

VONCOLLN v. COUNTY OF VENTURA

CV-97-3896 LGB (CWx) Consolidated with CV-97-8352 LGB (CWx), CV-98-3051 LGB (CWx), CV-98-6092 LGB (CWx)

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

189 F.R.D. 583; 1999 U.S. Dist. LEXIS 20956

November 10, 1999, Decided

November 12, 1999, Filed; November 15, 1999, Entered

DISPOSITION:

[**1] Plaintiffs' motion to certify the class GRANTED as to the class defined in this opinion; plaintiffs' motion for a preliminary injunction GRANTED; defendants' motion for summary judgment DENIED; plaintiff's motion to strike defendants' motion for summary judgment MOOT; and defendants' motion to dismiss newly added defendants and capacities DENIED.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiffs, four detainees of defendant Ventura County Jail, California, moved to certify their class action pursuant to Fed. R. Civ. P. 23. Plaintiffs also moved for a preliminary injunction.

OVERVIEW: Plaintiffs, four detainees of defendant Ventura County Jail, California, alleged defendant violated their Constitutional rights by restraining plaintiffs in custody with the Pro-strait chair. All four plaintiffs claimed that defendant's use of the Pro-strait chair violated 42 U.S.C.S. § 1983 by depriving plaintiffs of the right to be free from infliction of cruel and unusual punishment. Plaintiffs proposed a class of past, current, and future detainees of the Ventura County Jail. The court certified plaintiffs' class action, finding that plaintiffs satisfied the requirements set forth in Fed. R. Civ. P. 23. In analyzing the claims at hand, the court determined that homogeneity requirement under Fed. R. Civ. P. 23(b)(2) was satisfied, because the class members all challenged the same behavior: the policy and practices associated with defendant's use of the Pro-strait chair. The court granted a preliminary injunction prohibiting defendant's further use of the Pro-strait chair, because the balance of hardships weighed in favor of plaintiffs.

OUTCOME: Plaintiffs' motion to certify the class was granted and plaintiffs' motion for a preliminary injunction was granted. The proposed class members, present and future detainees of the Ventura County Jail, satisfied the homogeneity requirement for class action standing. Without an injunction plaintiffs would suffer a deprivation of civil rights.

OPINION:

[*585] ORDER (1) GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION; (2) GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION; (3) DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; AND (4) DENYING DEFENDANTS' MOTION TO DISMISS.

I. INTRODUCTION

Plaintiffs in this case were detained by the Ventura County Sheriff's Department ("VCSD") [**2] at different ...

... [*587] [**2] State Mental Hospital in Norwalk, and is awaiting trial, pending a determination of his mental ability to stand trial. See Defs.' Reply Mem. to Inj. and Class Certification Mot. Re. Newly Decided Ninth Circuit Decision at 6 ("Defs.' Supp. Mem.").

All four plaintiffs claim that these events give rise to three causes of action. First, they claim that the aforementioned events violated *42 U.S.C. § 1983* by depriving plaintiffs of their Constitutional rights, and particularly (1) the right to be free from infliction of cruel and unusual punishment; (2) the right not to be deprived of liberty without due process of law; (3) the right to be safe and ...

... [*587] [**2] deputy sheriffs, in violation of defendants' statutory duty, and that they failed to supervise and investigate deputy sheriffs thereby causing constitutional violations. Third, plaintiffs claim that the aforementioned events constitute a violation of *42 U.S.C. § 1983* by the defendants because the events constitute an unconstitutional custom or practice causing constitutional violations. Plaintiffs seek injunctive relief in order to prohibit the defendants from using the Pro-strait chair for purposes for which it was not designed. Plaintiffs also seek damages.

Plaintiff Von Colln filed his complaint on May 27, 1997. Plaintiff ...

... [*587] [**2] Court received a consolidated opposition on August 2, 1999. On August 27, 1999, all four plaintiffs filed (1) a motion for class certification, and (2) a motion for preliminary injunction. Defendants filed their oppositions to both motions on September 13, 1999. These motions were originally scheduled to be heard on September 27, 1999. The Court vacated both hearing dates and advised the parties that it would reschedule for a ...

... [*588] [**2] 1999.

On October 18, 1999, the Court vacated the October 25, 1999 hearing and rescheduled the hearing for all pending motions to November 1, 1999. At the hearing, defense counsel advised the Court that a recent Ninth Circuit decision clarified the standing issue in this case. Defense counsel provided the Court and plaintiffs' counsel with a copy of the opinion and a short brief. An additional hearing was set for November 4, 1999 to address the issues in the new case. This order addresses all pending motions.

