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Superior Court of California
County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk

By Jan Josef Manrique, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Coordinated Proceeding
Special Title (Rule 3.550)

JUDICIAL COUNCIL
COORDINATION PROCEEDING
NO. 4897

COUNTY INMATE TELEPHONE
SERVICE CASES

OPINION AND ORDER ON
DEFENDANTS' CONSOLIDATED
DEMURRER AND SUPPLEMENTAL
DEMURRERS TO PLAINTIFFS'
CONSOLIDATED CLASS ACTION
COMPLAINT

Plaintiffs' Consolidated Class Action Complaint

Plaintiffs are inmates in county jail facilities who, in order to make telephone calls to relatives, attorneys, bail bondsmen or lawyers, must use a telephone system installed in the jail, referred to as an Inmate Calling System. Also joined as Plaintiffs in this putative class action are relatives of the inmates who, in order to communicate with their loved ones, must establish a pre-paid account with the telecommunications companies who contract with the Defendant Counties to provide the telephone service. (Consolidated Complaint, para. 4.) Defendants are the counties of Los Angeles, Orange, Riverside, San Bernardino, Ventura, San Mateo, Contra Costa, Alameda and Santa Clara.

1 Plaintiffs allege that the Defendant Counties enter into contracts with
2 telecommunications companies, granting them the exclusive right to establish an Inmate
3 Calling System. (*Id.*) The telecommunications companies, who are not parties, are
4 common carriers and their rates are regulated by the Federal Communications
5 Commission. (*Id.* paras. 2, 4.) Plaintiffs allege that each County’s contract with a
6 telecommunications company establishes a “substantial minimum, guaranteed fee against
7 an identified percentage of the [Inmate Calling System] charges (**in each case above**
8 **50%**), after which the telecommunications companies still make a substantial profit.” (*Id.*
9 para. 86 (emphasis in original).) Plaintiffs allege that, without the guaranteed fee, referred
10 to as a commission and sometimes characterized by Plaintiffs as a “kickback,” the charges
11 paid by Plaintiffs would be “substantially lower.” (*Id.*) Plaintiffs also allege that the
12 amount of the commissions bears “no reasonable relationship to the actual cost of
13 providing the [Inmate Calling Service], or the reasonable value of the service. (*Id.*)
14 Plaintiffs further contend that, “because the telecommunications companies must pay to the
15 respective counties a significant guaranteed minimum amount and the majority of the
16 charges, it is not possible for the telecommunications companies to economically bear
17 these charges themselves; therefore, it is understood and agreed to by the
18 telecommunications companies and the counties that the full amount of the charges due to
19 the counties will be incurred by the customers of the telecommunications company, and
20 not by the telecommunications company itself.” (*Id.*)

21 Plaintiffs acknowledge that “Defendant Counties all use their annual commissions
22 as provided by Penal Code §4025(c-d) [*sic*]” (*Id.* para. 87.) Penal Code section 4025
23 specifically authorizes counties to deposit “in the inmate welfare fund any money, refund,
24 rebate, or commission received from a telephone company . . . when the money, refund,
25 rebate, or commission is attributable to the use of pay telephones which are primarily used
26 by inmates while incarcerated.” (Penal Code section 4025(d).) The money deposited in
27 the inmate welfare fund is to be “expended by the sheriff primarily for the benefit,
28 education, and welfare of the inmates confined within the jail,” and any funds left over

1 “may be expended for the maintenance of county jail facilities” but “shall not be used to
2 pay required county expenses of confining inmates in a local detention system” (*Id.*
3 section 4025(e).) The sheriff also may expend money from the inmate welfare fund to
4 provide indigent inmates with essential clothing and transportation expenses prior to
5 release from county jail. (*Id.* section 4025(i).)

