LINK:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	**CV 12-09012-BRO (FFMx)**	Date	November 20, 2015
Title	**DUNCAN ROY ET AL. V. COUNTY OF LOS ANGELES ET AL.**		

Present: The Honorable	**BEVERLY REID O'CONNELL, United States District Judge**	
Renee A. Fisher	Not Present	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
Not Present	Not Present	

Proceedings: (IN CHAMBERS)

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT AND GRANTING DEFENDANTS' MOTION TO STRIKE PARAGRAPHS 60 AND 61 OF THE FIRST AMENDED COMPLAINT [112]

I. INTRODUCTION

Pending before the Court is Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint (also referred to as "FAC") and Motion to Strike paragraphs 60 and 61 of the First Amended Complaint. (Dkt. No. 112.) After considering the papers filed in support of and in opposition to the instant Motion, the Court deems this matter appropriate for resolution without oral argument of counsel. *See* Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15. For the following reasons, the Court **GRANTS in part** and **DENIES in part** Defendants' Motion to Dismiss and **GRANTS** Defendants' Motion to Strike.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

Plaintiffs are a group of individuals who were or are currently in the custody of the Los Angeles County Sheriff's Department ("LASD") and who were denied either bail or release on the basis of an immigration hold. Plaintiffs initiated this putative class action on behalf of themselves and others similarly situated.[1] Collectively, Plaintiffs challenge

[1] Plaintiff Duncan Roy is proceeding on behalf of himself only. Plaintiff Alain Martinez-Perez and Plaintiff Annika Alliksoo seek damages on behalf of all individuals injured by Defendants' practice of refusing bail requests and detaining individuals beyond the time permitted by state law. (FAC ¶¶ 10,

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the legality of the LASD's practice of detaining individuals solely on the basis of immigration holds placed by the federal Immigration and Customs Enforcement ("ICE") agency. (FAC ¶ 18.)

Immigration holds advise local law enforcement agencies that the Department of Homeland Security ("DHS") seeks to arrest or detain an alien in the agency's custody. (FAC ¶ 21.) According to Plaintiffs, immigration holds are voluntary requests that are not accompanied by the same procedural protections as a criminal detainer or hold. (FAC ¶ 32.) For example, ICE agents may assign an immigration hold without probable cause to believe that a person is removable and without a warrant or court order authorizing a person's deportation. (FAC ¶¶ 25–26.) Plaintiffs allege that the LASD's practice of honoring immigration holds has resulted in numerous and widespread unlawful detentions, as the issuance of an immigration hold "does not ensure that ICE will assume custody over the detainee or that ICE will take any action against the detainee." (FAC ¶ 46.)

Plaintiffs challenge three of the LASD's practices related to immigration holds. First, Plaintiffs assert that the LASD has engaged in a pattern and practice of unlawfully denying bail to inmates subject to an immigration hold, thereby preventing these individuals from securing their release pending resolution of the charges against them. (FAC ¶¶ 1, 47–55.) Pursuant to this practice, the LASD allegedly codes the record of every individual subject to a hold with a "no bail" notation, regardless of the individual's bail eligibility under the county bail schedule or a court order. (FAC ¶ 49.) Plaintiffs allege that the LASD has "routinely turned away and refused to accept lawfully-tendered bail bonds from bail bondsmen, family members and others when they attempt to lawfully post bail for an inmate." (FAC ¶ 50.)

11.) Plaintiff Clemente De La Cerda seeks equitable relief on behalf of all individuals who are currently or who will in the future be in Defendants' custody on the basis of an immigration hold. (FAC ¶ 12.) Specifically, he seeks to bar Defendants from detaining individuals beyond the time permitted by state law "solely on the basis of an immigration hold not supported by a probable cause determination." (*Id.*) Portions of the First Amended Complaint also reference Christian Michel Varela. (*See, e.g.*, FAC ¶¶ 95, 99, 111, 143 n.5.) This appears to be a typographical error, however, because the Court previously dismissed Mr. Varela under Federal Rule of Civil Procedure 41(b). (Dkt. No. 69.)

