UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 14-3242 PSG (PJWx)	Date	December 18, 2014
Title	Colony Cove Properties, LLC v. City of Carson, *et. al.*		

Present: The Honorable	Philip S. Gutierrez, United States District Judge
Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): Order GRANTING IN PART and DENYING IN PART Defendants' motion to dismiss.

Before the Court is Defendant City of Carson (the "City") and Defendant City of Carson Mobilehome Park Rental Review Board's (the "Board") (together, "Defendants") motion to dismiss Plaintiff's complaint. Dkt. # 12. The Court finds this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); L.R. 7-15. After reviewing the moving, opposing, and reply papers, the Court GRANTS IN PART and DENIES IN PART Defendants' motion.

I. Introduction

This case involves constitutional challenges to the Board's application of the City's Mobilehome Space Rent Control Ordinance (the "Ordinance"). Specifically, Plaintiff Colony Cove Properties, LLC ("Colony Cove" or "Plaintiff") alleges that the Board's decisions denying it rent increases for the amount requested on five consecutive years (from 2008 to 2012) – and, thus, forcing it to operate at a loss – constitute an as-applied Taking in violation of the Fifth Amendment of the United States. *Compl.* ¶¶ 70-73. Colony Cove seeks damages and attorneys' fees for this alleged violation. *Id.* ¶ 73.

Colony Cove brings its second cause of action under the Due Process Clause of the Fourteenth Amendment. *Id.* ¶¶ 79-80. Dissatisfied with the Board's decisions, Colony Cove sought five writs of administrative mandamus in California state courts. *See id.* ¶¶ 49-69. According to Plaintiff, California courts denied it due process under the Fourteenth Amendment because they applied a deferential standard – a substantial evidence standard – when reviewing the Board's decisions instead of exercising independent judgment as required under *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U.S. 287 (1920). *Id.* ¶¶ 74-80. Colony Cove requests that the Court either "engage in independent review of the administrative records for each of the petitions" and "award damages against the City on the appropriate, nonconfiscatory rent-levels

set by the Court" or issue an injunction ordering the City to "permit Colony Cove to charge rents at appropriate, nonconfiscatory levels in an amount to be proved at trial." *Id.* ¶ 79. Colony Cove also claims that it is entitled to attorneys' fees for the Due Process violation.

Lastly, Colony Cove's third claim is for Declaratory Relief. *Id.* ¶¶ 81-83. Colony Cove requests a judicial declaration that the City's Ordinance, as applied to Colony Cove, is unconstitutional. *Id.* ¶¶ 82-83.

Defendants' motion to dismiss brings an array of challenges to Plaintiff's Complaint. *See generally Mot.* First, Defendants argue that all three causes of action should be dismissed for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6). *See Notice of Mot.* 2:7-9. Defendants also claim that Plaintiff's takings cause of action should be dismissed to the extent that it is based on litigation of Board decisions currently pending in California state court because it is not ripe for adjudication. *Id.* 2:10-12. According to Defendants, Plaintiff's takings claim is precluded by *Res Judicata* – in its entirety – and *Collateral Estoppel* – as to certain elements – to the extent that it is based on challenges to Board decisions that have been litigated in California state court. *Id.* 2:13-16.

Defendants also submit that Plaintiff fails to state its due process claim and that the Court does not have subject matter jurisdiction to hear it under the *Rooker-Feldman* doctrine. *Id.* 2:17-20. Defendants also maintain that the Court should abstain from hearing Plaintiff's claims under *Younger v. Harris,* 401 U.S. 37 (1971) because "this action would have the practical effect of mooting and interfering with Colony Cove's pending state court proceedings" or under *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941) because the "federal constitutional issues here could be mooted by resolution of Colony Cove's pending state court proceedings." *Id.* 2:21-3:11. Defendants finally aver that Plaintiff's request for declaratory and injunctive relief is inappropriate because Plaintiff seeks monetary damages. *Mot.* 25:5-18.

II. Background

The City enacted the Ordinance in 1979 to regulate rent in mobilehome parks. *Compl.* ¶ 11. The Ordinance established the Board, an entity charged with hearing and determining rent adjustment applications. *Id.*; Carson, Cal. Mun. Code § 4702(a). Under the Ordinance, the Board "shall grant such rent increases as it determines to be fair, just and reasonable." Carson, Cal. Mun. Code § 4704(g); *Compl.* ¶ 14. "A rent increase is fair, just and reasonable if it protects Homeowners from excessive rent increases and allows a fair return on investment to the Park Owner." Carson, Cal. Mun. Code § 4704(g). Plaintiff alleges that review of the Board's decisions is permissible under California law "only by pursuing a writ of administrative mandate

upon a showing that the Board's decision was not supported by substantial evidence with substantial deference to the Board's determinations." *Compl.* ¶ 11.

