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6 *Pro Hac Vice Application Forthcoming
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**

11 HOWARD A. MYERS,
12 Plaintiff,
13 v.

Case No. 19CV353510

14 LAURIE SMITH, in her official capacity
as Sheriff of Santa Clara County,
15 and

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

16 RICK SUNG, in his official capacity
17 as Undersheriff and Acting Chief of
Correction of Santa Clara County,
18 Defendants.
19

20 **INTRODUCTION**

21 1. Plaintiff HOWARD A. MYERS, a Santa Clara County taxpayer, seeks to enjoin
22 Defendants LAURIE SMITH, in her official capacity as Sheriff of Santa Clara County, and RICK
23 SUNG, in his official capacity as Undersheriff and Acting Chief of Correction of Santa Clara County,
24 from expending taxpayer funds and taxpayer-financed resources on a recently enacted policy that
25 requires federal immigration officials to obtain a judicial warrant before an alien in Santa Clara
26 County’s custody may be transferred to federal immigration officials’ custody for removal from the
27 United States.
28

1 **JURISDICTION AND VENUE**

2 2. Jurisdiction in this case is founded on California’s common law taxpayer standing
3 doctrine and Code of Civil Procedure section 526a, which grants California taxpayers the right to sue
4 government officials to prevent unlawful expenditures of taxpayer funds and taxpayer-financed
5 resources. The mere expending of a paid, public official’s time performing illegal or unauthorized acts
6 constitutes an unlawful use of funds that may be enjoined. *Blair v. Pitchess*, 5 Cal.3d 258, 268 (1971).
7 It is immaterial that the amount of the expenditure is small or that enjoining the illegal expenditure will
8 permit a savings of tax funds. *Id.*

9 3. Venue in this Court is appropriate under Section 393 of the Code of Civil Procedure as
10 Defendants are officials of Santa Clara County and the taxpayer funds and taxpayer-financed resources
11 at issue are being expended in Santa Clara County. *Regents of the University of California v. Karst*, 3
12 Cal.3d 529, 542 (1970).

13 **PARTIES**

14 4. Plaintiff HOWARD A. MYERS is a taxpayer and has paid property and other local taxes
15 to Santa Clara County during the one-year period prior to the commencement of this action.

16 5. Defendant LAURIE SMITH is the Sheriff of Santa Clara County, a public officer and the
17 head of the Santa Clara County Sheriff’s Office. The Sheriff’s Office oversees the Santa Clara County
18 jail system and is responsible for law enforcement within Santa Clara County.

19 6. Defendant RICK SUNG is the Undersheriff and Acting Chief of Correction of Santa
20 Clara County, a public officer and the acting head of the Department of Correction. The Department of
21 Correction operates the jail system in conjunction and cooperation with the Sheriff’s Office. Defendant
22 Sung is responsible for administering the Santa Clara County jail system, including receiving and
23 keeping prisoners in the jail.

24 7. Both Defendants are being sued in their official capacities.

25 **FACTUAL BACKGROUND**

26 8. On February 28, 2019, Bambi Larson, a Santa Clara County resident, was murdered
27 inside her San Jose home. According to court documents, she suffered extensive and deep wounds
28 consistent with a cutting tool.

1 counties are bound by this agreement. Cal. Const., art. XI, § 1, subd. (a) (“The State is divided into
2 counties which are legal subdivisions of the State.”).

3 16. As part of its authority to regulate immigration, Congress “decided that the process by
4 which aliens may be removed is a “civil, not criminal, matter.” *Arizona*, 567 U.S. at 395.

5 17. Congress also has established a comprehensive system of civil laws, set forth in the
6 Immigration and Nationality Act (“INA”), for determining which aliens may be removed from the
7 United States and the procedures for removal. 8 U.S.C. § 1101, *et seq.*

8 18. In the INA, Congress granted the Secretary of Homeland Security discretion to take an
9 alien into custody pending a decision on whether the alien is to be removed from the United States.² 8
10 U.S.C. § 1226(a). Congress also mandated that the Secretary take certain categories of criminal aliens
11 into custody, upon release by federal, state, or local law enforcement agencies, pending the outcome of
12 removal proceedings under the INA. 8 U.S.C. § 1226(c).

