

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 23-8152 PA (RAOx)	Date	April 26, 2024
Title	1210 Cacique Street, LLC v. City of Santa Barbara, et al.		

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

Kamilla Sali-Suleyman

Not Reported

N/A

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None

None

**Proceedings:** IN CHAMBERS – COURT ORDER

Before the Court is a Motion to Dismiss First Amended Complaint (“Motion”), filed by defendant City of Santa Barbara (“Defendant” or “the City”) pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. (Docket No. 40.) The Motion is fully briefed. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for April 29, 2024, is vacated, and the matter taken off calendar.

**I. Background**

Plaintiff 1210 Cacique Street, LLC (“Plaintiff”) purchased Flamingo Mobilehome Park (the “Park”) in Santa Barbara, California in 2018. On October 6, 2021, the City adopted Ordinance Number 6028 (“Ordinance 6028” or the “Rent Ordinance”). Among other things, the Rent Ordinance amended Chapter 26.08 of the Santa Barbara Municipal Code (titled “Mobilehome and Recreational Vehicle Park Lease Regulations”) to read as follows:

If a space is voluntarily vacated by all the existing tenants as a result of a transfer of legal ownership of the mobilehome or recreational vehicle, and it is not removed from the space, then the rent may be increased by no more than 10%. A park owner may increase space rent in any amount when a mobilehome is abandoned in-place . . . .

Santa Barbara Municipal Code (“S.B.M.C.”) § 26.08.060. Plaintiff alleges that this provision of the Rent Ordinance (the “vacancy control provision”) “significantly diminishes the value of the Park over time.” (Docket No. 37 ¶ 2.)

The original Complaint alleged ten claims against Defendant, including a claim for violation of the Fifth Amendment’s Takings Clause pursuant to 42 U.S.C. § 1983 (“Takings

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Clause claim” or “first claim”), and a claim for “declaratory relief as to [the] invalidity” of the Rent Ordinance (“declaratory relief claim” or “second claim”). (Docket No. 1 at pp. 29, 35.) Defendant moved to dismiss the first and second claims, and the Court granted Defendant’s motion, as well as granted Plaintiff leave to amend those claims. (Docket No. 35.) Plaintiff filed the operative, First Amended Complaint (“FAC”) on March 15, 2024, alleging the same claims as those alleged in the original Complaint. (Docket No. 37.) In the first claim, the FAC alleges that the Rent Ordinance constitutes a physical taking, facially and as applied, and alleges that the Rent Ordinance constitutes a regulatory taking, as applied. And in the second claim, Plaintiff seeks a “declaration that the Rent Ordinance [is] invalid and unenforceable as to Plaintiff and the Park, because it constitutes a taking of Plaintiff’s property . . . .” (Id. ¶ 117.)

Now, Defendant again moves to dismiss Plaintiff’s first and second claims for failure to state a claim, and for lack of subject matter jurisdiction on the grounds that Plaintiff’s as-applied takings challenge is not ripe.

## II. Requests for Judicial Notice

Defendant requests that the Court take judicial notice of the following: (1) Ordinance 6028; (2) sections of the Santa Barbara Municipal Code; and (3) sections of the City of Goleta Municipal Code and Santa Barbara County Code. (Docket No. 40-1.) Plaintiff does not object to Defendant’s request. Municipal ordinances and sections of municipal code are both proper subjects for judicial notice. See Tollis, Inc. v. Cnty. of San Diego, 505 F.3d 935, 938 n.1 (9th Cir. 2007); Apartment Ass’n of Greater Los Angeles v. City of Beverly Hills, No. CV 18-6840 PSG (EX), 2019 WL 1930136, at \*2 (C.D. Cal. Apr. 17, 2019). Accordingly, the Court grants Defendant’s requests that the Court take judicial notice of Ordinance 6028 and sections of the Santa Barbara Municipal Code. The Court does not rely on any of the other documents that are the subject of Defendant’s requests for judicial notice in reaching its decision. Therefore, the Court denies those requests as moot.

## III. Legal Standard

### A. Rule 12(b)(6)

For purposes of a motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6), plaintiffs in federal court are generally required to give only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). While the Federal Rules allow a court to dismiss a cause of action for “failure to state a claim upon which relief can be granted,” they also require all pleadings to be “construed so as to do justice.”

