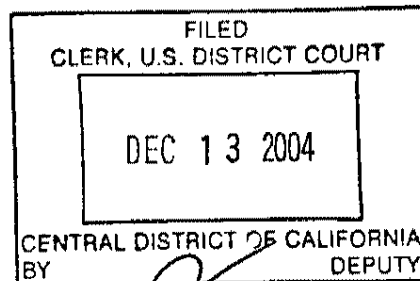


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

GAMINO, et al.

Plaintiff,

vs.

COUNTY OF VENTURA, et al.

Defendants.

CASE NO. CV02-9785 CBM

**ORDER DENYING
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY
JUDGMENT ON THE THIRD
CAUSE OF ACTION; AND
DENYING PLAINTIFF'S
REQUEST FOR A FINDING AS
TO CLASS SIZE**

The matter before the Court is Plaintiff's Motion for Partial Summary Judgment as to the Third Cause of Action, filed on September 13, 2004. On November 15, 2004, counsel for the parties appeared before the Court, the Honorable Consuelo B. Marshall, Chief Judge, presiding.

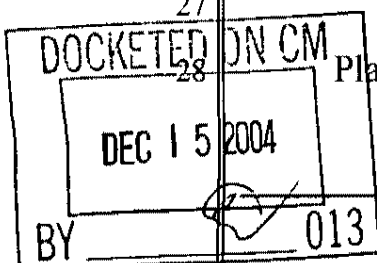
Upon consideration of the papers and arguments submitted, the Court **DENIES** Plaintiff's Motion for Partial Summary Judgment and **DENIES** Plaintiff's request for a finding as to class size.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

BACKGROUND

Plaintiffs filed this class action complaint on December 24, 2002, alleging



1 constitutional violations by Defendants as a result of the County of Ventura
2 Sheriff's Department's policy of strip searching all individuals booked into the
3 County Jail for suspicion of being under the influence of a controlled substance
4 This is a companion case to *Way v. Ventura County*, which alleges the same
5 wrongdoing. On July 22, 2002, this Court granted Way's Motion for Partial
6 Summary Judgment, finding that the visual unclothed body cavity search of
7 Plaintiff, pursuant to the County's strip search policy, violated Plaintiff's Fourth
8 Amendment rights. On February 18, 2004, this Court denied Defendants' Motion
9 for Summary Judgment based on Qualified Immunity, finding that the law
10 prohibiting the blanket search policy was clearly established at the time of the
11 search. Defendants filed a Notice of Appeal on March 4, 2004 and the case is
12 currently pending with the Ninth Circuit.

13 Like Noelle Way, the named Plaintiffs in this case (Juan Gamino, Kathy
14 Conley, and Ed Ferrel) were charged solely under California Health and Safety
15 Code Section 11550 for being under the influence of a controlled substance,
16 subjected to a strip search during the booking process, and subsequently were
17 either released on their own recognizance or posted bail. The named Plaintiffs
18 never entered the general jail population.

19 On September 4, 2003, the parties in this lawsuit lodged a stipulation and
20 proposed order certifying this case as a Rule 23(b)(3) class action and defining the
21 class as "[a]ny pretrial detainee in the Ventura County Jail for violation of Health
22 and Safety Code Section 11550 so that, in accordance with the Ventura County
23 Sheriff's Department's policy, each arrestee was subject to a visual-only unclothed
24 body cavity examination." The Court certified the class on September 17, 2003.

25 On August 30, 2004, the Court denied Defendants Motion to Modify Class,
26 rejecting Defendants' arguments that individuals who had been charged with
27 additional offenses that may have justified a strip search or who had entered the
28 general jail population should be excluded from the class. On August 31, 2004, the

1 Court Approved Plaintiffs' proposed notice of pendency of class action and ordered
2 Plaintiff to notify the class.

3 On September 13, 2004, Plaintiffs filed this Motion for Summary Judgment.
4 Plaintiffs seek summary judgment on two issues: (1) that Defendants violated
5 California Civil Code Section 52 and 52.1 as to each member of the class; and (2)
6 that the number of class members totals 4989. Defendants filed an opposition on
7 October 4, 2004. A reply was filed on October 12, 2004.

8 DISCUSSION

9 A. Standard of Law

10 Summary judgment against a party is appropriate when "the pleadings,
11 depositions, answers to interrogatories, and admissions on file, together with the
12 affidavits, if any, show that there is *no genuine issue as to any material fact* and
13 that the moving party is *entitled to a judgment as a matter of law*." Fed. R. Civ. P.
14 56(c) (emphasis added). A party seeking summary judgment bears the initial
15 burden of informing the court of the basis for its motion and of identifying those
16 portions of the pleadings and discovery responses which demonstrate the absence
17 of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
18 (1986). Where the nonmoving party will have the burden of proof at trial, the
19 movant can prevail merely by pointing out that there is an absence of evidence to
20 support the nonmoving party's case. *See id.* If the moving party meets its initial
21 burden, the nonmoving party must then set forth, by affidavit or as otherwise
22 provided in Rule 56, "specific facts showing that there is a genuine issue for trial."
23 Fed. R. Civ. P. 56(e); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