6 The Consolidated Complaint alleges that the Plaintiffs who are county jail inmates
7 have standing because inmates, even if they did not pay for calls, were restricted in “their
8 practical ability to communicate with the outside world. . . .” (Consolidated Complaint
9 para. 14.) Call recipients are alleged to have been “injured both because the unlawful
10 conduct alleged herein restricted their practical ability to communicate with inmates and
11 because they paid for unlawful fees and charges.” (*Id.*)

12 Plaintiffs allege that the commissions included by the Counties in their contracts
13 with the telecommunications companies are unlawful for a variety of reasons. In the First
14 Cause of Action Plaintiffs allege that “[t]he money received by the County Defendants in
15 exchange for their grant of exclusive rights to establish an inmate call system in their jails,
16 although denominated as a commission, in fact constitutes a tax under California law, and,
17 as such, was not approved by the voters of the respective counties in which the tax was
18 established, as required by Article 13C of the California Constitution.” (*Id.* para. 188.)
19 Plaintiffs seek “[a] refund/disgorgement/restitution/ damages constituting the monies paid
20 by Class Members that, in turn, were used to pay the contracted commissions to each
21 County Defendant” (*Id.* para. 221.)

22 As explained further below, the Second Cause of Action of the Consolidated
23 Complaint is premised on Government Code section 11135; the Third Cause of Action
24 alleges a claim under Civil Code section 52.1; and the Fourth Cause of Action is premised
25 on several alleged violations of the California Constitution.

26
27 *Plaintiffs Are Not Required to Exhaust Administrative Remedies by which Inmates May*
28 *Resolve Grievances*

1 Defendants argue that, as a precondition to filing suit, Plaintiffs should be required
2 to file a grievance regarding the telephone system, citing the provision of the California
3 Code of Regulations that requires jail administrators to “develop written policies and
4 procedures whereby any inmate may appeal and have resolved grievances relating to any
5 conditions of confinement, including but not limited to: . . . telephone” (15 Cal. Code
6 Regs. Section 1073.) This regulatory provision is inapplicable because Plaintiffs’
7 grievance is not with the jail administrator, with respect to his or her conduct regarding
8 telephone usage, but with the respective County Boards of Supervisors, with respect to
9 their contracts for telecommunications services requiring payment of commissions. A
10 Plaintiff is not required to pursue an administrative action against a government entity that
11 has no authority to grant the relief sought. Plaintiffs were not required to exhaust this
12 administrative remedy before asserting in court the claims pleaded in the Consolidated
13 Complaint.

14
15 *Plaintiffs Do Not Have Standing to Contend that the Commissions are an Unconstitutional*
16 *Tax*

17 The First Cause of Action of the Consolidated Complaint is premised on Plaintiffs’
18 theory that the commissions paid by the telecommunications companies (and passed on to
19 Plaintiff class members) are a tax within the meaning of California Constitution Article
20 13C. Plaintiffs contend that because the commissions are a tax, they must be “submitted to
21 the electorate and approved by a two-thirds vote” (Cal. Const. Art. 13C), which was not
22 the case when the commissions were contractually agreed to by the Counties. Although
23 Defendant Counties strongly contest Plaintiffs’ characterization of the commissions as a
24 tax, for purposes of the discussion below, the court will assume without deciding that the
25 commissions are a tax within the meaning of Article 13C of the California Constitution.

26 Plaintiffs are precluded from seeking to enjoin a tax. Article XIII, section 32 of the
27 California Constitution provides that “[n]o legal or equitable process shall issue in any
28 proceeding in any court against this State or any officer thereof to prevent or enjoin the

1 collection of any tax.” The Legislature incorporated the same restriction in the California
2 tax statutes. (Cal. Rev. & Tax. Code section 6931.) By common law, this restriction on
3 equitable relief has been extended to taxes imposed by state or local authorities, even when
4 the assessment is challenged as being unlawful. (*Flying Dutchman Park, Inc v. City and*
5 *County of San Francisco* (2001) 93 Cal.App.4th 1129, 1136-1138, 1141; *Writers Guild of*
6 *America, West, Inc. v. City of Los Angeles* (2000) 77 Cal.App.4th 475, 483.)