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Fed. R. Civ. P. 12(b)(6), 8(e). The purpose of Rule 8(a)(2) is to “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed. 2d 929 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)).

However, in Twombly, the Supreme Court rejected the notion that “a wholly conclusory statement of a claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery.” Twombly, 550 U.S. at 561 (internal quotation omitted). Instead, the Court adopted a “plausibility standard,” in which the complaint must “raise a reasonable expectation that discovery will reveal evidence of [the alleged infraction].” Id. at 556. For a complaint to meet this standard, the “[f]actual allegations must be enough to raise a right to relief above the speculative level.” Id. at 555 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, pp. 235–36 (3d ed. 2004) (“[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action”) (alteration in original)); Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) (“All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.”) (quoting Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)). “[A] plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Twombly, 550 U.S. at 555 (internal quotations omitted). In construing the Twombly standard, the Supreme Court has advised that “a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” Ashcroft v. Iqbal, 556 U.S. 662, 679, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).

**B. Rule 12(b)(1)**

Under Rule 12(b)(1), a complaint may be dismissed for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). “Federal courts are courts of limited jurisdiction” and “[i]t is presumed that a cause lies outside this limited jurisdiction,” unless otherwise shown. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994). Plaintiff, as the party seeking to invoke jurisdiction, has the burden of establishing that jurisdiction exists. Id.

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Because ripeness “pertain[s] to federal courts’ subject matter jurisdiction” it is “properly raised in a Rule 12(b)(1) motion to dismiss.” Chandler v. State Farm Mut. Auto. Ins. Co., 598 F.3d 1115, 1122 (9th Cir. 2010). The Ninth Circuit has recognized that “in many cases, ripeness coincides squarely with standing’s injury in fact prong.” Thomas v. Anchorage Equal Rts. Comm’n, 220 F.3d 1134, 1138 (9th Cir. 2000); see also Friends of the Earth, Inc. v. Laidlaw Env’tl Svcs. (TOC), Inc., 528 U.S. 167, 180–81, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (explaining that to satisfy Article III’s “injury in fact” requirement, a plaintiff must show that the injury is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical”) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). “A dispute is ripe in the constitutional sense if it ‘present[s] concrete legal issues, presented in actual cases, not abstractions.’” Montana Env’tl Info. Ctr. v. Stone-Manning, 766 F.3d 1184, 1188 (9th Cir. 2014) (quoting Colwell v. HHS, 558 F.3d 1112, 1123 (9th Cir. 2009)).

#### IV. Analysis

As an initial matter, the Court notes that the FAC contains largely the same allegations as those in the original Complaint, and the parties raise largely the same arguments that they raised in support of, or in opposition to, Defendant’s first Motion to Dismiss. Here, the Court again finds that Plaintiff fails to state its Takings Clause and declaratory relief claims for many of the same reasons as those articulated in the Court’s March 1, 2024 Minute Order granting Defendant’s first Motion to Dismiss (“March 1 Order”). (Docket No. 35.) Rather than repeat the Court’s prior descriptions of ripeness and physical and regulatory takings, the Court herein incorporates the descriptions as they appear in its March 1 Order. (See id. at pp. 5–10.)

##### A. Physical Taking

For the same reasons as those stated in the Court’s March 1 Order, the Court again finds that Plaintiff has failed to, and cannot, allege a physical takings challenge given the Supreme Court’s ruling in Yee v. City of Escondido, 503 U.S. 519, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992). See id. at 532 (holding that a mobile home rent control ordinance “is a regulation of petitioners’ use of their property,” not “an unwanted physical occupation of [the] property,” and “thus does not amount to a per se taking”). Although the Supreme Court in Yee found no physical taking in a mobilehome rent control ordinance, it noted that “[a] different case would be presented were the statute, on its face or as applied, to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy.” 503 U.S. at 528. This is not the “different case” contemplated by Yee. The Santa Barbara Municipal Code does not “compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy” (id.) because a mobilehome park landlord can terminate a tenancy for various reasons,

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or close or convert a park to another use by obtaining a permit from the City. See S.B.M.C. §§ 26.08.040(A) & 30.185.290.

