JAMES C. HARRISON, State Bar No. 161958
ROBIN B. JOHANSEN, State Bar No. 79084
MARGARET R. PRINZING, State Bar No. 209482
KRISTEN MAH ROGERS, State Bar No. 274672
OMAR EL-QOULAQ, State Bar No. 324729
OLSON REMCHO LLP
1901 Harrison Street, Suite 1550
Oakland, CA 94612
Phone: (510) 346-6200
Fax: (510) 574-7061
Email: jharrison@olsonremcho.com
rjohansen@olsonremcho.com
mprinzing@olsonremcho.com
krogers@olsonremcho.com
oelqoulaq@olsonremcho.com

KRISHAN S. CHOPRA, City Attorney, State Bar No. 192032
OFFICE OF THE CITY ATTORNEY
500 Castro Street, Suite 300
Mountain View, CA 94041
Phone: (650) 903-6303
Fax: (650) 967-4215
Email: krishan.chopra@mountview.gov

Attorneys for Defendant
City of Mountain View

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CELERINA NAVARRO, JANET STEVENS, ARMANDO COVARRUBIAS, EVELYN ESTRADA, GABRIEL RANGEL JAIME, ALMA ALDACO, and all others similarly situated,

Plaintiffs,

vs.

THE CITY OF MOUNTAIN VIEW,

Defendant.

No.: 5:21-cv-05381-NC

DEFENDANT CITY OF MOUNTAIN VIEW'S NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS

Date: November 3, 2021
Time: 1:00 p.m.
Ctrm: 5
Judge: Hon. Nathanael M. Cousins

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

CASES:

CALIFORNIA STATUTES:

FEDERAL REGULATIONS:

FEDERAL STATUTES:

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on November 3, 2021, at 1:00 p.m., or as soon thereafter as this matter may be heard in Courtroom 5 of the above-entitled Court, located at 280 South 1st Street, San Jose, California 95113, Defendant City of Mountain View ("Defendant" or "City") will move the Court for an order to dismiss each and every one of Plaintiffs' twelve claims without leave to amend.

This Motion is and will be made pursuant to Federal Rules of Civil Procedure 12(b)(6) on the grounds that each and every one of Plaintiffs' twelve claims fails to state any claim upon which relief can be granted as a matter of law, and that all claims should be dismissed without leave to amend. This Motion is and will be based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Request for Judicial Notice, and the Declaration of Omar El-Qoulaq, all records presently on file with this Court, all papers filed and proceedings held in this case, and such additional evidence and argument as may be presented to the Court before or during the hearing on this Motion.

Dated: August 16, 2021

Respectfully submitted,

OLSON REMCHO LLP

By: /S/ Margaret R. Prinzing
Margaret R. Prinzing

Attorneys for Defendant City of Mountain View

INTRODUCTION

Plaintiffs base this lawsuit on the notion that the City of Mountain View ("City" or "Mountain View") has banned oversized vehicles in order to banish its low-income population. The City has done no such thing. It has instead passed two ordinances that prohibit the parking of *all* oversized vehicles – not just vehicles used for habitation – on the streets where they pose the greatest traffic safety risk: narrow streets of no more than forty feet in width and streets with bicycle lanes. Oversized vehicles may continue to park on streets wider than forty feet, streets without bicycle lanes, and in the five safe parking lots the City has established to provide safer alternatives for its unhoused population, as judicially noticeable facts make clear.

Plaintiffs further claim that they are at imminent risk of having the oversized vehicles they use as habitation taken away from them, and there is nothing they can do to prevent that loss because they do not know how to avoid ticketing and towing. This too can be easily disproven by judicially noticeable facts. Not only has the City already published, months in advance of implementation and enforcement, every single segment of every single street where the parking restrictions will apply, it has announced its intention to install no fewer than two signs on every single impacted block, *and* provide individualized notice to those who live in oversized vehicles on affected streets. Once the Ordinances are fully implemented, it will be nearly impossible for someone to be ticketed or towed for violating the Ordinances unless they ignore signs posted near their parking space.

What Plaintiffs' Complaint makes clear is that the real purpose of this litigation is to secure a right to indefinitely locate their oversized vehicles on their preferred roadways, regardless of any dangers this may pose to other vehicles, pedestrians, and bicyclists in their vicinity. The fact that Plaintiffs have been forced to live in their vehicles is deeply unfortunate, and the City is continuing its efforts to help its unhoused population transition to better, safer housing alternatives. Yet Plaintiffs' constitutional rights do not extend anywhere near as far as they assert, and certainly do not extend so far as to prevent the City from enforcing parking restrictions that address public safety concerns.

Because Plaintiffs have not – and cannot through amendment – state valid claims attacking the City's oversized vehicle ordinances, this Court should grant the City's Motion to Dismiss all of Plaintiffs' claims without leave to amend.

STATEMENT OF FACTS AND ALLEGATIONS

On October 22, 2019, the Mountain View City Council passed Ordinance No. 14.19 to restrict the parking of oversized vehicles on streets adjacent to Class II bikeways (the "Bicycle Lane Ordinance"), and Ordinance 15.19 to restrict the parking of oversized vehicles on narrow streets (the "Narrow Streets Ordinance," collectively, the "Ordinances"). Class Action Complaint ("Compl."), ¶¶ 46, 47. Both Ordinances declare that they were enacted "to promote the safety of public roadways." Defendant City of Mountain View's Request for Judicial Notice & Declaration of Omar El-Qoulaq in Support of Motion to Dismiss ("RJN & El-Qoulaq Decl."), Exs. A at 1 & B at 1. Oversized vehicles are defined as vehicles that are more than 22 feet long, 7 feet tall, or 7 feet wide; narrow streets are defined as streets that are no more than forty feet wide; Class II Bikeways are bike lanes that provide restricted right-of-way designations for bicycles. Compl., ¶ 1 n.2; ¶ 2 & n.3. Both Ordinances exempt the same six categories of vehicles, including wheelchair accessible vehicles with valid disabled placards or license plates. *Id.*, ¶ 49; RJN & El-Qoulaq Decl., Exs. A at 2 & B at 2.

Opponents of the Narrow Streets Ordinance promptly qualified a referendum of that Ordinance, which appeared on the November 3, 2020 Mountain View ballot as Measure C. Compl., ¶¶ 48-49. The voters were told that Measure C was developed to address "serious safety concerns about oversized vehicles parking" in the City's neighborhoods. RJN & El-Qoulaq Decl., Ex. J. Contrary to the intent of the referendum proponents, a majority of the City's voters approved the Narrow Streets Ordinance. Compl., ¶ 50.

Plaintiffs are six individuals who reside in oversized vehicles that they park on City streets. *Id.*, ¶ 3. They sue on their own behalf and on behalf of a proposed class of individuals who reside, or have sought to reside, in oversized vehicles in Mountain View from December 18, 2020 through the present. *Id.*, ¶¶ 6, 16-17.

Plaintiffs claim the Ordinances are "designed to banish the City's low-income populations." *Id.*, ¶ 1. Yet the Ordinances do not target the City's low-income population. Instead, they apply to all oversized vehicles that meet the size specifications outlined in the statute. This includes oversized vehicles used for habitation, and oversized vehicles that are used for other purposes,

like recreation. RJN & El-Qoulaq Decl., Ex. A at 2.[1] Nor do the Ordinances apply to every vehicle used for habitation. Many of those who live in vehicles in Mountain View live in smaller vehicles, like cars or vans. Compl., ¶ 39. The Ordinances do not apply to these smaller vehicles, which may be parked on narrow streets or streets with bike lanes. Accordingly, the Ordinances simply cannot be said to target low-income *people*. They target oversized *vehicles*.

