

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

J.C., a minor, by and through her)	CV 08-3824 SVW (CWx)
guardian ad litem R.C.,)	
)	
Plaintiff,)	
)	
v.)	ORDER GRANTING PLAINTIFF'S
)	MOTION FOR SUMMARY ADJUDICATION
BEVERLY HILLS UNIFIED SCHOOL)	AS TO HER THIRD CAUSE OF ACTION
DISTRICT; ERIK WARREN, in his)	FOR VIOLATION OF DUE PROCESS
official and individual)	RIGHTS UNDER 42 U.S.C. § 1983
capacities; CHERRYNE LUE-SANG, in)	[45]
her official and individual)	
capacities; and JANICE HART, in)	
her official and individual)	
capacities,)	
)	
Defendants.)	

I. INTRODUCTION

Plaintiff filed this action, through her guardian ad litem, against the Beverly Hills Unified School District and individual Defendants Warren, Lue-Sang, and Hart (collectively "Defendants"). Plaintiff alleged (among other claims) three federal claims under 42 U.S.C. § 1983 for violation of Plaintiff's First Amendment rights and her right to Due Process. In December 2008, the parties filed cross

1 motions for summary adjudication. On November 16, 2009, the Court
2 issued an order granting Plaintiff's motion for summary adjudication as
3 to her First Amendment claims, and also granting the individual
4 Defendants' motion for summary adjudication on Plaintiff's claim for
5 money damages, on the ground of qualified immunity. The November 16,
6 2009 Order did not address Plaintiff's motion for summary adjudication
7 as to her Due Process claim. This Order will address that claim.

8 For the reasons stated below, the Court GRANTS Plaintiff's Motion
9 for Summary Adjudication as to the Third Cause of Action for violation
10 of her Due Process rights.

11 **II. FACTS**

12 The facts of this case were summarized in the Court's November 16,
13 2009 Order, which is incorporated here by reference. The Court will
14 only summarize additional facts to the extent necessary to the
15 resolution of Plaintiff's Due Process claim.

16 On or about May 28, 2008, Plaintiff was suspended from Beverly
17 Vista Middle School ("the School"). Plaintiff's suspension resulted
18 from Plaintiff making a video of her friends saying vulgar and hurtful
19 things about a classmate named C.C. while off campus and after school,
20 posting the video on the Internet at YouTube.com from her home
21 computer, and informing several Beverly Vista students about the video.
22 (Decl. of Martin Keleti in Support of Pl.'s Mot. For Summary Judgment
23 ["Keleti Supporting Decl."], Exh. F. [Suspension Notice].) School
24 administrators became aware of the video when C.C. and her mother came
25 to the School and brought the video to their attention on the morning
26 of May 28, 2008. (Pl. Statement of Undisputed Facts [PSUF 12, 22].)
27 C.C. was upset and initially refused to go to class because of the
28

1 video. (PSUF 13.) The School then conducted an investigation, which
2 ultimately resulted in Plaintiff's suspension. (PSUF 13-14, 18, 22.)

3 Defendant Lue-Sang, the Assistant Principal at the School, sent
4 J.C.'s parents a notice of her suspension, which stated that J.C. had
5 been suspended for violating California Education Code section
6 48900(k). (Keleti Supporting Decl., Exh. F.) Section 48900(k)¹
7 provides that a student may be suspended if the principal of the school
8 determines that the student "disrupted school activities or otherwise
9 willfully defied the valid authority of supervisors, teachers,
10 administrators, school officials, or other school personnel engaged in
11 the performance of their duties." Cal. Educ. Code § 48900(k). The
12 Beverly Hills Unified School District Manual entitled, "*Discipline*
13 *Policy and Procedures 2007-08*" (hereinafter, "the Discipline Manual")
14 lists Section 48900(k) as one of the grounds for suspension. (Keleti
15 Supporting Decl., Exh. I, p.149.) The Discipline Manual, along with
16 the Beverly Vista Student Handbook (hereinafter "the Student Handbook")
17 state the rules of conduct that students must follow at the school.
18 (PSUF 48.) The Discipline Manual and the Student Handbook are provided
19 to students at Beverly Vista (or to their parents).

