

Exemption Pursuant to Government Code §6103

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 Superior Court of California
 County of Los Angeles

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 CITY OF BALDWIN PARK, (a public entity
 also erroneously sued as the City of Baldwin
 Park Police Department)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SERGIO FLORES, an individual, and
 ROXANA GUEVARA, a California
 taxpayer,

Plaintiffs,

v.

CITY OF BALDWIN PARK POLICE
 DEPARTMENT, CITY OF BALDWIN
 PARK, and DOES 1 to 50, inclusive,

Defendants.

Case No. BC560031

(Assigned for all purposes to the
 Hon. Ruth Ann Kwan, Dept. 72)

**DEFENDANT'S NOTICE OF MOTION
 AND MOTION FOR SUMMARY
 JUDGMENT OR IN THE ALTERNATIVE,
 MOTION FOR SUMMARY
 ADJUDICATION; MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT**

*[Filed concurrently with Memorandum of
 Points & Authorities; Separate Statement of
 Undisputed Facts, Appendix of Evidence and
 Proposed Order]*

Date: April 28, 2016
 Time: 10:00 a.m.

Reservation ID: 151013075638

Action Filed: October 8, 2014
 Trial Date: May 31, 2016

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 28, 2016, at 10:00 a.m., or as soon thereafter as
 the matter may be heard, in Department 72 of the above-entitled Court located at 111 North Hill
 Street, Los Angeles, CA 90012, defendant City of Baldwin Park ("City") will move this Court for

LA #4850-0747-1148 v1

- 1 -

CITY'S MOTION FOR SUMMARY JUDGMENT

1 an order granting summary judgment, or in the alternative summary adjudication, in its favor
2 because the undisputed facts entitle defendant to judgment as a matter of law.

3 Specifically, this motion is made pursuant to California Code of Civil Procedure Section
4 437c on the grounds that there are no triable issues of material fact. This motion is brought on the
5 grounds that:

6 1. Plaintiffs Sergio Flores and Roxana Guevara cannot bring claims against the City
7 because the Baldwin Park City Jail where Flores was detained is operated by an independent
8 contractor, The GEO Group, Inc.

9 2. Plaintiff Flores cannot state a claim for negligence per se because it is not an
10 independent cause of action.

11 3. Plaintiff Flores' claims fail because the City had a good faith basis for detaining
12 Flores.

13 4. Plaintiff Flores cannot state a claim for the Bane Act because there is no evidence
14 of force, threats, or coercion.

15 5. Plaintiff Guevara's taxpayer claim seeking injunctive relief is moot because the
16 Baldwin Park City Jail follows the TRUST Act.

17 This motion is based on this notice, the attached Memorandum of Points and Authorities,
18 the declarations and exhibits filed concurrently thereto, the Separate Statement of Undisputed
19 Material Facts filed concurrently, and on such further oral and/or documentary evidence as may
20 be presented at the hearing of this motion, if any.

21
22 Dated: February 8, 2016

Burke, Williams & Sorensen, LLP

23
24 By: 

Susan E. Coleman
Kristina Doan Gruenberg

25
26 Attorneys for Defendant
27 CITY OF BALDWIN PARK

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1 MEMORANDUM OF POINTS AUTHORITIES

2 I. INTRODUCTION

3 On March 7, 2014, Plaintiff Sergio Flores was brought to the Baldwin Park City Jail for
4 driving without a license. The facility was and is still operated by The GEO Group, Inc.
5 ("GEO"), a private company contracted to operate the jail as an impendent contractor. After
6 booking Flores, GEO Detention Officers received an Immigration Detainer from the Department
7 of Homeland Security indicating that Flores had a violent conviction or arrest, and that there was
8 an ICE arrest warrant and deportation order for Flores.

9 Only three months before this incident, the TRUST Act went into effect. The TRUST Act
10 states that individuals shall not be held based on an Immigration Detainer unless the individual
11 has a conviction for one of the violent offenses enumerated by the statute. Believing that Flores
12 had such a conviction, that they were following the TRUST Act, and not wanting to endanger the
13 public, the GEO Detention Officers held Flores until March 10, 2014 at 4:29 a.m., when they
14 released him to an ICE agent.

15 Plaintiffs now sue the City of Baldwin Park (hereinafter "the City") for false
16 imprisonment, negligence per se, violation of the Bane Act, and declaratory and injunctive relief
17 on the grounds that Flores did not actually have a conviction for a violent offense, and therefore
18 should have been allowed to post bail and be released. However, Plaintiffs have brought their
19 claim against the wrong party. The undisputed evidence shows that GEO was an independent
20 contractor, and the Government Code indicates that the City cannot be held liable for an
21 independent contractor's actions. Further, Flores cannot bring a negligence per se claim against
22 the City because negligence per se is not an independent cause of action, and negligence claims
23 cannot be brought against a public entity.

24 Even if Plaintiffs could bring claims against the City of Baldwin Park, Flores cannot state
25 a claim because there was a good faith basis to hold Flores, and there is no evidence that any
26 intimidation, threats, or coercion were used against Flores.