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Second, Plaintiffs contest the LASD's practice of prolonging the detention of individuals based solely of an immigration hold after the expiration of any state law authority to hold an inmate in custody. (FAC ¶¶ 1, 57–59.) To that end, Plaintiffs allege that the LASD continues to detain inmates subject to immigration holds even when no charges have been filed against them, the inmates have served their sentence, the inmates have posted bail, the inmates are ordered released on their own recognizance, or a jury has acquitted them. (FAC ¶ 58.) According to Plaintiffs, ICE does not permit local law enforcement agencies to hold an alien for more than forty-eight hours beyond the time he or she would otherwise be released from custody. (FAC ¶ 22.) Plaintiffs maintain that the LASD nevertheless "regularly" detains individuals beyond this forty-eight hour time frame. (FAC ¶ 58.)

Finally, Plaintiffs allege that the LASD treats inmates with ICE holds differently from similarly-situated inmates without ICE holds. (FAC ¶ 60–61.) Plaintiffs aver that the LASD denied inmates with ICE holds participation in and release to LASD-administered community-based alternatives to custody programs. In addition, Plaintiffs maintain that they were precluded from court-ordered release to drug rehabilitation, mental health hospitals, and other alternatives to custody programs. The LASD thereby required the inmates to remain in custody while similarly-situated inmates without ICE holds were released. (FAC ¶ 60.) Plaintiffs also claim that the LASD subjects inmates with ICE holds to different procedures and treatment when they are processed for release from custody, including denying inmates with ICE holds consideration for release into work release or electronic monitoring release programs. (FAC ¶ 61.)

B. Procedural History

Plaintiffs filed their initial complaint on October 19, 2012, alleging that the LASD's practices constitute false imprisonment and negligence per se. Plaintiffs claim that the LASD's actions violate the Fourth and Fourteenth Amendments under 42 U.S.C. § 1983, the California Constitution, article I, sections 7 and 13, California Government Code sections 815.2, 815.6, and the Tom Bane Civil Rights Act, California Civil Code section 52.1. (Dkt. No. 1.) The Court issued its Civil Jury Trial Order setting October 19, 2014 as the deadline for amending pleadings. (Dkt. No. 45.)

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On June 8, 2015, Defendants filed a motion for judgment on the pleadings, (Dkt. No. 71), which the Court granted in part and denied in part on July 9, 2015, (Dkt. No. 88). The Court dismissed Plaintiffs' third and fourth claims for violations of article I, sections 7 and 13 of the California Constitution and Plaintiffs' eighth claim for violations of the Tom Bane Civil Rights Act under California Civil Code section 52.1. (Dkt. No. 88 at 19, 22.)

On August 24, 2015, Plaintiffs filed a motion seeking to modify the scheduling order and for leave to file a first amended complaint. (Dkt. No. 96.) Plaintiffs sought to address the pleading defects identified by the Court in Plaintiffs' previously-dismissed Tom Bane Civil Rights Act Claim and to allege additional claims as a result of newly-discovered evidence. (*Id.*) The Court granted Plaintiffs leave to amend their section 52.1 claims for violations of Plaintiffs' right to timely release and right to release on bail, but denied Plaintiffs leave to amend their complaint to add allegations supporting equal protection claims under California Civil Code section 52.1 and 42 U.S.C. § 1983. (Dkt. No. 107.)

Plaintiffs filed their First Amended Complaint on October 2, 2015. (Dkt. No. 109.) Plaintiffs' first and second claims allege Fourth and Fourteenth Amendment violations under 42 U.S.C. § 1983. (FAC ¶¶ 143–51.) The instant motion does not challenge these claims. Rather, Defendants seek to dismiss Plaintiffs' fourth cause of action for false imprisonment; fifth cause of action for violations of California Government Code sections 815.2 and 815.6; sixth cause of action for negligence per se; eighth cause of action for violation of the right to timely release pursuant to California Civil Code section 52.1; and, ninth cause of action for violation of the right to release on bail pursuant to California Civil Code section 52.1. (FAC ¶¶ 152–210.)

