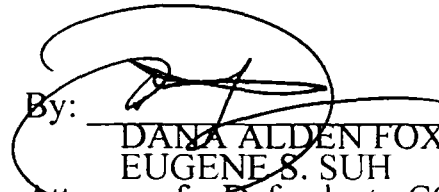




1 This Motion is based on this Notice of Motion, the pleadings on file herein, the  
2 Memorandum of Points and Authorities filed herewith, and on all further oral and/or  
3 documentary evidence which may be presented at the time of the hearing of this  
4 matter.

5  
6 DATED: January 31, 2008

7 LYNBERG & WATKINS  
8 A Professional Corporation

9  
10 By:   
11 DANA ALDEN FOX  
12 EUGENE S. SUH  
13 Attorneys for Defendants, COUNTY OF SAN  
14 BERNARDINO and SHERIFF GARY  
15 PENROD  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 STATEMENT OF FACTS

4 On January 11, 2008, Plaintiff Jameelah Medina filed her First Amended  
5 Complaint (FAC) against the County of San Bernardino (County) and Gary Penrod  
6 (Penrod), alleging a variety of Claims for Relief, including the Religious Land Use  
7 and Institutionalized Persons Act (42 U.S.C. §§ 2000cc et seq.), (2) 42 U.S.C. §1983,  
8 (3) Article I, Section 4 of the California Constitution, and (4) the California Tom  
9 Bane Act (California *Civil Code* § 52.1).

10 Plaintiff is an individual who was arrested, booked, and temporarily detained  
11 at the West Valley Detention Center on December 7, 2005 after being caught trying  
12 to use a fraudulent Metrolink monthly pass on a train. During booking, plaintiff was  
13 required to remove her religious headcovering despite her protest that she is a  
14 practicing Muslim who wears a headscarf for religious reasons. Plaintiff alleges a  
15 female deputy threatened plaintiff that she could make sure plaintiff was not  
16 processed, and would not be eligible for bail and released that day if plaintiff did not  
17 remove her headscarf. After the search, plaintiff was placed in a holding area with  
18 other women. She was released the same day after posting bail, and her headscarf  
19 was returned to her at the time of release.

20 Plaintiff's Fourth Claim alleging a violation under the Tom Bane Act,  
21 California *Civil Code* § 52.1, fails to adequately state a claim upon which relief can  
22 be granted. To succeed on a claim under the Tom Bane Act, plaintiff must prove  
23 defendants used violence or intimidation by threat of violence against her. Plaintiff  
24 does not allege in her FAC that defendants threatened her with violence; rather, she  
25 contends she was threatened with "delayed release" if she did not remove her  
26 headscarf.

27 ///

28 ///

1 **II.**

2 LEGAL STANDARD

3 A motion to dismiss pursuant to *Federal Rule of Civil Procedure* 12(b)(6) tests  
 4 the legal sufficiency of a claim for relief. A claim should be dismissed pursuant to  
 5 Rule 12(b)(6) if it either “lacks a cognizable legal theory” or fails to allege “sufficient  
 6 facts” to support a cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*,  
 7 749 F.2d 530, 533-34 (9<sup>th</sup> Cir. 1984). Courts have firmly held the belief that a  
 8 complaint should not be dismissed under *Federal Rule of Civil Procedure* 12(b)(6)  
 9 “unless it appears beyond doubt that the plaintiff can prove no set of facts in support  
 10 of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46,  
 11 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957). Although pleadings filed in federal court only  
 12 require “notice” to be provided to the defendant of a parties allegations, this does not  
 13 abrogate the need to place a defendant on notice so as to properly raise all applicable  
 14 defenses. Where, as here, certain claims involve allegations supported by only  
 15 conclusory statements and legal principles that lack support, a Rule 12 (b)(6) motion  
 16 is appropriate to dismiss for failure to state a claim.

17 **III.**

18 ARGUMENT

19 **I. PLAINTIFF’S FOURTH CLAIM FOR VIOLATION OF THE CALIFORNIA**  
 20 **TOM BANE ACT FAILS TO STATE A CLAIM UPON WHICH RELIEF**  
 21 **CAN BE GRANTED BECAUSE PLAINTIFF DOES NOT ALLEGE**  
 22 **DEFENDANTS THREATENED VIOLENCE AGAINST HER.**

23  
 24 Plaintiff claims defendants are liable under the California Tom Bane Act  
 25 because the County and its agents threatened her with “delayed release” if she did  
 26 not remove her headscarf (FAC, ¶60). The California Tom Bane Act, California  
 27 Civil Code § 52.1, provides a civil action for damages for a person whose  
 28 enjoyment of federal or state rights has been interfered with by a person who.

1 whether or not acting under color of state law, interferes with that right by threats,  
2 intimidation, or coercion.

3 “52.1 Action for injunctive relief from interference with enjoyment of legal  
4 rights:

5 “(a) If a person or persons, whether or not acting under color of law,  
6 interferes by threats, intimidation, or coercion, or attempts to interfere  
7 by threats, intimidation, or coercion, with the exercise or enjoyment  
8 by any individual or individuals of rights secured by the Constitution  
9 or laws of the United States...or laws of this state, the Attorney  
10 General, or any district attorney or city attorney may bring a civil  
11 action for injunctive and other appropriate equitable relief in the  
12 name of the people of the State of California...

13 (b) Any individual whose exercise or enjoyment of rights secured by the  
14 Constitution or laws of the United States, or...laws of this state...may  
15 institute and prosecute in his or her own name and on his or her own  
16 behalf a civil action for damages, including, but not limited to,  
17 ...injunctive relief, and other appropriate equitable relief to protect the  
18 peaceable exercise or enjoyment of the right or rights secured.”

19 The 2007 case of *Austin v. Escondido Union School District, et al.* sets forth the  
20 requirements for a plaintiff to succeed on a Bane Act claim. (2007) 149 Cal App  
21 4<sup>th</sup> 860. To establish the claim, plaintiff must prove all of the following:

- 22 1. That the defendants interfered with plaintiff’s right to freely  
23 exercise her religion by threatening or committing violent acts;
- 24 2. That plaintiff reasonably believed that if she exercised her right  
25 to freely exercise her religion, the defendants would commit  
26 violence against her;
- 27 3. That the defendants injured plaintiff or her property to prevent  
28 her from exercising her right to freely exercise her religion or

