

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Robert Huhn, dba Huhn Electric v. City of Red Bluff, et al.

No. 2:25-CV-1777-DMC · No. No. 2:25-CV-1777-DMC · Decided December 22, 2025

OPINION

Huhn

PER CURIAM.

1 2 3 4 5 6 7

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 ROBERT HUHNS, dba Huhn Electric, No. 2:25-CV-1777-DMC 12 Plaintiff, 13 v. ORDER
14 CITY OF RED BLUFF, et al., 15 Defendants. 16 17 Plaintiff, who is proceeding with retained
counsel, brings this civil action. The 18 parties have consented to Magistrate Judge jurisdiction
and the case has been reassigned. See 19 ECF No. 18. Pending before the Court is Defendants'
motion to dismiss. See ECF Nos. 9 (initial 20 motion) and 11 (amended points and authorities).
Plaintiff has filed an opposition, see ECF No. 21 20, and Defendants have filed a reply, see ECF
No. 21. The parties appeared for a hearing before 22 the undersigned and, following oral
arguments, the Court granted Defendants' motion and 23 dismissed the complaint with leave to
amend. Plaintiff has since filed his first amended 24 complaint. See ECF No. 23. This order will
formally confirm the Court's oral ruling from the 25 bench and direct Defendants to file a
response to Plaintiff's first amended complaint. 26 /// 27 /// 28 /// 1 In considering a motion to
dismiss, the Court must accept all allegations of 2 material fact in the complaint as true. See
Erickson v. Pardus, 551 U.S. 89, 93-94 (2007). The 3 Court must also construe the alleged facts in
the light most favorable to the plaintiff. See Scheuer 4 v. Rhodes, 416 U.S. 232, 236 (1974); see
also Hosp. Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 5 738, 740 (1976); Barnett v. Centoni, 31
F.3d 813, 816 (9th Cir. 1994) (per curiam). All 6 ambiguities or doubts must also be resolved in
the plaintiff's favor. See Jenkins v. McKeithen, 7 395 U.S. 411, 421 (1969). However, legally
conclusory statements, not supported by actual 8 factual allegations, need not be accepted. See
Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949-50 (2009). 9 In addition, pro se pleadings are held to a
less stringent standard than those drafted by lawyers. 10 See Haines v. Kerner, 404 U.S. 519, 520
(1972). 11 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement 12 of
the claim showing that the pleader is entitled to relief" in order to "give the defendant fair 13
notice of what the . . . claim is and the grounds upon which it rests." Bell Atl. Corp v. Twombly,
14 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). However, in
order 15 to survive dismissal for failure to state a claim under Rule 12(b)(6), a complaint must

contain 16 more than “a formulaic recitation of the elements of a cause of action;” it must contain factual 17 allegations sufficient “to raise a right to relief above the speculative level.” Id. at 555-56. The 18 complaint must contain “enough facts to state a claim to relief that is plausible on its face.” Id. at 19 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the 20 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” 21 *Iqbal*, 129 S. Ct. at 1949. “The plausibility standard is not akin to a ‘probability requirement,’ but 22 it asks for more than a sheer possibility that a defendant has acted unlawfully.” Id. (quoting 23 *Twombly*, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a 24 defendant’s liability, it ‘stops short of the line between possibility and plausibility for entitlement 25 to relief.’” Id. (quoting *Twombly*, 550 U.S. at 557). 26 / / / 27 / / / 28 / / / 1 In deciding a Rule 12(b)(6) motion, the Court generally may not consider materials 2 outside the complaint and pleadings. See *Cooper v. Pickett*, 137 F.3d 616, 622 (9th Cir. 1998); 3 *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994). The Court may, however, consider: (1) 4 documents whose contents are alleged in or attached to the complaint and whose authenticity no 5 party questions, see *Branch*, 14 F.3d at 454; (2) documents whose authenticity is not in question, 6 and upon which the complaint necessarily relies, but which are not attached to the complaint, see 7 *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001); and (3) documents and materials 8 of which the court may take judicial notice, see *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 9 1994). 10 Finally, leave to amend must be granted “[u]nless it is absolutely clear that no 11 amendment can cure the defects.” *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (per 12 curiam); see also *Lopez v. Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000) (en banc). 13