Defendants filed the instant Motion to Dismiss Plaintiffs' First Amended Complaint and Motion to Strike paragraphs 60 and 61 of the First Amended Complaint on October 26, 2015. (Dkt. No. 112.) Plaintiffs timely opposed the motion on November 2, 2015, (Dkt. No. 115), and Defendants timely replied on November 9, 2015, (Dkt. No. 119). On November 20, 2015, Defendants filed a Supplement with the Court, and attached the recently published opinion in *King v. California*, __ Cal. Rptr. 3d __, 2015 Cal. App. LEXIS 1027 (Cal. Ct. App. Nov. 18, 2015). (Dkt. No. 123.)

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III. LEGAL STANDARD

A. Motion To Dismiss

Under Rule 8(a), a complaint must contain a "short and plain statement of the claim showing that the [plaintiff] is entitled to relief." Fed. R. Civ. P. 8(a). If a complaint fails to do this, the defendant may move to dismiss it under Rule 12(b)(6). Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. Thus, there must be "more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility'" that the plaintiff is entitled to relief. *Id.*

Where a district court grants a motion to dismiss, it should provide leave to amend unless it is clear that the complaint could not be saved by any amendment. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008) ("Dismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment."). Leave to amend, however, "is properly denied . . . if amendment would be futile." *Carrico v. City & Cty. of S.F.*, 656 F.3d 1002, 1008 (9th Cir. 2011).

B. Motion To Strike

Under Federal Rule of Civil Procedure 12(f), a district court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). The role of a Rule 12(f) motion to strike is to avoid the expense of time and money that results from litigating "spurious issues" by discarding those issues before trial. *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010) (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.1993), *rev'd*

on other grounds, 510 U.S. 517 (1994)). Courts generally disfavor motions to strike "because of the limited importance of pleadings in federal practice and because [they are] usually used as a delaying tactic." *RDF Media Ltd. v. Fox Broad. Co.*, 372 F. Supp. 2d 556, 561 (C.D. Cal. 2005). "Ultimately, whether to grant a motion to strike lies within the sound discretion of the district court." *Cal. Dep't of Toxic Substances Control v. Alco Pac., Inc.*, 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002).

IV. DISCUSSION

Defendants raise the following arguments in support of their Motion: (1) Plaintiffs are barred from bringing their fourth, fifth, sixth, eighth, and ninth causes of action because Defendants are immune from liability for discretionary acts under California Government Code section 820.2; (2) there is no statutory basis for Plaintiffs' negligence per se claim; (3) Plaintiffs' eighth and ninth causes of action fail because the alleged coercive acts do not constitute "coercion" within the meaning of California Civil Code section 52.1; and, (4) paragraphs 60 and 61 of the First Amended Complaint must be stricken because this Court denied Plaintiffs leave to pursue an equal protection claim. (Mot. at 1–2.) The Court separately addresses each of these arguments below.

A. Defendants Failed to Show that Plaintiffs' State Law Claims Are Unquestionably Barred Based On Defendants' Discretionary Immunity Under California Government Code Sections 815.2 and 820.2

California Government Code section 815 provides: "Except as otherwise provided by statute . . . [a] public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability." Cal. Gov't Code § 815.2(b). Since "a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused," an employee's successful assertion of the defense of a discretionary act also insulates the public entity employer from liability. Cal. Gov't Code § 820.2. Thus, Defendants are immune from Plaintiffs' state law claims if one of Defendants' employees engaged in a discretionary act or omission that caused the injury for which Plaintiffs now seek to recover.

