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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID D. WESNER, et al.,

Plaintiffs,

No. C 08-03377 JSW

v.

COUNTY OF NAPA, et al.,

Defendants.

**ORDER DENYING
DEFENDANTS' MOTION TO
DISMISS OR, ALTERNATIVELY,
FOR A MORE DEFINITE
STATEMENT**

Now before the Court is the motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)") or, alternatively, for a more definite statement filed by Defendant County of Napa (the "County"). The Court finds that this matter is appropriate for disposition without oral argument and it is hereby deemed submitted. *See* Civ. L.R. 7-1(b). Accordingly, the hearing set for December 12, 2008 is HEREBY VACATED. Having carefully reviewed the parties' papers, considered their arguments and the relevant legal authority, the Court hereby denies the County's motion.

BACKGROUND

Plaintiffs David D. Wesner, Janice L. Wesner and Don Wesner, Inc. (collectively, "Plaintiffs") allege that through a stipulated judgment they obtained a vested right to continue to use their property as they have been. (Compl., ¶¶ 6-8.) Despite this stipulated judgment, the County posted a notice of nuisance on Plaintiffs' property, alleging that the same violations that had been settled through the stipulated judgment constituted a nuisance. (*Id.*, ¶ 9.) The County

1 held a hearing on the matter in April of 2008, but denied Plaintiffs a meaningful opportunity to
2 present their case. (*Id.*, ¶ 11.) At the conclusion of the hearing, the County’s Board of
3 Supervisors voted to declare the existence of a public nuisance on Plaintiffs’ property and
4 ordered it abated. Plaintiffs bring a claim under 42 U.S.C. § 1983 (“Section 1983”), alleging
5 that the County deprived them of the following constitutional rights:

- 6 a) Their right of notice and meaningful opportunity to be heard by an impartial decision maker;
- 7 b) Their right against impairment of contract, to wit the stipulated civil judgment recognizing their grandfathered use of their property;
- 8 c) Their First Amendment Rights to free speech and right to petition;
- 9 d) Their Fifth, Ninth, and Fourteenth Amendment rights not to be denied liberty and property without due process of the law, including their right to carry on a lawful business and a common trade and their right not to be subjected to malicious, arbitrary and capricious use of governmental authority and regulation; and
- 11 e) Their Fourth Amendment right against unreasonable seizure

12 (Compl., ¶ 18.)

13 Plaintiffs also bring a claim under the California Constitution and for relief under
14 California Code of Civil Procedure § 1094.5. The County moves to dismiss Plaintiffs’
15 complaint. The Court will address additional specific facts as required in the analysis.

16 ANALYSIS

17 A. Applicable Legal Standards.

18 A motion to dismiss is proper under Rule 12(b)(6) where the pleadings fail to state a
19 claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). In ruling on a Rule 12(b)(6)
20 motion, the complaint is construed in the light most favorable to the non-moving party and all
21 material allegations in the complaint are taken to be true. *Sanders v. Kennedy*, 794 F.2d 478,
22 481 (9th Cir. 1986). The court, however, is not required to accept legal conclusions cast in the
23 form of factual allegations if those conclusions cannot reasonably be drawn from the facts
24 alleged. *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994) (citing
25 *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

26 Pursuant to Federal Rule of Civil Procedure 12(e), “[i]f a pleading to which a responsive
27 pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to
28 frame a responsive pleading,” a party may move for a more definite statement. Such a motion

1 must point out the alleged defects and the details required. Fed. R. Civ. P. 12(e). Motions for
2 more a definite statement are disfavored and are “proper only where the complaint is so
3 indefinite that the defendant cannot ascertain the nature of the claim being asserted.” *Sagan v.*
4 *Apple Computer, Inc.*, 874 F. Supp. 1072, 1077 (C.D. Cal. 1994). Moreover, such motions may
5 not be used as a substitute for discovery. *Id.*

6 **B. The County’s Motion to Dismiss.**

7 The County moves to dismiss Plaintiffs’ Section 1983 claim to the extent it is premised
8 on the Ninth Amendment. The County argues that the Ninth Amendment does not create an
9 independent constitutional right for purposes of stating a claim. Plaintiffs do not disagree, and
10 clarify that they are not stating a “stand-alone” violation of the Ninth Amendment. (Opp. at 4.)
11 Because Plaintiffs are not bringing an independent claim under the Ninth Amendment, the
12 Court denies the County’s motion on this ground.