7 Therefore, Plaintiffs must establish that they have standing to seek a refund of the
8 commissions that they characterize as a tax. The general rule is that a person “may not sue
9 to recover excess . . . taxes paid by someone else, such as his landlord, who pays the tax by
10 design or mistake.” (*Grotenhuis v. County of Santa Barbara* (2010) 182 Cal.App.4th 1158,
11 1165.)

12 Although it is decided in the context of the state scheme for taxation of sales, the
13 California Supreme Court’s decision in *Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081,
14 presents strong arguments for declining to recognize standing for a customer who pays
15 higher prices charged because of a tax on a vendor who raises prices in order to recover the
16 amount of the tax from its customer.

17 In *Loeffler*, consumers brought an action under the UCL and CLRA against a
18 retailer, contending defendant retailer improperly charged sales tax on sales of hot coffee
19 sold “to go.” (*Id.* at p. 1092.) The Supreme Court emphasized the importance of strict
20 adherence to the statutory requirements for challenging the legality of a tax through the
21 vehicle of a tax refund action.

22 As a practical matter, if we did not view the tax code as providing
23 the exclusive procedure under which a claim such as plaintiffs’ may
24 be resolved, independent consumer claims against retailers for
25 restitution of reimbursement charges on nontaxable sales could form
26 a huge volume of litigation over all the fine points of tax law as
27 applied to millions of daily commercial transactions in this state.

28 (*Id.* at p. 1130.)

1 The instant case, unlike *Loeffler*, is not brought against the telecommunications
2 companies whose prices to Plaintiffs were increased to cover the amount of the
3 commissions paid to Defendant Counties. However, Plaintiffs' contention that they may
4 sue for a tax refund even though they were not legally responsible for paying the County
5 tax similarly raises the specter of unbridled litigation by the many consumers who pay
6 prices influenced by taxes that affect vendors' costs of doing business.

7 Plaintiffs cite cases in which courts have recognized that litigants may have
8 standing to bring a refund claim even though they are not statutorily denominated as a
9 "taxpayer." However, in those cases, unlike here, the litigants bringing the action had a
10 legal responsibility to pay the tax amount to the taxing authority.

11 In *TracFone Wireless, Inc. v. County of Los Angeles* (2008) 163 Cal.App.4th 1359,
12 plaintiff TracFone was required to collect and pay to the County of Los Angeles a user tax
13 based on five percent of the value of calls made with its phone cards in the county, it but
14 was not denominated a "taxpayer." (*Id.* at p. 1362.) The Court of Appeal held that
15 TracFone could seek a tax refund because it was subject to penalties if it did not pay the
16 tax to the county, whether or not it could recover the amounts of the tax from its
17 customers. (*Id.* at p. 1364. *See also Andal v. City of Stockton* (2006) 137 Cal.App.4th 86,
18 92-94 (allowing phone company to seek refund of a local fee assessed on 911 calls because
19 it was required to collect and pay the tax to the taxing authority).)

20 In *Delta Air Lines, Inc. v. State Bd. of Equalization* (1989) 214 Cal.App.3d 518,
21 although Plaintiff Delta was not denominated a taxpayer, the Court of Appeal recognized
22 that it had standing to bring a refund action based on the statutory framework which made
23 Delta, as a common carrier, directly responsible for tax payments to the State as if it were a
24 retailer, and which provided a direct right for Delta, as a purchaser, to a credit or refund of
25 an overpayment from the State. (*Id.* at pp. 527-8.) As the Court stated: "[T]he Law has
26 treated common carriers such as Delta differently than ordinary purchasers or consumers
27 [with respect to payment of sales taxes]." (*Id.* at p. 526.)
28