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The California Supreme Court has concluded that "almost all acts involve some choice among alternatives, and the statutory immunity [under section 820.2] thus cannot depend upon a literal or semantic parsing of the word 'discretion.'" *Caldwell v. Montoya*, 10 Cal. 4th 972, 981 (Cal. 1995). Under these circumstances, a "workable definition" of immune discretionary acts draws the line between "planning" and "operational" functions of government. *Johnson v. California*, 69 Cal. 2d 782, 793 (Cal. 1968). Immunity is reserved for those "basic policy decisions" which have been expressly "committed to coordinate branches of government," and as to which judicial interference would thus be "unseemly." *Id.* On the other hand, there is no basis for immunizing lower-level, or "ministerial," decisions that merely implement a basic policy already formulated. *Id.* at 796. The California Supreme Court cautioned that immunity applies only to deliberate and considered policy decisions, in which a "conscious[] balancing [of] risks and advantages . . . took place." *Id.* at 795 n.8.

Defendants contend that all of Plaintiffs' state law claims are premised on the allegation that the LASD maintains a policy of treating ICE detainers as mandatory holds, as opposed to voluntary requests. (Mot. at 5.) Because the enactment of this policy is "seeped with discretion," Defendants argue, Plaintiffs' state law claims are immunized from liability under California Government Code section 820.2. (*Id.*) According to Defendants, Defendants County of Los Angeles and Baca are derivatively immune as well, pursuant to California Government Code section 815.2. (*Id.*)

Defendants' claim for immunity pursuant to section 820.2 is flawed, however, in that there is no information before the Court to suggest that a public employee engaged in any discretionary act which caused Plaintiffs' injuries. Instead, Defendants generally argue that the implementation of a policy is discretionary, and therefore discretionary immunity should be afforded to Defendants County of Los Angeles and Defendant Baca. For a public entity to be immune from liability under California Government Code section 815.2, however, a public employee of the entity must be immune from liability. It is unclear, based on Defendants' Motion to Dismiss, which public employee Defendants assert is immune from liability, thereby making Defendants County of Los Angeles and Baca derivatively immune as well. There are no facts before the Court to suggest that one of Defendants' employees engaged in a discretionary act which caused the injury for which Plaintiffs now seek to recover. Plaintiffs' First Amended Complaint contains no allegations regarding how the LASD's policy that allegedly caused Plaintiffs'

injuries came into being. Defendants have not shown that enacting a policy to mark immigration holds as mandatory detainers resulted from a considered decision by any of Defendants' employees. *See Johnson*, 69 Cal. 2d at 795 n.8 ("[T]o be entitled to immunity the state must make a showing that such a policy decision, consciously balancing risks and advantages, took place.")

Even if the Court were to assume that Defendant Baca is the employee of the public entity who engaged in the injury-causing act or omission, Defendants have failed to show that Defendant Baca's decision to implement the alleged LASD policy was "discretionary," as required by section 820.2. *See* Cal. Gov't Code § 820.2; *see also Johnson*, 69 Cal. 2d at 782. Instead, the allegations presently before the Court suggest that Defendant Baca believed "that he was mandated under federal law to detain any person for whom ICE lodges a hold." (FAC ¶ 17.) If this allegation is true, it cannot be said that Defendant Baca engaged in a "[conscious] balancing [of] risks and advantages," such that his decision to enact the LASD's allegedly illegal policy constitutes a discretionary act under California Government Code section 820.2. *See Johnson*, 69 Cal. 2d at 795 n.8.

Because Plaintiffs' allegations do not suggest that a public employee engaged in a discretionary, injury-causing act or omission, the Court **DENIES** Defendants' Motion to Dismiss Plaintiffs' state law claims on the grounds of discretionary immunity.[2]

B. Plaintiffs' Sixth Cause of Action for Negligence Per Se Adequately States A Claim Pursuant to California Government Code Section 815.6

Pursuant to California Government Code section 815(a), "[a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person" except as otherwise provided by statute. Cal. Gov't Code § 815(a); *see also Cardinal v. Buchnoff*, No. 06cv72–MMA(BLM),

[2] Plaintiffs also assert that "even if the County's policy decisions to honor an ICE hold as though it were a lawful basis to detain inmates, or to deny bail, was entitled to discretionary immunity, jail staff conduct implementing those same policy decisions is not entitled to such immunity." (Opp'n at 4.) Having found that the Plaintiffs allege sufficient facts to find that discretionary immunity does not warrant dismissal of Plaintiffs' state law claims at this stage, however, the Court declines to address whether ministerial actions of employees not party to this action are sufficient to hold the public entity employer of those employees liable for Plaintiffs' injuries.