20 In addition to section 48900(k), Defendants contend that
21 Plaintiff's conduct relating to the YouTube video also violated
22 portions of the Beverly Vista Student Handbook, the Student
23 Responsibility Contract, paragraphs 12 and 13. (Def. Statement of
24 Genuine Issues ["DSGI"] 52.). These provisions state, in relevant
25 part, that the student agrees:

26
27
28 ¹ All future section references are to the California Education Code.

1 12. To refrain from behavior which disrupts school
2 activities. I understand that actions such as
3 inappropriate classroom conduct, profanity, lack of
4 respect for classmates and adults, are unacceptable
5 behaviors that may result in suspension and/or
6 expulsion.

7 13. To respect the dignity and rights of every student and
8 adult. I will refrain from making racial slurs or using
9 vulgar, obscene or insulting language. I understand
10 that violation of the District Sexual Harassment Policy
11 will result in disciplinary action. The policy
12 prohibits verbal, written, or physical sexual
13 harassment. I understand that I am responsible for
14 conducting myself responsibly with regard to the rights
15 and safety of others and the importance of mutual
16 respect and understanding.

17 (Keleti Supporting Decl., Exh. H, p.127.)

18 Plaintiff contends, in this motion for summary adjudication, that
19 the School's discipline policies violated her Due Process rights
20 because such policies are unconstitutionally vague and do not put
21 students on notice that off-campus speech may be prohibited. (Mot. at
22 12-14.)

23 **III. ANALYSIS**

24 **A. Legal Standard**

25 Rule 56(c) requires summary judgment for the moving party when the
26 evidence, viewed in the light most favorable to the nonmoving party,
27 shows that there is no genuine issue as to any material fact, and that
28 the moving party is entitled to judgment as a matter of law. See Fed.
R. Civ. P. 56(c); *Tarin v. County of Los Angeles*, 123 F.3d 1259, 1263
(9th Cir. 1997).

The moving party bears the initial burden of establishing the
absence of a genuine issue of material fact. See *Celotex Corp v.*
Catrett, 477 U.S. 317, 323-24 (1986). If that party bears the burden
of proof at trial, it must affirmatively establish all elements of its

1 legal claim. See Southern Cal. Gas Co. v. City of Santa Ana, 336 F.3d
2 885 (9th Cir. 2003) (per curiam). Otherwise, the moving party may
3 satisfy its Rule 56(c) burden by "'showing' -- that is, pointing out to
4 the district court -- that there is an absence of evidence to support
5 the nonmoving party's case." Celotex, 477 U.S. at 325.

6 Once the moving party has met its initial burden, Rule 56(e)
7 requires the nonmoving party to go beyond the pleadings and identify
8 specific facts that show a genuine issue for trial. See id. at 323-34;
9 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1968). A scintilla
10 of evidence or evidence that is merely colorable or not significantly
11 probative does not present a genuine issue of material fact. Addisu v.
12 Fred Meyer, 198 F.3d 1130, 1134 (9th Cir. 2000). Genuine disputes over
13 facts that might affect the outcome of the suit under the governing law
14 will properly preclude the entry of summary judgment. See Anderson,
15 477 U.S. at 248; see also, Aprin v. Santa Clara Valley Transp. Agency,
16 261 F.3d 912, 919 (9th Cir. 2001) (the nonmoving party must identify
17 specific evidence from which a reasonable jury could return a verdict
18 in its favor).