1 In *Sipple v. City of Hayward* (2014) 225 Cal.App.4th 349, the Court of Appeal,
2 considering “unique circumstances” (*id.* at p. 361), recognized that concerns of fairness
3 and ensuring that a taxing authority not be unjustly enriched are relevant when considering
4 the standing analysis for refund claims. (*Id.* at 359.) In that case, an internet provider had
5 charged improper internet access taxes and paid those taxes to counties and cities that were
6 joined as defendants in the lawsuit. The internet provider sued to recover the taxes for the
7 benefit of its customers based on a nationwide class action settlement in which the retailer
8 had agreed to be contractually obligated to seek the refunds. The Court recognized that,
9 due to the federal court class action settlement, no one likely would sue to recover the
10 wrongfully paid taxes if the internet provider were not allowed to seek the refund (which
11 would be remitted to the customer class in the federal action). (*Id.* at p. 362.) Under the
12 circumstances presented, the Court held that the internet provider had standing, although it
13 found “the issue of standing [to be] a close one.” (*Id.* at p. 362.)

14 There are no such reasons here for deviating from the general rule that a tax may not
15 be challenged by a person who asserts a right to bring a refund action because his or her
16 purchases are more expensive due to a tax that is reflected in the purchase price, but who
17 has no legal obligation to the taxing entity. Although Plaintiffs suggest that the
18 telecommunications companies which contract with the Counties have no incentive to
19 challenge the legality of the commissions, there is no basis for drawing such conclusion on
20 the basis of the facts pleaded. Plaintiffs have pleaded that the telecommunications
21 companies must pay a guaranteed fee (the commission) against an identified percentage of
22 charges, and that, after meeting that percentage, “the telecommunications companies still
23 make a substantial profit.” (Consolidated Complaint, para. 86.) It follows that the
24 telecommunications companies would have a greater opportunity for profit (subject to rate-
25 setting by the FCC) if they did not have to pay the commissions. The fact that the
26 telecommunications companies have not yet brought suit does not mean that they have no
27 financial incentive to do so. They may disagree with the Plaintiffs’ arguments that the
28

1 commissions (which are permitted by the California Penal Code) are properly
2 characterized as a tax under Proposition 26.

3 Moreover, in certain circumstances the courts have crafted remedies by which
4 consumers who pay taxes they contend are unlawful may sue the person who is required to
5 collect and pay the tax, requesting an injunction compelling the taxpayer to seek a refund.
6 (*Javor v. State Board of Equalization* (1974) 12 Cal.3d 790.) As in *Loeffler*, “[p]laintiffs
7 in the present case did not pursue that remedy.” (*Loeffler, supra*, 58 Cal.4th 1081, 1101.)

8 Both Plaintiffs and Defendants cite cases considering when a person qualifies as a
9 taxpayer under Code of Civil Procedure section 526a. While those cases are not
10 inconsistent with the analysis discussed above insofar as the cases consider who qualifies
11 as a taxpayer, section 526a has not been pleaded by Plaintiffs and is not relevant to the
12 constitutional challenge presented. Plaintiffs here seek to challenge the constitutionality of
13 a tax. Section 526a is inapplicable because it allows taxpayers to enjoin the illegal
14 *expenditure* of taxpayer funds, not to stop the collection of taxes.

15 Plaintiffs rely on *Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, but in that
16 case the Supreme Court did not consider or decide the standing issue presented here.
17 Rather *Jacks* stated that standing cases decided under section 526a “do not provide
18 guidance concerning what constitutes a tax under various voter initiatives restricting
19 taxation.” (*Id.* at p. 271.)

20 Insofar as the commissions constitute taxes, Plaintiffs may not enjoin them and do
21 not have standing to seek a refund. The demurrer to the First Cause of Action is sustained
22 without leave to amend. Plaintiffs suggest no amendment that could cure this defect.