14 I. PLAINTIFF’S ALLEGATIONS

15 This action proceeds on Plaintiff’s complaint, filed in state court and removed to 16 this Court on June 25, 2025. See ECF No. 1. Plaintiff, a licensed electrical contractor, is an 17 individual doing business as Affordable Solar Energy. See id. at 6. Plaintiff names the 18 following as defendants: (1) City of Red Bluff; (2) Beth Lindauer, the City of Red Bluff’s 19 Community Development Director; (3) Tom Westbrook, the City of Red Bluff’s City Manager; 20 and (4) Anita Rice, the City of Red Bluff’s Deputy City Clerk. See id. at 6-7. 21 Plaintiff states that, in October 2024, he was contracted to install a solar energy 22 system at the First Church of God, a commercial property located in Red Bluff. See id. at 8. 23 Plaintiff submitted to the City of Red Bluff a building plan for a commercial solar installation 24 permit on October 16, 2024. See id. On October 17, 2024, Plaintiff received an invoice for 25 permit application fees in the amount of \$1,000.00, which Plaintiff asserts is the maximum 26 amount allowed under the California Solar Rights Act. See id. This fee included a charge of 27 \$188.00 for a fire department inspection. See id. 28 / / / 1 Plaintiff was informed that he could not pay the full fees online because the City 2 of Red Bluff’s online payment system only accepted payments up to \$550.00. See id. As a 3 result, Plaintiff reported in-person to pay the fees and was told he could make separate 4 payments through the online system. See id. Plaintiff states, however, that the online system 5 would not

accept separate payments. See id. 6 Plaintiff began preliminary work on the solar project on October 18, 2024. See 7 id. During this process, Plaintiff discovered significant structural issues on the church roof that 8 required changes to the original building plan and layout. See id. Based on these findings, 9 Plaintiff revised the installation layout. See id. at 9. On October 21, 2024, an inspector for the 10 City of Red Bluff issued a stop-work order on the project because the initial permit process had 11 not been finalized and because the installation layout no longer matched the plans originally 12 submitted. See id. The same day, Plaintiff went to the city's offices to complete payment and 13 explain the layout changes. See id. 14 When Plaintiff appeared again at the city's offices to pay the permit fees, he was 15 informed that a permit would not be issued because the current layout plan no longer matched 16 the plan submitted with the original permit application. See id. Plaintiff explained to city 17 officials, including Defendant Lindauer, that the layout changes were required for structural 18 safety and requested that the city issue the permit and allow him to submit an updated plan. See 19 id. Plaintiff alleges that, despite accepting Plaintiff's payment of \$1,000.00, no permit was 20 issued. See id. 21 Plaintiff also states that, during this interaction with city officials, he questioned 22 the legality of the \$188.00 fire department inspection fee based on lack of any city ordinance or 23 resolution authorizing such a fee. See id. Plaintiff further argued that the fire department 24 inspection would be duplicative of the inspection which was already required by the Building 25 Department. See id. 26 /// 27 /// 28 // / 1 Plaintiff claims that, in response to his questions about the fire department 2 inspection fee, Defendant Lindauer "issued a retaliatory threat." Id. Plaintiff claims: 3 . . . She [Defendant Lindauer] stated that if Plaintiff continued to challenge the commercial solar inspection fees, she would instruct the fire department 4 to reinstate the residential solar permit fees. Those residential fees had previously been eliminated following Plaintiff's earlier objections to their 5 legality. This threat directly tied the possibility of adverse government action to Plaintiff's constitutionally protected speech. The statement had 6 the clear potential to chill future speech, precisely the type of retaliatory conduct that is prohibited under the established First Amendment 7 jurisprudence. 8 Id. 9 Plaintiff states that a permit was ultimately issued on October 24, 2024. See id. at 10. 10 Following the incident with Defendant Lindauer, Plaintiff contacted the City 11 Manager, Defendant Westbrook to report the retaliatory threat. See id. Defendant Westbrook 12 reported to Plaintiff that he would review surveillance footage of Plaintiff's encounter with 13 Defendant Lindauer. See id. While Defendant Westbrook promised to follow up, Plaintiff 14 contends he never did so. See id. 15 On October 28, 2024, Plaintiff submitted a formal public records request 16 seeking: (1) all ordinances pertaining to residential and commercial solar permit fees; (2) audio 17 and video recordings from the encounter with Defendant Lindauer; and (3) any ordinance or 18 written authorization allowing the fire department to impose inspection fees for solar 19 installations. See id. at 10-11. On November 19, 2024, Plaintiff called city offices to inquire 20 about his records request. See id. at 11. According to Plaintiff, Defendant Rice, who is the 21 Deputy City Clerk, informed Plaintiff that the city believed his request had "gone away" 22

