

1 Presently before the court is Defendants' Motion to Dismiss claims 16-18 from
2 Plaintiff's First Amended Complaint. Having considered the parties' submissions and
3 heard oral argument, the court adopts the following Order.

4 **I. BACKGROUND**

5 Plaintiffs Andres Felix ("Felix") and Federico Diaz ("Diaz") (collectively,
6 "Plaintiffs") are individuals residing in the City of Los Angeles. (Dkt. 10, First Amended
7 Complaint ("FAC") ¶¶ 12-13.) Defendants are the County of Ventura, Sheriff Bill Ayub,
8 Detective Sergeant Jeremy Bramlette, District Attorney Gregory D. Totten, and Deputy
9 District Attorney David S. Russell. (*Id.* ¶¶ 14-20.)¹

10 Plaintiffs allege that in approximately April 2016, Defendants Bramlette, Totten,
11 Russell, and others, applied for "numerous wiretap search warrants for various
12 interceptions" in connection with an ongoing investigation of a Ventura County Superior
13 Court criminal case. The criminal case "alleged that Plaintiffs and others conspired to
14 transport cocaine from Los Angeles, California to Denver, Colorado." (*Id.* ¶ 35.) Plaintiffs
15 allege that the warrants Defendants obtained were facially insufficient to operate a
16 "Stingray cell site emulator device." (*Id.* ¶¶ 41-50.) Plaintiffs allege that "the cumulative
17 number and nature of the deficiencies in the Applications, Affidavits, and Orders for the
18 Wiretaps . . . clearly indicate a deliberate intent to ignore the requirements of the Federal
19 and California wiretap Law, specifically the use of Stingrays without a proper warrant."
20 (*Id.* ¶ 43.) Based on these facially invalid warrants, Defendants used a Stingray to surveil
21 and identify Plaintiffs' cellphones. (*Id.* ¶ 48.)

22 As a result of Defendants' use of a Stingray to identify and surveil Plaintiffs,
23 Plaintiff Diaz was arrested on July 15, 2016 and Plaintiff Felix was arrested on July 21,
24 2017. (*Id.* ¶¶ 51, 54.) Plaintiffs were "each held on a bond of \$1.5 million which neither
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27 ¹ The court dismissed Defendants Harris Corporation and Verizon Communications from
28 this action pursuant to the parties' stipulations. (*See* Dkts. 35, 41.)

1 could pay . . .” (*Id.* ¶ 52.) Plaintiffs further allege that Defendants Totten and Russell
2 “continued to deny Plaintiffs and their attorneys[] access to the applications and orders
3 for wiretaps, specifically the technology used throughout the investigation” (*Id.* ¶
4 53.) In approximately May 2019, three years after Plaintiffs’ initial incarceration,
5 Plaintiffs’ motion to suppress evidence procured through the use of Stingrays was
6 granted and Plaintiffs were released. (*Id.* ¶¶ 54, 55.)

7 On the basis of these allegations, Plaintiffs filed this action alleging Federal and
8 California state law claims. (*See* FAC.) Defendants County of Ventura, District Attorney
9 Gregory D. Totten, and Deputy District Attorney David S. Russell now move to dismiss
10 Plaintiffs’ claims against them for violations of California Penal Codes §§ 631, 632.5, and
11 632.7. (*See* Dkt. 27, Motion to Dismiss (“MTD”).)

12 **II. LEGAL STANDARD**

13 A complaint will survive a motion to dismiss when it contains “sufficient factual
14 matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*
15 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).
16 When considering a Rule 12(b)(6) motion, a court must “accept as true all allegations of
17 material fact and must construe those facts in the light most favorable to the plaintiff.”
18 *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint need not include
19 “detailed factual allegations,” it must offer “more than an unadorned, the-defendant-
20 unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. Conclusory allegations or
21 allegations that are no more than a statement of a legal conclusion “are not entitled to the
22 assumption of truth.” *Id.* at 679. In other words, a pleading that merely offers “labels
23 and conclusions,” a “formulaic recitation of the elements,” or “naked assertions” will not
24 be sufficient to state a claim upon which relief can be granted. *Id.* at 678 (citations and
25 internal quotation marks omitted).

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1 **III. DISCUSSION**

2 Defendants County of Ventura, District Attorney Gregory D. Totten, and Deputy
3 District Attorney David S. Russell (collectively, "Defendants") argue that Plaintiffs'
4 claims for violations of Penal Codes §§ 631 (wiretapping), 632.5 (cellular radio telephone
5 interceptions), and 632.7 (intentional recordation of communications without consent)
6 (collectively, "claims 16-18") must be dismissed because Plaintiff failed to satisfy
7 California's Government Tort Claims Act. (MTD at 9-10.) Specifically, Defendants
8 contend that Plaintiffs' written claims to Ventura County did not provide any factual
9 allegations regarding wiretapping, interceptions, or recordation of communications
10 without consent. (*Id.* at 10.) Defendants argue that such allegations are necessary for
11 Plaintiff to maintain claims 16-18. (*Id.*)

12 California's Government Torts Claims Act § 945.4 requires a prospective plaintiff
13 to present a written claim to the public entity before filing a lawsuit for damages against
14 that entity. Gov't Code § 945.4. There are strict procedures for the claim process,
15 including specific factual content that must be in the claim and a time bar of six months
16 for claims related to personal injury. *Id.* §§ 910, 911.2(a). Section 910 requires the claim to
17 include: "(c) The date, place and other circumstances of the occurrence or transaction
18 which gave rise to the claim asserted" and "(d) A general description of the
19 indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the
20 time of presentation of the claim." *Id.* § 910(c), (d).