23
24 *Plaintiffs’ Claim under Government Code Section 11135 Fails Because Plaintiffs Have*
25 *Not Alleged that the Commissions Have a Disparate Impact on a Group that is Affected by*
26 *the Policy as Compared to a Group that is Not Affected by the Policy*

27 Government Code section 11135 prohibits discrimination when persons, on the
28 basis of their race, national origin or disability, are denied equal access to the benefits of a

1 program or activity that is funded by the State. Plaintiffs have alleged that the State
2 provides each Defendant County with funds for their respective jails and that the money is
3 used in part to facilitate the inmate calling services. (Consolidated Complaint paras. 191,
4 207.)

5 Plaintiffs allege that the inmate populations of the jails, and the members of the Call
6 Recipient Class, are disproportionately Latino and African-American compared to the
7 overall population, and that there are disproportionate numbers of mentally disabled
8 persons in the Inmate Class. (*Id.* para. 208.) Further Plaintiffs allege that there is no
9 reasonable necessity or substantial legitimate justification for the imposition of the
10 commission charges. (*Id.* para. 208.) However, Plaintiffs do not allege that Latino or
11 African-American inmates and Call Recipients are treated differently from inmates and
12 Call Recipients who are not members of those groups. (*Id.* para. 206 (“To the extent that
13 Inmate Class Members and Call Recipient Class Members are not African-American and
14 Latino, or do not suffer from mental illness or drug addiction, they are, for purposes of the
15 ICS [Inmate Calling System] charges, inextricably associated with such Class Members,
16 and suffer the same injuries as Class Members.”).)

17 A violation of Government Code section 11135 may be proved based on disparate
18 impact discrimination. “‘The basis for a successful disparate impact claim [including a
19 claim under section 11135] involves a comparison between two groups — those affected
20 and those unaffected by the facially neutral policy.’ *Tsombanidis v. W. Haven Fire Dep’t*,
21 352 F.3d 565, 575 (2d Cir. 2003).” (*Darensburg v. Metro. Transp. Comm’n* (9th Cir.
22 2011) 636 F.3d 511, 519-520.) Here, Plaintiffs do *not* claim that the African-American,
23 Latino and mentally disabled members of the Inmate Class and of the Call Recipient Class
24 were treated differently from members of those classes who are not African-American,
25 Latino or mentally disabled. Indeed, the Consolidated Complaint alleges that all members
26 of the defined classes were treated the same and suffered the same injuries.

1 Plaintiffs allege that the proper comparison group is taxpayers generally and
2 telephone users generally. However, even at the demurrer stage, these allegations are
3 insufficient to establish a relevant comparison group.

4 As to telephone users, the Consolidated Complaint does not allege that the
5 Defendant Counties provide telephone service for any other group. Such a comparison is
6 essential to a disparate impact claim. As stated in *Darensburg, supra*:

7 [W]e must analyze the impact of the plan on minorities in the
8 population base "affected . . . by the facially neutral
9 policy." *Tsombanidis*, 352 F.3d at 575; *see also Robinson*, 847 F.2d at
10 1318 (no prima facie case of disparate impact where wrong base
11 population used in statistical sample); *Hallmark Developers, Inc. v.*
12 *Fulton County.*, 466 F.3d 1276, 1286 (11th Cir. 2006) ("[T]he
13 appropriate inquiry is into the impact on the total group to which a
14 policy or decision applies") (citing *Betsey v. Turtle Creek Assocs.*, 736
15 F.2d 983, 987 (4th Cir. 1984)).

16 (*Darensburg, supra*, 636 F.3d 511, 520.)

17 With respect to Plaintiffs' taxpayer comparison, assuming arguendo that the
18 commission is a tax, the California Legislature, has established the basis for treating
19 members of the Inmate Class and the Call Recipient Class differently from other taxpayers.
20 As discussed above, Penal Code section 4025 authorizes the jails to collect commissions
21 on telephone calls from and to inmates. Thus the Legislature's choice to allow
22 commissions to be imposed and used for the benefit of inmates is the required rationale for
23 the treatment of Plaintiffs differently from other taxpayers. (*See, e.g., id.* at p. 519 (to
24 rebut a prima facie case of discrimination, a defendant must provide a justification for the
25 challenged practice).)