19 **B. Due Process Claim²**

20 Plaintiff contends that the School's disciplinary rules she
21 allegedly violated are unconstitutionally vague. Specifically,
22 Plaintiff argues that the Discipline Manual and the Student Handbook
23 give no indication to students that they may be punished for speech
24 originating off campus; instead, the school materials borrow from
25 California Education Code § 48900, which has "strict geographic
26

27 ² Plaintiff does not argue that she was not provided with the proper notice and
28 hearing prior to her suspension. Plaintiff does not claim that she was not
provided with a hearing under Goss v. Lopez, 419 U.S. 565 (1975). (Mot. at 16.)

1 limits." (Mot. at 17.) Nonetheless, the school administrators
2 testified that they have the authority to regulate student speech that
3 originates off campus if such speech causes a disruption on campus.
4 Thus, Plaintiff contends that "there is some unwritten component to
5 [the] rules," which allows students to be punished for conduct that is
6 not explicitly prohibited - that is, off-campus speech. (Id. at 18.)
7 Plaintiff also argues that the policy is unconstitutionally vague in
8 that the "unwritten" or "unspoken" policy does not provide school
9 administrators guidance as to how to enforce the policy and leads to
10 arbitrary enforcement.³

11 In general, a regulation is unconstitutionally vague where it
12 "either forbids or requires the doing of an act in terms so vague that
13 men of common intelligence must necessarily guess at its meaning and
14 differ as to its application." Connally v. General Const. Co., 269
15 U.S. 385, 391 (1926); Kolendar v. Lawson, 461 U.S. 352, 357 (1983).
16 The void-for-vagueness doctrine has two essential aspects. First, a
17 regulation that is unconstitutionally vague leaves persons "without
18 'fair notice' of the regulation's reach" and requires them to "guess as
19 to the contours of its proscriptions." Sypniewski v. Warren Hills
20 Regional Bd. Of Educ., 307 F.3d 243, 266-67 (3rd Cir. 2002). This
21 uncertainty often leads persons to "steer far wider of the unlawful
22 zone than if the boundaries of the forbidden areas were clearly

23 ³ Plaintiff's motion makes a few fleeting references to the word "overbreadth" when
24 describing the School's policies, but does not describe how or why such policies
are unconstitutionally overbroad.

25 It is clear to the Court that the crux of Plaintiff's due process argument is
26 that the School policies failed to give proper notice to the students of the
conduct that was prohibited, and failed to guide the discretion of school
27 administrators. Both these arguments fall squarely within the void-for-vagueness
doctrine. Thus, the Court will not address an overbreadth argument, to the extent
28 Plaintiff half-heartedly attempted to make one. Finally, as discussed below,
because the Court concludes that the policies are unconstitutionally vague, the
result would not change were the Court to address the alternative ground for a due
process violation.

1 marked." Id. (quoting Baggett v. Bullitt, 377 U.S. 360, 372 (1964)).
2 Second, a vague regulation may also fail to establish the guidelines to
3 govern its enforcement, thereby encouraging arbitrary and
4 discriminatory enforcement. Kolendar, 461 U.S. at 357.

5 When addressing school disciplinary rules the Supreme Court has
6 been less demanding of specificity than it has when evaluating the
7 constitutionality of criminal statutes. Sypniewski, 307 F.3d at 266.
8 In Bethel School District No. 403 v. Fraser, the Court held that, in
9 light of a school's "need to be able to impose disciplinary sanctions
10 for a wide range of unanticipated conduct disruptive of the educational
11 process," a school requires "a certain degree of flexibility in its
12 disciplinary procedures." 478 U.S. 675, 686 (1986). Thus, a school's
13 disciplinary rules "need not be as detailed as a criminal code which
14 imposes criminal sanctions." Id.