because Plaintiff previously met with city officials. *Id.* Plaintiff states that he told Defendant 23 Rice that he never withdrew his request. See *id.* Plaintiff adds that, on November 20, 2024, 24 Defendant Rice sent Plaintiff an email providing some, but not all, of the requested documents. 25 See *id.* According to the November 20, 2024, email, Defendant Rice stated that surveillance 26 video footage from October 23, 2024, was no longer available. See *id.* Plaintiff contends that, 27 as of the filing of the complaint, he still had not received all of the requested records. See *id.* 28 / / 1 Plaintiff asserts the following claims: 2 FIRST CLAIM Retaliation in violation of the First Amendment pursuant to 42 U.S.C. § 1983 (against all Defendants). 3 SECOND CLAIM Violation of the California Public Records Act 4 (against Defendant City of Red Bluff). 5 THIRD CLAIM Violation of the California Solar Rights Act (against Defendant City of Red Bluff). 6 FOURTH CLAIM Unlawful business practices (against Defendant 7 City of Red Bluff). 8 FIFTH CLAIM Negligence (against all Defendants). 9 SIXTH CLAIM Intentional interference with prospective economic advantage (against all Defendants). 10 ECF No. 1, pgs. 12-21. 11 12

13 II. DISCUSSION

14 In their motion to dismiss, Defendants argue: (1) the complaint fails to state a 15 claim for violation of the First Amendment as against any defendant; (2) there is no right of 16 action against a public entity under California's Solar Rights Act; (3) there is no right of action 17 against a public entity under California's unfair business practices law; and (4) the negligence 18 claim is deficient because Plaintiff fails to allege any duty owed and because the claim is barred 19 by state law immunities. See ECF No. 11. Because this Court declines to exercise 20 supplemental jurisdiction over pendent state law claims in the absence of a cognizable federal 21 law claim, Plaintiff's First Amendment retaliation claim is discussed first. 22 To state a claim under 42 U.S.C. § 1983 for retaliation, the plaintiff must establish 23 that he was retaliated against for exercising a constitutional right, and that the retaliatory action 24 was not related to a legitimate penological purpose. See *Barnett v. Centoni*, 31 F.3d 813, 815-16 25 (9th Cir. 1994) (per curiam). In meeting this standard, the plaintiff must demonstrate a specific 26 link between the alleged retaliation and the exercise of a constitutional right. See *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1995); *Valandingham v. Bojorquez*, 866 F.2d 1135, 1138-39 28 (9th Cir. 1989). The plaintiff must also show that the exercise of First Amendment rights was 1 chilled, though not necessarily silenced, by the alleged retaliatory conduct. See *Resnick v. Hayes*, 2 213 F.3d 443, 449 (9th Cir. 2000), see also *Rhodes v. Robinson*, 408 F.3d 559, 569 (9th Cir. 3 2005). Thus, the plaintiff must establish the following in order to state a claim for retaliation: (1) 4 government officials took adverse action against the plaintiff; (2) the adverse action was taken 5 because the plaintiff engaged in protected conduct; (3) the adverse action chilled the plaintiff's 6 First Amendment rights; and (4) the adverse action did not serve a legitimate governmental 7 purpose. See *Rhodes*, 408 F.3d at 568. 8 As to Plaintiff's First Amendment retaliation claims, Defendants argue that the 9 claims, as currently pleaded, fail because Plaintiff has not alleged facts to show that Defendant 10 Lindauer's comments or Defendant Westbrook's conduct chilled Plaintiff's