27 Finally, Plaintiff Roxana Guevara's sole claim against the City seeks declaratory and
28 injunctive relief, requiring the City to comply with the TRUST Act. However, this taxpayer

1 cause of action must be dismissed as moot, because the City complies with the Act.

2 Therefore the City moves for summary judgment on the grounds that Plaintiffs' claims
3 against the City fail as a matter of law.

4 **II. STATEMENT OF FACTS**

5 **A. Background Regarding GEO'S Operation of Baldwin Park City Jail**

6 The City and GEO have an agreement in which GEO operates the Baldwin Park Jail as a
7 private and independent contractor. (SUF #1.) The City and its police officers do not oversee the
8 intake, booking, and release processes. This is completed and done by GEO staff. (SUF #5.)
9 Additionally, trainings regarding the intake, booking, and release process are also done by GEO.
10 (SUF #6.)

11 **B. Flores' Detention at Baldwin Park City Jail**

12 On Friday March 7, 2014, Flores was brought to the Baldwin Park City Jail by Baldwin
13 Park Police Officers for driving without a license in violation of Vehicle Code 12500(A). (SUF
14 #7.) Flores was booked, fingerprinted, and photographed by GEO Detention Officer Fierro. (SUF
15 #8.) Flores was also medically screened by GEO Staff, and there was no indication that Flores
16 had any physical injuries, was taking any medication, or had any other medical issues. (SUF #9.)

17 After he was booked, GEO received an Immigration Detainer from the Department of
18 Homeland Security for Flores. (SUF #10.) The Immigration Detainer indicated that: 1) Flores
19 had a prior misdemeanor conviction or had been charged with a misdemeanor for an offense that
20 invokes violence, threats, or assaults; sexual abuse or exploitation; driving under the influence of
21 alcohol or a controlled substance; unlawful flight from the scene of an accident; the unlawful
22 possession of use of a firearm or other deadly weapon; the distribution or trafficking of a
23 controlled substance; or other significant threat to public safety; 2) there was an outstanding ICE
24 warrant for Flores; and 3) the Department of Homeland Security had obtained an order of
25 deportation or removal from the United States for Flores. (SUF #11.) The Immigration Detainer
26 indicated that the jail should maintain custody of Flores for a period not to exceed 48 hours,
27 excluding weekends and holidays, beyond the time when he would have been released from
28 custody. (SUF #11.)

1 Based on the Immigration Detainer, GEO believed it should hold Flores for up to 48
2 hours, excluding weekends, so that an individual from the Department of Homeland Security
3 could pick up Flores pursuant to the warrant. (SUF #13.) The TRUST Act indicates that an
4 individual can be held if they have a conviction for certain violent crimes. Here, it appeared to
5 GEO Detention Officers that Flores did have a conviction for a violent crime based on the ICE
6 detention order. Further, the Immigration Detainer also indicated that there was an ICE warrant
7 for his arrest and a deportation order, and GEO employees thus believed that they could hold
8 Flores on that basis. (SUF #14.)

9 Flores was held at the Baldwin Park City Jail until Monday March 10, 2014, when ICE
10 Agent Hernandez (#6023) picked up Flores and his property at 4:29 a.m. Agent Hernandez
11 indicated he was taking Flores to an ICE facility. (SUF #22.)

12 **III. STANDARD ON SUMMARY JUDGMENT**

13 A motion for summary judgment is properly granted when the moving party has
14 established the right to entry of judgment as a matter of law. (*Union Bank v. Superior Court*
15 (1995) 31 Cal. App. 4th 573, 579; Code Civ. Proc. § 437c(c).) A defendant establishes this right
16 either by showing that an affirmative defense would bar all causes of action, by disproving at
17 least one element in each alleged cause of action, or by showing that plaintiff cannot prove an
18 element of a cause of action. (Code Civ. Proc. § 437c(o).) Once the defendant makes one of
19 these two showings, the burden shifts to the plaintiff to “set forth the specific facts which prove
20 the existence of a triable issue of material fact.” (*Union Bank*, 31 Cal. App. 4th at 590; Code Civ.
21 Proc. § 437c(p).) A plaintiff “may not rely upon the mere allegations or denials of its pleadings
22 to show that a triable issue of material fact exists but, instead, shall set forth the specific facts
23 showing that a triable issue of material fact exists as to that cause of action.” (Code Civ. Proc. §
24 437c(p).) Summary judgment fulfils the “laudatory purpose of expediting the litigation and
25 eliminating the further waste of time and money which would have resulted from an utterly
26 needless trial.” (*Le Bourgeois v. Fireplace Manufacturers, Inc.* (1998) 68 Cal. App. 4th 1049,
27 1061.) “Justice requires that a defendant be as much entitled to be rid of an unmeritorious lawsuit
28

1 as a plaintiff is entitled to maintain a good one.” (*Frank and Freedus v. Allstate Ins. Co.* (1996)
2 45 Cal. App. 4th 461, 469 (quotation omitted).)