26 Plaintiffs have not challenged on any basis the enforceability of Penal Code section
27 4025. "Legislatures have especially broad latitude in creating classifications and
28 distinctions in tax statutes. . . . '[T]he presumption of constitutionality can be overcome

1 only by the most explicit demonstration that a classification is a hostile and oppressive
2 discrimination against particular persons and classes. The burden is on the one attacking
3 the legislative arrangement to negative every conceivable basis which might support it.’
4 *Madden v. Kentucky*, 309 U.S. 83, 87-88 (1940) (footnotes omitted).” (*Regan v. Taxation*
5 *with Representation* (1983) 461 U.S. 540 547-548.) The allegations of the complaint
6 provide no basis for concluding that the State Legislature’s determination to permit
7 imposition of the commission “tax” is not an adequate rationale for the treatment of
8 Plaintiffs differently from other taxpayers.

9 Plaintiffs’ arguments provide no basis for this court to conclude that providing an
10 opportunity to amend the Consolidated Complaint would allow a claim under section
11 11135 to survive. The demurrer to the Second Cause of Action is sustained without leave
12 to amend.

13
14 *The Allegations of the Complaint Do Not Make Out a Claim Under Civil Code Section*
15 *52.1*

16 The Third Cause of Action of the Consolidated Complaint alleges the Defendants
17 have violated Civil Code section 52.1. This statute establishes civil penalties and
18 injunctive relief applicable when a person, acting under color of law, who interferes by
19 threat, intimidation or coercion with the exercise or enjoyment of any individual of any
20 legal right. Plaintiffs concede that this cause of action applies only to the Call Recipient
21 Class, because Government Code section 884.6 bars claims based on injuries suffered by
22 prisoners. (Opposition Brief at p. 26, fn. 22.)

23 Plaintiffs’ theory is that Defendants violated the Call Recipient Class Members’
24 rights under section 52.1 by interfering by coercion with their rights under Proposition 26.
25 “The coercion takes the form of forcing Plaintiffs to the coercive choice of using the
26 telephone despite the fact that the charges are unlawful or foregoing the best realistically
27 available form of communication with inmates.” (*Id.* at p. 29.)

1 The court agrees with Defendants' argument that in order to prove a violation of
2 section 52.1 a Plaintiff must prove threats, intimidation or coercion not inherent in the
3 alleged constitutional violation. This position is supported by *Bender v. County of Los*
4 *Angeles* (2013) 217 Cal.App.4th 968 and *Shoyoye v. County of Los Angeles* (2012) 203
5 Cal.App.4th 947. The court follows these cases rather than the more recent decision of
6 *Cornell v. City & County of San Francisco* (2017) 17 Cal.App.5th 766. Plaintiffs have not
7 alleged coercion other than what is inherent in the required commission charge passed
8 through to the Call Recipient class. Therefore the claim under section 52.1 fails.

9 As a separate and alternative ground, the court finds that the allegations of the
10 Complaint do not establish coercion of the sort contemplated by section 52.1. Whenever
11 an improper tax is imposed, the person subject to the tax is required to pay it or otherwise
12 to forego a purchase or an activity that otherwise would be his or her right. The subjective
13 importance of the purchase or activity to the taxpayer does not make the tax "coercive."
14 Under the doctrine of *noscitur a sociis*, the meaning of a word in a statute should be
15 considered in the context of the accompanying words. Section 52.1 is concerned with
16 threats, intimidation or coercion to deprive one of legal or constitutional rights. The nature
17 of the coercion contemplated by the statute should be similar to the accompanying
18 concepts – threats and intimidation. Imposition of a tax is not a coercive act similar to a
19 threat or to intimidation.