Nor can the City plausibly be said to intend to "banish" its low-income population since it dedicates substantial resources to assisting residents of oversized vehicles and other low-income residents. Plaintiffs concede the City has built hundreds of housing units for low-income and very low-income residents. *Id*., ¶ 37. More specifically, in the years prior to enacting the Ordinances, recognizing that some oversized vehicles are used for habitation in the City, the City conducted "outreach to assess needs and link people [living in vehicles] to comprehensive health and social services" – such as sanitation services, RV repair funds, food, and health care – "and assistance to find housing." RJN & El-Qoulaq Decl., Ex. E at 2, 20-48. The City Council also sought "to develop short-term housing solutions, including the beginning of a safe parking program," which Plaintiffs concede now provides 101 Safe Parking spaces to oversized vehicles (67 spots) and passenger vehicles (34 spots). *Id.*, Ex. E at 2-3; Compl., ¶ 58. The City also supported programs that seek to prevent homelessness by providing rental assistance. RJN & El-Qoulaq Decl., Ex. E at 12-13. Finally, the City supports longer-term strategies, like a $50 million City investment in general affordable housing developments and approximately $28 million investment in permanent supportive housing and rapid rehousing. *Id.*, Ex. E at 24. A March 19, 2019 report informed the City Council that these efforts had recently resulted in "placing 116 Mountain View affiliated households in housing and approximately another 44 households on the path to housing." *Id.*, Ex. E at 3.

The City also felt the need to address the impacts of oversized vehicles parked on the

[1] The definition of oversized vehicles provides in full "Oversized vehicle. Any vehicle, as defined by California Vehicle Code Section 670, or combination of vehicles, which exceed twenty-two (22) feet in length, or seven (7) feet in width, or seven (7) feet in height, exclusive of projecting lights or devices allowed by California Vehicle Code Sections 35109 and 35110, but including any load in or on a vehicle which effectively causes the vehicle's length, width, or height to exceed the standards in this section." RJN & El-Qoulaq Decl., Exs. A at 2 & B at 1.

City's rights-of-way. Although the Council considered various options, including "a ban on the parking of all [oversized vehicles]," it ultimately approved the narrower parking restrictions at issue here. Compl., ¶¶ 43-46.

Plaintiffs dispute that the Ordinances were "motivated by the need for 'traffic safety.'" *Id.*, ¶ 1. Yet their less conclusory allegations admit "traffic safety concerns" were mentioned during the City Council's deliberations. *Id.*, ¶ 45. The public record supports the latter allegation. City Council reports reveal that the City Council was told that "[s]taff has assessed traffic safety issues and the need for parking restrictions in areas where large vehicles impede lines of sight for drivers, bikers, and pedestrians." RJN & El-Qoulaq Decl., Ex. E at 3. Staff further explained that "RVs can be very large in relation to City streets and other vehicles" and that they can impair "access by fire and emergency vehicles." *Id.*, Ex. E at 33. Indeed, the staff reports repeatedly describe various safety concerns, and complaints by members of the community concerned about safety issues. *Id.*, Ex. F at 2-3, 5 (describing various safety concerns); *id.*, Ex. G at 4 (describing the dangers of passing oversized vehicles parked on narrow streets); *id.*, Ex. G at 3 (describing how oversized vehicles parked along roadways force bicyclists into vehicle lanes); *id.*, Ex. E at 18 (describing public comments about safety concerns).

Much of Plaintiffs' Complaint focuses on how the Ordinances will be implemented. Both Ordinances prohibit any enforcement until signs "giving adequate notice of the restriction" are installed. *Id.*, Exs. A at 3 & B at 2. While "[s]igns for the Bike Lane Ordinances have already been installed," installation of signs for the Narrow Streets Ordinance will begin in August. Compl., ¶ 52; RJN & El-Qoulaq Decl., Ex. D. Plaintiffs admit neither Ordinance has been enforced against them, and do not allege that the Ordinances have been enforced against anyone else either. *See* Compl., ¶ 8.

Plaintiffs cite "confusion . . . as to how and where the [Ordinances] will be enforced." *Id.*, ¶ 53. Yet the City passed a resolution on December 8, 2020, "designating streets, or portions thereof, where oversized vehicle parking on narrow streets is prohibited." RJN & El-Qoulaq Decl., Ex. C. The resolution lists all impacted segments of all impacted streets. For example, it lists "Adele Avenue" from "Thompson Avenue" to "Palmer Avenue." *Id.*, Ex. C at 1. Furthermore, the City has made public its plan to install at least two signs on every block where the restrictions apply. *Id.*, Ex. H

at 5. Thus, Plaintiffs need only consult the list of affected streets or look for signs on any segment of street where they wish to park to determine whether the restrictions apply.

Plaintiffs also allege that they have been living "in constant fear" that their vehicles will be towed because "*the Ordinances* do not require any individualized notices or warnings prior to towing." Compl., ¶¶ 54-56 (emphasis added). While it is true that the Ordinances do not require individualized notice, the City has publicized its plans to provide such notice well in advance of sign installation and any enforcement efforts, as Plaintiffs know.[2] The City is "mailing notices to residents and property owners on the narrow streets identified for sign installation." RJN & El-Qoulaq Decl., Exs. Q & P. It is also "providing advance notifications to unstably housed individuals living in oversized vehicles in both English and Spanish prior to any enforcement to ensure people are aware of the ordinance." *Id.*, Ex. D. This individualized notice includes information about how to access the City's Safe Parking program and other housing programs, as well as human services such as food distribution, hygiene services, and mobile medical services. *Id.*, Ex. D; *see also id.*, Exs. Q & R.

Plaintiffs assert that the Ordinances together "create an effective city-wide ban on [oversized vehicle] parking." Compl., ¶ 51. Yet their own allegations undermine this characterization. Plaintiffs first concede that the City has five Safe Parking sites with 67 spaces for oversized vehicles. *Id.*, ¶ 58. Given that Plaintiffs allege there were approximately 191 oversized vehicles used for habitation in the City as of July 2020 (*id.*, ¶ 39), this suggests the City provides safe, legal, off-street parking for approximately one-third of such vehicles in the City, including a vehicle used by one of the Plaintiffs. *Id.*, ¶¶ 39, 58, 59.

Plaintiffs also fail to effectively deny that the remaining oversized vehicles used for habitation will be able to continue parking on the City's streets once the Ordinances are fully enforced. Indeed, Plaintiffs concede that approximately 11% of City streets are exempt from the Ordinances'

[2] This information was provided in connection with the December 8, 2020 City Council meeting referred to in paragraph 51 of the Complaint. RJN & El-Qoulaq Decl., Ex. H at 8. It is also provided on the City's Narrow Streets website through the link entitled "Latest Updates and Notifications," which Plaintiffs cite in footnote 8 to paragraph 52 of their Complaint. *Id.*, Ex. D ; *see also* < https://www.mountainview.gov/depts/pw/transport/narrow_streets.asp>. However, links on the website to copies of the individualized notices provided to City residents were added to the website after Plaintiffs filed their Complaint.

parking restrictions, which equals approximately *54 public streets*. *Id.*, ¶ 51. The exempt streets are shown on publicly available maps that outline exactly which streets are covered and which are exempt. RJN & El-Qoulaq Decl., Exs. N & O. Plaintiffs nevertheless assert that "many of these streets . . . are unavailable as parking options" because posted signs restrict or prohibit parking. Yet they admit that other streets do indeed have parking spaces. Compl., ¶ 51. And critically, they do not allege that any oversized vehicle dweller, let alone a significant number of them, will be unable to find a legal parking spot in Mountain View once the Ordinances are fully implemented – either on exempt streets or in Safe Parking lots.