When evaluating rent adjustment applications the Board "shall" consider eleven factors enumerated in the Ordinance "and any Guidelines adopted by the City Council, as well as any other relevant factors" with "no one (1) factor" being "determinative." Carson, Cal. Mun. Code § 4704(g). The eleven factors listed include: changes in the Consumer Price Index ("CPI"), the "rent lawfully charged for comparable mobilehome spaces," "[c]hanges in reasonable operating and maintenance expenses" and the "amount and quality of services provided by the applicant to the affected tenant." *Id.*

In addition to adopting the Ordinance, the City adopted "Guidelines for Implementation of the Mobilehouse Space Rent Control Ordinance" (the "Guidelines"). *Compl.* The Guidelines were revised in 1998 in order to make them consistent with the Ordinance. *See RJN, Ex. B.* Plaintiff states in the Complaint that the Guidelines "have the force of law" and are designed and intended to "set the reasonable expectations of investors and park owners in the City." *Compl.* ¶ 12. The Guidelines provide, however, that they "are intended to assist the Board in implementing the Ordinance" and that "the purpose of the Ordinance and the provisions of the Ordinance are controlling." *Defendants' Request for Judicial Notice* ("RJN"), *Ex. B.*

Since the 1998 amendment to the Guidelines, the Guidelines have provided that "[d]ebt [s]ervice necessarily incurred to operate the park after adoption of the Ordinance is generally an allowable operating expense if the financing arrangements were prudent and consistent with customary business practice" and that "[d]ebt service incurred after adoption of the Ordinance to purchase a park may be an allowable operating expense if the purchase price paid was reasonable in light of the rent allowed under the Ordinance and involved prudent and customary financing practices." *RJN, Ex. B.* The Guidelines also provide that in addition to the eleven factors enumerated in the Ordinance, the Board "may" consider a Gross Profit Maintenance analysis which "compares the gross profit level expected from the last rent increased granted to the park prior to the current application ("target profit") to the gross profit shown by the current application." *Id.* This analysis is "an aid to assist the Board in applying the factors in the Ordinance" and "is not intended to create any entitlement to any particular rent increase." *Id.*

In April of 2004, Colony Cove purchased Colony Cove Mobile Estates ("the Park"), a mobilepark located in Carson, California, for approximately $23,050,000. *Compl.* ¶¶ 2, 19. Colony Cove financed around $18 million of the purchase price from G.E. Capital. *Id.* ¶ 21. According to Colony Cove, at the time that it purchased the Park, the City "always (or virtually always) considered a park owner's debt service when disposing of fair return rent applications." *Id.* ¶ 17. Colony Cove alleges that it was entitled to include debt service as an allowable

expense and that this belief is reasonable "based in part on the terms of the Ordinance and Guidelines and also based on how the Board had analyzed and calculated rents previously in the City." *Id.* ¶¶ 17, 22.

In 2006, however, the City amended the Guidelines to "provide additional analytical tools to evaluate pending applications for rent increase" and to "help . . . assure that the mobilehome park owners within the City receive[d] a constitutional fair return on their investments." *RJN, Ex. C* ("2006 Amendment"). The 2006 Amendment states that the Board "may also consider, a 'maintenance of net operating income analysis,' which compares the net operating income (NOI) level expected from the last rent increase granted to a park owner and prior to any pending rent increase application (the so-called "target NOI") to the NOI demonstrated in any pending rent increase application" but in which "changes in debt service expenses are not to be considered in the analysis." *Id.* According to the 2006 Amendment, the "analysis is another aid to assist the Board in the factors in the Ordinance" and "is not intended to create any entitlement to any particular rent increase." *Id.*

On or about September 28, 2007, Colony Cove submitted a rent increase application ("Year 1 Application"). *Compl.* ¶ 23. According to Colony Cove, it submitted evidence that a rent increase of approximately $200 per space per month was necessary for Colony Cove to earn a fair return on its investment, but was only granted a rent increase of $36.74 per space per month. Colony Cove alleges that the Board reached this result "by refusing to consider Colony Cove's debt service" which resulted in a six-figure loss on its investment. *Id.* ¶¶ 23-30. Colony Cove submitted additional rent increase applications on or about September 28, 2008 ("Year 2 Application"), September 29, 2009 ("Year 3 Application"), September 29, 2010 ("Year 4 Application"), and March 2, 2012 ("Year 5 Application"). *Id.* ¶¶ 31-47. Colony Cove pleads that each time, the Board ignored Colony Cove's debt service payments and ignored evidence contained in the application granting substantially less than was necessary for it to earn a fair return and forcing it to incur losses as to its investment. *Id.*

Colony Cove filed a complaint against Defendants in this Court on October 27, 2008 asserting facial and as-applied takings and due process claims, a state claim seeking a writ of administrative mandate under California law, and requesting declaratory relief. *Compl.* ¶49. The Court granted a motion to dismiss – affirmed by the Ninth Circuit in March 2011 – filed by Defendants holding that Plaintiff's facial challenges were barred by the statute of limitations because the "City's rent control guidelines did not restart the limitations period on the original rent control ordinance;" and that the as-applied takings claim was not ripe because "Colony Cove had not yet pursued an action in state court." *Id.* ¶¶ 51-52.

On December 23, 2009, Colony Cove filed a state writ claim challenging the Year 1 Application Board decision and on February 3, 2010, challenging the Year 2 Application Board decision. *Id.* ¶¶ 55. The Superior Court denied Colony Cove's writ challenging the Year 1 application finding that the City "may choose to regulate pursuant to any fairly constructed formula" and that "the landlord cannot insist that a fair return must be calculated on the basis of what it paid for the mobile home park." *Id.* ¶ 57. According to Plaintiff, it stipulated with Defendants to judgment in favor of the City as to the writ challenging the Year 2 Application Board decision acknowledging that "the same trial judge was going to make the same ruling on the City's decision on the Year 2 Applications." *Id.* ¶ 58. Colony Cove appealed the two judgments and the California Court of Appeal affirmed the trial court's denial of the writs challenging the Year 1 and Year 2 Applications on October 21, 2013. *Id.* ¶ 62. These judgments became final on January 28, 2014. *Id.* ¶ 66.

