

January 14, 2020

VIA E-MAIL AND
FIRST CLASS MAIL

John M. Funk, Esq.
Assistant City Attorney
Office of the City Attorney, Santa Ana
20 Civic Center Plaza M-29
P.O. Box 1988
Santa Ana, CA 92702

jfunk@santa-ana.org

Re: City of Santa Ana v. County of Orange et al., USDC Case No. 8:20-CV-00069,
Demand for Immediate Dismissal

Dear Mr. Funk:

As you are aware, this law firm represents the City of Dana Point (“Dana Point”) as municipal legal counsel and I serve as the City Attorney. This letter is being written to you to demand that your client, the City of Santa Ana (“Santa Ana”), ***immediately*** dismiss Dana Point from its recently filed complaint in the matter of *City of Santa Ana v. County of Orange et al.*, USDC Case No. 8:20-CV-00069 (the “Complaint” and the “Action”). As set forth below, Santa Ana’s three claims for relief in the Complaint, as well as its *ex parte* application for a temporary restraining order (“Application”), are legally and factually baseless as they pertain to Dana Point and maintaining this Action against Dana Point serves no purpose but harassment and a waste of taxpayer resources. Should you fail to confirm that Dana Point will be dismissed from the Action by January 15, 2020 at 4:00 p.m., Dana Point will move forward with the necessary paperwork to file a Rule 11 Motion.

* * *

On January 13, 2020, you notified me that Santa Ana would be filing a complaint against Dana Point, alleging constitutional claims related to an alleged plan that involved transporting of homeless persons from Dana Point to the Armory Shelter located in Santa Ana. You also notified me that Santa Ana would be filing the Application related to this alleged practice. I have since been able to review the Complaint, the Application, and the allegations contained therein. It is clear that Santa Ana is filing this matter for an improper purpose as its claims are without legal or factual support and are in violation of Rule 11.

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I. SANTA ANA LACKS STANDING TO BRING THIS MATTER

In the Complaint, Santa Ana attempts to allege three federal constitutional claims against Dana Point: violations of the Eighth Amendment, Fourteenth Amendment (Equal Protection), and Fourteenth Amendment (Due Process Clause). These claims are frivolous. Case law is clear in the Ninth Circuit: cities lack standing to maintain federal constitutional claims for relief.

As a starting point, standing is a necessary element of federal-court jurisdiction. *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Only after a court is satisfied that standing and the other jurisdictional prerequisites are met may it determine, within its discretion, whether to abstain. See *Miller-Davis Co. v. Illinois State Toll Highway Auth.*, 567 F.2d 323, 326 (7th Cir. 1977).

It is well established in the Ninth Circuit that municipalities do not have standing to raise federal constitutional claims. *City of South Lake Tahoe v. California Tahoe Regional Planning Agency*, 625 F.2d 231 (9th Cir. 1980) [*“South Lake Tahoe”*]. In *South Lake Tahoe*, the City of South Lake Tahoe brought a Section 1983 action against the California Tahoe Regional Planning Agency, alleging that its land use regulations violated the Fifth and Fourteenth Amendments, and conflicted with the plans and ordinances of the Tahoe Regional Planning Agency, a bi-State agency approved by Congress, in violation of the Supremacy Clause. The Ninth Circuit held that the City, as a political subdivision of the State, could not challenge the statutes of the State itself, or one of its other political subdivisions, on constitutional grounds. (*Id.* at 233.) Accordingly, the Ninth Circuit concluded that the standing component of federal jurisdiction was lacking and the City’s claims, based on the Federal Constitution, were properly dismissed. (*Ibid.*) In the years since *South Lake Tahoe* was decided, the Ninth Circuit has re-affirmed its principles. See *Okanogan Sch. Dist. No. 105 v. Sup’t of Pub. Instr.*, 291 F.3d 1161, 1163 (9th Cir. 2002), cert denied, *Okanogan Sch. Dist. No. 105 v. Bergeson*, 537 U.S. 1187 (2003); *Palomar Pomerado Health Sys. v. Belshe*, 180 F.3d 1104 (9th Cir. 1999), cert denied, *Palomar Pomerado Health Sys. v. Bonta*, 528 U.S. 1074 (2000); *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998).

Indeed, that principle was affirmed once again a mere four months ago by the Ninth Circuit in *City of San Juan Capistrano v. Cal. PUC*, 937 F.3d 1278 (9th Cir. 2019) - which affirmed an order by Judge Guilford on this very topic. Yet, neither *South Lake Tahoe* nor *City of San Juan Capistrano* is cited once anywhere in the Application, despite a discussion of the very issue of standing. Santa Ana’s failure to even cite these two controlling precedents is extremely troubling and seems to have been omitted on purpose. Nonetheless, the case law is clear – a city, a

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subdivision of the State, cannot sue another subdivision of the State for federal constitutional claims. Therefore, Santa Ana's Complaint is devoid of legal merit.

II. DANA POINT HAS NO CUSTOM, POLICY, OR PRACTICE TO TRANSPORT HOMELESS PERSONS TO THE ARMORY SHELTER IN SANTA ANA

Second, despite Santa Ana's allegation to the contrary, Dana Point simply has no custom, policy, or practice¹ to transport homeless individuals to the Armory Shelter located in Santa Ana. On that point, the Complaint is devoid of any factual basis for the suggestion that Dana Point does have such a practice, but rather, cites to an Orange County Register article concerning the City of San Clemente's alleged practice. (Complaint, ¶¶ 57-64.) Specifically, there is really only one allegation in the Complaint to connect Dana Point to San Clemente's alleged practice:

Defendants Dana Point and San Juan Capistrano are reported to join San Clemente to share the cost for this transportation [to the Armory]. (Complaint, ¶ 63.)

This allegation lacks any evidentiary support and is completely baseless. Indeed, Judge Carter has already denied Santa Ana's Application on the basis that these allegations are not supported by any facts, and are purely speculative. To be clear, Dana Point has **no such practice**, and has never transported, or arranged for the transportation of any homeless person to the Armory. It cannot be held responsible for or bound by the alleged practices of nearby cities. Plaintiffs in the *Housing is a Human Right Orange County et al v. County of Orange et al*, SACV 19-00388-PA-JDEx attempted this same tactic and failed. In that matter, the plaintiffs alleged that various South Orange County cities had some uniform policy related to citing and harassing the homeless. Judge Anderson quickly found that this allegation was without merit and dismissed several of the cities, including Dana Point, since the allegations in that case, as in the instant Complaint, were really only directed at the actions of the City of San Clemente. We have no doubt that the Complaint here will suffer the same fate. In summary, the baseless allegation of such a policy by Dana Point must be withdrawn, or we will pursue a Rule 11 Motion.

¹ A municipality may only be held liable under Section 1983 "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978); see also *Wallis v. Spencer*, 202 F.3d 1126, 1136 (9th Cir. 2000)

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III. SANTA ANA'S FILING OF THE LAWSUIT AND APPLICATION ARE IN VIOLATION OF RULE 11

Santa Ana's insistence on asserting the three claims and Application against Dana Point is grounds for sanctions,, including without limitation an award of Dana Point's attorneys' fees and costs. Rule 11, subdivision b, provides in relevant part:

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

The Complaint and the Application, which are both signed and filed by your office, violate Rule 11, since, as discussed above, none of the claims are warranted by the existing law or any facts. Penalties under Rule 11 may include "nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation." Fed. R. Civ. P. 11(c)(4).

Dana Point may likewise seek sanctions, including attorneys' fees, under 28 U.S.C. § 1927, which provides:

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the

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excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

If Dana Point is forced to incur attorneys' fees and costs litigation this frivolous action and obtaining a dismissal, it will seek reimbursement of its attorneys' fees and costs pursuant to Fed. R. Civ. Proc. 11 and 28 U.S.C. § 1927. Judge Carter's ruling on the Application already supports the above assertions, and points out that the Compliant and Application are based on mere speculation, not facts. Moreover, as noted above, the speculation upon which both are based is objectively, and demonstratively false. To avoid sanctions, Dana Point demands that you immediately dismiss it with prejudice from the Action.

* * *

Dana Point seeks to avoid spending any additional time, judicial resources, and taxpayer dollars on this baseless and frivolous lawsuit. Please confirm that Santa Ana will dismiss Dana Point from the matter by 4:00 p.m. on January 15 or we will have no choice but to move forward as discussed above.

Sincerely,

RUTAN & TUCKER, LLP



A. Patrick Muñoz
City Attorney

APM:ast
Attachment

cc: City Manager
City Council
All counsel