ARGUMENT

I. LEGAL STANDARD

When ruling on a motion to dismiss, the Court generally considers only those allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice. *Outdoor Media Group, Inc. v. City of Beaumont*, 506 F.3d 895, 899 (9th Cir. 2007); *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003). The Court need not accept conclusory allegations. It should "begin 'by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.'" *Telesaurus VPC, LLC v. Power,* 623 F.3d 998, 1003 (9th Cir. 2010) (citations omitted). The Court should disregard "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements…." *Id.* (citations omitted). After eliminating legal conclusions, the court must identify "well-pleaded factual allegations," which it assumes to be true, "and then determine whether they plausibly give rise to an entitlement to relief." *Id.* (citations omitted).

II. PLAINTIFFS HAVE FAILED TO STATE A CLAIM FOR EXCESSIVE FINES (FIRST AND SECOND CAUSES OF ACTION)

A. Plaintiffs' Claims for Excessive Fines Fail

1. A $65 ticket for violating the Ordinances is not excessive

As explained above, Plaintiffs have not effectively alleged that there are insufficient parking spaces in Mountain View for oversized vehicles or that oversized vehicles resident will be prohibited from living in Mountain View. Accordingly, their first and second causes of action for

excessive fines fail, since oversized vehicle residents may avoid any fine by moving their vehicle to a legal parking space in the City. *Cf. Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL, 2020 U.S. Dist. LEXIS 129494 (D. Or. July 22, 2020) (fining an unhoused person $295 or more is excessive when the person has no choice but to violate the ordinance by sleeping outside because they cannot find shelter). As the *Blake* court explained in finding mandatory fines of $295 for camping and $75 for sleeping excessive: "the *decisive consideration* is that Plaintiffs are being punished for engaging in the *unavoidable*, biological, life-sustaining acts of sleeping and resting while also trying to stay warm and dry." *Id*. at *35 (emphasis added). Unlike the unhoused plaintiffs in *Blake*, Plaintiffs here, and all oversized vehicle owners, have the option of parking in legal and available spaces and therefore avoiding any fines.

Although the Ordinance ticket fine is $65, Plaintiffs speculate that there will be "unlimited," "unending," and "exorbitant" fines that they would be unable to pay. Compl., ¶¶ 67-69. But nowhere do they allege that anyone has actually been ticketed or towed despite the fact that the Bike Lanes Ordinance has been in effect for months. *See* Compl. ¶ 52. Because plaintiffs are complaining about ticketing that *has not yet happened* the claim is arguably not ripe. At the very least, Plaintiffs' speculation that the Ordinances will result in fines *ad infinitum* is wholly implausible.

Furthermore, California Vehicle Code section 40215 provides a procedure that enables individuals to contest parking citations. This code section is referenced in the text of the two forms of parking tickets issued in Mountain View. RJN & El-Qoulaq Decl., Exs. T & U. Subdivision (a) of section 40215 provides that on an initial review of a challenged citation, an issuing agency may cancel the ticket if "extenuating circumstances make dismissal of the citation appropriate in the interest of justice." Cal. Veh. Code § 40215(a). Subdivision (c)(7) makes clear that an individual's inability to pay the parking penalty in full may be considered at any stage of the review process. Both forms of tickets inform individuals that they may contest citations. *See* RJN & El-Qoulaq Decl., Exs. T & U. Moreover, all tickets issued by parking assistants contain the following information:

> Within 60 days of issuance this citation may qualify for a payment plan. Registered owners may apply for an indigency determination.
>
> *Id.*, Ex. U.

Thus, any recipient has an opportunity to demonstrate that the cost of a $65 ticket is more than they can bear, and the law permits downward adjustments of fines in the interest of justice. The statute provides for three levels of review: (1) an initial review, (2) an administrative hearing, and (3) de novo review to the superior court. Cal. Veh. Code §§ 40215, 40230(a); *see Yagman v. Garcetti*, 852 F.3d 859 (9th Cir. 2017) (upholding constitutionality of hearing procedure).

Even so, the fine contemplated under the Ordinances is not excessive because a $65 ticket for parking in spaces that are unsafe for oversized vehicles is not "grossly disproportional to the gravity of the offense," particularly considering that oversized vehicle owners may move their vehicles to avoid the fines. *See Pimentel v. City of Los Angeles*, 974 F.3d 917, 921 (9th Cir. 2020) (citing *United States v. Bajakajian*, 524 U.S. 321, 336-37 (1998)). "The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *Bajakajian*, 524 U.S. at 334. To determine whether a fine is grossly disproportional, "four factors are considered: (1) the nature and extent of the underlying offense; (2) whether the underlying offense related to other illegal activities; (3) whether other penalties may be imposed for the offense; and (4) the extent of the harm caused by the offense." *Pimentel*, 974 F.3d at 921 (citations omitted).

In *Pimentel*, the Ninth Circuit applied this test and determined that a $63 parking ticket for overstaying metered street parking time limits was not excessive. *Id*. at 922-25. Failure to comply with time-limited parking led to increased congestion and impeded traffic flow, and although a parking meter violation "is not a serious offense, the fine is not so large, either, and likely deters violations." *Id*. at 924. The Ninth Circuit also rejected plaintiff's invitation to affirmatively incorporate a means test into the excessive fines analysis to assess a violator's ability to pay. *Id*. at 925; *but see People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal. 4th 707, 728 (2005) (articulating the *Bajakajian* factors as: "(1) the defendant's culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant's ability to pay."). But even if a means

test is required for the excessive fines analysis,[3] Plaintiffs have failed to allege sufficient facts to support their claim that the $65 ticket is unconstitutionally excessive. Plaintiffs assert that they "cannot afford to pay rent or a mortgage" in the City (Compl., ¶ 68), but the average price for those expenses bears no resemblance to a $65 ticket. *Id.*, ¶ 36 (rent for a one-bedroom apartment is $2,719 monthly). Despite other $65 tickets having been issued in past years, including to oversized owners (*id*., ¶ 41), Plaintiffs offer no allegations that the tickets actually exceeded an individual's ability to pay. And again, if it did, every oversized vehicle owner has the opportunity to seek an indigency determination. Cal. Veh. Code §§ 40215(c)(7).

Because Mountain View's fine is essentially the same as the fine in *Pimentel*, there is no "gross disproportionality" here. The City has broad authority to fashion fines so long as the amount of the forfeiture "bears 'some relationship' to the gravity of the offense," and the City's determination that $65 is an appropriate fine is afforded substantial deference. *Pimentel,* 974 F.3d at 924. Furthermore, the "gravity of the offense" is more substantial here than in *Pimentel*, as the Ordinances restrict oversized vehicle parking in the interest of public safety, not just traffic congestion, and there are sufficient places to park throughout the City such that any owner can avoid receiving a ticket.