Colony Cove also filed writ petitions challenging the Board's decisions as to the Years 3 to 5 Applications. *Id.* ¶ 60. According to the Complaint, the parties have agreed in principle that the same result would be obtained in California courts regarding these writ applications, but the parties have failed to file a stipulation to that effect. *Id.* ¶ 67. The writ petitions litigating the Year 3 and Year 5 Applications are still pending in California state court. *Declaration of Jeff M. Malawy in Support of Motion to Dismiss Complaint* ("Malawy Decl.") ¶¶ 2-4. The writ petition based on the Year 4 Application decision, however, was dismissed on September 9, 2014 by a California Superior Court. *See Defendants' Supplemental Request for Judicial Notice* ("Supplemental RJN"), *Exs. A, B.*

Plaintiff filed this action on April 28, 2014.

III. Legal Standard

A. Rule 12(b)(1)

A plaintiff must "have 'standing' to challenge the action sought to be adjudicated in the lawsuit." *Valley Forge Christian College v. Ams. United for Separation of Church and State, Inc.*, 454 U.S. 464, 471 (1982) (citation omitted). The "irreducible constitutional minimum" of Article III standing has three elements: (1) the plaintiff must have suffered an "injury in fact," meaning a concrete and particularized injury that is actual or imminent; (2) the injury must be causally related to the defendant's challenged actions; and (3) it must be "likely" that the injury will be "redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotation marks and citations omitted); *Townley v. Miller*, 722 F.3d 1128, 1133 (9th Cir. 2013). The plaintiff, as the party invoking federal jurisdiction, has the burden of establishing these elements. *See Lujan*, 504 U.S. at 561.

Article III standing bears on the court's subject matter jurisdiction, and is therefore subject to challenge under Federal Rule of Civil Procedure 12(b)(1). *See Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011). Rule 12(b)(1) attacks on subject matter jurisdiction can be factual or facial. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). "Once the moving party has converted the motion to dismiss into a factual motion by presenting affidavits or other evidence properly brought before the court, the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction." *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003). When evaluating a factual attack the court may consider evidence and matters subject to judicial notice without converting the motion into a motion for summary judgment. *See id.*; *Maya*, 658 F.3d at 1067; *Safe Air for Everyone*, 373 F.3d at 1039.

B. Rule 12(b)(6)

A motion to dismiss under Rule 12(b)(6) tests whether the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When deciding a Rule 12(b)(6) motion, the court must accept the facts pleaded in the complaint as true, and construe them in the light most favorable to the plaintiff. *Faulkner v. ADT Sec. Servs., Inc.*, 706 F.3d 1017, 1019 (9th Cir. 2013); *Cousins v. Lockyer*, 568 F.3d 1063, 1067-68 (9th Cir. 2009). The court, however, is not required to accept "legal conclusions . . . cast in the form of factual allegations." *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981); *see Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555. The Court may consider documents that have been judicially noticed. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001), *overruled on other grounds*, *Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119, 1125-26 (9th Cir. 2002).

After accepting all non-conclusory allegations as true and drawing all reasonable inferences in favor of the plaintiff, the court must determine whether the complaint alleges a plausible claim to relief. *See Iqbal*, 556 U.S. at 679-80. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* at 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).

I. Discussion

A. Requests for Judicial Notice

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 14-3242 PSG (PJWx) Date December 18, 2014

Title Colony Cove Properties, LLC v. City of Carson, *et. al.*

As an initial matter, the Court addresses Defendants' two requests for judicial notice. Defendants' first request involves certain records related to proceedings in other courts that Defendants are using to support their *Res Judicata* and *Collateral Estoppel* arguments; city ordinances and resolutions; and corporate filings. *See RJN*, Dkt. # 13. Defendants' supplemental requests involves records related to proceedings in other cours that were published after Defendants filed their papers in support of the present motion. *See Supplemental RJN,* Dkt. # 24. The Court may take judicial notice of and consider matters that are not subject to reasonable dispute, including public records. *See* Fed. R. Evid. 201(b); *Dudum v. Arntz*, 640 F.3d 1098, 1101 n.6 (9th Cir. 2011) (taking judicial notice of a verifiable public record); *U.S. ex rel Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) ("[W]e may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.") (internal quotations omitted); *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F. 3d 1022, 1025 fn. 2 (taking judicial notice of city ordinances). Plaintiff objects to the request arguing that "[w]hile the existence of records of a public agency is judicially noticeable, legislative facts contained in the City agency resolutions are not." *Opp. to RJN*. The Court agrees. *See Lee v. City of Los Angeles*, 250 F. 3d 668, 689-90 (finding that district court erred in taking judicial notice of disputed facts in public records). Accordingly, the Court GRANTS both of Defendants' requests. The Court takes notice of the City ordinances and resolutions only for the purpose of noting their existence and adoption.

B. Unconstitutional Taking

a. Ripeness

As described above, Plaintiff's Fifth Amendment Takings claim is based on Board decisions denying it its requested rent increases in Years 1 through Year 5 Applications. *See Compl.* ¶¶ 70-73. Defendants argue that Plaintiff's claim should be dismissed because Colony Cove has "not alleged" that "a final state court judgment has been issued denying compensation" related to the Years 3-5 Applications. *Mot.* 11:24-12:1.

A cause of action "is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296, 300 (1998) (citation omitted). Ripeness is a "question of timing," which prevents the courts from issuing advisory opinions or "entangling themselves in abstract disagreements." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1122 (9th Cir. 2009) (internal quotation marks and citations omitted). "Constitutional ripeness, in many cases, 'coincides squarely with standing's injury in fact prong' and 'can be characterized as standing on a timeline.'" *Id.* (internal quotation marks and citations omitted).