13 19. In enacting the INA, Congress also authorized the Secretary to issue administrative
14 warrants for the arrest and detention of aliens pending the outcome of removal proceedings. 8 U.S.C.
15 §1226(a). A sample Form I-200 civil administrative warrant is attached hereto as Exhibit A. The
16 warrants are civil, not criminal, but require a finding of probable cause to believe the alien is removable
17 from the United States. Congress has not authorized judicial warrants for use in civil immigration
18 enforcement. There is no process for seeking or obtaining them.

19 **BOARD POLICY 3.54(B)**

20 20. Following Ms. Larson’s murder, the Santa Clara County Board of Supervisors sought to
21 review and update its ICE detainer policy, known as Board Policy 3.54. On June 4, 2019, it amended Board
22 Policy 3.54, entitled *Cooperation with U.S. Immigration and Customs Enforcement*, to include the
23 following provision:

24 (B) It is the policy of the County that the Sheriff may exercise discretion to facilitate the
25 transfer of an adult inmate to ICE custody if an ICE agent presents a valid arrest warrant
26 signed by a federal or state judicial officer, or other signed writ or order from a federal or
27 state judicial officer authorizing ICE’s arrest of the inmate. An administrative warrant
signed by an agent or official of ICE or of the Department of Homeland Security (such as
a Form I-200) is not a judicial warrant and will not be honored. The Sheriff and Chief of

28 ² Although the statute refers to the Attorney General, the Homeland Security Act of 2002,
Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration
functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security.

1 Correction shall jointly develop transfer procedures to implement this paragraph.
2 The obvious purpose of the policy, as amended, is to protect aliens in Santa Clara County's custody
3 from removal proceedings by federal immigration authorities.

4 21. In enacting Board Policy 3.54(B), the board was well aware that the INA does not
5 contemplate or provide for the issuance of judicial warrants in civil immigration enforcement
6 proceedings and that there is no process for ICE to obtain a judicial warrant in such proceedings. A
7 letter ICE submitted to the County in response to the proposed amendment expressly advised them of
8 these facts and was included in the Agenda Packet for the June 4, 2019 meeting. An analysis of the
9 proposed amendment prepared by the County Executive for the June 4, 2019 meeting and also included
10 in the Agenda Packet states, "ICE's response indicates that it is unable to obtain judicial warrants for
11 *civil* immigration law violations because judicial warrants are *criminal* in nature."

12 22. On information and belief, Defendants are complying with Board Policy 3.54(B) as
13 written.

14 23. On information and belief, Defendants are developing transfer procedures that prohibit
15 the Sheriff's Office and the Department of Correction from transferring an inmate to ICE's custody
16 when presented with an administrative warrant representing that ICE has determined there is probable
17 cause to believe the inmate is a removable alien.

18 24. On information and belief, Defendants have instructed the Sheriff's Office and the
19 Department of Correction not to facilitate the transfer of any inmate to ICE without a judicial warrant
20 authorizing the inmate's arrest for removal proceedings.

21 25. On information and belief, the Sheriff's Office and the Department of Correction refuse
22 to transfer any inmate to ICE if ICE does not have a judicial warrant authorizing the inmate's arrest for
23 removal proceedings.

24 26. The Sheriff's Office and the Department of Correction receives hundreds of millions of
25 dollars in taxpayer support annually. In Fiscal Year 2018, the Sheriff's Office and the Department of
26 Correction spent nearly \$280,000,000 to operate the County's jail system. The primary source of that
27 money is the Santa Clara County General Fund, a third of which comes from property taxes and other
28 local taxes such as those paid by Plaintiff.

1 27. On information and belief, Defendants have expended and will expend taxpayer funds
2 and taxpayer-financed resources complying with Board Policy 3.54(B), developing transfer procedures
3 pursuant to the policy, and implementing, enforcing, defending, and otherwise carrying out Board Policy
4 3.54(B) and the transfer procedures.