3 In moving for summary judgment, a defendant need not support its motion for summary
4 judgment with affirmative evidence negating an essential element of the plaintiff’s case. Instead,
5 the moving party may (through factually vague discovery responses or otherwise) point to the
6 absence of evidence to support the plaintiff’s case. When that is done, the burden shifts to the
7 plaintiff to present evidence showing there is a triable issue of material fact. If the plaintiff is
8 unable to meet his burden of proof regarding an essential element of his case, all other facts are
9 rendered immaterial. (*Leslie G. v. Perry & Associates*, 43 Cal. App. 4th 472, 482 (1996); *see*
10 *also, Union Bank v. Superior Court*, 31 Cal. App. 4th 573, 590 (1995).)

11 As set forth more fully below, the City is entitled to summary judgment because there are
12 no triable issues of material fact to support plaintiff’s causes of action for negligence and failure
13 to summon medical care.

14 **IV. THE CITY CANNOT BE HELD LIABLE FOR PLAINTIFFS’ CLAIMS**

15 As an initial matter, judgment should be entered on behalf of the City because a public
16 entity cannot be held liable for the acts of GEO, an independent contractor.

17 The courts have held that as a public entity, a public entity’s liability must be based on
18 statutory not common law. Government Code section 815 provides in part: “Except as otherwise
19 provided by statute: [¶] (a) A public entity is not liable for an injury, whether such injury arises
20 out of an act or omission of the public entity or a public employee or any other person.” The
21 liability statute upon which plaintiff relies, Government Code section 815.2, states in relevant
22 part: “(a) A public entity is liable for injury proximately caused by an act or omission of an
23 employee of the public entity within the scope of his employment if the act or omission would,
24 apart from this section, have given rise to a cause of action against that employee or his personal
25 representative.” (Italics added.) However, the term “employee” as used in Government Code
26 section 815.2 is defined in Government Code section 810.2 as “an officer, judicial officer as
27 defined in Section 327 of the Elections Code, employee, or servant, whether or not compensated,
28 **but does not include an independent contractor.**” (emphasis added.)

1 Here, the City and GEO have an agreement in which GEO operates the Baldwin Park Jail
2 as a private and independent contractor. (SUF #1.) The City Detention Facility Operations and
3 Management Agreement Section 13: Independent Contractor; Subcontracts, states in relevant
4 part:

5 [GEO] Operator is associated with City only for the purposes and to the extent set
6 forth in this Agreement, and in respect to the performance of the Operation and
7 Management Services pursuant to this Agreement, Operator is and shall be an
8 independent contractor and, subject to the terms of this Agreement, shall have the
sole right to supervise, manage, operate, control, and direct the performance of the
details incident to its duties under this Agreement, subject to the Minimum
Standards.

9 (SUF #2.) Further, Section 6(A) of the Agreement states that GEO shall provide the operation
10 and management services necessary to operate, maintain, and manage the Detention Facility in
11 compliance with the applicable Minimum Standards. The applicable Minimum Standards are
12 defined by the Agreement as Federal, State, and City requirements, law, and statutes, applicable
13 court orders, Board standards, and American Correctional Association standards. (SUF #3.)

14 Moreover, GEO is specifically responsible for the intake and release processing of
15 individuals, pursuant to Section 6(c)(1) of the agreement, which states:

16 *Intake and Releasing Processing:* Operator shall provide intake and release
17 processing which shall include review of Inmate's documents, Inmate search as
18 permitted by law, inventory and storage of Inmate's personal property and funds,
19 entry of Inmate data into Operator's data processing system, acceptance of Inmate
custody, generation of intake and release documents and records, photographing
and fingerprinting of Inmate, initiation of Inmate health and well-being screening,
classification and housing assignment of Inmate, review of court release
documents, return of Inmate personal property and funds, completion of internal
release documentation and ascertainment of Inmate identification confirmation
prior to release, transportation as described in Section 6C(6), Transportation, and
any and all such other duties as may be required by applicable statute or rule.

22 (SUF #4.) Therefore, the City and its police officers do not oversee the intake, booking, and
23 release processes. This is completed and done by GEO staff. (SUF #6.)

24 Indeed, the undisputed evidence in this case demonstrates that only GEO Detention
25 Officers were involved in booking, photographing, and finger printing Flores (SUF #8); and
26 medically screening him (SUF #9). Further, it was GEO Detention Officers who received the
27 Immigration Detainer from the Department of Homeland Security (SUF #10), and GEO
28 Detention Officers who believed that they should hold Flores for up to 48 hours. (SUF #12.)

1 Finally, it was GEO who released Flores to the ICE Agent Hernandez on March 10, 2014. (SUF
2 #22.) Accordingly, there is no evidence that the City had control, or was involved in any way in
3 Flores' detention, other than bringing Flores to the jail. The City therefore cannot be liable for
4 the acts and decisions of an independent contractor.