**B. Regulatory Taking**

**1. Ripeness**

Defendant again contends that Plaintiff’s as-applied, regulatory takings challenge is not ripe because Plaintiff has not applied for a rent increase. And, for a second time, Defendant fails to point to any section of the Santa Barbara Municipal Code that permits Plaintiff to submit an application to the City for a rent increase. Rather, Defendant cites to the same sections of the Santa Barbara Municipal Code that it cited in its first Motion to Dismiss: (1) section 26.08.050(A), which permits a mobilehome park landlord and tenant to agree to “modify or waive” the mandatory 10% cap on rent increases upon transfer of mobilehome ownership; and (2) section 26.08.040(D), which provides that, if a landlord and tenant cannot agree on the issue of a rent increase, either party may request arbitration. S.B.M.C. §§ 26.08.040 & 26.08.050. However, these provisions of the code do not establish a means for Plaintiff to apply to the City for a rent increase; rather, they merely outline a dispute resolution mechanism for when the landlord and tenant cannot agree on a rent increase. Cf. DiVittorio v. City of Santa Clara, No. 21-CV-03501-BLF, 2022 WL 409699, at \*5–7 (N.D. Cal. Feb. 10, 2022) (finding as-applied takings claim unripe where plaintiffs failed to complete the requisite application to build their proposed RV park); Hoffman Bros. Harvesting, Inc. v. Cnty. of San Joaquin, No. 2:20-CV-00660-TLN-AC, 2021 WL 4429465, at \*5 (E.D. Cal. Sept. 27, 2021) (finding as-applied takings claim unripe where plaintiffs did not allege that they sought variances or exemptions to a zoning change despite the fact that the county provided “several avenues” for plaintiffs to seek such a variance or exemption). Accordingly, on this record, the Court cannot conclude that Plaintiff’s as-applied regulatory takings challenge is unripe. Assuming, without deciding, that the as-applied challenge is ripe, the Court nonetheless concludes that Plaintiff has failed to plausibly allege a regulatory takings challenge for the reasons stated below.

**2. Penn Central Factors**

In Penn Central Transportation Co. v. City of New York, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978), the Supreme Court set forth three factors for determining whether government action constitutes a regulatory taking: (1) “[t]he economic impact of the regulation on the claimant,” (2) “the extent to which the regulation has interfered with distinct investment-backed expectations,” and (3) “the character of the governmental action.” Id. at 124; see Bridge Aina Le’a, LLC v. Land Use Comm’n, 950 F.3d 610, 630 (9th Cir. 2020) (“The first and second Penn Central factors are the primary factors.”). “Applying these factors, the

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Supreme Court and the Ninth Circuit have consistently held that rent control provisions and other restrictions on landlord-tenant relationships are not regulatory takings.” Better Hous. for Long Beach v. Newsom, 452 F. Supp. 3d 921, 928–29 (C.D. Cal. 2020) (citing cases), aff’d, No. 20-55373, 2022 WL 2287436 (9th Cir. June 24, 2022). For the reasons stated below, the Court finds that Plaintiff, again, fails to plausibly allege that any of the Penn Central factors weigh in Plaintiff’s favor.

In applying the first Penn Central factor, courts “compare the value that has been taken from the property with the value that remains in the property.” Colony Cove Props., LLC v. City of Carson, 888 F.3d 445, 450 (9th Cir. 2018) (internal quotations omitted). The Ninth Circuit has explained that “[a]lthough there is no litmus test . . . our value comparison again aims to identify regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owners from his domain.” Bridge Aina Le’a, LLC, 950 F.3d at 630–31 (internal quotations and citation omitted). “Supreme Court cases ‘have long established that mere diminution in the value of property, however serious, is insufficient to demonstrate a taking.’” Rancho de Calistoga v. City of Calistoga, 800 F.3d 1083, 1090 (9th Cir. 2015) (quoting Concrete Pipe & Products of California, Inc. v. Constr. Laborers Pension Trust for S. California, 508 U.S. 602, 645, 113 S.Ct. 2264, 124 L.Ed.2d 539 (1993)).