20 The demurrer to the Third Cause of Action is sustained without leave to amend.

21
22 *The Allegations of the Fourth Cause of Action are Insufficient to Support Any of the*
23 *Constitutional Provisions Cited Therein*

24 In the Fourth Cause of Action, Plaintiffs allege violations of (1) free speech and
25 association under Articles 2 and 3 of the California Constitution, (2) due process of law
26 under Article 7 of the California Constitution, (3) equal protection of the law under Article
27 7 of the California Constitution, and (4) just compensation for a public use under Article
28 19 of the California Constitution.

1 With respect to the Counties of Alameda, Santa Clara, Contra Costa and San Mateo,
2 Plaintiffs concede that the Fourth Cause of Action is barred by a decision of the federal
3 district court involving these counties. The court takes judicial notice of the documents
4 filed in the federal actions and of the judgment entered against Plaintiffs and in favor of
5 these counties on October 12, 2017. The demurrer of these Defendant Counties to the
6 Fourth Cause of Action is sustained without leave to amend on grounds of res judicata.

7 With respect to Plaintiffs' claims against the other Defendant Counties, Plaintiffs'
8 Opposition does not address the due process and just compensation portions of the Fourth
9 Amended Complaint. The allegations of the Consolidated Complaint with respect to these
10 constitutional provisions do not state a claim.

11 Plaintiffs' free speech and equal protection challenges would require invalidation of
12 Penal Code section 4825. Yet Plaintiffs have not acknowledged this necessary
13 consequence of their constitutional contentions. Plaintiffs' equal protection arguments are
14 rejected for reasons discussed in the portion of this decision addressing Government Code
15 section 11135. In addition, with respect to Plaintiffs' equal protection and free speech
16 arguments, this court adopts the reasoning of Judge Yvonne Gonzales Rogers in *Banks v.*
17 *County of San Mateo* (N.D. Cal., Aug. 10, 2017) 16-cv-04455-YGR (Ex. 15 to Request for
18 Judicial Notice in Support of Second Supplemental Demurrer). (*See* with respect to the
19 equal protection claim, slip op. at pp. 23-25, and with respect to the free speech claim, *id.*
20 at pp. 17-21 and Order of Oct. 12, 2017 at pp. 3-5 (Ex. 16 to Request for Judicial Notice in
21 Support of Second Supplemental Demurrer).) The court takes judicial notice of the record
22 and opinions in *Banks v. County of San Mateo, supra*, and also of the record and opinion in
23 *Salazar, et al. v. County of Los Angeles, et al.* (C.D. Cal. Dec. 20, 2016) 2:15-cv-09003-
24 MAT-JC. This court declines to follow the decision in *Salazar*, as did the Court in *Banks*.

25 The briefing does not suggest any basis for potential amendment to further support
26 the constitutional claims of the Fourth Cause of Action. The demurrer to the Fourth Cause
27 of Action is sustained without leave to amend.


28 - - - - -

1
2 The court notes that Plaintiffs have articulated strong policy arguments in
3 opposition to the policy embodied in Penal Code section 4025 and adopted by Defendant
4 Counties in their contracting practices with respect to the Inmate Calling System. The
5 political branches have not shown themselves to be deaf to arguments against fees that fall
6 primarily on those least able to pay, as indicated by current efforts to reform the bail
7 system and to reconsider the ways in which traffic fines and fees are enforced. The
8 responsibility of this court is to apply existing law, and this Opinion is not intended to
9 express a view one way or the other as to Plaintiffs' policy arguments.
10

11 **ORDER**

12 For the reasons stated, the Demurrer to the Consolidated Complaint is granted
13 without leave to amend.
14

15
16
17 Dated: Apr. 30, 2018



CAROLYN B. KUHIL
JUDGE OF THE SUPERIOR COURT