24 In judging evidence at the summary judgment stage, the Court does not make
25 credibility determinations or weigh conflicting evidence and draws all inferences in
26 the light most favorable to the nonmoving party. *T.W. Elec. Svc., Inc. v. Pacific*
27 *Elec. Contractors Ass'n*, 809 F.2d 626, 630-31 (9th Cir. 1987). The evidence
28 presented by the parties must be admissible. Fed. R. Civ. P. 56(e). Conclusory,

1 speculative testimony in affidavits and moving papers is insufficient to raise
2 genuine issues of fact and defeat summary judgment. *See Thornhill Pub. Co., Inc.*
3 *v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

4 **B. Analysis**

5 Plaintiffs set forth two issues for the Court to decide. First, Plaintiffs request
6 summary judgment as to the Third Cause of Action for Violation of California Civil
7 Code Section 52.1. Second, Plaintiffs request that the Court make a finding that the
8 number of class members totals 4989.

9 1. California Civil Code Section 52.1

10 Plaintiffs' Third Cause of Action alleges that Defendants interfered with
11 class members' exercise or enjoyment of constitutional rights by threats,
12 intimidation, or coercion, in violation of Cal. Civil Code §52.1. Cal. Civil Code
13 §52.1 provides for damages under Civil Code §52, which, in turn, provides for
14 damages "up to a maximum of three times the amount of actual damage but in no
15 case less than four thousand dollars (\$ 4,000), and any attorney's fees that may be
16 determined by the court in addition thereto." Plaintiffs contend that the remedies
17 set forth in this section apply to the present case.

18 In the companion case of *Way v. County of Ventura*, this Court held that the
19 County's strip search policy violated plaintiffs' Fourth Amendment right to be free
20 from unreasonable searches. *See* Order of July 22, 2002. However, the Court made
21 no findings as to whether threats, intimidation or coercion had been used to conduct
22 the strip searches. Nor do Plaintiffs offer any evidence about the use of the threats,
23 intimidation or coercion in this Motion for Partial Summary Judgment. Plaintiffs
24 simply assert that class members' rights were violated "through intimidation and
25 coercion with the threat of being incarcerated if they did not acquiesce to the
26 mandatory strip/visual body cavity search." The use of intimidation, coercion or
27 threats is a separate element of Civil Code §52.1 that must be proven. *See, e.g.,*
28 *Jones v. Kmart Corp.*, 17 Cal.4th 329, 338 (1988) (finding that, "as long as

1 interference or attempted interference with [rights] is accompanied by threats,
2 intimidation, or coercion, section 52.1 provides remedies for that misconduct").
3 Since the Court denies summary judgment as to the third cause of action based on
4 Plaintiffs fail to offer any evidence of intimidation, coercion or threats, the Court
5 need not reach the issue of whether §52.1 can be invoked in a class action and
6 whether claims under this section may be brought in federal court.

7 2. Class Size

8 Plaintiffs also request that the Court make a finding as to the size of the
9 class. Plaintiffs assert that there are 4989 class members. Plaintiffs rely on the
10 September 4, 2003 deposition of Commander Mark Ball of the Ventura County
11 Jail, which includes exhibits that specify the total booking including a charge of
12 Section 11550 for each year from 1998 to 2003, as well as a booking count for
13 Section 11550 arrests for each month from June 2002 to July 2003. Since the class
14 period is from December 24, 2001 to March 27, 2003, Plaintiffs estimate the
15 number of persons booked during December 2001 and March 2003 by calculating
16 the average number of people strip searched per day in each of these years.

17 Defendants reject 4989 as the number of class members for several reasons.
18 Defendants contend that persons who were convicted of additional offenses and
19 those released into the general jail population should be excluded from the class.
20 The Court rejected these arguments in denying Defendants' Motion to Amend the
21 Class on August 30, 2004. However, Defendants also contend that the number of
22 persons charged with a violation of Section 11550 who were strip searched at
23 Ventura County Jail between December 24, 2001 and March 27, 2003 was 4429,
24 not 4989 as stated by Plaintiffs. Defendants rely on the March 26, 2004 deposition
25 of Renee Ferguson, who is a sergeant with the Ventura County Jail. However,
26 Defendants do not submit the underlying evidence that supports Ms. Ferguson's
27 declaration. Since there is a factual dispute as to the number of persons charged
28 with Section 11550 violations who were strip searched during the class period, and

1 the Court does not have the underlying evidence supporting the declarations of
2 either Commander Ball or Ms. Ferguson, the Court declines to make a finding as to
3 the number of class members at this time.

4 **CONCLUSION**

5 Based on the foregoing, the Court **DENIES** Summary Judgment as to
6 Plaintiff's Third Cause of Action for Violation of California Civil Code Section
7 52.1 and Section 52. In addition, the Court **DENIES** Plaintiffs' request for a
8 finding that the number of class members totals 4989.

9 **IT IS SO ORDERED.**

10 **DATE:** December 9, 2004



11 **CONSUELO B. MARSHALL**

12 **UNITED STATES DISTRICT JUDGE**