In the context of a takings claim under the Fifth Amendment, a claim is not ripe for adjudication until a plaintiff satisfies two requirements set out in *Williamson Cnty. Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172. *See Colony Cove Properties, LLC v. City of Carson*, 640 F. 3d 948, 958 (9th Cir. 2011). First, a plaintiff must show that "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." *Williamson Cnty.*, 473 U.S. at 186. "Second, the plaintiff must have sought, and been denied, 'compensation through the procedures the State has provided for doing so.'" *Colony Cove*, 640 F. 3d at 958 (citing *Williamson Cnty.*, 473 U.S. at 194). The procedure available for a plaintiff pursuing an as-applied takings challenge to a rent control ordinance in the state of California – known as the *Kavanau* adjustment – involves "filing a writ of mandamus in state court and, if the writ is granted, seeking an adjustment of future rents from the local rent control board." *Id.* at 958.

Here, the Court agrees that Plaintiff's as-applied takings claim is not ripe for adjudication to the extent that it is based on the Board's decisions regarding its Year 3-5 Applications. Plaintiffs have satisfied the first requirement under *Williamson* since "there is no dispute that . . . the City has reached a final decision on Colony Cove's rent increase applications." *Opp.* 22:10-12; *see Compl.* ¶¶ 29, 36, 41, 45, 46. However, Plaintiff has not met the second *Williamson* requirement. In its Complaint, Plaintiff alleges that "all state court remedies have been exhausted" because "the parties have agreed in principle to stipulate to judgment" in the cases about the Year 3-5 Applications, but to date, no such stipulation has been filed. *Compl.* ¶¶ 66-68. In fact, Plaintiff concedes that "no final state court judgment exists" as to these Applications, but claims that this is due to "the City's gamesmanship."[1] *Opp.* 22:18-23.

According to Plaintiff, the parties had agreed to stipulate to judgment for the City with regards to the writ petitions challenging the Year 3-5 Board decisions, but two days after it filed this lawsuit, the "City reneged on its agreement to stipulate to judgment." *Opp.* 22:18-25. Defendants respond that they "should not be punished for attempting to negotiate a fair settlement." *Reply* 8:20-24. The Court agrees. Plaintiff has not provided the Court with a persuasive argument to find that the claim is ripe based on a stipulation that was never filed.

Plaintiff's argument that "the state procedure is unavailable or inadequate" because Colony Cove "will almost certainly be denied compensation by the state courts" for the Year 3

[1] In its Supplemental RJN, Defendants inform the Court that Plaintiff's writ petition challenging the Year 4 Application decision was dismissed by a California state court. *See Supplemental RJN.* Defendants also argue that although the state court dismissed the action, Colony Cove did not pursue "just compensation" because they "essentially abandoned the action." *Id.* The Court need not decide this issue because Plaintiff – who's burden it is to establish federal jurisdiction – has not filed an amended Complaint or convinced the Court that it has met *Williamson's* second requirement based on this dismissal. *See Lujan*, 504 U.S. at 561.

to 5 Applications based on the Year 1-2 Application decisions is equally unpersuasive. *Opp.* 23:9-23. There is an exception to the second *Williamson* requirement that allows a plaintiff to "bypass state procedures if such procedures are shown to be 'unavailable or inadequate'" making availment of those procedures futile. *Equity Lifestyle Properties, Inc. v. County of San Luis Obispo*, 548 F. 3d 1184, 1191 (9th Cir. 2007). This is a narrow exception, however, and "mere uncertainty does not establish futility." *Id.* Plaintiff claims that it will "almost certainly" be denied compensation, but does not substantiate this assertion. The only argument that Plaintiff offers is that the California courts have denied it relief related to the Year 1 and Year 2 Application decisions. The Court is not convinced. The Years 3 to 5 Applications are based on different rent increase requests and the Board presumably took different expenses into account when issuing its decision. Therefore, it is not almost certain that in reviewing these Board decisions, the California courts will deny Plaintiff's writ petitions. Plaintiff has failed to show that its as-applied takings claim based on the Board's Years 3 to 5 Application decisions is ripe for adjudication under *Williamson*.

Accordingly, Plaintiff's as-applied takings claim is DIMISSED without prejudice to the extent that it relies on the Board's Year 3 to 5 Application decisions.

b. Res Judicata

Defendants also argue that "any taking claim based on the Board's Years 1 and 2 [Application] decisions is barred by *Res Judicata*." *Mot.* 19:8-9.

"Judicial proceedings of any state 'have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State.'" *Adam Bros. Farming, Inc. v. Cnty. of Santa Barbara*, 604 F. 3d 1142, 1148 (9th Cir. 2010) (citing 28 U.S.C. § 1738). *Res Judicata* – also known as claim preclusion – "precludes litigation of claims that were raised or should have been raised in earlier litigation." *San Remo Hotel, L.P. v. San Francisco City and Cnty.*, 364 F. 3d 1088, 1094 (9th Cir. 2004). When analyzing the *res judicata* effect of a state court proceeding, federal courts apply the *res judicata* doctrine "as adopted by that state." *Adam Bros.*, 604 F. 3d at 1148. In California, *res judicata* "precludes a party from relitigating (1) the same claim, (2) against the same party, (3) when that claim proceeded to a final judgment on the merits in a prior action." *Id.* at 1148-49.