[3] In their complaint, Plaintiffs cite *Bearden v. Georgia*, 461 U.S. 660 (1983) and *People v. Duenas*, 30 Cal. App. 5th 1157 (2019) and assert that an individualized means analysis is required prior to the imposition of fines. The facts of those cases are markedly different than those here. In *Bearden*, the Supreme Court held that due process requires a sentencing court to conduct an individualized means assessment before revoking probation for criminal defendants who cannot pay a court-imposed fine and restitution due to their indigence. 461 U.S. at 672-73. In *Duenas*, the trial court automatically imposed a $70 court facility assessment fee and a $150 restitution fine after the defendant had been convicted for driving without a license. 30 Cal. App. 5th at 1162. The California court of appeal held that under due process, the trial court must conduct an ability to pay hearing before it imposes court facilities and court operations assessments. *Id*. at 1164. There is a conflict among California courts over whether court fines and fees may be assessed in the absence of an ability-to-pay hearing, and the California Supreme Court has granted review to determine the answer. *People v. Kopp*, 38 Cal. App. 5th 47 (2019) (review granted Nov. 13, 2019, S257844). In both *Bearden* and *Duenas*, the courts themselves were imposing the fines. Conducting a means test during that process, which was already underway, presents little challenge in comparison to the risk of constitutional deprivation. To require a means test prior to issuance of every parking ticket, however, would impose an unnecessary and unworkable burden on local agencies and the courts, and the comparative benefits of imposing such a requirement are marginal given that the current scheme *already provides* that anyone who receives a ticket is entitled to seek an indigency determination.

2. Passing On Towing Costs To Plaintiffs Is Not An Excessive Fine

For the excessive fines doctrine to apply, Plaintiffs must establish that the fine is punitive, or punishment for an offense, as opposed to a sanction that is purely remedial in nature. *Bajakian*, 524 U.S. at 327-34. But "[c]osts associated with impoundment are not necessarily punitive; they can reflect the costs associated with towing and storage." *Potter v. City of Lacey*, No. 3:20-cv-05925-RJB, 2021 U.S. Dist. LEXIS 45173, at *3 (W.D. Wash., Mar. 10, 2021) (rejecting claim that towing and impoundment expenses for violation of recreational vehicle parking prohibitions are excessive fines); *Tsinberg v. City of New York*, 2021 U.S. Dist. LEXIS 56958, *18-19 (S.D.N.Y. Mar. 25, 2021) (observing that "recoupment of storage costs occasioned by the impoundment of delinquent vehicles, serve legitimate, important non-punitive interests"); *see also Salazar v. Schwarzenegger*, No. CV 07-01854 SJO (VBK), 2008 U.S. Dist. LEXIS 124790, at *19 (C.D. Cal. Sep. 8, 2008) (a reasonable administrative penalty plus towing and storage fees for "a lawfully impounded vehicle does not transgress the Excessive Fines Clause.") (citation omitted)); *Krueger v. City of Eastpointe*, 452 F. Supp. 3d 679, 696 (E.D. Mich. 2020) ("[R]equiring that an owner simply pay expenses incurred in towing and storing a vehicle does not implicate the Eighth Amendment."); *Jones v. St. Louis Parking Violations Bureau*, No. 4:06CV150 (HEA), 2006 U.S. Dist. LEXIS 30881, *7 n.3 (E.D. Mo. 2006) ("[T]owing and storage fees – because they are administrative costs – may not constitute part of the 'fine' (*i.e.*, an amount imposed as punishment for an offense) for purposes of the eighth amendment …"). To the extent that towing or storage occurs improperly, California law provides individuals a mechanism to challenge it and avoid the costs. *See* Cal. Veh. Code § 22852.

Here, both Ordinances make clear that before any vehicles can be towed, "signs shall be posted giving notice of the removal of vehicles parked in violation of this section." Only then can vehicles parked in violation of the Ordinances "be subject to removal from the public right-of-way at the registered owner's expense," and the owner "liable for the cost of all towing and storage fees." *See* RJN & El-Qoulaq Decl., Exs. A at 3 & B at 2; Compl., ¶ 55. As the Ordinances demonstrate, these costs represent the costs incurred to remove an illegally parked vehicle. Passing on those costs to the individual responsible for them is remedial in nature and not an excessive fine.

In an attempt to increase the costs they claim will be occasioned by towing an oversized vehicle that is parked in violation of the Ordinances, Plaintiffs assert that to recover towed vehicles they must remit payment on outstanding parking tickets, expired registrations and penalties, and make sure that the vehicle complies with smog requirements. Compl., ¶ 42. That may be true, but it does not save Plaintiffs' claim. As explained above, Plaintiffs can avail themselves of a mechanism to challenge parking ticket fines to take into account indigency status. Moreover, they do not assert that the expired registration penalties or smog certification requirements, which are reasonably necessary to ensure the safety of the public roadways and protect the environment, are either punitive or excessive.[4]

III. PLAINTIFFS HAVE FAILED TO STATE A CLAIM UNDER THE STATE-CREATED DANGER DOCTRINE (THIRD CAUSE OF ACTION)

Plaintiffs allege that the Ordinances will violate their substantive due process rights by placing them in state-created danger if their vehicles are towed or impounded. Compl., ¶¶ 75-77. The claim fails in ways that Plaintiffs cannot save through amendment.

A. Plaintiffs Have Not Alleged Facts Sufficient to State a Claim

The state-created danger doctrine is a narrow exception to the rule that the Fourteenth Amendment's Due Process Clause "typically 'does not impose a duty on [the state] to protect individuals from third parties.'" *Patel v. Kent Sch. Dist.,* 648 F.3d 965, 971-72 (9th Cir. 2011) (quoting *Morgan v. Gonzales,* 495 F.3d 1084, 1093 (9th Cir. 2007)). To state such a claim, a plaintiff must show: (1) that the government's affirmative actions created or exposed plaintiff "to an actual, particularized danger that she would not otherwise have faced;" (2) that she suffered a foreseeable injury; and (3) that the government was "deliberately indifferent to the known danger." *Martinez v. City of Clovis,* 943 F.3d 1260, 1271 (9th Cir. 2019).

Generalized allegations of the sort Plaintiffs make here do not meet this standard. At the outset, the allegations are clearly unripe because Plaintiffs are complaining about something – the towing and impoundment of their vehicles under dangerous circumstances – that *has not happened* and may never happen. The Complaint alleges only that the Ordinances "authorize[] the City to issue

[4] Nor do Plaintiffs allege that these requirements are imposed by the City, as opposed to the State.

parking citations to Plaintiffs, and to tow and impound their vehicles;" it concedes that these things have not happened to Plaintiffs, and it does not allege they have happened to anyone else. Compl., ¶ 8.

Furthermore, Plaintiffs should not be granted leave to amend because they cannot allege that *the City* is creating or exposing them to danger. As set forth above (pp. 4-5), Plaintiffs will have ample notice of where the parking restrictions apply, meaning that their vehicles will only be towed if they (1) cannot find any place to park in a Safe Parking spot or one of the alleged 54 streets where the Ordinances do not apply; *and/or* (2) choose to defy the law. In short, because Plaintiffs have opportunities to avoid towing, the City will not create the dangers Plaintiffs describe.