5 **FIRST CAUSE OF ACTION**
6 **(*Ultra Vires* Regulation of Immigration)**

7 28. Plaintiff incorporates paragraphs 1 to 27 by reference as if fully set forth herein and
8 further alleges as follows:

9 29. An actual and justiciable controversy has arisen and now exists between Plaintiff and
10 Defendants. Plaintiff contends that Board Policy 3.54(B) is an *ultra vires* regulation of immigration.
11 *See In re Jose C.*, 45 Cal.4th 534, 550 (2009). By refusing to honor civil administrative arrest warrants
12 issued by ICE and requiring a judicial warrant before transferring inmates to ICE for removal
13 proceedings, Board Policy 3.54(B) alters the conditions under which aliens in Santa Clara County are
14 allowed to remain in the United States. Specifically, the policy grants aliens in Santa Clara County
15 significant protections from removal neither authorized by Congress nor mandated by the Fourth
16 Amendment or Due Process Clause. *See, e.g., Demore v. Kim*, 538 U.S. 510 (2003). Accordingly,
17 Defendants’ expenditures of taxpayer funds and taxpayer-financed resources complying with the policy,
18 developing transfer procedures pursuant to the policy, and implementing, enforcing, defending, and
19 otherwise carrying out the policy and transfer procedures are illegal. On information and belief,
20 Defendants contend the expenditures are not illegal.

21 30. A judicial declaration pursuant to California Code of Civil Procedure § 1060 is necessary
22 and appropriate so that the parties may ascertain their respective legal rights and duties with respect to
23 Defendants’ illegal expenditure of taxpayer funds and taxpayer-financed resources.

24 31. Plaintiff has been irreparably harmed and will continue to be irreparably harmed by
25 Defendants’ illegal expenditure of taxpayer funds and taxpayer-financed resources. On information and
26 belief, Defendants’ illegal expenditures will continue unless and until enjoined.

27 32. Plaintiff also has no adequate remedy at law.
28

1 **SECOND CAUSE OF ACTION**
2 **(Federal Preemption)**

3 33. Plaintiff incorporates paragraphs 1 to 32 by reference as if fully set forth herein and
4 further alleges as follows:

5 34. Board Policy 3.54(B) also seeks to regulate a field – the detention and removal of aliens
6 from the United States – that the U.S. Constitution expressly delegates to the federal government and in
7 which Congress, acting within its lawful authority, left no room for supplementary state or local
8 regulation. *See In re Jose C.*, 45 Cal.4th at 551-53.

9 35. Board Policy 3.54(B) also stands as an obstacle to Congress’ comprehensive, civil
10 immigration enforcement scheme. *See In re Jose C.*, 45 Cal.4th at 553-54. It goes beyond directing that
11 Defendants ignore a lawful, administrative arrest warrant. It mandates that Defendants refuse to transfer
12 an alien to ICE unless ICE officials first obtain a judicial warrant, which is an impossibility in a civil
13 removal proceeding.

14 36. Plaintiff contends that Board Policy 3.54(B) is preempted by federal law and,
15 accordingly, that Defendants’ expenditures of taxpayer funds and taxpayer-financed resources
16 complying with the policy, developing transfer procedures pursuant to the policy, and implementing,
17 enforcing, defending, and otherwise carrying out the policy and transfer procedures are illegal.

18 37. A judicial declaration pursuant to California Code of Civil Procedure § 1060 is necessary
19 and appropriate so that the parties may ascertain their respective legal rights and duties with respect to
20 Defendants’ illegal expenditure of taxpayer funds and taxpayer-financed resources.

21 38. Plaintiff has been irreparably harmed and will continue to be irreparably harmed by
22 Defendants’ illegal expenditure of taxpayer funds and taxpayer-financed resources. On information and
23 belief, Defendants’ illegal expenditures will continue unless and until enjoined.

24 39. Plaintiff also has no adequate remedy at law.