The first prong of this test is met when two different causes of action stem from the same invasion of a primary right. *Id.* at 1149. A primary right is "the right to be free from a particular injury, regardless of the legal theory on which liability for the injury is based." *Id.* (quotations and citations omitted). According to Defendants, Plaintiff's state court claims – that the Board decisions did not provide it a fair return – and the as-applied takings claim all "stem from the

same injuries." *Mot.* 20:5-26. In response, Plaintiff does not argue that Defendants fail to meet the elements of *res judicata*, but rather, that because it asserted an *England* reservation in state court, it does "not subsequently face claim preclusion in federal district court on the ground that it could have litigated its federal claims in state court." *Opp.* 12:1-8. Under *England v. Louisiana State Bd. Of Med. Examiners*, 375 U.S. 411 (1964) a "party who has been remitted to state court" can "reserve the right to return to federal court for a ruling on the federal claims." *Montes v. City of Bellflower*, 61 Fed. Appx. 385 (9th Cir. 2003) (unpublished). The Court agrees with Plaintiff.

Defendants contend that Plaintiff's "*England* reservations do not prevent the *res judicata* bar" and cite to the U.S. Supreme Court in *San Remo Hotel, L.P. v. City and Cnty. of San Francisco, CA*, 545 U.S. 323 (2005) to support this assertion. *Mot.* 21:8-13. Defendants mischaracterize *San Remo's* holding. In *San Remo*, the Supreme Court was reviewing a decision by the Ninth Circuit finding that issue preclusion – not claim preclusion – "can apply to bar relitigation in federal court of issues necessarily decided in state court, notwithstanding that plaintiffs must litigate in state court pursuant to *Pullman* and/or *Williamson County.*" *San Remo,* 364 F. 3d at 1096; *see San Remo*, 545 U.S. at 327 fn.1, 337 (explaining that the Court's grant of certiorari was limited to the question whether "a Fifth Amendment Takings claim [is] barred by issue preclusion based on a judgment denying compensation solely under state law, which was rendered in a state court proceeding that was required to ripen the federal Takings claim?").

The Ninth Circuit was very clear in *San Remo* that claim preclusion was not at issue and that defendant in that case did "not dispute that the plaintiffs' *England* reservation was sufficient to avoid the doctrine of *claim* preclusion." *San Remo*, 364 F. 3d at 1094. As Plaintiffs point out – a contention that Defendants fail to address in their reply – the present case is more analogous to *Dodd v. Hood River Cnty.*, 59 F. 3d 852 (1995) where the Ninth Circuit "refused to apply *claim* preclusion to dismiss [plaintiffs'] federal takings claim" although plaintiff brought a takings claim in state court, but "reserved their right to have any federal takings claim adjudicated in federal court." *Id.* at 1094-95 (emphasis in original); *see Dodd*, 59 F. 3d 852. Accordingly, the Court is not convinced that *res judicata* bars Plaintiffs' as-applied takings claim.

c. Failure to State Claim

Plaintiff's as-applied takings claim is based on two theories. First, Plaintiff pleads that the Board's decisions constitute a Takings violation under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). *Compl.* ¶ 71. Plaintiff's second theory is that the Board's conduct violated *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978). *Id.* Defendants assert that Plaintiff fails to state a claim under both theories.

i. *Lucas Taking*

To assert a *Lucas* taking, a plaintiff must show that the government's land regulation has caused a deprivation of "all economically productive or beneficial uses." *Lucas*, 505 U.S. at 1030; *see also Lingle v. Chevron U.S.A.*, 544 U.S. 528, 539 (finding that for a *Lucas* claim "the complete elimination of a property's value is the determinative factor").

Plaintiff claims that the government has effected a taking under *Lucas* by prohibiting "all economically beneficial use of the land" because "[u]nder California law, Colony Cove is not permitted to close the Park and use it for another economic purpose, nor is Colony Cove permitted to evict the Park's current tenants, nor is Colony Cove permitted to charge a rent that would result in any profit." *Compl.* ¶ 72.

While Defendants challenge the truthfulness of the first two assertions by citing to California statutes, Plaintiff avers that this Court "must" accept as true its allegation that Defendants' actions have denied it "all economic value." *Mot.* 12:21-13:13; *Opp.* 17:25-18:10. The Court disagrees with Plaintiff. *First English Evangelical Lutheran Church v. Cnty. of Los Angeles,* 482 U.S. 304 – a case that Plaintiff quotes to support its point – does not stand for Plaintiff's proposition. Although the Court must accept factual allegations in the complaint as true, it need not "assume the truth of legal conclusions merely because they are cast in the form of factual allegations." *Warren v. Fox Family Worldwide, Inc.,* 328 F.3d 1136, 1139 (9th Cir.2003); *see Ashcroft v. Iqbal,* 556 U.S. 662, 129 S. Ct. 1937, 1950, 173 L.Ed.2d 868 (2009) ("[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."). Here, the statutes that Defendants cite to show that Plaintiff's contentions are false as a matter of law. The California Government Code expressly provides that mobilehome parks can be closed down and converted to other uses. *See* Cal. Gov. Code §§ 65863.7; 66427.4. The Carson Municipal Code, too, provides the procedures for a closure of a mobilehome park. Carson, Cal. Muni. Code, art. IX, ch. 1, § 9128.21. Furthermore, the California Civil Code expressly provides that a mobilehome owner's tenancy can be terminated if there is a "[c]hange of use of the park or any portion thereof." Cal. Civ. Code § 798.56(g). These allegations can, therefore, not support Plaintiff's claim.