Here, the FAC alleges that “the impact of the enactment of the vacancy control provision in the Rent Ordinance will lead to a nearly seven million dollar (\$7,000,000.00) decline in value of the Park, representing a ninety-two and one half percent (92.5%) decrease of the value of Plaintiff’s purchase of the Park.” (Docket No. 37 ¶ 101.) Not only does the FAC fail to allege sufficient facts to establish the basis for this alleged diminution in value, a 92.5% decrease in value has been found insufficient to establish a taking.<sup>1/</sup> See Pakdel v. City & Cnty. of San Francisco, 636 F. Supp. 3d 1065, 1075 (N.D. Cal. 2022) (finding that plaintiff had not sufficiently pled the first Penn Central factor where plaintiff alleged a diminution in the property’s value of \$500,000, and explaining that “the FAC does not include any facts to establish the basis for this averred diminution in value”); Colony Cove, 888 F.3d at 451 (“[W]e have observed that diminution in property value because of governmental regulation ranging from 75% to 92.5% does not constitute a taking.”). Accordingly, Plaintiff has not plausibly alleged that the first Penn Central factor weighs in its favor.

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<sup>1/</sup> For example, the FAC does not allege the estimated turnover rate of mobilehome ownership in the Park. Nor does the FAC state, or allege the basis for, the amounts by which Plaintiff would be able to increase rent absent the Rent Ordinance.

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As to the second Penn Central factor, “a purported distinct investment-backed expectation must be objectively reasonable” in order “to form the basis for a taking claim.” Colony Cove, 888 F.3d at 452. “[W]hat is relevant and important in judging reasonable expectations is the regulatory environment at the time of the acquisition of the property.” Bridge Aina Le’a, LLC, 950 F.3d at 634 (internal quotations and citation omitted); see Pakdel, 636 F. Supp. 3d at 1076 (“[T]his factor must consider the extent to which the challenged regulation departs from or extends beyond past or conceivable future regulatory developments.”). “[T]hose who buy into a regulated field such as the mobile home park industry cannot object when regulation is later imposed.” Rancho de Calistoga, 800 F.3d at 1091. The expectation that a “property will be continually unencumbered by government regulation” is unreasonable. Id. at 1090; see also id. at 1091 (“Simply put, when buying a piece of property, one cannot reasonably expect that property to be free of government regulation such as zoning, tax assessments, or, as here, rent control.”).

Here, the FAC alleges that “Plaintiff had a reasonable investment-backed expectation when it purchased the Park in 2018 that the City would not re-enact the same vacancy control rent control provision that this Court in 1989 and the Ninth Circuit in 1986 had ruled constituted an unconstitutional taking of park owner’s property in violation of the Fifth Amendment of the United States Constitution, at which time the City rescinded the vacancy control provision of its Rent Ordinance.” (Docket No. 37 ¶ 102 (citing Hall v. City of Santa Barbara, 833 F.2d 1270, 1274 (9th Cir. 1986)).) The Court again rejects the argument that Plaintiff had a reasonable expectation that the Rent Ordinance would not be enacted because of the Ninth Circuit’s decision in Hall. This argument fails given that the Supreme Court overruled Hall in 1992. See generally Yee 503 U.S. 519. Moreover, the mobilehome park industry is a well-regulated field and Plaintiff’s expectation that the Park would be free from a rent control ordinance is unreasonable. See Rancho de Calistoga, 800 F.3d at 1091. Accordingly, the FAC fails to plausibly allege that the second Penn Central factor weighs in Plaintiff’s favor.

In evaluating the third Penn Central factor, the Ninth Circuit considers whether a government action “amounts to a physical invasion or instead merely affects property interests through some public program adjusting the benefits and burdens of economic life to promote the common good.” Guggenheim v. City of Goleta, 638 F.3d 1111, 1121 (9th Cir. 2010) (internal quotations omitted). In MHC Fin. Ltd. P’ship v. City of San Rafael, 714 F.3d 1118 (9th Cir. 2013), the Ninth Circuit held that a mobilehome park rent control ordinance “is much more an ‘adjust[ment] of the benefits and burdens of economic life to promote the common good’ than it is a physical invasion of property.” Id. at 1127 (quoting Penn Central, 438 U.S. at 124). Here, the Rent Ordinance does not constitute a physical taking, and Chapter 26.08 of the Santa Barbara Municipal Code (titled “Mobilehome and Recreational Vehicle Park Lease Regulations”) states:

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The purpose of this chapter is . . . to regulate the rent charged for mobilehome and recreational vehicle spaces used on a permanent basis to prevent severe and inordinate rent increases, to protect certain persons of limited economic means from the disruption and expense of relocation and to provide increased certainty to park residents of their ability to maintain their current status while at the same time providing park owners with a fair return on their investment and the continuing ability to maintain their parks.