5 Plaintiff may argue that correctional duties are non-delegable to independent contractors.
6 However courts, including the Supreme Court, have held the opposite. For example, in *Logue v.*
7 *United States*, 412 U.S. 521 (1973), the Supreme Court held that the United States was not liable
8 for the suicide of a federal inmate claimed to be the result of the alleged negligence a local jail's
9 employees as the jail operator was an independent contractor. (*Id.* at 530-32.)

10 In *Minneeci v. Pollard*, 132 S.Ct. 617 (2012), Respondent Pollard was a prisoner at a
11 federal facility operated by a private company, the Wackenhut Correctional Corporation (which is
12 now called the GEO Group). Pollard sought damages from Wackenhut employees, claiming that
13 they had deprived him of adequate medical care in violation of the Eighth Amendment's
14 prohibition against cruel and unusual punishment. (*Id.*) Although the Court upheld the dismissal
15 of the Eighth Amendment Claim against Wackenhut, the reason was because inmates already had
16 adequate alternative state remedies, such as bringing a negligence claim, against private
17 contractors like Wackenhut. (*Id.* at 624.) The Court did not hold that correctional duties could
18 not be delegated to a private contractor such as Wackenhut, nor did it hold that Pollard was suing
19 the wrong party. Rather, the Court simply held that Pollard was seeking the wrong type of relief.
20 Similarly here, Plaintiff does have an alternate remedy (bringing a claim against GEO). Simply
21 because Flores has chosen not to pursue such relief, for whatever reason, does not mean that
22 liability should be expanded to sue the City.¹

23 Because the entire intake and release process for the jail, including reviewing and
24 enforcing Immigration Detainers, is under the purview of GEO and not the City, Flores cannot
25 show that the City had a duty to him or that it violated any duty. Therefore Flores' claims for
26 false imprisonment, negligence per se, and violation of the Bane Act should be dismissed.

27 _____
28 ¹ The parties met and conferred regarding this matter but Plaintiffs refused to name GEO as a
party.

1 **V. FLORES CANNOT STATE A CLAIM FOR NEGLIGENCE PER SE**

2 Flores' Second Cause of Action is for negligence per se. However, it is well settled law
3 that negligence per se is an evidentiary doctrine and not a cause of action. "[T]he doctrine of
4 negligence per se does not establish tort liability. Rather, it merely codifies the rule that a
5 presumption of negligence arises from the violation of a statute which was enacted to protect a
6 class of persons of which the plaintiff is a member against the type of harm that the plaintiff
7 suffered as a result of the violation." (*Quiroz v. Seventh Ave. Ctr.* (2006) 140 Cal.App.4th 1256,
8 1285 (citing *Peart v. Ferro* (2004) 119 Cal.App.4th 60, 80, fn. 11).)

9 "Accordingly, to apply negligence per se is not to state an independent cause of action.
10 The doctrine does not provide a private right of action for violation of a statute." (*Sierra-Bay
11 Fed. Land Bank Assn. v. Superior Court* (1991) 227 Cal.App.3d 318, 333-334.).) Instead, it
12 operates to establish a presumption of negligence for which the statute serves the subsidiary
13 function of providing evidence of an element of a preexisting common law cause of action. (*Id* at
14 1286 (citing *Crusader Ins. Co. v. Scottsdale Ins. Co.* (1997) 54 Cal.App.4th 121, 125).)

15 To the extent that Flores argues that his claim is for negligence, as articulated more fully
16 above, public entities cannot be liable for general or common law negligence because the
17 Government Claims Act abolishes all common law or judicially declared forms of liability for
18 public entities. *Government Code* § 815 provides that "[e]xcept as otherwise provided by statute .
19 . . a public entity is not liable for an injury, whether such injury arises out of an act or omission of
20 the public entity or a public employee or any other person." The Legislative Committee
21 Comments for *Government Code* § 815 specifically admonish that "[t]his section abolishes all
22 common law or judicially declared forms of liability for public entities"

23 Further, those Comments recognize that "the practical effect of this section is to **eliminate**
24 **any** common law governmental liability for damages arising out of torts." (emphasis added.)
25 *See, Searcy v. Hemet Unified School Dist.* (1986) 177 Cal.App.3d 792, 798 (finding that any duty
26 imposed on a public entity must be grounded in statute); *Hilts v. Solano County* (1968) 265
27 Cal.App.2d 161, 169-171 (recognizing that a negligence claim is not proper against a public
28 entity because such a claim is not founded on statute).

1 Therefore, a litigant who seeks to allege a cause of action for breach of a mandatory duty
2 must specifically allege the particular enactment relied on that creates the mandatory duty. (*Lehto*
3 *v. City of Oxnard*, 171 Cal.App.3d 285, 292 (1985); *Washington v. County of Contra Costa*
4 (1995) 38 Cal.App.4th 890 [general allegation that County breached mandatory statutory duties
5 by failing to protect against a release of hazardous material insufficient to withstand demurrer];
6 *Lopez v. City of Oxnard* (1989) 207 Cal.App.3d 1, 13 [alleged failure of duty to correct law
7 enforcement records to prevent mistaken address insufficient to state a claim for violation of
8 mandatory statutory duty and absence of allegation of specific statutory basis on which to hold
9 public entities liable]; *Sullivan v. City of Sacramento* (1987) 190 Cal.App.3d 1070, 1080; *Searcy*
10 *supra* 177 Cal.App.3d at 801.) Absent a statute declaring liability of public entities or employees,
11 there can be no liability. (*California Government Code* §815, §815.2(b); *Peterson v. San*
12 *Francisco Community College Dist.* (1984) 36 Cal.3d 799, 809.)