15 A regulation may be vague on its face, or vague as applied. Here,
16 unlike in other cases, Plaintiff does not challenge the specific
17 language used in the School's disciplinary regulations.⁴ See, e.g.,
18 Killion v. Franklin Regional School Dist., 136 F. Supp. 2d 446 (W.D.
19 Penn. 2001) (finding the undefined and subjective phrase in a school
20 rule, "abuse a staff member," would lead to arbitrary enforcement);
21 Flaherty v. Keystone Oaks School Dist., 247 F. Supp. 2d 698 (W.D. Penn.
22 2003) (finding the terms "abuse, offend, harass, and inappropriate" in
23 school policy to be undefined and unconstitutionally vague); Syniewski,

24
25 ⁴ Indeed, Plaintiff does even not specify what regulations she contends
26 are unconstitutionally vague, apart from the reference to "the
27 prohibitions she allegedly violated." (Mot. at 16.) In this Order, the
28 Court has focused on exactly those provisions - i.e., the provisions of
the Disciplinary Manual and the Student Handbook that Defendants argue
were the basis for Plaintiff's suspension - as well as any provisions
that modify or otherwise explain the provisions Plaintiff allegedly
violated. (See Keleti Decl., Exh. F [Suspension Notice]; DSGI 52.)

1 307 F.3d at 267 (school rule prohibiting speech that "creates ill will
2 or hatred" presented "an arguable vagueness concern"). Instead,
3 Plaintiff contends that the School's policies are vague precisely
4 because of what they do not say - that is, the School administrators
5 apply the rules in such a manner so as to reach off-campus speech, but
6 the language of the policies themselves is geographically limited. The
7 vagueness problem, therefore, is one of application rather than
8 definition.

9 The Court agrees with Plaintiff that the School's policies are
10 unconstitutionally vague. First, the school administrators involved in
11 J.C.'s suspension believed that they had the authority to punish a
12 student for off-campus speech that creates a disruption to school
13 activities. For example, Defendant Warren testified that a school
14 could regulate off-campus speech if it "lead[s] to a problem on the
15 campus" or caused "a material disruption of what goes on in school."
16 (Keleti Supporting Decl., Exh. B [Warren Depo. at 14:10-15, 15:2-8].)
17 Similarly, Defendant Lue-Sang testified that she had disciplined
18 students for off-campus speech in the past, and that she could
19 discipline a student for words spoken off campus if they have an effect
20 on campus. (Keleti Supporting Decl., Exh. A [Lue-Sang Depo. at 10:11-
21 22, 11:16-12:8]; see also Keleti Supporting Decl., Exh. C [Hart Depo.
22 at 28:1-23].)

23 Under the Supreme Court's ruling in Tinker, school administrators
24 can regulate off-campus speech that causes a material and substantial
25 disruption to school activities without violating a student's First
26 Amendment rights. Tinker v. DesMoines Independent Community School
27 District, 393 U.S. 503, 509, 511, 513 (1969). However, the rules under
28

1 which J.C. was disciplined do not put students on notice that off-
2 campus speech can be regulated. As stated above, the School's notice
3 of suspension cited California Education Code § 48900(k) as the basis
4 for Plaintiff's suspension. On its face, section 48900(k) allows
5 disciplinary action where a student "disrupted school activities or
6 otherwise willfully defied the valid authority of supervisors,
7 teachers, administrators, school officials, or other school personnel
8 engaged in the performance of their duties." Cal. Educ. Code §
9 48900(k). There is no language in subsection (k) that would put a
10 student on notice that off-campus speech could subject them to
11 discipline if such speech disrupts school activities. Further, by use
12 of the word "otherwise," the statute appears to include an example of
13 the type of disruption contemplated - that is, the "willful defi[ance]"
14 of school officials "engaged in the performance of their duties." Id.
15 An ordinary, common sense interpretation of this language is that the
16 act of "willful defiance" must occur at school, i.e., where school
17 officials are engaged in their duties.