S.B.M.C. § 26.08.020(D).

The FAC alleges that “the Rent Ordinance in fact fails to even accomplish the objective of actually providing more affordable housing”; rather, it “bestow[s] a ‘windfall’ on current homeowners, at the expense of Plaintiff and other park owners, while at the same time making mobilehomes less affordable, not more, and therefore also at the expense of future residents of the Park who now must pay distorted and inflated prices for the homes.” (Docket No. 37 ¶ 103.) The FAC further alleges that “recent sales in the Park over the last few months show that the vacancy control provision of the Rent Ordinance has made homes in the Park distinctly less affordable: a home worth \$3,200 sold for \$195,000 and a home worth \$38,000 sold for \$369,000!” (Id. ¶ 2.) Assuming that the sale price of mobilehomes in the Park has indeed increased since the Rent Ordinance was enacted, that still does not render the Rent Ordinance a physical taking. See Yee, 503 U.S. at 532; Penn Central, 438 U.S. at 124. Moreover, an increase in the sale price of the mobilehomes in the Park does not necessarily render it contrary to the aforementioned purpose of Chapter 26.08. Plaintiff, again, has failed to plausibly allege that the third Penn Central factor weighs in its favor.<sup>2/</sup>

Accordingly, Plaintiff still has not alleged that any of the Penn Central factors weigh in its favor. Therefore, the FAC fails to plausibly allege an as-applied, regulatory takings challenge.

The Court has previously explained the inadequacies of Plaintiff’s Takings Clause claim, and gave Plaintiff the opportunity to amend the original Complaint to plausibly allege the claim. Nonetheless, Plaintiff, again, has failed to allege sufficient facts to support its regulatory takings

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<sup>2/</sup> Even if the Court were to find that Plaintiff has plausibly alleged that the third Penn Central factor weighs in its favor, “this factor is not alone a sufficient basis to find that a taking occurred.” Bridge Aina Le’a, LLC, 950 F.3d at 635–36.

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challenge. Rather, the allegations in the FAC confirm that the bases for Plaintiff’s regulatory takings challenge are insufficient under Penn Central. In addition, Plaintiff has not plausibly alleged, and cannot plausibly allege, that the Rent Ordinance constitutes a physical taking given the Supreme Court’s ruling in Yee. Accordingly, the Court dismisses Plaintiff’s Takings Clause claim without leave to amend because any further amendment would be futile. See Leadsinger, Inc. v. BMG Music Publ’g, 512 F.3d 522, 532 (9th Cir. 2008) (explaining that the decision of whether to grant leave to amend “remains within the discretion of the district court” (internal quotations omitted)); Zixiang Li v. Kerry, 710 F.3d 995, 999 (9th Cir. 2013) (“Although a district court should grant the plaintiff leave to amend if the complaint can possibly be cured by additional factual allegations, [d]ismissal without leave to amend is proper if it is clear that the complaint could not be saved by amendment.” (internal quotations and citations omitted)).

**C. Declaratory Relief**

The FAC seeks a declaration from the Court stating that “the Rent Ordinance [is] invalid and unenforceable as to Plaintiff and the Park, because it constitutes a taking of Plaintiff’s property . . . .” (Docket No. 37 ¶¶ 115, 117.) Accordingly, Plaintiff’s declaratory relief claim rises and falls with the Takings Clause claim, and, like the Takings Clause claim, the Court dismisses the declaratory relief claim without leave to amend.

**Conclusion**

For all of the foregoing reasons, the Court grants Defendant’s Motion to Dismiss the FAC, in part,<sup>3/</sup> and dismisses Plaintiff’s first and second claims for relief without leave to amend. Defendant shall file its Answer to the FAC by May 10, 2024.

IT IS SO ORDERED.

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<sup>3/</sup> In addition to the first and second claims for relief, the FAC alleges eight claims (claims three through ten) seeking damages and declaratory relief for violations of the Fair Housing Act, 42 U.S.C. §§ 3601 et seq. The Court grants Defendant’s Motion to Dismiss “in part” because Defendant seeks to have the Court dismiss the FAC in its entirety, yet provides no legal basis for dismissing claims three through ten. Accordingly, the Court declines to dismiss those claims.