ability to engage in 11 protected activity. See ECF No. 11. Next, Defendants argue that Plaintiff has failed to allege 12 facts to show Defendant Rice's involvement. See id. Next, Defendants contends that Plaintiff 13 has failed to allege sufficient facts to establish municipal liability against Defendant City of Red 14 Bluff. Finally, Defendants argue that Lindauer and Westbrook are entitled to qualified immunity. 15 See id. 16 For all defendants, Plaintiff needs to allege facts to show that adverse action was 17 taken against him because he complained about fees. Here, Plaintiff has failed to do so. 18 Rather, he asserts facts indicating his speculation that adverse action may be taken if Plaintiff 19 continued to complain. Further, notwithstanding Plaintiff's complaints and the alleged threats, 20 Plaintiff was issued a permit. On the facts currently alleged, Plaintiff has not shown adverse 21 action sufficient to support a First Amendment retaliation claim. 22 More specifically as to Defendants Westbrook and Rice, Plaintiff has not alleged 23 their involvement in any threats against Plaintiff should he continued to make complaints about 24 fees. Rather, Defendant Westbrook is alleged to have failed to follow up on review of 25 surveillance footage, and Defendant Rice is alleged to have failed to provide all of the public 26 record requested by Plaintiff. These allegations do not indicate that either Defendant 27 Westbrook or Defendant Rice took any adverse action against Plaintiff on account of 28 complaints about fees.] Finally, Defendants' argument concerning municipal liability is persuasive. 2 | Municipalities and other local government units are among those "persons" to whom § 1983 3 || liability applies. See *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). Counties and 4 | municipal government officials are also "persons" for purposes of § 1983. See id. at 691; see also 5 || *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1443 (9th Cir. 1989). A local government 6 || unit, however, may not be held responsible for the acts of its employees or officials under a 7 || respondeat superior theory of liability. See *Bd. of County Comm'rs v. Brown*, 520 U.S. 397, 403 8 | (1997). Thus, municipal liability must rest on the actions of the municipality, and not of the 9 || actions of its employees or officers. See id. To assert municipal liability, therefore, the plaintiff 10 || must allege that the constitutional deprivation complained of resulted from a policy or custom of 11 | the municipality. See id. 12 Here, even if Plaintiffs First Amendment claims against one of the individual 13 || defendants was viable — and they are not as currently pleaded — Plaintiff would still need to 14 | allege the existence of some kind of municipal policy, custom, or practice which allowed the 15 || individual defendants to retaliate against him. He has failed to do so in the operative complaint. 16

17 II. CONCLUSION

18 Accordingly, IT IS HEREBY ORDERED as follows: 19 1. Defendants' motion to dismiss, ECF Nos. 9 and 11, is GRANTED. 20 2. Plaintiff's complaint, ECF No. 1, is dismissed with leave to amend. 21 3. Plaintiff's first amended complaint, ECF No. 23, filed on December 18, 22 || 2025, is deemed timely. 23 4. Defendants shall file a response to Plaintiffs first amended complaint 24 || within 30 days of the date of this order. 25 | Dated: December 19, 2025 Co

26 DENNIS M. COTA

07 UNITED STATES MAGISTRATE JUDGE

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