18 The problem is further compounded by the fact that other
19 provisions of section 48900 modify subsection (k) and expressly impose
20 geographic limitations. Specifically, California Education Code
21 section 48900(s) provides, in relevant part:

22 A pupil should not be suspended or expelled for any of the
23 acts enumerated in this section, unless that act is *related*
24 *to school activity or school attendance occurring within a*
25 *school* under the jurisdiction of the superintendent of the
26 school district or principal . . . A pupil may be suspended
27 or expelled for acts that are enumerated in this section *and*
28 *related to school activity or attendance* that occur at any
time, including, but not limited to, any of the following:
(1) While on school grounds. (2) While going or coming from
school. (3) During the lunch period whether on or off the
campus. (4) During, or while going to or coming from, a
school sponsored activity.

1 Cal. Educ. Code § 48900(s) (emphasis added). Although subsection (s)
2 does not, by its terms, rule out discipline for off-campus conduct or
3 speech, it clearly limits suspension to acts "related to school
4 activity or school attendance occurring within a school." Further,
5 each of the four examples listed regarding when and where a student may
6 be subject to discipline relate to the campus, the period in which
7 students are under the school's supervision (the school day), or
8 school-sponsored activities. A person of ordinary intelligence likely
9 would not read subsection (s) so as to permit regulation of conduct
10 that occurred off-campus, after school, and without any connection to a
11 school-sponsored activity. Indeed, the Director of Pupil Personnel for
12 the District, Amy Lambert, and the School Superintendant Kari McVeigh
13 both testified that the District does not have any policies related to
14 off-campus speech. (Keleti Supporting Decl., Exh. D [Lambert Depo. at
15 17:17-22], Exh. E [McVeigh Depo. at 20:21-24].) When asked how a
16 student at Beverly Vista would know whether off-campus speech was
17 prohibited or not, Lambert responded, "I'm not sure." (Id. at 25:15-
18 23.)

19 Fremont Union High School District v. Santa Clara County Board of
20 Education supports a geographically limited interpretation of section
21 48900(s). 235 Cal. App. 3d 1182 (1991). In Fremont Union, a student
22 was disciplined under section 48900 for using a stun gun during an
23 altercation with another student on a different campus from which the
24 student was enrolled. Id. at 1184. The student argued that the
25 section 48900 was both vague and overbroad as applied to his conduct.
26 Id. at 1187. The court disagreed. Regarding vagueness, the court held
27 that a person of ordinary intelligence would understand that "using a
28

1 | stun gun on a *school campus* during *school hours* on another *district*
2 | *student* is related to school activity and attendance" within the
3 | meaning of the statute. Id. at 1188 (emphasis in original). Further,
4 | the statute was not overbroad because the phrase "related to school
5 | activity or school attendance" imposed limits on the school's
6 | jurisdiction. Id. at 1187. Thus, the court found that if, for
7 | example, the student had used the stun gun "at a restaurant on a
8 | weekend where no school activity were in progress and shot someone
9 | unrelated to the school district," he could not have been suspended
10 | under section 48900. Id.

11 | The California Appellate Court in Fremont Union found that the
12 | language of the section 48900 limited the places and times in which the
13 | school had the authority to regulate a student's conduct. In the
14 | obvious case where a student used violence on campus during the school
15 | day, section 48900 clearly applied. However, where the student engaged
16 | in similar conduct off campus and on the weekend, it would not.

17 | It could be argued, however, that the language of section 48900(s)
18 | still leaves room for some middle ground. That is, the term "related
19 | to school activity" *could* be interpreted in such a way so as to extend
20 | to conduct occurring off-campus, which involves students in the
21 | district and causes a disruption to school activities. This
22 | possibility is not expressly ruled out by the statute; indeed, the list
23 | of time and place limitations is inclusive rather than exclusive. But
24 | a person of ordinary intelligence cannot be left to guess at what
25 | section 48900 *might* cover. Even under the less stringent standard
26 | applied to school disciplinary rules, section 48900(k), when applied to
27 | off-campus speech occurring after school and unconnected with a school-

28

1 sponsored event, is too vague to pass constitutional muster. The Court
2 concludes that section 48900(k) did put J.C. or other Beverly Vista
3 students on notice that off-campus speech that caused a disruption to
4 school activities could be regulated by the School.

