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COUNTY OF SANTA CLARA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(San José Division)

CALVARY CHAPEL SAN JOSE, et al.,

Plaintiffs,

v.

COUNTY OF SANTA CLARA,

Defendant.

No. 20-CV-03794 BLF

DEFENDANT COUNTY OF SANTA CLARA'S NOTICE OF MOTION, MOTION TO DISMISS, AND MOTION TO STAY PLAINTIFFS' CLAIMS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; AND [PROPOSED] ORDER

Date: January 26, 2023
Time: 9:00 a.m.
Crtrm: 3, 5th Floor
Judge: The Hon. Beth Labson Freeman

NOTICE OF MOTION AND MOTION

TO PLAINTIFFS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on **January 26, 2023** at **9:00 a.m.**, or as soon thereafter as the matter may be heard in the U.S. District Courthouse, 280 South 1st Street, San José, California, the Honorable Beth Labson Freeman presiding, Defendant County of Santa Clara (the "County") will move, and hereby does move, this Court for an order pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure (i) dismissing Plaintiffs' claims for injunctive and declaratory relief and (ii) staying Plaintiffs' claims for damages until the state court proceeding has concluded. The County's motion is based on this Notice of Motion, Motion, and Memorandum of Points and Authorities; the pleadings and other papers on file in this action; and on such oral argument as the Court may permit.

RELIEF SOUGHT

The County moves to dismiss the Plaintiffs' claims for injunctive relief and declaratory relief and to stay Plaintiffs' claims for damages on the grounds that abstention is required under *Younger v. Harris*, 401 U.S. 37 (1971).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The County respectfully asks this Court to abstain from exercising jurisdiction as to Plaintiffs' remaining claims, as is required under the *Younger* abstention doctrine. The *Younger* abstention doctrine reflects "a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances," so as to protect the "comity" between state and federal courts that includes a "proper respect for state functions." *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982) (quoting *Younger v. Harris*, 401 U.S. 37, 44 (1971)). This Court previously relied on *Younger* as a basis for denying Plaintiffs' motion for a temporary restraining order, recognizing that granting temporary injunctive relief would "disregard Our Federalism" and the general principle of comity between state and federal courts. ECF 67 at 1.

At this stage of the proceedings, *Younger* demands even more. Now that this Court has dismissed Plaintiffs' Bane Act claims, each of Plaintiffs' remaining claims for relief—not merely Plaintiffs' prior request for temporary injunctive relief—asks this Court to disregard important

principles of comity and rule on the constitutionality of an ongoing state court proceeding. But a ruling on Plaintiffs' federal claims would cause precisely the "interference with state proceedings" that "is at the core of the comity concern that animates *Younger*." *Gilbertson v. Albright*, 381 F.3d 965, 976 (9th Cir. 2004) (en banc). And if there were any doubt, the Ninth Circuit has answered it: In a case on all fours with this one, it affirmed that a federal court should exercise *Younger* abstention in favor of an ongoing state court proceeding. *See Herrera v. City of Palmdale*, 918 F.3d 1037, 1043-50 (9th Cir. 2019). In keeping with the respect for federalism and the comity between state and federal courts, as well the Ninth Circuit's application of the *Younger* doctrine, this Court should abstain from exercising jurisdiction under *Younger* as to all of Plaintiffs' remaining claims.

This Court should therefore dismiss Plaintiffs' claims for injunctive and declaratory relief for lack of jurisdiction under Federal Rule of Civil Procedure 12(h)(3). Plaintiffs' claims for damages should be stayed until the conclusion of the state proceedings. *Gilbertson*, 381 F.3d at 981.

II. LEGAL STANDARD

Under Rule 12(h)(3),"[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P 12(h)(3). Motions for abstention under *Younger* are properly asserted under Rule 12(h)(3) or Rule 12(b)(1). *See, e.g.*, *Herships v. Cantil-Sakauye*, No. 17-cv-00473-YGR, 2017 WL 2311394, at *1, *5-6 (N.D. Cal. May 26, 2017) (granting a 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction on *Younger* grounds and noting that "dismissal is appropriate under Rule 12(b)(1)"); *Ambat v. City & County of San Francisco*, No. C 07-3622 SI, 2007 WL 3101323, at *2 (N.D. Cal. Oct. 22, 2007) ("[N]umerous courts have also considered abstention arguments within the framework of a motion to dismiss for lack of subject matter jurisdiction . . . ."); *see also* 5B Charles Alan Wright et al., *Federal Practice and Procedure* § 1350 n.12 (3d ed.), Westlaw (database updated Apr. 2022) (collecting cases).