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2010 WL 3609489, at *2 (S.D. Cal. Sept. 14, 2010) ("It is well-settled that there is no common law tort liability for public entities in California; instead, such liability must be based on statute." (citing *Miklosy v. Regents of Univ. of Cal.*, 44 Cal. 4th 876, 899 (Cal. 2008))). Thus, "in the absence of some constitutional requirement, public entities may be liable only if a statute declares them to be liable." *Becerra v. Cty. of Santa Cruz*, 68 Cal. App. 4th 1450, 1457 (Cal. Ct. App. 1998). Defendants assert that "there is no statutory basis for a negligence claim against California public entities." (Reply at 4.) However, California Government Code 815.6 creates a "rebuttable presumption of negligence." *Chaudhry v. City of L.A.*, 751 F.3d 1096, 1106–07 (9th Cir. 2014). Accordingly, a public entity may be liable for negligence if the public entity violates a statute and: "(1) the statute which was violated imposes a mandatory duty; (2) the statute was intended to protect against the type of harm suffered; and (3) breach of the statute's mandatory duty was a proximate cause of the injury suffered." *Braman v. State*, 28 Cal. App. 4th 344, 349 (Cal. Ct. App. 1994); *see also Flanagan v. Benicia Unified Sch. Dist.*, No. CIV. S-07-333 LKK, 2008 WL 435355, at *6 (E.D. Cal. Feb. 14, 2008) ("A public entity or its agents can be sued for negligence if it failed to discharge a mandatory duty."). Thus, to find that Plaintiffs state a claim for negligence, the Court must determine whether Plaintiffs sufficiently state a claim for relief under California Government Code section 815.6.

Plaintiffs' sixth cause of action for negligence per se properly alleges that Defendants are liable under California Government Code 815.6, (FAC ¶ 172), and Plaintiffs' fifth cause of action directly alleges violations of the same, (FAC ¶¶ 160–67). Defendants do not argue that Plaintiffs' sixth cause of action for violations of section 815.6 fails to state a claim for which relief can be granted.

Moreover, considering all of the allegations in Plaintiffs' First Amended Complaint, including those in Plaintiffs' fifth cause of action, the Court finds that Plaintiffs satisfactorily state a claim pursuant to California Government Code section 815.6. Plaintiffs name specific statutes which they allege "impose[] a mandatory duty" on LASD to release inmates on bail and release detainees after a judge has ordered them released. (*See, e.g.*, FAC ¶¶ 125 (citing Cal. Penal Code § 1269b(g)), 156 (citing Cal. Penal Code § 1384), 161 (citing Cal. Penal Code. §§ 1268, 1269b, 1295(a)).) Plaintiffs further allege that Defendants refused to allow Plaintiffs to post bail for which they were eligible and detained Plaintiffs after their release date solely on the basis of immigration

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holds. (FAC ¶¶ 163, 166.) Thus, Plaintiffs aver, Defendants "fail[ed] to discharge their mandatory duties" and caused Plaintiffs "injuries those duties were designed to prevent." (FAC ¶¶ 162, 163, 166.) These allegations enable the Court to plausibly infer that Defendants violated a mandatory duty designed to protect against the kind of injury Plaintiffs suffered. As a result, Plaintiffs adequately pleaded the three elements of a California Government Code section 815.6 claim. *See Chaudhry*, 751 F.3d at 1106–07.