21 The purpose of the claims statutes is not to prevent surprise,
22 but 'to provide the public entity sufficient information to
23 enable it to adequately investigate claims and to settle them,
24 if appropriate, without the expense of litigation. [] It is well-
25 settled that claims statutes must be satisfied even in face of
26 the public entity's actual knowledge of the circumstances
27 surrounding the claim.'

1 *City of Stockton v. Superior Court*, 171 P.3d 20, 25 (Cal. 2007) (quoting *City of San Jose v.*
2 *Superior Court*, 12 Cal. 3d 447, 455 (1974)). “Consequently, a claim need not contain the
3 detail and specificity required of a pleading, but need only fairly describe what [the]
4 entity is alleged to have done.” *Stockett v. Ass’n of Cal. Water Agencies Joint Powers Ins.*
5 *Auth.*, 99 P.3d 500, 502 (Cal. 2004) (internal quotations and citations omitted). Where a
6 complaint “shifts allegations,” such that liability is premised on “acts or omissions
7 committed at different times or by different persons than those described in the claim,”
8 such complaint is barred. *Id.* at 503 (internal citations and quotations omitted); *see, e.g.,*
9 *Fall River Joint Unified Sch. Dist. v. Superior Court*, 206 Cal. App. 3d 431 (1988) (holding
10 that where plaintiff’s claim for damages only contained a theory of negligent
11 maintenance of a door, plaintiff could not maintain a theory of failure to supervise
12 children). However, “where the complaint merely elaborates or adds further detail to a
13 claim, but is predicated on the same fundamental actions or failures to act by the
14 defendants,” such complaint will not be barred. *Stockett*, 99 P.3d at 502, 505 (holding that
15 new theories of wrongful termination were not barred where plaintiff notified employer
16 of wrongful termination claim and employer’s reasonable investigation would include
17 “an evaluation of whether any of the reasons proffered by the [employer], including but
18 not limited to the theories in [plaintiff’s] claim, constituted wrongful termination.”)

19 Here, Plaintiffs submitted claims for damages to the County of Ventura. (*See* Dkt.
20 27-1, Exs. A, B (collectively, “Claims for Damages”).) In the statement of facts section of
21 the Claims for Damages, Plaintiffs provided the following allegations:

22 From July 21, 2016 to May 29, 2019 the Claimant, [Plaintiff],
23 was wrongfully and maliciously incarcerated. His case was
24 dismissed on May 29, 2019, by the Ventura County District
25 Attorney for “no probable cause”. He was illegally
incarcerated for three years.

26 (*Id.*) Plaintiffs contend that the allegations above, substantially complied with the
27 statutory requirements under Sections 945.4 and 910 and claims 16-18 “are derived from

1 the illegal use of stingrays to intercept their private communication that [was] ultimately
2 used to hold [Plaintiffs] in prison for three (3) years without probable cause.” (Dkt. 32,
3 Opp. at 10.) Plaintiffs argue that claims 16-18 are not barred because Plaintiffs have not
4 added additional parties or new theories of liability. (*Id.* at 6:17-18.) Notably, however,
5 the claims for unlawful wiretapping involve different times—dates not included in
6 Plaintiffs’ Claims for Damages—and factual circumstances nowhere mentioned in the
7 Claims for Damages. Although the Claims for Damages refer to a dismissal of Plaintiffs’
8 criminal cases against them for “no probable cause,” “no probable cause” is a vague
9 statement that fails to fairly describe what Defendants are alleged to have done.
10 Plaintiffs’ Claims for Damages could have, at a minimum, provided a statement that
11 probable cause was lacking because of unlawful surveillance, interception, or wiretaps.

12 Because Plaintiffs’ Claims for Damages failed to provide any facts that could have
13 provided notice to Defendants of violations of wiretapping laws, the court concludes that
14 Plaintiffs cannot maintain claims 16-18.

15 **IV. CONCLUSION**

16 Defendants’ Motion to Dismiss claims 16-18 is GRANTED. Claims 16-18 in
17 Plaintiff’s First Amended Complaint are dismissed as to Defendants County of Ventura,
18 District Attorney Gregory D. Totten, and Deputy District Attorney David S. Russell.

19 **IT IS SO ORDERED.**

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21 Dated: October 21, 2019

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26 DEAN D. PREGERSON
27 UNITED STATES DISTRICT JUDGE
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