"In addressing *Younger* abstention issues, district courts . . . may not exercise jurisdiction when" the doctrine applies; "there is no discretion vested in the district courts to do otherwise." *Vasquez v. Rackauckas*, 734 F.3d 1025, 1035 (9th Cir. 2013) (quoting *San Jose Silicon Valley Chamber of Commerce Political Action Comm. v. City of San Jose*, 546 F.3d 1087, 1092 (9th. Cir. 2008)); *see also Farhat v. California*, No. 18-06055 BLF (PR), 2019 WL 295256, at *1 (N.D. Cal.

Jan. 22, 2019). *Younger* abstention may be raised "at any stage of the litigation." *Citizens for Free Speech, LLC v. County of Alameda*, 953 F.3d 655, 658 (9th Cir. 2020).

III. ARGUMENT

A. *Younger* Abstention Is Required as to All of Plaintiffs' Remaining Claims

Younger precludes "federal intrusion" in three types of proceedings: (1) state criminal proceedings, (2) "civil enforcement proceedings," and (3) "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72, 78 (2013) (quoting *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 367-68 (1989)). If the state court proceeding falls into one of these categories, the state court action "must also satisfy a three-part inquiry: the state proceeding must be (1) 'ongoing,' (2) 'implicate important state interests,' and (3) provide 'an adequate opportunity . . . to raise constitutional challenges.'" *Herrera*, 918 F.3d at 1044 (9th Cir. 2019) (quoting *Middlesex Cnty. Ethics Comm.*, 457 U.S. at 432). Where those three threshold requirements are met, abstention under *Younger* is not only permitted but in fact *required* for any claims that would "enjoin" the ongoing state proceeding, "or have the practical effect of doing so." *Gilbertson*, 381 F.3d at 978; *see also Vasquez*, 734 F.3d at 1035 (district courts do not retain discretion to exercise jurisdiction where *Younger* abstention is necessary).

All of those prerequisites exist here. As this Court previously held, and as Plaintiffs cannot credibly dispute, the state proceeding is a civil enforcement proceeding, is ongoing, implicates important state interests, and provides Plaintiffs an opportunity to raise their challenges. ECF 67 at 6-8. And ruling on each of Plaintiffs' remaining claims would require this Court to adjudicate the validity of the ongoing civil enforcement action—that is, have the practical effect of enjoining that proceeding. Indeed, the Ninth Circuit has already held, in a case with analogous facts and claims, that *Younger* abstention is required. *See Herrera*, 918 F.3d at 1043-50. This Court should therefore abstain from exercising jurisdiction over the Plaintiffs' claims.

Abstaining from exercising jurisdiction over Plaintiffs' claims is still warranted at this juncture in the litigation. In fact, as explained below, this is the first instance of this litigation during which *all* of Plaintiffs' claims unquestionably require abstention under *Younger*, given this Court's

recent order granting the County's motion to dismiss the Plaintiffs' claims under the Bane Act. Further, *Younger* abstention may be raised "at any stage of the litigation," *Citizens for Free Speech, LLC*, 953 F.3d at 658; *see also Belloti v. Baird*, 428 U.S. 132, 143 n.10 (1976), and a "state may waive *Younger* only by express statement, not through failure to raise the issue," *Boardman v. Estelle*, 957 F.2d 1523, 1535 (9th Cir. 1992).

1. The State Civil Enforcement Proceeding Is Ongoing, Implicates Important State Interests, and Provides Plaintiffs an Opportunity to Raise Their Federal Claims

The County's ongoing state court action is a civil enforcement proceeding requiring *Younger* abstention. As a threshold matter, the state court action plainly meets the definition of a "civil enforcement proceeding[]." *Sprint Commc'ns*, 571 U.S. at 78 (quoting *New Orleans Pub. Serv.*, 491 U.S. at 367-68). As the Supreme Court has explained, civil enforcement proceedings are "characteristically initiated to sanction the federal plaintiff . . . for some wrongful act," "a state actor is routinely a party to the state proceeding and often initiates the action," and "[i]nvestigations are commonly involved, often culminating in the filing of a formal complaint or charges." *Id.* at 79-80. Those hallmarks of a civil enforcement proceeding are present here. The state court proceeding is a nuisance action brought by the District Attorney and the County Counsel on behalf of the People, the County, and the County's Public Health Officer to enforce State and County public health orders. ECF 67 at 2-4. Moreover, the civil enforcement proceeding was preceded by an investigation that resulted in the filing of notices of violations (regarding the public health orders) and a state-court complaint. *Id.* at 3-4. The Supreme Court has recognized that civil nuisance proceedings like this one fall within *Younger*'s scope, reasoning that "an offense to the State's interest in the nuisance litigation is likely to be every bit as great as it would be were this a criminal proceeding." *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 607 (1975).