The Court notes, however, that Plaintiffs' negligence and section 815.6 claims rest on identical theories of liability (violations of section 815.6) for the same underlying conduct (over-detaining inmates solely on the basis of immigration holds). (*See* FAC ¶¶ 160–72.) Both Plaintiffs' fifth cause of action for violations of section 815.6 and Plaintiffs' sixth cause of action for negligence per se rely on the identical allegations of duty, breach, causation, and damages. Therefore, the claims are duplicative and it is unnecessary for Plaintiffs to maintain both causes of action. *See Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007) (affirming dismissal of cause of action as duplicative). Because Plaintiffs' fifth and sixth causes of action are duplicative, the Court **GRANTS** Defendants' Motion to Dismiss Plaintiffs' fifth cause of action for negligence. Plaintiffs' fifth cause of action is **DISMISSED** without leave to amend.

C. Plaintiffs Adequately Plead An Actionable Coercive Act Separate From the Coercion Inherent in Their Over-Detention Claim Under California Civil Code Section 52.1

Plaintiffs' eighth and ninth causes of action allege violations of the right to timely release and right to post bail pursuant to California Civil Code section 52.1. (FAC ¶¶ 193–210.) California Civil Code section 52.1 creates a private right of action for individuals whose constitutional rights were violated by another, whether or not acting under the color of law, "by threat, intimidation, or coercion." Cal. Civ. Code. § 52.1. In this Court's previous Order granting in part and denying in part Plaintiffs' Motion for Leave to Amend their Complaint, the Court found that Plaintiffs' proposed amendments were not futile because Plaintiffs sufficiently pleaded that Defendants acted coercively by knowingly interfering with Plaintiffs' constitutional rights. (Dkt. No. 107.) Accordingly, Plaintiffs' First Amended Complaint maintains that Defendants engaged in wrongful, coercive conduct independent from the detention by knowingly marking ICE holds as mandatory in their record-keeping system, which "falsely communicated to

employees and agents that ICE holds authorized and required class members to be detained." (FAC ¶¶ 197, 204.) Yet Defendants contest that Plaintiffs adequately pleaded a section 52.1 claim on three grounds.

First, Defendants claim that record-keeping is not "coercive" merely because it falsely communicated that ICE holds are mandatory. (Mot. at 9–11.) The required threat, intimidation, or coercion under section 52.1 cannot be the coercion inherent to the underlying violation. *Shoyoye v. Cty. of L.A.*, 203 Cal. App. 4th 947, 959 (Cal. Ct. App. 2012) ("[W]here coercion is inherent in the constitutional violation alleged . . . the statutory requirements of 'threats, intimidation, or coercion' is not met. The statute requires a showing of coercion independent from the coercion inherent in the wrongful detention itself."). Therefore, Plaintiffs must allege that Defendants intentionally detained Plaintiffs by use of threats, intimidation, or coercion independent of the coercion inherent in over-detention. *Id.*

As discussed, Plaintiffs allege that Defendants "falsely communicated to employees and agents that ICE holds authorized and required class members to be detained." (FAC ¶¶ 197, 204.) "There is limited [section 52.1] precedent defining what constitutes 'coercion' independent from that which is inherent in a wrongful arrest, but *Shoyoye v. County of Los Angeles* indicates that such conduct must be 'intentionally coercive and wrongful, i.e., a knowing and blameworthy interference with the plaintiffs' constitutional rights." *Gant v. Cty. of L.A.*, 772 F.3d 608, 624 (9th Cir. 2014). In *Venegas v. County of Los Angeles*, 32 Cal. 4th 820, 843 (Cal. 2004), the Supreme Court of California held that plaintiffs properly alleged misconduct under section 52.1. The court in *Venegas* based its holding on the following facts: an officer stopped the plaintiffs' vehicle and arrested and detained plaintiffs based on law enforcement's erroneous conclusion that the stopped vehicle was stolen. *Id.* at 827–28. The officer released one of the plaintiffs after two hours, and eventually directed that the second plaintiff be released from custody, but that plaintiff was not released for another two days. *Id.* at 828.