Nor can Plaintiffs plausibly allege the kind of "actual, particularized danger" that has been found to state a claim under the doctrine. *See, e.g., Kennedy v. Ridgefield City,* 439 F.3d 1055, 1057-58, 1063 (9th Cir. 2006) (doctrine applied where police officer notified suspect who was known to be violent that the plaintiff had accused him of child molestation without first warning the plaintiff); *Munger v. City of Glasgow Police Dep't*, 227 F.3d 1082, 1084-87 (9th Cir. 2000) (doctrine applied where intoxicated bar patron died of hypothermia after police ordered him to leave a bar on a bitterly cold night); *Wood v. Ostrander*, 879 F.2d 583 (9th Cir. 1989) (doctrine applied where police officer ejected a woman from vehicle in a high-crime neighborhood at 2:20 a.m.); *Schroeder v. San Diego Unified Sch. Dist*., No. 07cv1266-IEG(RBB), 2009 U.S. Dist. LEXIS 40422, at *40-42 (S.D. Cal. May 13, 2009) (doctrine applied where state actors placed student with history of discipline problems as a peer tutor in a class of students with severe mental disabilities). Here, Plaintiffs can only allege the kind of speculative, generalized dangers that they may confront if they find themselves unsheltered or if they feel they must leave Mountain View. Compl., ¶¶ 75-78. The City has already explained why either alternative is unlikely (pp. 4-6), but even if both alternatives were likely, they would still be too generalized to state a claim. After all, if such allegations did state a claim, then every eviction statute and ordinance in the United States might violate the due process clause.

Finally, Plaintiffs will inevitably fail to meet the deliberate indifference prong of the state-created danger test, which requires "a culpable state of mind." *L.W. v. Grubbs,* 92 F.3d 894, 899 (9th Cir. 1996). More specifically, the defendant must "know[] that something *is* going to happen but ignores the risk and exposes [the plaintiff] to it." *Patel,* 648 F.3d at 974 (citation omitted) (emphasis in

original). Plaintiffs cannot plausibly allege that the City *knows* that towing an oversized vehicle will inevitably expose individuals to danger. After all, there are many possible outcomes, including that the driver of such a vehicle may not live in the vehicle, or may have other places to shelter.

B. Plaintiffs Cannot Enlarge the State-Created Danger Doctrine to Apply Here

Plaintiffs ask this Court to break new ground in the law of substantive due process by applying the state-created danger doctrine as grounds to enjoin a statute that might result in constitutional violations to an entire class of plaintiffs. Yet this is not what the state-created danger doctrine is designed to do. The doctrine is meant to allow plaintiffs who can meet its stringent requirements to allege a cause of action *for damages* against state actors who have knowingly put them in danger with deliberate disregard for the consequences.

The City has not found any case in this circuit that has enjoined conduct in order to prevent the mere possibility that a government may implement a law in a way that creates a danger. Thus, Plaintiffs' theory would stretch this doctrine beyond all recognition, in direct contradiction of the Supreme Court's admonition that "the Court has always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended." *Collins v. City of Harker Heights,* 503 U.S. 115, 125 (1992).

Furthermore, the Ninth Circuit has already refused to apply the state-created danger doctrine to a group of individuals rather than to an individual. In *Bologna v. City & Cty. of S.F.*, No. C-09-2272 SI, 2009 U.S. Dist. LEXIS 69985 (N.D. Cal. Aug. 11, 2009), an undocumented immigrant shot and killed a father and son, apparently believing from their appearance that they belonged to a rival gang. The alleged killer had been held by city authorities for violent crimes, but officials did not notify immigration authorities when they released him. The victims' family sued, arguing that the city created a danger by failing to ensure immigration authorities could deport the defendant.

Judge Illston dismissed the claims, noting that "[p]laintiffs appear to argue that the class of people defendants placed in danger consisted of all black and Latino residents of San Francisco, as well as all people who appear to belong to those groups." *Id.* at *16. Citing the *Kennedy*, *Munger*, *Wood*, and *Schroeder* decisions referenced above (p. 12) she noted that the case law "demonstrate[s] that the state-created danger doctrine is implicated when a state actor creates a risk that is specific to an

individual or small group of individuals, rather than to the general public." *Id*. at *17. "[T]here is no authority for the proposition that the state-created danger doctrine can apply when the population of a city – or a subset consisting of racial or ethnic groups in that city and people who appear to belong to those groups – is placed at risk." *Id.* at *16.

The same is true here. Plaintiffs seek equitable relief based on speculation about how the Ordinances will be enforced against the entire putative class of plaintiffs that is allegedly "so numerous that joinder of its members is impracticable." Compl., ¶ 18. In Judge Illston's words, "[d]ue process claims simply do not stretch so far." *Bologna*, 2009 U.S. Dist. LEXIS 69985 at *18.

IV. PLAINTIFFS HAVE FAILED TO STATE A CLAIM FOR UNLAWFUL SEIZURE OF PROPERTY BY TOWING (FOURTH AND FIFTH CAUSES OF ACTION)

Plaintiffs allege that implementation of the Ordinances will violate their Fourth Amendment protections from unlawful seizure of property by towing. Compl., ¶¶ 81-82. They begin by asserting that "[t]he Ninth Circuit requires 'individualized notice' before vehicle towing, which is not satisfied by merely posting signage on a City street." *Id*., ¶ 82. Yet the cases Plaintiffs cite for these propositions do not support Plaintiffs' characterizations of them. Although both *Clement v. City of Glendale*, 518 F.3d 1090 (9th Cir. 2008) and *Grimm v. City of Portland*, 971 F.3d 1060 (9th Cir. 2020) confirm that individualized notice is generally required before a car can be towed, they also both confirm that cars can sometimes be towed without any notice at all, such as when the car is parked in the path of traffic or blocking a driveway. *Clement*, 518 F.3d at 1093-94; *Grimm*, 971 F.3d at 1063-64. In other words, the amount of notice provided depends on the circumstances. *Grimm*, 971 F.3d at 1068. Contrary to Plaintiffs' assertions, neither case even addresses the adequacy of notice provided through a posted sign. Rather, the Ninth Circuit in *Clement* explains "[w]e do not prescribe a particular procedure for giving notice; it is up to the government to develop a policy that will result in sufficient notice being given to car owners before impoundment." 518 F.3d at 1095 n.9.

Here, the City of Mountain View relied on state law to establish the minimum amount of notice required. California Vehicle Code section 22651(n) provides that a police officer may tow a vehicle "[w]henever a vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles" as long as "signs are

posted giving notice of the removal." In compliance with this statute, the City has by ordinance prohibited parking by oversized vehicles on certain streets; it has authorized the removal of vehicles violating this prohibition; and it has mandated that signs be posted "giving adequate notice of the restriction" before the prohibitions may be enforced. RJN & El-Qoulaq Decl., Exs. A at 2-3 & B at 2. Plaintiffs' Complaint confirms that the City's signs provide drivers with notice that their vehicles may be towed if they violate the prohibition. The signs display an image of a tow truck towing a car, and provide a number to call "FOR TOWED VEHICLES." Compl., ¶ 54. As noted above (pp. 4-5), the City plans to post at least two signs per block on every street where these Ordinances apply. RJN & El-Qoulaq Decl., Ex. H at 5. Accordingly, Plaintiffs will have the amount of notice required by state and municipal law before their cars will be subject to towing. If more notice is required, the City is providing it through various methods, including mailed notices, notices on windshields, and website notice. *See* p. 5.