Indeed, the Ninth Circuit has expressly held, in a case on nearly all fours with this one, that a state-court nuisance action initiated by a local government is a "civil enforcement proceeding within the scope of the *Younger* doctrine." *Herrera*, 918 F.3d at 1045. In *Herrera*, a city government issued an order requiring owners to abate nuisances on their property, noting that the nuisances on

the property posed a severe health and safety hazard to the public. *Id.* at 1041-42. When the owners failed to abate the nuisances, the city filed a nuisance complaint against them in state court. *Id.* The owners sued the city under 42 U.S.C. § 1983 in federal court, alleging various federal constitutional violations by city officials. *Id.* at 1041. The district court abstained from exercising jurisdiction over the owners' claims under *Younger*, and the Ninth Circuit affirmed. *Id.* at 1042, 1050. As relevant here, the Ninth Circuit concluded that the city's nuisance proceeding is a "civil enforcement action" for *Younger* purposes. *Id.* at 1045. Accordingly, there can be no question that the state court action here is a "civil enforcement proceeding" for purposes of *Younger*.

The state civil enforcement action also meets the other three threshold requirements for *Younger* abstention. The proceeding is (1) ongoing, (2) implicates important state interests, and (3) provides an adequate opportunity to raise constitutional challenges. *See id.* at 1044.

First, as this Court previously concluded, "the state proceedings are, in fact, ongoing." ECF 67 at 7-8. In their temporary restraining order briefing, the Plaintiffs argued that *Younger* abstention was not required because the Plaintiffs filed suit in federal court before the County filed suit in state court. ECF 62 at 3-4. But "a filing date is not dispositive" as to whether the state court proceedings were "ongoing" for the purposes of *Younger* abstention. *Equity Lifestyle Props., Inc. v. County of San Luis Obispo*, 548 F.3d 1184, 1196 (9th Cir. 2008). Rather, "where state criminal proceedings are begun against the federal plaintiffs after the federal complaint is filed but before any proceedings of substance on the merits have taken place in the federal court, the principles of *Younger v. Harris* should apply in full force." *Hicks v. Miranda*, 422 U.S. 332, 349 (1975); *see also Equity Lifestyle Props.*, 548 F.3d at 1196. As this Court already found, no proceedings of substance on the merits of this federal case had taken place by the time the County filed suit in state court: "This federal case ha[d] not yet advanced past the pleadings stage, and there was no operative complaint in this case when the state court set the contempt hearing." ECF 67 at 8.

Indeed, shortly after the County initiated the state court enforcement action on October 29, 2020, this Court dismissed Plaintiffs' initial complaint. ECF 30 (Nov. 5, 2020 Order Granting Motion to Dismiss With Leave to Amend). Plaintiff did not file their First Amended Complaint until November 25, 2020—one month after the civil enforcement action had been filed. ECF 38.

Second, the County's state court action unquestionably implicates "important state interests." Here, the County's state-court action seeks to enforce public health orders issued to slow the spread of COVID-19. The Ninth Circuit has repeatedly noted that state actions seeking to "enforce health and safety provisions . . . and to abate public nuisances . . . implicate important state interests." *Herrera*, 918 F.3d at 1045. That is even more true given that the County's public health orders were issued during a once-in-a-generation pandemic. As the Supreme Court has recognized, "[s]temming the spread of COVID-19 is unquestionably a compelling interest." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020).

Third and finally, the state court action affords Plaintiffs an "adequate opportunity to raise" their challenges. The "burden rests on" Plaintiffs "to show that they were barred from raising their federal claims" in the state civil enforcement proceeding. *Lebbos v. Judges of Superior Court*, 883 F.2d 810, 815 (9th Cir. 1989). Plaintiffs cannot meet that burden here. Indeed, Plaintiffs have repeatedly raised their constitutional arguments in state court. That the state court has rejected those claims does not mean that Plaintiffs lacked an opportunity to raise them. Quite the opposite.

Herrera is again instructive. There, the Ninth Circuit expressly recognized that California nuisance proceedings provide federal plaintiffs with an adequate opportunity to raise federal constitutional challenges. In *Herrera*, the owners (who were plaintiffs in the federal case) argued that the civil rights violations they claimed to have suffered were "'irrelevant' to the issue" of whether they had caused a nuisance. 918 F.3d at 1045-46. The Ninth Circuit disagreed, noting that the relevant question as to this factor is whether an "opportunity exists" for plaintiffs to raise their claims. *Id.* at 1046. Because the California Code of Civil Procedure explicitly allows state court defendants to raise cross-complaints, the state civil enforcement unquestionably provided the plaintiffs an opportunity to raise their federal claims in state court. *Id.* at 1046. So too here: Calvary has had an opportunity to raise its federal constitutional challenges in the state court proceedings, and in fact has done so, including in its demurrer to the amended complaint, which the Superior Court overruled. Calvary will also have an opportunity to raise its constitutional challenges in its opposition to the motion for summary adjudication that the County has filed in the state court proceeding.

2. Each of Plaintiffs' Claims Would Have the Practical Effect of Enjoining the Ongoing State Enforcement Proceedings

As the Ninth Circuit has held, when *Younger* abstention is applicable, federal courts must withhold jurisdiction over all claims that would enjoin the ongoing state proceeding "or have the practical effect of doing so." *Gilbertson*, 381 F.3d at 978. Here, *Younger* applies to each type of relief sought by Plaintiffs—injunctive, declaratory, and monetary—because each category of relief would have the practical effect of enjoining the ongoing state enforcement proceeding. The only claim that could conceivably have fallen outside *Younger*'s purview—Plaintiffs' Bane Act claim—was recently dismissed. *See generally* ECF 222; *see also Herrera*, 918 F.3d at 1049 (holding that plaintiffs' Fourth Amendment claims regarding the investigations conducted in the course of the state enforcement action, unlike the rest of their claims, did not warrant *Younger* abstention).

The Ninth Circuit's decision in *Herrera* is again on point. In *Herrera*, the owners—like Plaintiffs here—sought injunctive, declaratory, and monetary relief for their federal constitutional claims. *Herrera*, 918 F.3d at 1041-42. The Ninth Circuit rejected the owners' arguments that their federal claims were sufficiently "distinct" from the nuisance issue being addressed in the state court. *Id.* at 1047-49. First, the *Herrera* court affirmed that *Younger* applied to the owners' request for an injunction preventing the state court from enforcing abatement of the nuisances, as granting such relief would "enjoin directly the state action." *Id.* at 1048. As to the owners' requests for declaratory relief, the Ninth Circuit reasoned, the "request for declaratory relief would have 'the same practical impact as injunctive relief on a pending state proceeding as a result of the preclusive effect of the federal court judgment.'" *Id*. (quoting *Gilbertson*, 381 F.3d at 975). Finally, the Ninth Circuit affirmed the district court's decision to abstain from exercising jurisdiction over the owners' damages claims. The Ninth Circuit reasoned that "[r]elief on such claims requires the district court to determine first whether violations of [the owners'] civil rights have occurred in the course of the state enforcement proceeding, which would create a federal court judgment with preclusive effect over the ongoing state proceeding." *Id.*

Here, as in *Herrera*, each form of relief Plaintiffs request would invalidate the County's ongoing state nuisance and enforcement proceeding. The Ninth Circuit's reasoning in *Herrera*

controls this case.

First, Plaintiffs' claims for injunctive relief explicitly ask this court to "enjoin . . . ongoing state proceedings." *Readylink Healthcare, Inc. v. State Comp. Ins. Fund,* 754 F.3d 754, 758 (9th Cir. 2014). In each cause of action asserted in their Fourth Amended Complaint, Plaintiffs state that they seek to enjoin enforcement of the fines that the County seeks to collect in state court. ECF 167 ¶¶ 104, 109, 119, 125, 132, 136. Granting Plaintiffs such relief would "enjoin directly the state action," *Herrera*, 918 F.3d at 1048—the state court would be enjoined from ruling on the County's attempts to enforce the fines.

Second, Plaintiffs' claims for declaratory relief, like their claims for injunctive relief, would have the practical effect of enjoining the ongoing state proceeding. Plaintiffs request a judicial declaration that the orders upon which the fines levied against Plaintiffs were based are unconstitutional. ECF 167 ¶¶ 104, 109, 119, 125, 132, 136. Plaintiffs' Fourth Amended Complaint acknowledges the effect that such a declaratory judgment would have on the pending state court proceeding. The Fourth Amended Complaint asserts that the requested declaratory judgment "will resolve the constitutionality of the fines levied against the Plaintiffs"—that is, resolve the constitutionality of the fines currently being adjudicated in state court. *Id.* ¶ 104. Granting the requested declaratory relief would thus "result in precisely the same interference with and disruption of state proceedings that the longstanding policy limiting injunctions was designed to avoid." *Herrera*, 981 F.3d at 1048 (quoting *Gilbertson*, 381 F.3d at 971).

Finally, an order adjudicating Plaintiffs' requests for damages would result in the same interference with state court proceedings. Plaintiffs seek "nominal damages" to compensate them for the County's alleged violation of their civil rights. ECF 167 ¶¶ 104, 109, 119, 125, 132, 136. To grant this request, this Court would be required "to determine first whether violations of their civil rights have occurred in the state enforcement proceeding." *Herrera*, 918 F.3d at 1048. "Plainly, such determination that the state proceeding is itself unconstitutional would interfere with the ongoing state enforcement action in the same way as would a declaratory judgment by the federal court." *Id.* As a result, adjudicating Plaintiffs' damages claims would "frustrate the state's interest in administering its judicial system, cast a negative light on the state court's ability to enforce

constitutional principles, and put the federal court in the position of prematurely or unnecessarily deciding a question of federal constitutional law." *Id.* (quoting *Gilbertson*, 381 F.3d at 980).

In sum, adjudicating each of Plaintiffs' claims for relief would require this Court to interfere with the ongoing state court proceeding. To maintain jurisdiction over this case despite the potential impact on the state court case would be contrary to *Younger* because it would "implicate the state's interest in administration of its judicial system, risk offense because it unfavorably reflects on the state courts' ability to enforce constitutional principles, and put the federal court in the position of making a premature ruling on a matter of constitutional law." *Gilbertson*, 381 F.3d at 984. As in *Herrera*, because a ruling for the Plaintiffs on any of their claims would "invalidate the . . . enforcement proceeding," *Younger* applies to the relief sought by Plaintiffs. 918 F.3d at 1048-49.

B. Because *Younger* Abstention is Required, this Court Should Dismiss Plaintiffs' Claims for Injunctive Relief, Dismiss Plaintiffs' Claims for Declaratory Relief, and Stay Plaintiffs' Claims for Damages

The remedy where *Younger* abstention is warranted varies by the type of relief sought by the plaintiffs. As to Plaintiffs' claims for injunctive relief, the Ninth Circuit has instructed that where "an injunction is sought and *Younger* applies," federal courts must "refrain from exercising jurisdiction . . . *permanently* by dismissing" the claims for injunctive relief. *Gilbertson*, 381 F.3d at 981. "Once it is determined that an injunction is not warranted on *Younger* grounds, there is nothing more for the federal court to do. Hence, dismissal (and only dismissal) is appropriate." *Id.*; *cf. Cornell v. Off. of Dist. Att'y*, No. 5:22-cv-00789-JWH-SHK, 2022 WL 2953892, at *9 (C.D. Cal. July 25, 2022) (denying plaintiff's request for a preliminary injunction on the basis of *Younger* abstention and holding that, as a result, dismissal of plaintiff's claims entirely was required).

Plaintiffs' claims for declaratory relief fare no better. Because, as explained above, adjudicating claims for declaratory relief has the same "practical effect" of enjoining the ongoing state proceedings, courts must "refrain from exercising jurisdiction in actions for declaratory relief"—that is, dismiss the claims—entirely. *See Gilbertson*, 381 F.3d at 975.

Plaintiffs' nominal damages claims, however, need only be stayed. "[W]hen damages are sought and *Younger* principles apply, it makes sense for the federal court to refrain from exercising

jurisdiction *temporarily* by staying its hand until such time as the state proceeding is no longer pending." *Id.* at 981. Staying, rather than dismissing, the damages claims allows the "federal plaintiff an opportunity to pursue constitutional challenges in the state proceeding (assuming, of course, that such an opportunity is available under state law), and the state an opportunity to pass on those constitutional issues in the context of its own procedures, while still preserving the federal plaintiff's opportunity to pursue compensation in the forum of his choice." *Id.*

In sum, this Court should dismiss Plaintiffs' claims for injunctive relief and declaratory relief and stay Plaintiffs' claims for nominal damages until the conclusion of the state court proceeding.

IV. CONCLUSION

The *Younger* doctrine requires this Court to abstain from exercising jurisdiction as to all of Plaintiffs' claims for relief and provide the County the mandatory relief outlined by the Ninth Circuit: dismiss Plaintiffs' claims for injunctive and declaratory relief and stay Plaintiffs' claims for damages until the conclusion of the ongoing state proceeding.

Dated: October 11, 2022

Respectfully submitted,

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COUNTY OF SANTA CLARA

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