The California Court of Appeal in *Shoyoye* discusses *Venegas*, and explains that the *Venegas* plaintiffs offered sufficient evidence suggesting the probable cause initially justifying the stop eroded over time, "such that the officers' conduct became intentionally coercive and wrongful, i.e., a knowing and blameworthy interference with the plaintiffs'

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constitutional rights." *Shoyoye*, 203 Cal. App. 4th at 961. Unlike the officers in *Venegas* whose conduct "became" intentionally coercive and wrongful, Plaintiffs assert that Defendants knowingly interfered with Plaintiffs' rights to timely release and release on bail as soon as Defendants recorded ICE detainers. In *Shoyoye*, the court found "no evidence that [plaintiff] was treated differently than other inmates who were lawfully incarcerated, or that any conduct directed at him was for the purpose of interfering with his constitutional rights." 203 Cal. App. 4th at 961. The Court has no evidence before it at the pleadings stage—only Plaintiffs' allegations that Defendants acted knowingly. The Court finds that Plaintiffs have sufficiently alleged coercive conduct independent of the over-detention to plead a cause of action under section 52.1. The Court finds that Plaintiffs have sufficiently alleged coercive conduct independent of the over-detention to plead a cause of action under section 52.1.

Second, Defendants argue that the allegedly coercive record-keeping practices fail to state a claim under California Civil Code section 52.1 because they were "not directed at any Plaintiff or any other County Jail inmates," but "[i]nstead, . . . involve[d] the communication of certain information to LASD employees." (Mot. at 8.) Defendants' argument is inapposite. Defendants' Motion lacks any legal authority in support of this argument, and the cases cited by Defendants in their Reply do not support Defendants' proposition. (*See* Mot. at 8; Reply at 5.)

Nor does *King v. California*, filed by Defendants as a supplement to their Motion, change the Court's conclusion here. In *King*, after a full trial, the court found that plaintiff had no existing constitutional right to resist, and therefore "the [officer's] threat did not itself interfere with [plaintiff's] exercise or enjoyment of his constitutional rights." 2015 Cal. App. LEXIS 1027, at *56. Although Defendants claim *King* is "relevant to Defendant's pending motion to dismiss since Plaintiffs' Civil Code [section] 52.1 claims are not based on any allegation that they were directly threatened, intimidated or coerced from doing something that they were entitled to do under the law," (Dkt. No. 123 at 3), the Court disagrees. As discussed above, at this stage, Plaintiffs sufficiently allege that Defendants knowingly interfered with Plaintiffs' existing constitutional rights and that the record-keeping practices were "carried out in order to effect a knowing interference." *Shoyoye*, 203 Cal. App. 4th at 961.

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Finally, Defendants seek to dismiss Plaintiffs' section 52.1 claim on the grounds that it "ventures far beyond the original intent of the statute" which was enacted "as an additional legislative effort to deter violence." (Mot. at 9.) This argument is unavailing, however, because the Ninth Circuit explicitly held that "section 52.1 does not require violence or threat of violence." *Moreno v. Town of Los Gatos*, 267 F. App'x 665, 666 (9th Cir. 2008); *see also Venegas v. Cty. of L.A.*, 32 Cal. 4th 820, 843 (Cal. 2004) (holding that a plaintiff had stated a 52.1 claim despite the fact there was no allegation of violence).

Because Plaintiffs adequately pleaded "threat[s], intimidation, or coercion" independent from the over-detention, the Court **DENIES** Defendants' Motion to Dismiss Plaintiffs' eighth and ninth causes of action.