5 Defendants contend, however, that J.C. not only violated section
6 48900(k), she also violated paragraphs 12 and 13 of the Student
7 Responsibility Contract, which is contained in the Student Handbook.⁵
8 (Opp'n at 12; DSGI 52.) As noted above, paragraph 12 provides that the
9 student will "refrain from behavior which disrupts school activities."
10 (Keleti Supporting Decl., Exh. H, p.127.) The rule goes on, "I
11 understand that actions such as inappropriate classroom conduct,
12 profanity, lack of respect for classmates and adults, are unacceptable
13 behaviors and may result in suspension or expulsion." Paragraph 13
14 requires the student "to respect the dignity and rights of every
15 student and adult," and "to conduct [himself or herself] with regard to
16 the rights and safety of others and the importance of mutual respect
17 and understanding." (Id.) Defendants contend that, in light of these
18 rules, J.C. was on notice that "making an insulting and humiliating
19 video about a fellow 13 year old, posting it in a public forum, and
20 notifying [fellow students] of the posting" would not promote mutual
21 understanding.

22 The Court finds that Paragraphs 12 and 13 suffer similar
23 infirmities as section 48900(k). First, neither paragraph contains any
24 indication that a student can be punished for off-campus speech or
25 conduct that disrupts school activities. Moreover, paragraph 12 gives
26

27 ⁵ In fact, Defendants do not address section 48900(k) in their
28 Opposition, even though this was the explicit reason given for
Plaintiff's suspension in the notice sent from the School to Plaintiff's
parents.

1 several examples of conduct that may constitute a disruption, including
2 "inappropriate classroom conduct, profanity, or lack of respect for
3 classmates and adults," none of which appear to relate to off-campus
4 speech. Certainly "inappropriate classroom conduct" is conduct that
5 necessarily occurs at school. Further, a person of average
6 intelligence likely would not believe that conduct such as "profanity"
7 or "lack of respect for other students" that occurs outside of school
8 could be a basis for school discipline. See Fraser, 478 U.S. at 683
9 and 688 n.1 (Blackmun, J. concurring) (holding that a school could
10 punish a student for lewd, vulgar, and inappropriate language at
11 school, but could not do so had the same speech been used outside of
12 school). Thus, there is nothing in the language of these disciplinary
13 rules to put students on notice that off-campus speech or conduct may
14 be regulated.

15 Finally, Paragraph 13 is also lacking in that it does not contain
16 any indication that failure to conduct oneself "with regard to the
17 rights and safety of others and the importance of mutual respect" can
18 result in discipline. While many of the other paragraphs of the
19 Student Responsibility Contract contain explicit language indicating
20 the discipline a student should expect upon violation of the
21 provisions, Paragraph 13 only contains such language with regard to a
22 violation of the Sexual Harassment Policy. The School does not contend
23 that J.C. violated the Sexual Harassment Policy. Thus, while J.C.
24 likely knew that the YouTube video did not promote "mutual respect" for
25 fellow students, the Student Handbook did not put her on notice that
26 she could be disciplined for her conduct.⁶

27 ⁶ Defendants also argue that J.C. should have known her conduct would
28 result in discipline because she had been disciplined in the Spring of
2008 for making a secret video of her teacher during class while at

1 In sum, the Court finds that the School's disciplinary policies
2 are unconstitutionally vague because such policies appear, on their
3 face, to limit the School's authority to discipline students for
4 activities occurring at school, while the students are on the way to or
5 from school, or at a school-sponsored event. Although the School can,
6 within the bounds of the constitution, regulate off-campus speech that
7 causes a material and substantial disruption to school activities under
8 Tinker, it must put students on notice of such authority so that they
9 can modify their conduct in conformity with the school rules. The
10 School's current written policies do not put students on notice that
11 off-campus speech or conduct which cause a disruption to school
12 activities may subject them to discipline.