Even if the Court disregarded the statutes described above, Plaintiff's own allegation that in 2012 Defendants "permitted Colony Cove to earn a profit" is fatal to the *Lucas* claim. *Compl.* ¶ 5. Apparently aware of this, Plaintiff argues that it alleges a temporary taking, but admits that temporary takings are evaluated under the *Penn Central* test. Plaintiff's own Complaint undermines its claim that Defendants' Board decisions deprived it of all economically

productive or beneficial use of the land. Accordingly, Plaintiff's *Lucas* Takings claim is DISMISSED without leave to amend.

ii. *Penn Central Taking*

Under *Penn Central*, a taking takes place when "'regulatory actions [occur] that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner' with the inquiry 'focusi[ing] directly upon the severity of the burden that government imposes upon private property rights.'" *MHC Financing Ltd. Partnership v. City of San Rafael,* 714 F. 3d 1118, 1127 (9th Cir. 2013) (modifications in original). Courts look at the following factors when determining whether there has been a *Penn Central* violation: "the regulation's economic impact on the claimant, the extent to which the regulation interferes with distinct investment-backed expectations, and the character of the government action." *Id.*

Here, Plaintiff's Complaint states that the Board's decisions had a significant economic impact because it resulted in "substantial loss of property value and forced operating losses exceeding $4 million." *Compl.* ¶ 72. Plaintiff also alleges that Defendants' regulation interfered with its reasonable expectation that its "debt service would be considered when the City and the Board set rents" which would lead to a profit. *Id.*

Defendants contend that Plaintiff fails to state a Takings violation under *Penn Central* because it does not allege a sufficiently severe economic impact; the Ninth Circuit has already found that the Board's decisions did not interfere with its investment-backed expectations; and the character of the government action described in the Complaint does not support a taking under this theory. *Mot.* 14:12-19:7.

Defendants first attempt to show that Plaintiff has not stated facts of a sufficiently severe economic impact under *Penn Central* by citing to Ninth Circuit cases finding that diminution in value of property ranging from 75% to 92.5% did not support a *Penn Central* taking. *See Mot.* 15:4-14. Plaintiffs, in turn, argue that it is improper for the Court to conclude that "when a property owner is forced to lose money year after year, including over $1 million annually some years with forced operating losses totaling over $4 million, that the loss is insufficiently severe to be contemplated by the Fifth Amendment." *Opp.* 1-12. While the Court agrees with Defendants that Plaintiff's stated diminution in value, on its own, does not support a *Penn Central* finding, Defendants have not persuasively shown that this factor is dispositive.[2] In their

[2] Because the economic injury factor is not dispositive, whether this factor is precluded by the doctrine of *Collateral Estoppel* – due to the California state court's finding that Plaintiff did not suffer a significant economic impact from the Board's actions – does not change the Court's analysis. *Mot.* 15:15-17:27. Therefore, the Court need not reach this issue.

Reply, Defendants cite to *Garneau v. City of Seattle*, 147 F. 3d 802 (9th Cir. 1998), for the proposition that the Ninth Circuit has held that this factor is dispositive, but *Garneau* is distinguishable for at least two reasons. First, *Garneau's* finding dealt with a facial Takings claim, not an as-applied Takings cause of action. *See Garneau*, 147 F. 3d at 807-809. Second, in *Garneau*, Plaintiffs had failed to "produce *any* evidence of economic impact." *Id.* at 808. Here, Plaintiffs have pled that there was at least some negative economic impact from Defendants' actions.

Defendants also argue that Plaintiff cannot plead sufficient facts to support *Penn Central's* second consideration. Specifically, Defendants argue that Plaintiff is "precluded from claiming that the Ordinance has interfered with its distinct investment-backed expectations" as a matter of law. *Mot.* 17:17-18-25.

In *Guggenheim v. City of Goleta*, 638 F. 3d 1111(9th Cir. 2010), the Ninth Circuit held that a mobilehome park owner could not have distinct investment-backed expectations that were disrupted by an ordinance that was adopted before the owner acquired the park. *Guggenheim*, 638 F. 3d at 1120-22. Defendants argue that since the Ninth Circuit also found that the Ordinance at issue in this litigation – which does not guarantee that debt service expenses will be accounted for by the Board in assessing Rent Increase Applications – was in effect before Plaintiff purchased the park, and was not amended in 2006 to prohibit the Board from considering debt service expenses, the Board's decisions "could not have interfered with any of Colony Cove's investment-backed expectations." *Mot.* 18:20-25.

Plaintiff's claim that it had a distinct investment-backed expectation that the Boards would consider debt service expenses, however, is not merely "based on the Ordinance and the Guidelines, but also how the City had set rents historically on other rent applications." *Opp.* 17:3-10. In fact, the Complaint states that Plaintiff's expectations were "based in part on the terms of the Ordinance and Guidelines and also based on how the Board had analyzed and calculated rents previously in the City" since "prior to Colony Cove's acquisition of the Park, the City always (or virtually always) considered a park owner's debt service when disposing of fair return rent applications." *Compl.* ¶¶ 17, 22. The Court accepts the facts pleaded in the Complaint as true, and construes them in the light most favorable to the plaintiff. *See Faulkner v. ADT Sec. Servs., Inc.*, 706 F.3d 1017, 1019 (9th Cir. 2013); *Cousins v. Lockyer*, 568 F.3d 1063, 1067-68 (9th Cir. 2009). As such, even accepting that the Ordinance never required that the Board consider a park owner's debt service, Plaintiff has plead sufficient facts to support the allegation that Defendants' actions interfered with its distinct investment-backed expectations.

Plaintiff's complaint fails to plead, however, sufficient facts that the character of the government's action supports a *Penn Central* taking. A government's action is more likely to

support a *Penn Central* taking "when the interference with property can be characterized as a physical invasion by government" and not "when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *MHC Financing LTD.*, 714 F. 3d at 1128. The Ordinance and the Board's action is more akin go the second scenario than the first. *See id.* (finding that a city Ordinance regulating mobilehome parks did not support that there was a *Penn Central* taking). Plaintiff's assertions that "imposing use restrictions that decide how [the Park] can be used, who can live on the property, and for what price closely resembles . . . a physical invasion" by the government are unavailing. *Opp.* 10:13-24. Nevertheless, Defendants have not shown – nor argued – that this factor is dispositive for finding a *Penn Central* Takings violation.

There is no "set formula" for determining when there is a taking under *Penn Central. See Penn Central*, 438 U.S. at 123. Here, Plaintiff has pled that the Board's decision had at least a small economic impact and interfered with its distinct investment-backed expectations. Defendants have failed to show that these combined facts – notwithstanding the fact that the economic impact was small and the government's character does not support a *Penn Central* violation – are insufficient to show that there was a *Penn Central* taking. As such, the Court DENIES Defendants' motion requesting that the Court dismiss Plaintiff's *Penn Central* Takings cause of action.

C. Violation of Due Process Right

Plaintiff's second claim is brought under the Due Process Clause of the Fourteenth Amendment. Plaintiff states in its Complaint that under *Ohio Valley Water* "judicial review of the administrative action by a statute court must be de novo or else the property owner's due process rights are violated." *Compl.* ¶ 76. According to Plaintiff, the California courts reviewed the Board's decisions using a "substantial evidence standard" which did "not permit [the California courts] to exercise [their] independent judgment." *Id.* ¶ 75.

Defendants challenge Plaintiff's second claim by arguing both that the Complaint fails to state a claim and that the claim is barred by the doctrine of *Rooker-Feldman.* The Court agrees with Defendants.

Plaintiff's due process claim is based entirely on *Ben Avon*, a Supreme Court case from 1920 holding that if a utility company claims confiscation of property due to an agency's ratesetting "the state must provide a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment." *Ben Avon*, 253 U.S. at 289. As Plaintiff submits, however, the Courts have not developed a mechanism for which to redress this alleged violation. *See Opp.* 20:1-12 ("*Ben Avon* does not address exactly what remedy will

serve to compensate for the due process violation"). In fact, Plaintiffs have not shown that this doctrine is still viable. In *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944), the U.S. Supreme Court found that in assessing an agency's rate setting decision a Court's judicial inquiry "is at an end" "[i]f the total effect of the rate order cannot be said to be unjust and reasonable." Like the California court's review of the Board's actions, in *Hope Natural*, review of the agency was accomplished using a substantial evidence standard. *Id.* at 602. Plaintiffs have also failed to show that *Ben Avon* applies within the context of a rent control ordinance.

Even if Plaintiff could state a claim under *Ben Avon*, however, the Court would not have subject matter to hear it under the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine provides that federal district courts, as courts of original jurisdiction, lack appellate jurisdiction to review, modify, or nullify final orders of state courts. *Worldwide Church of God v. McNair*, 805 F.2d 888, 890-91 (9th Cir. 1986). As the Supreme Court has clarified, the doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Furthermore, while federal district courts have jurisdiction over a "general constitutional challenge," *i.e.* one that does not require review of a final state court decision in a particular case, "[w]here the district court must hold that the state court was wrong in order to find in favor of the plaintiff," the court lacks subject matter jurisdiction because the issues presented to both courts are "inextricably intertwined." *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1029 (9th Cir. 2001).

Here, although Plaintiffs argues otherwise, their second cause of action is, in effect, an appeal of the California Court's decisions denying the writ petitions related to the Year 1 and 2 Applications. Plaintiff goes as far as asking the Court to "engage in independent review of the administrative records for each of the petitions described herein and award damages against the City based on the appropriate, nonconfiscatory rent-levels set by the Court." *Compl.* ¶ 79. The Court is not convinced that this request, as well as the cause of action, is not a review of the California courts' decision. Plaintiff's argument that the situation here is analogous to *Skinner v. Switzer*, 131 S. Ct. 1289 (2011) is not convincing. In *Skinner*, the U.S. Supreme Court found that a convict challenging a court's decision to uphold a statute denying him the right to obtain DNA testing was not barred by *Rooker-Feldman* because the convict was not "challeng[]ing] the . . . decisions reached by the [state court]" but the "DNA statute 'as construed' by the [state court]." *Skinner*, 562 U.S. at 1291. Here, Plaintiff is challenging the standard of review that the Court utilized when reviewing the Board's decision. Although Colony Cove argues that it could not have litigated its claim in California state courts, it could have argued that the appropriate standard was something more stringent than the substantial evidence standard. *See Termo Co. v.*

Luther, 169 Cal. App. 4th 394 (Cal. Ct. App. 2008) (remanding action to trial court to complete "its review under the independent judgment standard").

