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10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA – CENTRAL DIVISION

12  
13 REX SCHELLENBERG, an individual,  
14  
15 Plaintiff,  
16  
17 v.  
18 THE CITY OF LOS ANGELES, a  
19 municipal entity, DOES 1-10.  
20  
21 Defendants.

Case No. 2:18-cv-07670-CAS-PLA

**PLAINTIFF’S OBJECTIONS TO  
IMPROPER ALLEGATIONS  
RAISED IN DEFENDANT’S REPLY  
ISO DEFENDANT’S MOTION TO  
EXTEND TIME TO RESPOND TO  
INITIAL COMPLAINT AND TO  
STRIKE THE FAC**

Date: March 25, 2019  
Time: 10:00 a.m.  
Ctrm: 8B  
Hon. Christina A. Snyder

Action filed: September 3, 2018

22 TO THIS HONORABLE COURT AND ALL PARTIES OF RECORD:

23  
24 Plaintiff Rex Schellenberg hereby objects to, and asks the Court to strike,  
25 improper matters raised by the Defendant City of Los Angeles in its Reply filed in  
26 support of the City’s Motion to Extend Time to Respond to the Initial Complaint  
27 and to the Strike the First Amended Complaint.  
28

1 "It is well established in this circuit that "the general rule is that [a party]  
2 cannot raise a new issue for the first time in [its] reply brief[.]"" *Eberle v.*  
3 *Anaheim*, 901 F.2d 814, 818 (9th Cir. 1990), quoting *Northwest Acceptance Corp.*  
4 *v. Lynnwood Equip., Inc.*, 841 F.2d 918, 924 (9th Cir. 1988). The reason for this  
5 rule is clear: as here, to permit otherwise denies the opposing party an opportunity  
6 to respond.

7 Contrary to this fundamental principle, the City improperly asserts new  
8 factual allegations in its Reply. The argument and allegations should be stricken.  
9 *See Fraser v. Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003) (objections to  
10 declarations should be timely raised either in a motion to strike or a party should  
11 otherwise lodge an objection with the district court); *see also Desrosiers v.*  
12 *Hartford Life & Acc. Ins. Co.*, 515 F.3d 87, 91-92 (1st Cir. 2008) (stating that a  
13 party should object to or move to strike new matters raised in Reply as improper).

14 In its Reply brief, the City asserts the following:

15 There is also some doubt as to whether Plaintiff's original claim  
16 for relief (in his Initial Complaint) has any merit at all. Plaintiff  
17 alleged both in his Initial Complaint and his government claim that  
18 his property was seized on July 14, 2017, but the City has no  
19 record of any property seizure on that date. Kwon Decl. ¶3.  
20 Plaintiff's cryptic allegations also suggest that he may have a  
21 reason to believe that no seizure took place at that time. See FAC  
22 ¶¶ 23-24 and Compl. ¶¶ 23 (alleging that plaintiff "was informed  
23 him [sic] that no vehicle from that area brought in property on the  
24 day in question" but was later called to recover property that  
25 Plaintiff says was "misabeled.") Thus, the most just and efficient  
26 resolution of this case may be dismissal of the Initial Complaint  
27 and case.

28 City's Reply at Page 7, lines 10-18 (Dkt. #17). The Declaration of Ruth Kwon is  
cited in support of this allegation:

Based upon my review of the case files assembled prior to my  
participation in the case, the City does not have any written record  
confirming that Plaintiff's property was taken on July 14, 2017. It  
is the City's initial assessment that Plaintiff's claim does not have

a basis in fact or law.

Decl. of Kwon at ¶ 3 (Dkt. #17-1). The City continues at Footnote 7:

If Plaintiff agrees with the City’s initial assessment that his property was not seized on July 14, 2017 (as alleged in a government claim and in this case) the City requests that he voluntarily dismiss this case now. If the City prevails, it is possible that 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.

City’s Reply at Page 7, fn. 7 (Dkt. #17).

Setting aside the fatal evidentiary deficiencies in these purported factual allegations, this is improper rebuttal evidence that cannot be raised for the first time on Reply. See Local Rule 7-10. Plaintiff has not been afforded an opportunity to respond to these allegations, nor should he have to at this pleading stage. Plaintiff respectfully requests that the Court strike the improper allegations asserted by the City in their Reply at Page 7, lines 10-18; Footnote 7; and Decl. of Ruth Kwon ¶ 3.

Dated: March 12, 2019

Respectfully submitted,  
LAW OFFICE OF CAROL A. SOBEL



By: Monique Alarcon  
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