Plaintiffs next concede that cars can be towed if the circumstances satisfy the community caretaking doctrine, which permits officers to impound vehicles that "jeopardize public safety and the efficient movement of vehicular traffic." *Miranda v. City of Cornelius*, 429 F.3d 858, 864 (9th Cir. 2005) (citation omitted).[5] Whether a vehicle can be towed pursuant to this doctrine will depend on the circumstances. The government may "seize and remove any vehicle which may impede traffic, threaten public safety, or be subject to vandalism." *Id*. (quoting *United States v. Jensen*, 425 F.3d 698, 706 (9th Cir. 2005)). Thus, as long as the City impounds an oversized vehicle that is parked on a prohibited street in a way that impedes traffic or threatens public safety, the impoundment will satisfy the doctrine.

It is therefore not surprising that Plaintiffs do not take the position that a lawful impoundment under the Ordinances could never take place. They instead just make the rather obvious – and irrelevant – point that it cannot happen *if* Plaintiffs refrain from doing things like blocking traffic

[5] Federal and state courts employ essentially the same standard when analyzing the community caretaking doctrine to challenges under the Fourth Amendment and California Vehicle Code section 22650. *See People v. Williams*, 145 Cal. App. 4th 756, 761-62 (2006).

or obstructing bike lanes. Compl., ¶ 83. The relevant point is that if Plaintiffs *do* block traffic or obstruct bike lanes with their oversized vehicles, impoundment may very well be lawful.

Finally, Plaintiffs assert that the Ordinances cannot justify towing because "the City did not analyze any street to determine whether parking an oversized vehicle would be a public safety concern," and because the City Council just assumed without analysis that oversized vehicles on the applicable streets would create a safety concern. Compl., ¶ 84. Both assertions have been rebutted by judicially noticeable facts,[6] but even if they were true, it would not matter. The community caretaking doctrine does not demand an inquiry into the adequacy of the legislative process leading up to the law in question. It just demands an evaluation of the facts on the ground. *See Miranda*, 429 F.3d at 864. If an oversized vehicle is parked in a bike lane, and bicyclists are forced to swerve into a traffic lane to pass the oversized vehicle, public safety may well be at risk, regardless of whether the City Council considered data that conclusively proved that possibility before it passed the Ordinances in 2019.

V. PLAINTIFFS HAVE FAILED TO STATE A CLAIM FOR VIOLATIONS OF THE RIGHT TO PRIVACY (SIXTH CAUSE OF ACTION)

Plaintiffs allege that the Ordinances violate Plaintiffs' privacy rights under article I, section 1 of the California Constitution, which identifies the right to privacy as an inalienable right. Compl., ¶ 93. The California Supreme Court has held that a plaintiff alleging a violation of the right to privacy under the California Constitution must establish each of the following:

> First, he must possess a legally protected privacy interest. These interests include "conducting personal activities without observation, intrusion, or interference", as determined by "established social norms" derived from such sources as the "common law" and "statutory enactment". Second, the plaintiff's expectations of privacy must be reasonable. This element rests on an examination of "customs, practices, and physical settings surrounding particular activities", as well as the opportunity to be notified in advance and consent to the intrusion. Third, the plaintiff must show that the intrusion is so serious in "nature, scope, and actual or potential impact [as] to constitute an egregious breach of the social norms."
>
> *Hernandez v. Hillsides, Inc.,* 47 Cal.4th 272, 287 (2009) (citations omitted).

[6] *See* p. 4.

Plaintiffs' broad, conclusory statements that the Ordinances threaten their homes, their families, and their emotions do not meet these elements. For example, "established social norms" do not give people the right to park their vehicles anywhere they choose, and it is not reasonable to have an expectation of privacy in those vehicles if they do. Instead, the "customs, practices, and physical settings" surrounding that particular activity – not to mention the street signage – make clear to anyone that they do not have a reasonable expectation of privacy in a vehicle parked in a prohibited parking spot. As a result, Plaintiffs cannot possibly show "that the intrusion is so serious in 'nature, scope, and actual or potential impact [as] to constitute an egregious breach of the social norms." *Id.* This flaw alone dooms Plaintiffs' claim.

Alternatively, the invasion of a privacy interest "is not a violation of the state constitutional right to privacy if the invasion is justified by a competing interest. Legitimate interests derive from the legally authorized and socially beneficial activities of government and private entities." *Hill v. Nat'l Collegiate Athletic Ass'n*, 7 Cal. 4th 1, 38 (1994). More specifically, when "the challenged action primarily concerns health and safety, no fundamental right to privacy is at stake." *Coshow v. City of Escondido*, 132 Cal. App. 4th 687, 711 (2005); *Wilson v. Cal. Health Facilities Com.*, 110 Cal. App. 3d 317, 322 (1980); *see also People v. B & I News, Inc.*, 164 Cal. App. 3d Supp. 1, 9 (1984) (the privacy protection of the California Constitution does not prevent the government "in the exercise of its police power [from] protect[ing] public health and safety by regulating the time, place, and manner of specified conduct."). Here, the City has exercised its police powers to promote traffic safety by restricting oversized vehicle parking. Plaintiffs' ill-defined privacy interests do not trump these safety concerns, particularly when they can avoid any risk of towing by refraining from parking on well-marked restricted streets.

VI. PLAINTIFFS HAVE FAILED TO STATE A RIGHT TO TRAVEL CLAIM (SEVENTH AND EIGHTH CAUSES OF ACTION)

Plaintiffs allege that because the Ordinances restrict their ability to park anywhere they choose, the City has denied them their fundamental right to travel. Plaintiffs are mistaken.

A. The Ordinances Do Not Implicate the Right to Travel

A law implicates the right to travel when (1) the law actually deters such travel; (2) when impeding travel is the law's primary objective; or (3) when the law uses any classification which serves to penalize the exercise of that right. *Attorney Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 903 (1986) (citations omitted); *Sanchez v. City of Fresno*, 914 F. Supp. 2d 1079, 1111 (E.D. Cal. 2012) (dismissing without leave to amend plaintiff's right to travel claim based on city's sweep of homeless encampment); *accord Tobe v. City of Santa Ana*, 9 Cal. 4th 1069 (1995). Caselaw demonstrates that only direct, serious burdens on the right to travel raise constitutional concerns, such as restrictions that prohibit a person's physical movement, like a curfew (*e.g.*, *Nunez by Nunez v. San Diego*, 114 F.3d 935 (1997)), or discrimination against newcomers by denying them benefits, like public assistance payments (*Shapiro v. Thompson*, 394 U.S. 618 (1969)), medical services (*Mem'l Hosp. v. Maricopa Cty.*, 415 U.S. 250 (1974)), or the right to vote (*Dunn v. Blumstein*, 405 U.S. 330 (1972)).