13 Here, the language of the TRUST Act does not create a private right of action. (*See*
14 *Government Code* § 7282.5.) Further, as stated more fully above, Plaintiff cannot hold the City
15 liable for the actions of its employees pursuant to *Government Code* 815.2 because no city
16 employees were involved with the decision to hold Mr. Flores based on the Immigration Detainer.
17 Further, the City cannot be held liable for the acts of an independent contractor.

18 In sum, negligence per se is not a valid cause of action but merely an evidentiary standard
19 for a preexisting common law cause of action. Also, common law causes of action cannot be pled
20 against governmental entities such as the City.

21 **VI. THERE WAS A GOOD FAITH BASIS FOR DETAINING FLORES**

22 Should the Court find that the City can be held responsible for the acts of its independent
23 contractor, The GEO Group, Inc., Plaintiff's First Cause of Action for false imprisonment and
24 Second Cause of Action for negligence *per se* claims both nonetheless fail because there was a
25 good faith basis to detain Flores.

26 The tort of false imprisonment is the intentional confinement of a person without consent
27 and without lawful privilege for an appreciable length of time, however short. (*City of Newport*
28 *Beach v. Sasse* (1970) 9 CA.3d 803 (*citing* Restatement (Second) of Torts § 35 (1965)).) The

1 cause of action lies when there has been an unlawful arrest followed by imprisonment or when an
2 arrest is lawful but there is an unreasonable delay in releasing or in bringing the person before a
3 magistrate. (*Id.* (citing *Dragna v. White* (1955) 45.2d 469); *see also, Lopez v. City of Oxnard*
4 (1989) 207 Cal.App.3d 1, 7.) However, the “good faith” exception is an affirmative defense to a
5 false imprisonment case where a defendant can show, as it can here, that there was a reasonable
6 basis to hold an individual.

7 Here, the Immigration Detainer, which was sent from the Department of Homeland
8 Security, indicated that there was an outstanding ICE warrant for Flores, the Department of
9 Homeland Security had obtained a deportation order for Flores, and Flores had “a prior
10 misdemeanor conviction or has been charged with a misdemeanor for an offense that involves
11 violence, threats, or assaults; sexual abuse or exploitation; driving under the influence of alcohol
12 or controlled substance; unlawful possession or use of a firearm or other deadly weapon, the
13 distribution or trafficking of a controlled substance; or other significant threat to public safety.”
14 (SUF #11.) The Immigration Detainer indicated that the jail should maintain custody of Flores
15 for a period not to exceed 48 hours, excluding weekends and holidays, beyond the time when he
16 would have been released from custody. (SUF #12.)

17 The TRUST Act similarly allows for immigration holds for individuals who have
18 convictions for violent “wobbler” offenses such as assault, battery, threats, sexual abuse, felony
19 driving under the influence, and unlawful possession of a firearm. (Government Code § 7282.5.)
20 Therefore, based on the Immigration Detainer, GEO believed that it was in fact following the
21 Trust Act and it could hold Flores as requested so that an individual from the Department of
22 Homeland Security could pick up Flores pursuant to the warrant. (SUF #13-14.)

23 Plaintiffs will assert that 1) although the Immigration Detainer indicates that Flores had an
24 arrest or conviction, the TRUST Act only allows for convictions and not merely arrests; and 2)
25 the Immigration Detainer contained inaccurate information as Flores had neither an arrest nor a
26 conviction. These arguments do not negate GEO’s good faith basis for detaining Flores, for
27 several reasons.

28 ///

1 First, the TRUST Act went into effect only three months before Flores was brought to the
2 Baldwin Park City Jail. Given the newness of the TRUST Act at the time of Plaintiff's detention,
3 and the substantially similar language between exceptions of the TRUST Act and what the jail
4 was told about Flores, it was reasonable to believe Flores could be detained for up to 48 hours
5 excluding weekends. Because Flores was booked on a Friday February 7, 2014 and released on
6 Monday February 10, 2014 at 4:29 a.m., he was detained for a time within the scope of the
7 Immigration Detainer.

8 Moreover, GEO did not want to risk endangering the public by releasing an individual
9 who appeared to have a violent conviction, an ICE warrant for his arrest, and an order for his
10 deportation. (SUF #16.)

