1 2 3 4 5 6	DANA ALDEN FOX, S.B. # 119761 EUGENE S. SUH, S.B. #245313 LYNBERG & WATKINS A Professional Corporation 888 South Figueroa Street Los Angeles, CA 90017 Phone: (213) 624–8700 Fax: (213) 892–2763 E-mail: dfox@lynberg.com / esuh@lyn Attorneys for Defendants SAN BERNA	_ <del></del>
7	DEPARTMENT, Sheriff Gary Penrod (Exempt per Gov't Code Section 6103)	
8	UNITED STATES DISTRICT COURT	
9	CENTRAL DISTRICT OF CALIFORNIA	
10	JAMEELAH MEDINA,	CASE NO: EDCV07-1600 VAP (OPx)
11	Plaintiff(s),	DEFENDANTS' NOTICE OF MOTION AND MOTION TO
13 14 15 16	v. COUNTY OF SAN BERNARDINO, a political subdivision; GARY PENROD, in his individual and official capacities; DOES 1 through 10, in their individual and official capacities;	) DISMISS PURSUANT TO ) FEDERAL RULE OF CIVIL ) PROCEDURE 12(B)(6); MEMORANDUM OF POINTS AND AUTHORITIES ) Date: February 25, 2008 Time: 10:00 a.m. Courtroom: 2
17	Defendants.	) Courtroom. 2 ) }
18		Complaint Filed: 12/5/07
19		
20	TO PLAINTIFF AND HER ATTORNEYS OF RECORD:	
21	PLEASE TAKE NOTICE that on February 25, 2008 or as soon thereafter as	
22	the matter may be heard in the above-entitled court, located at 3470 Twelfth Street,	
23	Riverside, California 92501, defendants will, and hereby do, move to dismiss the	
24	Fourth Claim for Relief of plaintiff's First Amended Complaint.	
25	This Motion is made on the grounds that plaintiff's Fourth Claim for Relief	
26	fails to state a claim upon which relief can be granted.	
27	This Motion is made following the conference of counsel pursuant to L.R. 7-3,	
28	which took place on January 31, 2008.	
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This Motion is based on this Notice of Motion, the pleadings on file herein, the Memorandum of Points and Authorities filed herewith, and on all further oral and/or documentary evidence which may be presented at the time of the hearing of this matter. DATED: January 31, 2008 LYNBERG & WATKINS A Professional Corporation for Defendants, COUNTY OF SAN PENROD F:\WP\Njw-team\DAF\1858-0023-J Medina\Pld\Mtn-2-Dismiss.wpd\ 

DEFENDANTS' NOT. OF MOT./MOTION TO DISMISS PURSUANT TO FEDERAL RULE 12(b)(6)

## **MEMORANDUM OF POINTS AND AUTHORITIES**

I.

## **STATEMENT OF FACTS**

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

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

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

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## LEGAL STANDARD

II.

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

III.

## <u>ARGUMENT</u>

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

Plaintiff claims defendants are liable under the California Tom Bane Act because the County and its agents threatened her with "delayed release" if she did not remove her headscarf (FAC, ¶60). The California Tom Bane Act, California

Civil Code § 52.1, provides a civil action for damages for a person whose

enjoyment of federal or state rights has been interfered with by a person who.

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

- "52.1 Action for injunctive relief from interference with enjoyment of legal rights:
  - "(a) If a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States...or laws of this state, the Attorney General, or any district attorney or city attorney may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California...
  - (b) Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or...laws of this state...may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages, including, but not limited to, ...injunctive relief, and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured."

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

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

retaliated against plaintiff for having exercised her right to 1 freely exercise her religion; 2 4. That plaintiff was harmed; and 3 5. That the defendants's conduct was a substantial factor in 4 causing plaintiff's harm." 5 To succeed on a claim under the Tom Bane Act, plaintiff must prove 6 defendants used violence or intimidation by threat of violence against her. Id. at 7 882. Plaintiff does not contend in her FAC that defendants threatened her with 8 violence; rather, she contends she was threatened with "delayed release" if she did 9 not remove her headscarf (FAC, ¶60). Plaintiff's Fourth Claim alleging a 10 violation under the Tom Bane Act, California Civil Code § 52.1, fails, therefore, to 11 adequately state a claim upon which relief can be granted and should be dismissed. 12 13 IV. 14 **CONCLUSION** 15 For all of the foregoing reasons, Defendants respectfully request the Court 16 dismiss Plaintiff's Fourth Claim on behalf of the County and Penrod. 17 18 DATED: January 31, 2008 19 LYNBERG & WATKINS 20 A Professional Corporation 21 22 23 24 for Defendants, COUNTY OF 25 26 27 28 F/WP\Niw-team\DAF\1858-0023-J Medina\Pld\Mtn-2-Dismiss.wod\ 6

DEFENDANTS' NOT. OF MOT./MOTION TO DISMISS PURSUANT TO FEDERAL RULE 12(b)(6)