13 The County also moves to dismiss Plaintiffs’ Section 1983 claim on the grounds that
14 Plaintiffs fail to state facts sufficient to constitute a claim under the First Amendment. The First
15 Amendment prohibits the government from abridging the right “to petition the Government for
16 a redress of grievances.” See U.S. Const. amend I. This right is infringed when a government
17 actor directly interferes with the right to present a grievance, or imposes restrictions on the
18 ability to present a grievance that has a “chilling” effect on a citizen’s exercise of that right.
19 *O’Keefe v. Van Boening*, 82 F.3d 322, 325 (9th Cir.1996).

20 The cases cited to by the County do not demonstrate that Plaintiffs failed to allege a
21 claim that their rights under the First Amendment have been violated. See *Adderley v. Florida*,
22 385 US 39, 47-48 (1966); *DeGrassi v. City of Glendora*, 207 F. 3d 636, 646 (9th Cir. 2000). In
23 *Adderley*, the Supreme Court held that the state’s neutral enforcement of its trespass laws did
24 not violate demonstrators’ rights of freedom of speech, press, assembly or petition. *Adderley*,
25 385 U.S. at 47. Significantly, the Court noted that there was “not a shred of evidence” that the
26 trespass law was enforced based on what was being said by the demonstrators or because the
27 sheriff disagreed with the objectives of their protest. *Id.* Similarly, in *DeGrassi*, the court held
28 that excluding the plaintiff from city council meetings did not violate her free speech rights

1 because she was excluded based on her status as a party, not because of her viewpoint.
2 *DeGrassi*, 207 F.3d at 646. Limitations on speech at such meetings “must be reasonable and
3 content neutral, but that is all they need to be.” *Id.* (quoting *Kindt v. Santa Monica Rent*
4 *Control Bd.*, 67 F.3d 266, 271 (9th Cir. 1995)). Here, it is not clear, based on the allegations in
5 Plaintiffs’ complaint, that the County restricted Plaintiffs’ ability to present their case at the
6 hearing based on content neutral reasons. Therefore, the Court cannot find as a matter of law at
7 this procedural stage that being denied the right to speak at a hearing at which their property
8 rights were being adjudicated was not a denial of Plaintiffs’ first amendment rights. Therefore,
9 the Court denies the County’s motion on this ground as well.

10 Next, the County argues the public interest exception to collateral estoppel applies here,
11 and thus, Plaintiffs cannot rely on the stipulated judgment to preclude the County from
12 enforcing the zoning ordinance. However, neither party has filed a copy of the stipulated
13 judgment or the zoning ordinances at issue in the case in which judgment was entered or the
14 present action. Moreover, it is not clear what conduct by Plaintiffs that the County argued was
15 a nuisance in the case in which judgment was entered or what conduct by Plaintiffs that the
16 County presently contends is a nuisance, or even if the zoning ordinances have changed since
17 the judgment was entered. Therefore, whether or not collateral estoppel or res judicata applies
18 here is not an issue the Court can determine on the record before it on this motion to dismiss.

19 Finally, the County argues that Plaintiffs’ complaint fails to allege facts sufficient to
20 demonstrate a protected property right because Plaintiffs are merely seeking to maintain a
21 nuisance condition on their property. Again, the Court cannot determine on the record before it
22 whether Plaintiffs are seeking to maintain a nuisance or whether the stipulated judgment entitles
23 them to continue their preexisting use. Therefore, the Court denies the County’s motion to
24 dismiss.

25 **B. The County’s Alternative Motion for a More Definite Statement.**

26 The County argues that Plaintiffs should be required to provide a more definite
27 statement because they do not identify in their complaint the particular zoning ordinances at
28 issue and fail to incorporate the substance of the stipulated judgment or the resolution of the

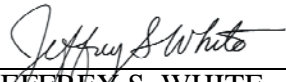
1 County's Board of Supervisors of which they complain. The Court finds that omitting these
2 details do not render Plaintiffs' complaint so ambiguous or vague that the County cannot be
3 required to frame a responsive pleading. *See* Fed. R. Civ. P. 12(e). The County is aware of the
4 stipulated judgment, the Board of Supervisor's resolution, and the zoning ordinances at issue.
5 To the extent the County needs more information about the facts supporting Plaintiffs'
6 complaint, the County can obtain such information through discovery. Accordingly, the Court
7 denies the County's alternative motion for a more definite statement.

8 **CONCLUSION**

9 For the foregoing reasons, the Court DENIES the County's motion to dismiss or, in the
10 alternative, for a more definite statement.

11 **IT IS SO ORDERED.**

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13 Dated: December 9, 2008

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16 JEFFREY S. WHITE
17 UNITED STATES DISTRICT JUDGE
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