11 Even if the ICE detainer contained incorrect information, there was no reason for
12 Defendant to believe the information from the Department of Homeland Security was inaccurate
13 on its face. (*See Lopez v. City of Oxnard, supra* 207 Cal.App.3d at 8 9 (internal citations omitted)
14 ("Jail personnel may not be similarly situated to police officers on the street, but they, too, are
15 entitled to rely on process and orders apparently valid on their face."); *Vallindras v. Massachusetts*
16 *etc. Ins. Co.* (1954) 42 Cal.2d 149, 154 (If a warrant appears valid to an ordinarily intelligent and
17 informed layman and the issuing court has subject matter jurisdiction, the sheriff is ordinarily
18 entitled to protection from civil suits for damages for false imprisonment).)

19 Although the background check that GEO Detention Officers ran for Flores did not
20 indicate that he had any prior convictions, GEO did not have any reason to believe that the
21 Immigration Detainer it received from the Department of Homeland Security was inaccurate.
22 Sometimes there are delays in information being reported and/or not all convictions appear for an
23 individual if they are using an alias, have a common name, or if the crimes occur in different
24 jurisdictions. Moreover, the Immigration Detainer indicated that there was a warrant for his
25 arrest. (SUF #15.)

26 Therefore, although Flores alleges he should have been able to post bail and that there was
27 an illegal delay in his release, the undisputed evidence shows that there was a good faith basis for
28 holding Flores until March 10, 2014. Flores' claims should therefore be dismissed.

1 **VII. FLORES CANNOT STATE A CLAIM UNDER THE BANE ACT**

2 Flores also brings a claim against the City for alleged violation of the Bane Act.
3 Specifically, Plaintiff contends that his unlawful detention was a result of coercion. (Complaint at
4 ¶ 57.) As noted above, Plaintiff's claim fails because he cannot show that the City was involved
5 with his detention. Moreover, Plaintiff has no evidence to satisfy the requirements of the Bane
6 Act, as explained in more detail below.

7 There are two distinct elements for a Bane Act (CCP § 52.1) cause of action. A plaintiff
8 must show (1) intentional interference or attempted interference with a state or federal
9 constitutional or legal right, and (2) the interference or attempted interference was by threats,
10 intimidation or coercion. (*Jones v. Kmart Corp.* (1998) 17 Cal.4th 329, 334 (section 52.1 requires
11 an attempted or completed act of interference with a legal right, accompanied by a form of
12 coercion); *Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 958.)

13 Here, there is no evidence of threats, intimidation, or coercion. For example, there was no
14 use of force ever made against Flores or threats of force. (SUF #19.) Flores was never deprived
15 an opportunity to make a phone call, and he was advised that he had the right to have the nearest
16 embassy or consulate notified of his arrest/detention, but he declined to exercise that right. (SUF
17 #s 17-18.) Further, there is no record that Flores ever complained about any medical or health
18 issues. (SUF #19.)

19 To the extent that Flores claims that the sole fact of being incarcerated, because he was
20 not allowed to post bail, satisfies the "coercion" element of the Bane Act by itself, this theory has
21 been rejected by the courts. In 2012, the California Court of Appeal first addressed whether an
22 inmate claiming that he was wrongfully detained satisfied the "coercion" element of Section 52.1.
23 (*Shoyoye*, Cal.App.4th at 947.) In *Shoyoye*, the California Court of Appeal held that "where
24 coercion is inherent in the constitutional violation alleged ... the statutory requirement of 'threats,
25 intimidation, or coercion' is not met. The statute requires a showing of coercion independent
26 from the coercion inherent in the wrongful detention itself." (*Id.* at 959.) In *Shoyoye*, the plaintiff
27 was wrongfully detained in county jail. His initial detention was justified, but due to a clerical
28 error, the country over-detained him for 16 days. When the mistake was discovered and the

1 plaintiff was released he brought a cause of action pursuant to the Bane Act. The court concluded
2 “not every wrongful detention is a violation of [the Bane Act],” and the evidence did not establish
3 the “threats, intimidation, or coercion” necessary for a Bane Act violation. (*Id.* at 959.) The
4 Court of Appeal also found no Bane Act violation “where the overdetention occurs because of
5 mere negligence rather than a volitional act intended to interfere with the exercise or enjoyment
6 of the constitutional right.” (*Id.* at 960.) Similar here, there was a good faith basis to detain
7 Flores, as more fully articulated above. Therefore, even assuming arguendo that there was an
8 unlawful detention, this by itself is not enough to state a claim for the Bane Act.

9 Further, last year, the California Court of Appeal again addressed the meaning of the
10 “threats, intimidation, or coercion” requirement in ruling that the coercive act of arresting
11 individuals who violated a particular statute did not satisfy the “threats, intimidation, or coercion”
12 prong of Section 52.1. (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41.) The *Allen*
13 plaintiffs were homeless residents challenging the validity of an ordinance for illegal camping.
14 The *Allen* plaintiffs did not allege unreasonable force by the police, instead contending that police
15 officers made prior “threats” to other homeless residents threatening arrest and the confiscation of
16 property. (*Id.* at 66.) In addition, the *Allen* plaintiffs argued that the “coercion” element of the
17 statute was satisfied “because City police officers arrested plaintiffs and an arrest is inherently
18 coercive.” (*Id.*) The plaintiffs further argued “that the actions of the police are inherently
19 coercive because of their ‘unique position of trust’ in society.” (*Id.* at 67.)