For the reasons stated above, the Court DISMISSES Plaintiff's second cause of action without leave to amend.

a. Abstention as to Claims Not Dismissed

Defendants request that the Court abstain from hearing any claim not dismissed – in this case Plaintiff's *Penn Central* Takings cause of action – under *Younger* and *Pullman.*

The *Younger* abstention is a jurisprudential doctrine based on principles of comity, equity, and federalism. *San Jose Silicon Valley Chamber of Commerce Political Action Comm. V. City of San Jose*, 546 F. 3d 1087, 1091 (2008). It requires federal courts to abstain from granting relief when such relief would interfere with state judicial proceedings. *Gilbertson v. Albright*, 381 F. 3d 965, 970-95 (9th Cir. 2004) (en banc). In the Ninth Circuit, four requirements must be met for the *Younger* abstention to apply: (1) a state-initiated proceeding is ongoing; (2) the state-initiated proceeding implicates important state interests; (3) the federal plaintiff is not barred from litigating federal constitutional issues in the state proceeding; and (4) the federal court action wound enjoin the state proceeding or have the practical effect of doing so. *San Jose Silicon Valley*, 546 F. 3d at 1092. All four factors must be satisfied to warrant abstention. *Logan v. U.S. Bank National Ass'n*, 772 F. 3d 1163, 1167 (9th Cir. 2013) (internal citations omitted).

Defendants fail to show that all four factors have been satisfied warranting a *Younger* abstention. Defendants argue that a "determination by this Court that any of the Board's Years 3-5 Application decisions effected a taking would have the practical effect of a declaration establishing that Colony Cove was denied a fair return by the Board and that the application of the Ordinance effected a confiscatory taking under state law." As expounded above, however, the Court has dismissed Plaintiff's claims to the extent that they rely on the Board's Years 3 to 5 Application decisions. Therefore, Defendants' argument holds no weight. The Court's adjudication of Plaintiff's *Penn Central* claim would not enjoin the pending state court proceedings.

The Court denies Defendants' request for a *Pullman* abstention for the same reason. Under *Pullman*, federal courts refrain from deciding sensitive federal constitutional questions when state law issues may moot or narrow the constitutional questions." *San Remo*, 145 F. 3d 1095, 1105 (9th Cir. 1998)(citing *Pullman*, 312 U.S. 496 (1941)). Here, Plaintiff's claims are not based on the Year 3 to 5 Application Board decisions and would, therefore, not moot the constitutional issues pending before this Court.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 14-3242 PSG (PJWx) Date December 18, 2014

Title Colony Cove Properties, LLC v. City of Carson, *et. al.*

Therefore, neither a *Younger* nor a *Pullman* abstention is warranted.

D. Declaratory and Injunctive Relief

Defendants contend that Plaintiff's request for declaratory and injunctive relief should be dismissed. *Mot.* 25:5-18. These forms of relief, however, are not independent causes of action, but tied to Plaintiff's claims. Apparently recognizing this, Defendants write that Plaintiff's "claim for declaratory relief must be stricken." *Id.* 25:11. Defendants have failed to bring a motion to strike, however, and the Court declines to strike these forms of relief from the Complaint at this juncture.

Defendants' motion to strike Plaintiff's request for declaratory and injunctive relief is DENIED.

E. Leave to Amend[3]

In summary, the Court has dismissed Plaintiff's *Lucas* Taking cause of action, Due Process cause of action, and Takings claim , under *Penn Central*, to the extent that it relies on the Year 3 to 5 Application Board decisions without leave to amend.

In determining whether leave to amend is warranted, the Court considers: (1) a party's bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility; and (5) whether the plaintiff has previously amended his complaint. *See Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F. 3d 351, 355 (9th Cir. 1996). Although the factors should be analyzed with liberality, "leave to amend is not to be granted automatically." *Jackson v. Bank of Hawai'i,* 902 F. 2d 1385, 1387 (9th Cir. 1990).

Here, although the Court finds that most of the factors support granting Plaintiff leave to amend its due process cause of action as well as its *Lucas* Taking cause of action – there is no evidence of bad faith, undue delay, prejudice to Defendants, and Plaintiff has not amended its Complaint – any amendments to the Complaint to attempt to successfully plead these causes of action would be futile. As the Court described above, Plaintiff's second cause of action is barred by the doctrine of *Rooker-Feldman.* As to Plaintiff's *Lucas* Taking claim, Plaintiff conceded in its very Complaint that it earned a profit, defeating this cause of action.

[3] In its opposition, Plaintiff requests that the Court give it leave amend its Complaint to state a Fifth Amendment Takings claim under *Horne v. United States Dept. of Agriculture*, 750 F. 3d 1128 (9th Cir. 2014). *Opp.* 24:22-25:23. The Court DENIES Plaintiff's request because the request is not properly before the Court. If Plaintiff wishes to add a new claim, it may file a motion to amend its Complaint.

Plaintiff's *Penn Central* Takings claim, on the other hand, is dismissed without leave to amend to the extent that it relies on the Years 3 to 5 Application decisions because its dismissal is based on the fact that the claims are not ripe for adjudication and not due to a deficiency in Plaintiff's pleadings.

VI. Conclusion

For the foregoing reasons, Defendants' motion to dismiss is DENIED as to Plaintiff's *Penn Central* Takings claim to the extent that it relies on the Boards Year 1 and 2 Application Decisions.

Defendants' motion is GRANTED as to the remaining claims. Plaintiff's *Penn Central* claim is DISMISSED without prejudice to the extent that it relies on the Years 3 to 5 Applications; Plaintiff's due process claim and *Lucas* Takings claim are dismissed with prejudice.

IT IS SO ORDERED.