25 **THIRD CAUSE OF ACTION**
26 **(Intergovernmental Immunity)**

27 40. Plaintiff incorporates paragraphs 1 to 39 by reference as if fully set forth herein and
28 further alleges as follows:

1 41. Board Policy 3.54(B) directly regulates the United States by dictating the conditions
2 under which federal immigration officials may arrest and detain aliens they have probable cause to
3 believe are deportable from the United States, the procedure by which they obtain arrest warrants for
4 such aliens, and the contents of the warrants, among other direct regulations. *See Mayo v. United States*,
5 319 U.S. 441, 445 (1943).

6 42. Plaintiff contends that Board Policy 3.54(B) is barred by the doctrine of
7 intergovernmental immunity and, accordingly, that Defendants' expenditures of taxpayer funds and
8 taxpayer-financed resources complying with the policy, developing transfer procedures pursuant to the
9 policy, and implementing, enforcing, defending, and otherwise carrying out the policy and transfer
10 procedures are illegal.

11 43. A judicial declaration pursuant to California Code of Civil Procedure § 1060 is necessary
12 and appropriate so that the parties may ascertain their respective legal rights and duties with respect to
13 Defendants' illegal expenditure of taxpayer funds and taxpayer-financed resources.

14 44. Plaintiff has been irreparably harmed and will continue to be irreparably harmed by
15 Defendants' illegal expenditure of taxpayer funds and taxpayer-financed resources. On information and
16 belief, these illegal expenditures will continue unless and until enjoined.

17 45. Plaintiff also has no adequate remedy at law.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for the following relief against Defendants:

20 **First Cause of Action**

21 1. A judgment declaring Defendants' expenditure of taxpayer funds and taxpayer-financed
22 resources on Board Policy 3.54(B) to be an *ultra vires*, illegal local regulation of immigration;

23 2. An injunction permanently prohibiting Defendants from expending or causing the
24 expenditure of taxpayer funds and taxpayer-financed resources on Board Policy 3.54(B);

25 3. Costs of suit herein;

26 4. Reasonable attorney's fees under the Private Attorney General Statute, Code of Civil
27 Procedure § 1021.5, the Common Fund Doctrine, and the Substantial Benefit Doctrine; and

28 5. Such other relief as the Court deems just and proper.

1 **Second Cause of Action**

- 2 1. A judgment declaring Defendants' expenditure of taxpayer funds and taxpayer-financed
3 resources on Board Policy 3.54(B) to be preempted by federal law;
- 4 2. An injunction permanently prohibiting Defendants from expending or causing the
5 expenditure of taxpayer funds and taxpayer-financed resources on Board Policy 3.54(B);
- 6 3. Costs of suit herein;
- 7 4. Reasonable attorney's fees under the Private Attorney General Statute, Code of Civil
8 Procedure § 1021.5, the Common Fund Doctrine, and the Substantial Benefit Doctrine; and
- 9 5. Such other relief as the Court deems just and proper.

10 **Third Cause of Action**

- 11 1. A judgment declaring Defendants' expenditure of taxpayer funds and taxpayer-financed
12 resources on Board Policy 3.54(B) to be barred by the doctrine of intergovernmental immunity;
- 13 2. An injunction permanently prohibiting Defendants from expending or causing the
14 expenditure of taxpayer funds and taxpayer-financed resources on Board Policy 3.54(B);
- 15 3. Costs of suit herein;
- 16 4. Reasonable attorney's fees under the Private Attorney General Statute, Code of Civil
17 Procedure § 1021.5, the Common Fund Doctrine, and the Substantial Benefit Doctrine; and
- 18 5. Such other relief as the Court deems just and proper.

19 Dated: August 21, 2019

JUDICIAL WATCH, INC.

20 By: /s/ Robert Patrick Sticht.
21 ROBERT PATRICK STICHT

22 MICHAEL BEKESHA*
23 *Pro Hac Vice Application Forthcoming

24 Attorneys for Plaintiff

EXHIBIT A

EXHIBIT A

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)

on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)