20 The Court of Appeal rejected the plaintiffs’ arguments, citing *Shoyoye*, and holding that “a
21 wrongful arrest or detention, without more, does not satisfy both elements of section 52.1.” (*Id.*
22 at 69.) The *Allen* Court emphasized that the plaintiffs did not allege coercion “beyond the
23 coercion inherent in any arrest[]” in rejecting the plaintiffs’ arguments. (*Id.*)

24 Therefore, Plaintiff’s conclusory allegation that there was coercion, without any specific
25 evidence of such, is insufficient to maintain a claim for the Bane Act, and judgment should be
26 entered in favor of the City.

27 **VIII. GUEVARA’S TAXPAYER STANDING CLAIM IS MOOT**

28 In the Fourth Cause of Action, Guevara seeks declaratory and injunctive relief pursuant to

1 California Code of Civil Procedure §526(a), requesting that the Court order the City to comply
2 with the Trust Act. This cause of action is moot because the City of Baldwin Park Jail already
3 complies with the TRUST Act.

4 California Code of Civil Procedure §526(a) creates a taxpayer private right of action to
5 restrain the illegal or wasteful expenditure of public funds. It provides in pertinent part: "An
6 action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or
7 injury to, the estate, funds, or other property of a county, town, city or city and county of the state,
8 may be maintained against any officer thereof, or any agent, or other person, acting in its behalf,
9 either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or,
10 within one year before the commencement of the action, has paid, a tax therein."

11 However, the courts have held that injunctive relief is appropriate only when there is a
12 threat of continuing misconduct. (*Madrid v. Perot Systems Corp.* (2005) 130 Cal.App.4th 440,
13 463; *see also Cisneros v. U.D. Registry, Inc.* (1995) 39 Cal.App.4th 548, 574 (holding that
14 injunctions should not be issued absent evidence the unlawful "acts are likely to be repeated in
15 the future."); *Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 660 [prayer for
16 injunctive relief under UCL is moot when "the assertedly wrongful practice has ended"].)

17 Here, there is no reason to order the City of Baldwin Park to comply with a law that they
18 already comply with and intend to comply with. Both the City of Baldwin Park and GEO have
19 affirmed that it is their policy and practice to follow the TRUST Act and that they intend to keep
20 following the TRUST Act. (SUF #s 24, 28.) Specifically, Jail Administrator Martinez declares
21 that it is current policy for jail employees to see whether the detainee has a conviction which
22 would allow the jail to hold the individual under the TRUST Act. If it does not appear that the
23 detainee has a conviction which would allow the ICE hold, it is the jail's policy to inform ICE
24 that the detainer is not valid under California law and to allow the detainee to post bail. (SUF
25 #27.) Jail Administrator Martinez also indicated that the language of the TRUST Act is posted in
26 the jail so that staff can follow the law, and GEO provides training to staff members about
27 compliance with the TRUST Act. (SUF #s 25-26.)

28 ///

1 Finally, the request for injunctive relief is moot because there is no evidence that any
2 violation of the TRUST Act is likely to repeat in the future. (*See Southern Pacific Terminal Co.*
3 *v. ICC*, 219 U.S. 498, 515 (1911) (finding that an issue is moot unless there is evidence that it is
4 “capable of repetition, yet evading review”); *Weinstein v. Bradford* (1975), 423 U.S. 147, 149
5 (doctrine of capable of repetition yet evading review is limited to the situation where two
6 elements combine: “(1) the challenged action was in its duration too short to be fully litigated
7 prior to its cessation or expiration, and (2) there was a reasonable expectation that the same
8 complaining party would be subjected to the same action again.”))

9 Because there is no evidence of any ongoing violations of the TRUST Act, the request for
10 injunctive relief is moot and must be dismissed. (*Wilson & Wilson v. City Council of Redwood*
11 *City* (2011) 191 Cal. App. 4th 1559 (it is well settled that courts do not decide cases that are
12 moot).)

13 **IX. CONCLUSION**

14 For the foregoing reasons, the City is entitled to judgment as a matter of law. Flores
15 cannot state a claim against the City for the alleged actions of an independent contractor, nor can
16 he bring a claim for negligence per se against the City. Further, Flores’ claims fail because there
17 was a good faith basis to hold Flores pursuant to the detainer. Flores’ Bane Act claim is
18 untenable because an alleged unlawful detention is not by itself coercion, and he has no evidence
19 of any other types of threats, intimidation, or coercion. Finally, Guevara’s claim against the City
20 as a taxpayer seeking injunctive relief is moot because the City complies with the TRUST Act.