13 Thus, Plaintiff's Motion for Summary Adjudication as to the Third
14 Cause of Action for violation of her Due Process rights under 42 U.S.C.
15 § 1983 is GRANTED.

16 **C. Remaining State Law Claim**

17 This Order, in conjunction with the Court's November 16, 2009
18 Order regarding Plaintiff's First and Second Causes of Action, resolves
19 all of Plaintiff's claims arising under federal law. Plaintiff's
20 Amended Complaint also asserts a single cause of action arising under
21 the Bane Act, California Civil Code § 52.1(b). California Civil Code
22 section 52.1 establishes a cause of action against a person who
23 "interferes by threats, intimidation, or coercion" with another's

24
25 school. (Opp'n at 13.) The Court disagrees. J.C. was disciplined in
26 the spring 2008 for violating a school rule that prohibited students
27 from bringing cameras and other recording devices *to school* or
28 possessing such items *on the way to or from school*. (See Declaration of
Erik Warren in Support of Def.'s Mot. For Summary Judgment ¶ 10 and Exh.
A, pg. 9, ¶ 14 (emphasis added); Allen Supporting Decl., Exh. EE [J.C.
Depo. at 23:4-19].) Thus, nothing in J.C.'s disciplinary history would
have put her on notice that she could be disciplined for videotaping
students off campus.

1 "exercise or enjoyment of rights secured by the Constitution or laws of
2 the United States, or rights secured by the Constitution or laws of
3 [California]." Cal. Civ. Code § 52.1(a) and (b). A claim under §
4 52.1(b) includes three elements: (1) an actual or attempted
5 interference with or violation of (2) a person's legal right (3) by
6 threats, intimidation, or coercion. See Jones v. Kmart Corp., 17 Cal.
7 4th 329, 334 (1998).

8 Resolution of Plaintiff's Bane Act claim is not subject to the
9 same analysis as Plaintiff's claims arising under 42 U.S.C. § 1983.
10 Although the first two requirements of the claim are commonplace
11 elements of a private right of action, the third element imposes a
12 specific limitation not required in a section 1983 claim - i.e., there
13 must be "a form of coercion" in order for a Bane Act cause of action to
14 succeed. Id. Further, as another court has noted, the Bane Act is a
15 difficult statute to construe, as "[t]here is paucity of California
16 cases interpreting it, and the courts in those few cases have struggled
17 with exactly what it means." Reinhardt v. Santa Clara County, No. C05-
18 5143, 2006 WL 3147691, *9 (N.D. Cal. Nov. 1, 2006). This Court has
19 wrestled with the application of the Bane Act's coercion or
20 intimidation requirement in the past and finds it a difficult field to
21 navigate given the existing case law. Thus, the Court finds that
22 Plaintiff's Bane Act claim raises a complex issue of State law that is
23 better left to the state court to resolve.

24 Having adjudicated all the federal claims before it, this court
25 declines to exercise supplemental jurisdiction over the remaining state
26 law claim under the Bane Act. 28 U.S.C. § 1367(c)(1) and (3).
27
28

1 **IV. CONCLUSION**

2 For the reasons stated, Plaintiff's Motion for Summary
3 Adjudication as to the Third Cause of Action for violation of Due
4 Process rights under 42 U.S.C. § 1983 is GRANTED.

5 The Court declines to exercise supplemental jurisdiction over the
6 remaining state law claim under the Bane Act, California Civil Code
7 52.1, as the Court has adjudicated all the claims over which it has
8 original jurisdiction, and the claim raises complex issues of state
9 law.

10 Plaintiff is ordered to submit a proposed judgment in accordance
11 with this Order and the November 16, 2009 Order regarding the parties'
12 cross-motions for summary adjudication, within 15 days of the date of
13 this Order.

14
15
16
17
18 IT IS SO ORDERED.

19 DATED: 12/08/09



STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE