>1</sup> The unauthorized supplemental complaint attempts to add several new claims  
22 arising from four purported incidents of property seizure in alleged violation of the  
23 Fourth, Fifth, and Fourteenth Amendments and the Americans with Disabilities Act. The  
24 supplemental complaint also invites the Court to exercise supplemental jurisdiction over  
25 each of the four new incidents under several state laws (Bane Act, Unruh Act, and Cal.  
26 Civ. Code § 2080), yet Plaintiff’s government claims were not administratively  
27 exhausted until after the lawsuit was filed. Indeed, assuming Plaintiff’s allegations are  
28 true, —three of the incidents did not even occur until after Plaintiff filed this case, so he  
could not have presented government claims to the City, much less receive a response,  
prior to filing this lawsuit.

1 The Opposition relies, in part, on improper *ad hominem* (or *ad governmentum*)  
2 attacks. Otherwise, Plaintiff’s argument relies on the *presumption* that *if* he had filed a  
3 motion seeking leave (which he has not), the motion would be granted. Plaintiff decided  
4 not to seek leave for its supplemental complaint. Therefore, the City respectfully requests  
5 that the City’s Motion be granted in its entirety, such that the case should proceed on the  
6 Initial Complaint, and the unauthorized supplemental pleading should be stricken. There  
7 is no prejudice here, as Plaintiff may attempt to file a new lawsuit on the additional  
8 claims.<sup>2</sup>

9 **II. ARGUMENT**

10 **A. The Opposition concedes facts demonstrating that Plaintiff has filed a**  
11 **“supplemental” complaint without leave of Court.**

12 Contrary to Plaintiff’s assertions, he did not comply at all – never mind, fully –  
13 with Rule 15. Rule 15(d) mandates that a plaintiff obtain permission from the Court  
14 upon motion and reasonable notice to file a supplemental complaint – which Plaintiff  
15 failed to do. As Rule 15 and the case authorities make clear, a supplemental complaint  
16 adds facts that purportedly occurred after the original pleading was filed, while an  
17 amended complaint adds facts that purportedly occurred prior to the initial filing date.  
18 Plaintiff admits that his “First Amended Complaint” (Dkt. 13) (“FAC”) includes factual  
19 allegations of incidents that occurred after the filing of the present action (September 3,  
20 2018). Opp., Dkt. 16, at 3:1-3 & 3:13-14. Despite this admission, Plaintiff argues that  
21 the supplemental complaint is an amended pleading “as of right” under Rule 15(a).  
22 Opp., Dkt. 16, at 4:2-23.

23 While the City disputes Plaintiff’s interpretation of Rule 15(a), and without  
24 waiving any argument regarding it, Plaintiff’s reasoning is a red-herring. Rule 15(d), not  
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26 <sup>2</sup> During a telephonic meet and confer, Plaintiff’s counsel informed Defendant’s  
27 counsel that they could and might file a new lawsuit on these additional claims to resolve  
28 the issues the City raised concerning the supplemental complaint. Kwon Decl. ¶ 7.

1 Rule 15(a), applies here, and a supplemental complaint cannot be filed “as a matter of  
2 course.” Fed. R. Civ. P. 15(d); *ConnectU LLC v. Zuckerberg*, 522 F.3d 82, 90 (1st Cir.  
3 2008) (“An amended complaint sometimes can be filed “as a matter of course,” Fed. R.  
4 Civ. P. 15(a); a supplemental complaint cannot.”) Because Plaintiff admits he did not  
5 move for leave of Court to file the supplemental pleading (Opp., Dkt. 16, at 3:21-23), he  
6 violated Rule 15(d). The “FAC” is unauthorized; the City’s motion should be granted.

7 **B. The City’s request that the parties comply with the Federal Rules is**  
8 **reasonable and compulsory.**

9 The Federal Rules of Civil Procedure govern civil proceedings in all federal  
10 district courts, and “should be construed, administered, and employed by the court and  
11 the parties to secure the just, speedy, and inexpensive determination of every action and  
12 proceeding.” Fed. R. Civ. P. 1. In the “Notice to Counsel,” this Court expressly states,  
13 “Counsel are advised that the Court expects strict compliance with the provisions of the  
14 Local Rules and the Federal Rules of Civil Procedure.” Dkt. 15 at 1:21-22. Despite this  
15 admonishment, Plaintiff unreasonably vilifies the City for attempting to ensure the Rules  
16 are followed.

17 1. Plaintiff elected not to seek leave of Court for his supplemental  
18 complaint; thus, the City’s Motion to should be granted.

19 Contrary to Plaintiff’s assertion, the City is not engaging in any untoward conduct  
20 via its Motion. The City recognizes that the Rules (and the need to seek the Court’s  
21 authorization in specific circumstances<sup>3</sup>) are in place for many reasons. Plaintiff,  
22 however, seeks to cherry pick which rules should be followed, and disregard others as  
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24 <sup>3</sup> During the telephonic meet and confer, preceded and followed by several  
25 emails, counsel for the City explained that under Rule 15(d), leave of Court was required  
26 and that requiring such leave prior to the filing of a supplemental complaint served  
27 multiple purposes. Kwon Decl. at ¶ 8. The Opposition mischaracterizes statements made  
28 during the call. Opp., Dkt. 16, at 3, fn. 1. Kwon Decl. at ¶¶ 8-9.

1 “form over substance.”<sup>4</sup> Here, Plaintiff’s arguments, if adopted, would result in  
2 rendering the Rules irrelevant, or in rendering some Rules superior to others. Were  
3 Plaintiff’s method of filing a supplemental complaint permitted, the parties (or the  
4 Plaintiff alone) could expand the scope of a case at any time, preventing the just, speedy  
5 and expeditious resolution of the matters before the Court.

6 This Motion, and the procedural predicament that required its filing, might have  
7 been avoided if Plaintiff sought the Court’s authorization to file his supplemental  
8 pleading. Counsel for the City raised this issue with Plaintiff’s attorney on January 28,  
9 2019 – mere days after being assigned to handle this matter – but Plaintiff’s counsel  
10 declined, and continues to decline, to seek leave. Declaration of Arlene Hoang, Dkt. 14-  
11 1, ¶¶ 2-4. Because Plaintiff had given the City no other option, the City filed this  
12 Motion. Having expressed a disinclination to seek the Court’s leave, the Court should  
13 strike the supplemental complaint and set a deadline by which the City may respond to  
14 the Initial Complaint. If he so chooses, Plaintiff may file a new lawsuit on the additional  
15 claims.

16 2. Unlike the parties in *ConnectU* and *Cabrera*, the City has not waived  
17 any argument that the supplemental complaint is improper.

18 Plaintiff attempts to justify his failure to seek the Court’s authorization to file his  
19 FAC by citing dicta from *ConnectU LLC v. Zuckerberg*, 522 F.3d 82 (1st Cir. 2008) and  
20 *Cabrera v. City of Huntington Park*, 159 F.3d 374 (9th Cir. 1998), both of which are  
21 inapposite. Unlike here, in *ConnectU*, the defendants did not move to strike the  
22 supplemental pleading, nor did they present any arguments that the pleading should have  
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24 <sup>4</sup> Plaintiff’s suggestion that he need not comply strictly with the Federal Rules  
25 does not comport with his counsel’s argument in a pending case against the City. There,  
26 counsel argued that the City’s motion (involving different City counsel) should be  
27 dismissed due to a purported failure to comply strictly with the Local Rule 7-3 meet and  
28 confer requirements. See Dkt. 52, pp. 1-3, in *Mitchell v. City of Los Angeles*, United  
States District Court, Central District of California, Case No. 16-CV- 01750 SJO (JPR).

1 been regarded as a supplemental complaint, rather than an amended complaint. 522 F.3d  
2 at 90. The parties operated under the “amended complaint” for about a year before  
3 challenging it. Thus, the Court held that the issue was waived. *Id.* Similarly, in  
4 *Cabrera*, the parties filed various pleadings including joint stipulations and motion  
5 papers that led the Court to determine that the parties expressly consented to the filing of  
6 a supplemental or amended claim for malicious prosecution. 159 F.3d at 382. The  
7 Court relied on Rule 15(b)(2), finding that the parties gave express consent to the trial of  
8 the malicious prosecution claim by stipulation. *Id.*

9 Here, the City has not waived any argument concerning Plaintiff’s improperly  
10 filed supplemental pleading. Indeed, the City notified the Plaintiff and the Court on its  
11 first reasonable opportunity to do so and filed this Motion to obtain relief. The cases  
12 Plaintiff cite *reinforce* the propriety and timing of the City’s Motion. The Motion should  
13 be granted.

14 3. Plaintiff declines to file a motion to support the supplemental  
15 complaint; thus, the City’s Motion should be granted.

16 Requiring Plaintiff to follow the Federal Rules is not at the expense of “an arcane  
17 bit of nomenclature” as Plaintiff suggests, but rather promotes the interests of the Court  
18 and avoids undue prejudice to Defendant. Rule 15(d) not only requires the Court’s  
19 permission to file a supplemental complaint, but it also offers the parties the opportunity  
20 to fully brief the Court on the propriety of any supplemental complaint. *See* Rule 15(d)  
21 (“On motion and reasonable notice, the court may, on just terms” permit a supplemental  
22 pleading); *see also* L.R. 6-1 (“no oral motions will be recognized and every motion shall  
23 be presented by written notice of motion. The notice of motion shall be filed with the  
24 Clerk not later than twenty-eight (28) days.”). A party cannot unilaterally foreclose  
25 another party’s right to fully brief the propriety of a supplemental complaint.

26 Yet much of the Opposition relies upon Plaintiff’s presumption that the Court  
27 would grant him leave to file a supplemental complaint. Plaintiff is not entitled to such a

1 presumption; it is in the Court's broad discretion whether *or not*, to grant leave to file a  
2 supplemental complaint, when a motion is actually filed. Plaintiffs here decided not to  
3 file such a motion. Further, even when a motion is in fact filed, courts can and do deny  
4 leave to file a supplemental pleading if the supplemental pleading would result in undue  
5 prejudice to the opposing party, is a product of bad faith, would cause undelay in the  
6 proceedings, or would be a futile exercise.<sup>5</sup>

7 Here, a cursory review of the unauthorized supplemental complaint raises multiple  
8 concerns of prejudice, lack of good faith, delay, and futility. It is indisputable that the  
9 FAC greatly expands the issues in this case to the City's prejudice. While the initial  
10 Complaint involved a single incident, the alleged seizure of Plaintiff's personal property  
11 on July 14, 2017 in Northridge, the FAC adds four additional incidents on four separate  
12 dates in 2018 (July 10, September 6, September 19, and October 28) in four separate  
13 locations in the West Hills and Woodland Hills neighborhoods of the City.

14 Although Plaintiff argues that the new allegations involve the same parties and the  
15 same claims for relief, this characterization is misleading. The new allegations involve  
16 five different events, five different sets of facts, as well as the involvement of different  
17 City personnel, different Council Districts, and different City agencies as well as  
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19 <sup>5</sup> See *Beezley v. Fremont Indem. Co.*, 804 F.2d 530, 531 (9th Cir. 1986) (no abuse  
20 of discretion in denying supplemental complaint where it failed to remedy deficiencies in  
21 original complaint); *Shatford v. L.A. Cty. Sheriff's Dep't*, No. CV 15-1767 BRO (AJW),  
22 2016 U.S. Dist. LEXIS 52473, at \*75 (C.D. Cal. Mar. 29, 2016) (adopted at 2016 U.S.  
23 Dist. LEXIS 52449) (denying supplemental complaint where it did not remedy defects in  
24 the prior complaint and failed to state a claim); *Schimmeyer v. 99¢ Only Stores*, No. CV  
25 07-08126 SJO (FFMx), 2008 U.S. Dist. LEXIS 127252, at \*2-3 (C.D. Cal. July 7, 2008)  
26 (denying supplemental complaint where plaintiff wished to add two new causes of action  
27 against the same entity); see also *Hunt v. Rios*, 2009 U.S. Dist. LEXIS 107882, at \*5-8  
28 (E.D. Cal. Oct. 30, 2009) (denying supplemental complaint where administrative  
remedies had not been exhausted and holding that "[e]ven if the conduct alleged is  
similar to this suit, the allegations should be made (if at all) in a separate civil action").

1 different divisions within those agencies.<sup>6</sup> Moreover, Plaintiff sues Doe Defendants “in  
2 their official and individual capacities,” but Plaintiff’s Opposition does not – because it  
3 cannot in good faith – assert that Doe Defendants are the same across all five incidents at  
4 issue. Just because the causes of action have the same title and are alleged (primarily)  
5 against the City does not make the claims the same, and the alleged facts and individuals  
6 involved in each incident are separate and distinct. *See, e.g., Aul v. Allstate Life Ins. Co.*,  
7 1993 U.S. App. LEXIS 10517, \*8 (9th Cir. 1993) (a claim based on different rights and  
8 established by different transactional facts will be a different cause of action, even if the  
9 remedy sought is substantially similar).

10 There is also some doubt as to whether Plaintiff’s *original* claim for relief (in his  
11 Initial Complaint) has any merit at all. Plaintiff alleged both in his Initial Complaint and  
12 his government claim that his property was seized on July 14, 2017, but the City has no  
13 record of any property seizure on that date. Kwon Decl. ¶3. Plaintiff’s cryptic allegations  
14 also suggest that he may have a reason to believe that no seizure took place at that time.  
15 *See* FAC ¶¶ 23-24 and Compl. ¶¶ 23 (alleging that plaintiff “was informed him [*sic*] that  
16 no vehicle from that area brought in property on the day in question” but was later called  
17 to recover property that Plaintiff says was “misabeled.”) Thus, the most just and  
18 efficient resolution of this case may be dismissal of the Initial Complaint and case.<sup>7</sup>

19 Given the significant expansion of this case, and the burden it places on the Court  
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21 <sup>6</sup> Despite diligently conducting its investigation, as of the filing of this brief, the  
22 City has not been able to obtain all the necessary information and documentation from  
23 all the implicated City departments and personnel to confirm the basic facts about the  
24 four additionally alleged 2018 incidents. Kwon Decl. ¶ 4.

25 <sup>7</sup> If Plaintiff agrees with the City’s initial assessment that his property was not  
26 seized on July 14, 2017 (as alleged in a government claim and in this case) the City  
27 requests that he voluntarily dismiss this case now. If the City prevails, it is possible that  
28 Plaintiff would be subject not only to costs but also fees for initiating and maintaining an  
unfounded action. *See* Fed. R. Civ. P. 54(d); Cal. Civ. Proc. § 1038; and 42 U.S.C. §  
1988.

1 and the City – especially if the City must prove a negative – the relief sought by the City  
2 is appropriate. Because Plaintiff made a deliberate decision not to file a motion to seek  
3 leave to file his supplemental pleading, the case should proceed pursuant to the Initial  
4 Complaint. The City's Motion should be granted

5 **C. Plaintiff did not exhaust his administrative remedies under the**  
6 **California Government Claims Act prior to filing the suit**

7 Another reason to grant the City's Motion and for this case to proceed on the  
8 Initial Complaint (if at all), is that Plaintiff's unauthorized supplemental complaint  
9 violates the Government Claims Act. Plaintiff would have this Court exercise  
10 supplemental jurisdiction over state law claims, which were not exhausted (or had not  
11 even occurred) prior to filing suit. The Court need not and should not do so here.

12 Plaintiff concedes, as he must, that compliance with the Government Claims Act  
13 is required for state law tort claims for damages. *See, e.g., Karim-Panahi v. Los Angeles*  
14 *Police Department*, 839 F.2d 621, 627 (9th Cir. 1988). The filing of a claim for damages  
15 “is more than a procedural requirement, it is a condition precedent to plaintiff's  
16 maintaining an action against defendant....” [Citations].” *State of California v. Superior*  
17 *Court (Bodde)*, 32 Cal.4th 1234, 1240 (2004). Plaintiff's argument that he “substantially  
18 complied” with the Government Claims Act lack merit. Significantly, none of the cases  
19 cited by Plaintiff involve the same situation as here where Plaintiff seeks to “tack on”  
20 multiple, additional claims after the filing of his initial Complaint – including three  
21 claims involving incidents that occurred after the filing of his Complaint.

22 In *Bodde*, the California Supreme Court analyzed cases involving the premature  
23 filing of a complaint against a public entity even though the plaintiff submitted a timely  
24 claim to the entity (meaning the complaint was filed before the time for the entity to act  
25 on the claim had expired). In those instances, the Courts held that the plaintiffs  
26 substantially complied with the claim presentation requirement. 32 Cal.4th at 1244.  
27 Here, however, three incidents had not yet occurred when Plaintiff filed suit, and

1 therefore no claim could have been presented at the time suit was filed.

2 In *Ramos v. Marcisz*, 2008 U.S. Dist. LEXIS 6019, 2008 WL 257292 (S.D. Cal.  
3 2008), the plaintiff filed her lawsuit on the same day she filed a state court petition for  
4 relief from the Government Claims Act's presentation requirement. The Court, in  
5 relying on the *Bodde* premature filing doctrine (2008 WL 257292 at \*6), found that the  
6 plaintiff's initial complaint substantially complied with the Government Claims Act's  
7 statute of limitations. *Id.*, at \*3. And in *Yearby v. California Department of Corrections,*  
8 *et al.*, 2010 U.S. Dist. LEXIS 73717, 2010 WL 2880180 (E.D. Cal. 2010), the plaintiff  
9 filed the original complaint before filing a timely tort claim, and then amended his  
10 complaint to allege a tort cause of action after timely submitting the claim. 2010 U.S.  
11 Dist. LEXIS 73717, \*19-20. Notably, unlike here, the defendant twice filed statements  
12 of non-opposition to the plaintiff's requests to amend his complaint to add his state law  
13 claims, and neither of the amended complaints reflected any defects in the plaintiff's  
14 pleadings as to his tort claims. *Id.*, at \*26. Here, the City was deprived of any  
15 opportunity to brief these issues.

16 The Court in *Yearby* further indicated that the situation did not present any  
17 "relation back" issues. *Id.*, at \*22-23.<sup>8</sup> Here, however, Plaintiff arguably wants to use  
18 the original lawsuit filing date to contend that his action is timely with regard to the 2017  
19 incident, but then also wants to use the filing date of his FAC to contend that it is timely  
20 with regard to the 2018 incidents. Adopting Plaintiff's rationale would open the door to  
21 allow a plaintiff to add claims of future incidents to pending lawsuits – that were filed  
22 before the claims even existed – without end.

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25 <sup>8</sup> Significantly, the *Yearby* Court *denied* the plaintiff's motion to file an amended  
26 or supplemental complaint. *Id.*, at \*28-33. The Court held that the proposed complaint  
27 challenged different conduct by different people, the challenged conduct arose at  
28 different times in different facilities, and the proposed complaint did not name the  
current defendant. *Id.*, at \*30-31.

1 **III. CONCLUSION**

2 Based on the foregoing, and the arguments raised in its moving papers, Defendant  
3 City of Los Angeles respectfully requests that the Court grant its Motion in its entirety.

4  
5 Dated: March 11, 2019

Respectfully submitted,

6  
7 /s/  
8 RUTH M. KWON  
Deputy City Attorney

9 Attorneys for Defendant City of Los Angeles  
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