D. Paragraphs 60 and 61 of the First Amended Complaint are Barred by This Court's Order Denying Plaintiffs Leave to Add Allegations Supporting an Equal Protection Claim

On August 24, 2015, Plaintiffs filed a motion seeking to modify the scheduling order and file a first amended complaint. (Dkt. No. 96.) Plaintiffs' proposed amendments included the addition of a claim for denial of equal protection. (Dkt. No. 91.) In support of Plaintiffs' equal protection claim, Plaintiffs sought to add allegedly newly-discovered facts, including: (1) the fact that from at least 2010 until at least May 2014, inmates with ICE holds were denied participation in LASD's community-based alternatives to custody programs, available to other inmates; (2) the LASD denied inmates with ICE holds early release due to overcrowding, which LASD afforded to other inmates; and, (3) the LASD processed persons with ICE detainers differently from inmates with criminal warrants and subjected them to different release procedures. (Dkt. No. 107 at 13.)

Because Plaintiffs did not seek to amend their complaint until after the deadline imposed by the scheduling order, however, Plaintiffs were entitled to amend their complaint only if they acted diligently in doing so. *See Johnson v. Mammoth Recreations*, 975 F.2d 604, 607 (9th Cir. 1992.) In this Court's September 17, 2015 Order granting in part and denying in part Plaintiffs' Motion for Leave to Amend, the Court found that Plaintiffs did not act diligently with respect to the equal protection claim

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

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because the allegedly "new" facts proposed as additional allegations were likely available to Plaintiffs at the time they filed their first complaint three years earlier. (Dkt. No. 107 at 14.) Accordingly, the Court denied Plaintiffs' Motion for Leave to Amend to add the allegedly newly-discovered information. (*Id.* at 15.)

Nonetheless, Plaintiffs' First Amended Complaint contains these additional allegations. (FAC ¶¶ 60–61.) Plaintiffs aver that they were entitled to add these allegations, despite the Court's Order to the contrary. Plaintiffs claim the allegations are relevant to the section 52.1 claim[3] and Plaintiffs believe equal protection claims were already pleaded in the original complaint. (Opp'n at 10–16.) This argument, however, is unavailing. The question before the Court in ruling on Plaintiffs' Motion for Leave to Amend was limited to whether Plaintiffs had shown good cause to modify the scheduling order by acting diligently in seeking modification. (*See* Dkt. No. 107.) Accordingly, the Court did not determine that Plaintiffs failed to plead an equal protection claim in their original complaint. Indeed, such a conclusion would be inapposite in determining whether Plaintiffs were diligent in seeking leave to amend. Plaintiffs are free to argue that they satisfactorily pleaded equal protection claims through the allegations contained in the original complaint. Plaintiffs cannot, however, ignore this Court's explicit order denying leave to add new facts supporting an equal protection claim when Plaintiffs were not diligent in seeking to amend this Court's scheduling order.

Accordingly, the Court **GRANTS** Defendants' Motion to Strike paragraphs 60 and 61 of Plaintiffs' First Amended Complaint.

[3] Plaintiffs assert that allegations that inmates with ICE holds were treated differently from detainees without ICE holds support Plaintiffs' section 52.1 claims because these allegations allege coercion not ordinarily associated with an arrest or incarceration. (Opp'n at 12.) While these allegations are independent of the coercion inherent in over-detention, they do not show that Defendants coercively violated Plaintiffs' right to timely release and right to post bail. The allegations that inmates with ICE holds were denied participation in LASD's community-based alternatives to custody programs, denied early release due to overcrowding, and subject to different release procedures than inmates without immigration holds do not show coercion related to Defendants' alleged violations of Plaintiffs' constitutional rights. (*See* FAC ¶¶ 60–61.)

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V. CONCLUSION

For the foregoing reasons, the Court **GRANTS in part** and **DENIES in part** Defendants' Motion to Dismiss and **GRANTS** Defendants' Motion to Strike paragraphs 60 and 61 of Plaintiffs' First Amended Complaint. Plaintiffs must file a Second Amended Complaint, pursuant to this Court's Order, no later than **4 p.m. on Monday, December 7, 2015**. The hearing set for November 23, 2015 is hereby **VACATED**.

IT IS SO ORDERED.

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