21
22 Dated: February 8, 2016

Burke, Williams & Sorensen, LLP

23
24 By: 

Susan E. Coleman
Kristina Doan Gruenberg

25
26 Attorneys for Defendant
CITY OF BALDWIN PARK

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 *(Sergio Flores and Roxana Guevara v. City of Baldwin Park, et al., LASC Case No. BC560031)*

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within action; my business address is 444 South Flower Street, Suite 2400,
Los Angeles, California 90071-2953.

6 On February 8, 2016, I served the document described as: **DEFENDANT'S NOTICE**
7 **OF MOTION AND MOTION FOR SUMMARY JUDGMENT OR IN THE**
8 **ALTERNATIVE, MOTION FOR SUMMARY ADJUDICATION; MEMORANDUM OF**
POINTS AND AUTHORITIES IN SUPPORT on the interested parties in this action by
placing true copies thereof enclosed in sealed envelopes addressed as follows:

9 SEE ATTACHED SERVICE LIST

10 ☒ (BY MAIL) I caused such envelope to be deposited in the mail at Los Angeles,
California. The envelope was mailed with postage thereon fully prepaid. I placed such envelope
11 with postage thereon prepaid in the United States mail at Los Angeles, California. I am "readily
familiar" with the firm's practice of collection and processing correspondence for mailing. Under
12 that practice it would be deposited with the U.S. postal service on that same day with postage
thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware
13 that on motion of the party served, service is presumed invalid if postal cancellation date or
postage meter date is more than one day after date of deposit for mailing in affidavit.

14 ☐ (BY OVERNIGHT COURIER): I placed the above referenced document(s) in
(an) envelope(s) designated by the express service carrier (UPS) for overnight delivery, addressed
15 as indicated above. I delivered said UPS envelope to the personnel of our mail room. I am
"readily familiar" with the firm's practice of collecting and processing documents intended for
16 UPS overnight delivery. Under that practice, after the document is delivered to the firm's mail
room, it is deposited that same day, with delivery fees provided for, in a box or other facility
17 regularly maintained by the express service carrier or is delivered to an authorized courier or
driver authorized by the express service carrier to receive documents, for overnight delivery.

18 ☐ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of
the addressee.

19
20 I declare under penalty of perjury under the laws of the State of California, that the above
is true and correct.

21 Executed on February 8, 2016 at Los Angeles, California.

22
23 

24 TERRI MEHRA

1 **SERVICE LIST**

2 *Sergio Flores and Roxana Guevara v. City of Baldwin Park, et al.*, LASC Case No. BC560031

3
4 Thomas A. Saenz
Matthew J. Barragan
5 Mexican American Legal Defense and Educational Fund
634 S. Spring Street, 11th Floor
6 Los Angeles, CA 90014
7 213-629-2512
213-629-0266
8 E-mail: mbarragan@maldef.org

9 Jessica Karp Bansal
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11 Los Angeles, CA 90057
213-380-2785
12 E-mail: jkarp@ndlon.org

13 Attorneys for Plaintiffs
14 *SERGIO FLORES AND ROXANA GUEVARA*

CRS RECEIPT

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ALFORNIA, COUNTY OF LOS ANGELES CASE NO: BC60031 NOTICE OF MOTION AND MOTION TO COMPEL ANSWERS TO FINAL INTERROGATORIES DATE: 10/13/2015 TIME: 2:05 pm DEPT: 072 RES ID: 151013075638	

RESERVATION INFORMATION

Reservation ID: **151013075638**
Transaction Date: October 13, 2015 2:05 PM
Case Number: BC560031
Case Title: SERGIO FLORES ET AL VS CITY OF BALDWIN PARK POLICE DEPT ET A
Party: CITY OF BALDWIN PARK (Defendant)
Courthouse: Stanley Mosk Courthouse
Department: 072
Reservation Type: Motion for Summary Judgment
Date: 6/2/2016
Time: 10:00 am

FEE INFORMATION (Fees are non-refundable)

Description	Fee
Reschedule Fee - Motion for Summary Judgment	\$20.00
Total Fees:	\$20.00

PAYMENT INFORMATION

Special Condition: NO FEE REQUIRED - Gov. Code, § 6103

The reserving party asserts they are filing on behalf of government agency City of Baldwin Park. (Validity must be confirmed at the time of filing the motion/document. Document must include required Government Agency language on face page.)

Waived fees are recoverable (plus a one-time administrative fee upon judgment if the party becomes a judgment creditor).

A COPY OF THIS RECEIPT MUST BE ATTACHED TO THE CORRESPONDING
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Mehra, Terri

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Sent: Tuesday, January 26, 2016 11:35 AM
To: Mehra, Terri
Subject: Reschedule: BC560031-151013075638

The following reservation has been rescheduled by the Court.

Reservation ID: 151013075638
Case Number: BC560031
Case Title: SERGIO FLORES ET AL VS CITY OF BALDWIN PARK POLICE DEPT ET A
Party: CITY OF BALDWIN PARK (Defendant)
Courthouse: Stanley Mosk Courthouse
Dept: 72 View Courtroom Information.
Reservation Type: **Motion for Summary Judgment**
Date: 4/28/2016
Time: 10:00 am

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