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18 City of Aliso Viejo, City of San Juan
19 Capistrano, and City of San Clemente

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 HOUSING IS A HUMAN RIGHT
23 ORANGE COUNTY, et al.,

24 Plaintiffs,

25 v.

26 THE COUNTY OF ORANGE, et al.,

27 Defendants.

Case No. 8:19-cv-00388-PA
Honorable Percy Anderson

**[PROPOSED] ORDER ON
MOTION OF DEFENDANTS CITY
OF ALISO VIEJO, CITY OF SAN
JUAN CAPISTRANO, AND CITY
OF SAN CLEMENTE TO DISMISS
THE AMENDED COMPLAINT**

1 **[PROPOSED] ORDER**

2 This Court, having considered the Motion to Dismiss the Amended Complaint
3 filed by Defendant Cities of Aliso Viejo, San Juan Capistrano, and San Clemente
4 (“Defendants”), finds that the Motion should be **GRANTED** in its entirety.

5 **1.** Counts 1 through 3 of the Amended Complaint, asserting constitutional
6 claims against Defendants, must be dismissed. *First*, Plaintiffs lack standing to assert
7 these claims against San Juan Capistrano and Aliso Viejo. *See, e.g., DaimlerChrysler*
8 *Corp. v. Cuno*, 547 U.S. 332, 351-52 (2006); *Clark v. City of Seattle*, 899 F.3d 802,
9 808 (9th Cir. 2018); *La Asociacion de Trabajadores de Lake Forest v. City of Lake*
10 *Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010). *Second*, Counts 1 through 3 do not state
11 any Eighth Amendment claim for relief that is legally viable or plausible. *See, e.g.,*
12 *Martin v. City of Boise*, 920 F.3d 584, 589, 616-17 & n.8 (9th Cir. 2019); *Gaut v.*
13 *Sun*, 810 F.3d 923, 925 (9th Cir. 1987) (*per curiam*); *Warner v. Tinder*, 105 F. Supp.
14 3d 1083, 1098 (C.D. Cal. 2015). For the reasons articulated in Defendants’ Motion,
15 Plaintiffs’ claims under the First, Fourth, and Fourteenth Amendments are similarly
16 threadbare and insufficient, and must also be dismissed.

17 **2.** Counts 5 and 8, which assert that Defendants have violated the
18 Americans with Disabilities Act and analogous California law (Cal. Govt. Code
19 § 11135), are also dismissed. Plaintiffs have alleged no plausible facts—as opposed
20 to conclusory legal labels—suggesting that Defendants have subjected them to
21 disability-based discrimination. *See, e.g., Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
22 555 (2007); *Lovell v. Chandler*, 303 F.3d 1039, 1052 (9th Cir. 2002); *Basilios v.*
23 *City of Torrance*, 166 F. Supp. 3d 1061, 1084 (C.D. Cal. 2015).

24 **3.** Count 4, which is based on the California Tort Claims Act, Cal. Govt.
25 Code § 815.6, must also be dismissed. Plaintiffs have not pled facts alleging an injury
26 proximately caused by the type of mandatory duty which supports liability under the
27 Act. *See, e.g., Guzman v. City of Monterey*, 46 Cal. 4th 887, 898 (Cal. 2009); *Tuthill*
28 *v. City of Buenaventura*, 223 Cal. App. 4th 1081, 1089 (Cal. Ct. App. 2014).

1 4. Count 7—a due process claim brought by Plaintiff James under 42
2 U.S.C. § 1983 against the City of San Clemente for the alleged seizure and
3 destruction of his property without just compensation—is also hereby dismissed.
4 The Amended Complaint does not plausibly allege that the City of San Clemente
5 took or destroyed James’s property—let alone pursuant to a policy or established
6 practice of the municipality. *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009);
7 *Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 691 (1978).

8 5. Count 6, brought under California’s Bane Act, Cal. Civ. Code § 52.1, is
9 dismissed. As explained with regard to Counts 1 through 3, the Amended Complaint
10 states no claim that Defendants violated Plaintiffs’ federal constitutional rights—let
11 alone that Defendants did so in a “coercive” manner, *see, e.g., Venice Justice Comm.*
12 *v. City of L.A.*, 205 F. Supp. 3d 1116, 1127-28 (C.D. Cal. 2016).

13 6. Count 9, which simply seeks declaratory and injunctive relief, sets forth
14 no independent cause of action and—since it therefore rises and falls on the fate of
15 the Complaint’s other Counts—must also be dismissed. *TYR Sport Inc. v. Warnaco*
16 *Swimwear Inc.*, 679 F. Supp. 2d 1120, 1141 n.3 (C.D. Cal. 2009); *Tesoro Refining &*
17 *Mktg. Co. v. City of Long Beach*, 334 F. Supp. 3d 1031, 1049 (C.D. Cal. 2017).

18 **IT IS THEREFORE ORDERED** that the Amended Complaint is dismissed
19 with respect to Defendants City of Aliso Viejo, City of San Juan Capistrano, and City
20 of San Clemente pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

21
22 Date: _____

HON. PERCY ANDERSON
UNITED STATES DISTRICT
JUDGE

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