The right does not extend so far as to guarantee anyone the "right to live or stay where one will," and nondiscriminatory ordinances that have incidental or indirect burdens on travel, such as parking or camping restrictions, do not raise constitutional right to travel concerns. *See Nishi v. Cty. of Marin*, No. C11-0438 PJH, 2012 U.S. Dist. LEXIS 21591, at *11-13 (N.D. Cal. Feb. 21, 2012); *Potter v. City of Lacey*, No. 3:20-5925 RJB, 2021 U.S. Dist. LEXIS 23954, at *17 (W.D. Wash. Feb. 5, 2021) (right to travel "inapplicable" to recreational vehicle parking ordinance). Pursuant to their police powers, cities have the right to regulate their roads. *See Mackey v. Montrym*, 443 U.S. 1, 17, 19 (1979) (holding a state's interest in public safety includes a "paramount interest . . . in preserving the safety of its public highways"); *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates*, 583 F.3d 716, 722 n.3 (9th Cir. 2009) (similar).

Accordingly, courts in the Ninth Circuit have made clear that the right is not implicated in cases like this, when unhoused persons are required to move to an alternative location. *See Aitken v. City of Aberdeen*, 393 F. Supp. 3d 1075, 1084 (W.D. Wash. 2019); *Roulette v. City of Seattle*, 850 F. Supp. 1442, 1448 (W.D. Wash. 1994), *aff'd*, 78 F.3d 1425 (9th Cir. 1996) (similar); *Veterans for Peace Greater Seattle v. City of Seattle*, No. C09-1032 RSM, 2009 U.S. Dist. LEXIS 77040, at *11 (W.D. Wash. July 24, 2009) (right to travel not directly implicated when individuals seek "to remain at a certain place"); *Davison v. City of Tucson*, 924 F. Supp. 989, 994

(D. Ariz. 1996) (right to travel not implicated where indigent person sought only to remain in prohibited location); *Joyce v. City & Cty. of S.F.*, 846 F. Supp. 843 (N.D. Cal. 1994) (rejecting challenge to ordinances prohibiting camping in public parks or obstructing sidewalks); *accord Tobe v. City of Santa Ana*, 9 Cal. 4th 1069 (1995) (anti-camping ordinance not violative of constitutional right to travel despite incidentally burdening individuals who could not obtain other accommodations); *Allen v. City of Sacramento*, 234 Cal. App. 4th 41 (2015) (same). Such laws are subjected to rational basis review: they are presumed valid, and plaintiff must show that no rational basis supports them. *See Joyce*, 846 F. Supp. at 860-61; *Tobe*, 9 Cal. 4th at 1100-01.

B. Plaintiffs Have Failed to Allege Sufficient Facts to Support their Right to Travel Claims

Plaintiffs cannot allege facts to support a right to travel claim against the Ordinances, and what facts they do allege are disproven by the Ordinances themselves and by their own allegations. First, the Ordinances do not forbid any person's travel, nor do they deprive any person of government services. They simply regulate where oversized vehicles may park and therefore do not implicate the right to travel. Moreover, because limiting oversized vehicle parking on narrow streets and roads with bike lanes is rationally related to the Ordinances' stated purpose of improving traffic safety, the Ordinances satisfy rational basis review. Even if the Ordinances are subjected to strict scrutiny, as Plaintiffs urge (Compl., ¶¶ 96, 97, 99, 100), they satisfy that standard. In *Veterans for Peace*, the court observed that an ordinance restricting camping could survive strict scrutiny because the City's interest in protecting public health and safety was compelling. 2009 U.S. Dist. LEXIS 77040, at *12-14. And as counsel for Plaintiffs argued just five months ago before Judge Chhabria in *Geary v. City of Pacifica*, No. 3:21-cv-01780-VC (N.D. Cal.) when seeking to enjoin the City of Pacifica's oversized vehicle ordinance, an ordinance restricting parking is narrowly tailored to address the compelling interest of traffic safety concerns by "restrict[ing oversized vehicle] parking only where safety [is] obviously implicated, or creat[ing] a safe parking program for those who are vehicularly housed." RJN & El-Qoulaq Decl., Ex. S at 18. In this case, Mountain View has done both.

Plaintiffs summarily assert that the Ordinances create an "effective ban," "target" them, and "seek[] to banish them" due to their socioeconomic status. Compl., ¶ 97. But the court need not

accept as true "allegations contradicted by judicially noticeable facts," *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000), and here, the record is replete with facts that prove Plaintiffs' allegations are untrue.

First, the Ordinances do not treat plaintiffs or their proposed class any differently than any other person. The Ordinances apply to all oversized vehicles, whether used for recreation or habitation by residents or non-residents alike, and simply regulate where oversized vehicles may park. RJN & El-Qoulaq Decl., Exs. A & B. Next, Plaintiffs' own allegations make clear that the City has *not* sought to banish them, but has instead endeavored to assist its unhoused residents by building hundreds of housing units for low-income and very low-income residents, Compl., ¶ 37, and by creating the Safe Parking program, which provides 101 Safe Parking spaces to oversized vehicles (67 spots) and passenger vehicles (34 spots), and operates at five different locations. Compl., ¶ 58; *see also* RJN & El-Qoulaq Decl., Ex. E at 2-3. Even if it is true, as Plaintiffs allege, that there are 191 oversized vehicles used for habitation in Mountain View (Compl., ¶ 39), they concede that the City provides parking for approximately one-third of them, including the oversized vehicle owned by Plaintiff Navarro. *Id.*, ¶¶ 58, 59.

Plaintiffs also effectively admit that there will continue to be street parking space for the remaining oversized vehicles because even after the Ordinances are fully implemented, 11% of the City's streets will be exempt from these parking restrictions, which equals approximately 54 public streets. Compl., ¶ 51. These available streets are identified on maps that inform the public where oversized vehicles may legally park. RJN & El-Qoulaq Decl., Exs. N & O. Although plaintiffs assert that many of these streets are unavailable to them because posted signs restrict or prohibit parking, they admit that other streets are available for oversized vehicles parking. Compl., ¶ 51. Nowhere do they allege that any oversized vehicles resident will be unable to find a legal parking spot in Mountain View once the Ordinances are fully implemented – either on exempt streets or in Safe Parking lots.

Ultimately, plaintiffs' right to travel claim reduces to an assertion that the Constitution entitles them to a "dwelling in the place of their choosing." Compl., ¶ 97. Courts have been clear that is not the law. Plaintiffs' right to travel claim fails.

VII. PLAINTIFFS HAVE FAILED TO STATE A CLAIM FOR DISABILITY DISCRIMINATION (NINTH - TWELFTH CAUSES OF ACTION)

A. Plaintiffs' Americans With Disabilities Act Claim Fails (Ninth Cause of Action)

Title II of the Americans with Disabilities Act ("ADA"), which applies to state and local governments, provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132 (2019). If a local government subjects a person with disabilities to such discrimination, it must make "reasonable modifications" that are "necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7)(i) (revised Aug. 11, 2016). Here, Plaintiffs claim that the Ordinances are "facially neutral policies that burden people with disabilities more than non-disabled people" because people with disabilities are disproportionately represented among the unhoused population. Compl., ¶¶ 60-61, 107. The Ordinances therefore have the alleged effect of denying people with disabilities the benefits of being able to indefinitely locate their residences in parking spaces on public streets. *See id*., ¶¶ 105, 107, 111. According to Plaintiffs, this means the City must therefore exempt them from the Ordinances or provide them with priority access to the City's Safe Parking program. *Id.*, Prayer for Relief, ¶ 4.

As a threshold matter, even if the Ordinances constituted discrimination under the ADA (they do not, as explained immediately below), Plaintiffs fail to mention that the City has already provided modifications for many individuals with disabilities. Both Ordinances exempt wheelchair accessible vehicles with valid disabled placards or license plates. RJN & El-Qoulaq Decl., Exs. A at 2 & B at 2. The Ordinances therefore ensure that those with qualifying mobility issues need not park further from their homes or destinations than they did before the Ordinances were enacted. Thus, Plaintiffs' claims fail with respect to all individuals who already qualify for an exemption.[7]

With respect to other individuals with disabilities who do not qualify for the exemption,

[7] Plaintiffs largely claim to have other kinds of disabilities. Although Plaintiff Alma Adaco alleges that she has mobility issues, she does not address whether she qualifies for the exemptions under the Ordinances. Compl., ¶ 14.

no modifications are necessary because Plaintiffs effectively concede that they will be able to find other places to park in the City after the Ordinances are fully implemented. *See* pp. 5-6. Thus, even if the Ordinances do implicate the ADA by infringing on Plaintiffs' ability to indefinitely locate their residences in some of the parking spaces on public streets, the City already offers reasonable accommodations through the availability of other streets or Safe Parking spots to park their residences.

In any event, reasonable modifications are not necessary here because Plaintiffs cannot state a claim under Title II of the ADA. To do so, plaintiff must show "(1) the plaintiff is an individual with a disability; (2) the plaintiff is otherwise qualified to participate in or receive the benefit of some public entity's services, programs, or activities; (3) the plaintiff was either excluded from participation in or denied the benefits of the public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and (4) such exclusion, denial of benefits, or discrimination was by reason of the plaintiff's disability." *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002). While the City assumes the truth of Plaintiffs' allegations with respect to the first element (Compl., ¶¶ 10, 11, 14), Plaintiffs stumble on the last two elements.

First, Plaintiffs assert that "[u]nder the ADA, a 'program, service, or activity' includes within its scope 'anything a public entity does.'" Compl., ¶ 105 (quoting *Cohen v. City of Culver City*, 754 F.3d 690, 694-95 (9th Cir. 2014)). This may be the case, but it does not help Plaintiffs. While it is true that one of the "things" Mountain View "does" is to provide streets as public rights of way, Mountain View does *not* provide streets as locations for private housing. Although some residents now use the City's streets for their own residential purposes, their use of streets in that manner does not transform the City's streets into a housing "program, service, or activity" as contemplated by the ADA. Put differently, the ADA applies to "anything *a public entity* does"; it does not obligate the City to accommodate everything *private citizens* may do on its property. After all, it would be absurd to suggest the City has a "graffiti program" just because local teens spray painted messages on its public buildings, or that it has an "outdoor music program" just because street musicians play their instruments outside transit hubs during rush hour. *See Bassilios v. City of Torrance*, 166 F. Supp. 3d 1061, 1073-74 (C.D. Cal. 2015) (suggesting that the ADA would not apply to a vacant lot owned by the city just because the city "acquiesce[s] to some uninvited and unregulated public use.").

Plaintiffs try to avoid this analysis by framing the "program, service, or activity" at issue here differently. Rather than grappling with the fact that their claims address private housing on public streets, they ask the Court to consider the City's policies relating to oversized vehicles (Compl., ¶ 106) and parking more broadly. *Id.*, ¶ 111. Yet even if the Court accepts this reframing, it would not save Plaintiffs' claim. The ADA only requires local governments to administer their programs in ways that do not discriminate against people with disabilities. While this mandate sometimes requires local governments to modify their practices to ensure those with disabilities can enjoy the *same* benefits as those without disabilities, it does not require local governments to offer services to those with disabilities that it does not offer to those without. *See Thompson*, 295 F.3d at 895 (ADA prohibits a denial of benefits or discrimination that is done "by reason of the plaintiff's disability."). And here, the City makes the benefits of parking oversized vehicles on city streets equally available to individuals with disabilities and individuals without disabilities.

For example, in *Bassilios*, although the City of Torrance's municipal code authorized the designation of parking spaces for the exclusive use of people with disabilities, the city refused to designate a spot for plaintiff in front of her residence. 166 F. Supp. 3d at 1066. The court found that this violated the plaintiff's rights under the ADA because it prevented her from enjoying benefits extended to all non-disabled residents. As the court phrased it, "Plaintiff is only seeking meaningful access to a benefit available to all other members of the public: on-street parking." *Id*. at 1078-79.

Courts respond differently, however, when the plaintiff is seeking parking opportunities that are not available to others. In *Jones v. City of Monroe*, 341 F.3d 474 (6th Cir. 2003), the city offered everyone free downtown all-day parking at specific locations, and free one-hour limited spots at a parking garage located closer to plaintiff's workplace. Plaintiff sued, seeking all-day access to one of the one-hour limited spots, arguing that she was "not able to walk" to the more distant all-day parking spots due to her disability. *Id*. at 475. The court ruled against the plaintiff on the ground that the program offered by the city – free all-day "downtown parking at specific locations"– was offered to everyone equally, regardless of disability. The ADA did not require the city to offer an individual with disabilities something different – free all-day parking at a different location where everyone else was limited to one-hour parking. *Id*. at 478-79; *see also Kornblau v. Dade County*, 86 F.3d 193, 194

(11th Cir. 1996) (where county offers disabled parking spaces in public parking lots, ADA does not require county to provide a plaintiff with disabilities a disabled parking spot in a closer private lot; ADA does not "give disabled parkers access to areas that would not be available to them if they were not disabled.").

Here, Plaintiffs' claims are like the plaintiff's claim in *Jones* and *Kornblau*, not *Bassilios*. They ask the Court to grant them something that would not be available to them if they did not have disabilities – the ability to park their oversized vehicles on narrow streets and streets with bike lanes. The ADA does not reach that far.

B. Plaintiffs' Remaining Disability Claims Fail With Their ADA Claim (Tenth – Twelfth Causes of Action)

Plaintiffs' other disability discrimination claims, which largely rely on the same allegations as their ADA claim (¶¶ 118-133), also fail. The elements of a Title II program-accessibility ADA claim are largely coextensive with a Section 504 Rehabilitation Act claim (Tenth Cause of Action), except that Title II applies to public entities, and Section 504 applies to any entity that receives federal financial assistance. *Zukle v. Regents of Univ. of Cal.*, 166 F.3d 1041, 1045 (9th Cir. 1999); *Bassilios*, 166 F. Supp. 3d at 1069. Likewise, the California Disabled Persons Act (Eleventh Cause of Action) is coextensive with the ADA. Cal. Civ. Code §54(c) ("A violation of the right of an individual under the [ADA] also constitutes a violation of this section."). Finally, compliance with the ADA generally means compliance with California Government Code section 11135 (Twelfth Cause of Action). Cal. Gov. Code § 11135(b) ("[P]rograms and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132 (2019)) . . . except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.").

CONCLUSION

At issue here are two valid Ordinances passed by the City Council and the City's voters to improve traffic safety. For all the reasons stated above, Plaintiffs have failed to state a single claim against these Ordinances. Their case should be dismissed in its entirety without leave to amend.

Dated: August 16, 2021

Respectfully submitted,

OLSON REMCHO LLP

By: /S/ Margaret R. Prinzing
Margaret R. Prinzing

Attorneys for Defendant City of Mountain View

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