III. ANALYSIS

A. STANDING

As a preliminary matter, defendants challenge each plaintiff's standing to seek injunctive relief. Standing is not merely a pleading requirement, but an indispensable part of the case, and must be established by evidence appropriate for every stage of the litigation. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 119 L. Ed. 2d 351, 112 S. Ct. 2130 (1992). The standard for determining whether plaintiffs have standing has three elements. First, the plaintiffs [**12] must have suffered an injury in fact. See *Defenders of Wildlife*, 504 U.S. at 560. Second, there must be a causal connection between the injury and the conduct complained of. See *id.* Third, it must be likely that a favorable decision will redress the injury. See *id.* Defendants here claim that plaintiffs do not have standing to obtain the injunction they seek. n1

-----Footnotes-----

n1 Defendants only challenge plaintiffs' ability to show "injury in fact" and do not dispute that if plaintiffs do show such injury, there is a causal connection between the injury and the conduct complained of or that it is likely that a favorable decision will redress the injury.

-----End Footnotes-----

This inquiry must start with the seminal Supreme Court decision of *Los Angeles v. Lyons*, 461 U.S. 95, 75 L. Ed. 2d 675, 103 S. Ct. 1660 (1983). In *Lyons*, plaintiff sued the Los Angeles Police Department ("LAPD") for civil rights violations, seeking both damages and injunctive relief. See *id.* Lyons had been the victim of a "chokehold" [**13] and sought both money damages and an injunction which would have prohibited the LAPD from using the chokehold on any other person. See *id.* In *Lyons*, the Supreme Court held that the plaintiff lacked standing to seek injunctive relief absent a sufficient likelihood that he will again be wronged in a similar way. *Lyons*, 461 U.S. at 109. Because Lyons was not able to make this showing, the Court found that he lacked standing as to the injunction. See *id.* This opinion, on the surface, seems to decide the issue at hand. However, the Ninth Circuit has carved an exception to this rule. In *Giles v. Ackerman*, 746 F.2d 614, 619 (9th Cir. 1984), the Court held that the plaintiff had standing to request injunctive and declaratory relief simply by virtue of her standing to bring her damage action. See *Giles*, 746 F.2d at 619. In *Nava v. Dublin*, 121 F.3d 453 (9th Cir. 1997), the Ninth Circuit reaffirmed that holding. Specifically, it stated that "after *Giles*, in other

words, plaintiffs in this Circuit were relieved of the obligation to allege a credible threat of future injury in order to seek forward looking relief [**14] so long as they also brought a claim for damages in the same action." *Nava v. Dublin*, 121 F.3d 453, 456 (9th Cir. 1997). Cognizant of the breadth of this rule, the Ninth Circuit subsequently limited the exception to situations in which the claim for relief for damages and equitable relief are predicated on the same operative facts and legal theories. See *id.*

This principle is not without controversy. The Ninth Circuit is the only one to recognize such an exception. See *id.* at 457. As such, the Nava court applied the exception with reservation, and noted that several Ninth Circuit decisions impliedly declined to apply the rule. See *id.* at 457-58 (citing *O'Neal v. City of Seattle*, 66 F.3d 1064, 1066 [*589] (9th Cir. 1995); *Thomas v. County of Los Angeles*, 978 F.2d 504, 507-08, 511 (9th Cir. 1992); *Imagineering, Inc. v. Kiewit Pacific Co.*, 976 F.2d 1303, 1306-09 (9th Cir. 1992); *Nelsen v. King County*, 895 F.2d 1248, 1249-55 (9th Cir. 1990); *Presbyterian Church (U.S.A.) v. United States*, 870 F.2d 518, 528-29 (9th Cir. 1989)). n2 Despite its reservations, [**15] however, the Nava Court held that a faithful interpretation of the Ninth Circuit cases creating the exception to Lyons required the court to apply that exception. 121 F.3d at 456. This Court must as well. Defendants do not challenge, nor can they, that plaintiffs do have standing to sue for the damages they suffered, nor could they argue that plaintiffs' claims for damages and for injunctive relief do not involve the same operative facts and legal theory. As such, plaintiffs have standing to sue for injunctive relief under Nava.

-----Footnotes-----

n2 The recent opinion of the Ninth Circuit, *B.C. v. Plumas Unified School District*, 1999 Daily Journal D.A.R. 10807 is another one of these cases which "impliedly" refused to follow Ninth Circuit precedent set by *Giles* and *Nava*. The B.C. Court never addressed, or even attempted to distinguish, *Nava*. As such, there appears to be an intra-circuit split of authority on this issue. An intra-circuit conflict may be resolved authoritatively only through en banc proceedings. See *United States v. Sotelo-Murillo*, 887 F.2d 176, 179 (9th Cir. 1989). Lacking such clear pronouncement from the Circuit, this Court must look elsewhere for guidance. The Eleventh Circuit, when faced with a similar dilemma, held that when circuit authority is in conflict, a court should look to the ...

... [*589] [**15] before B.C., which was decided in 1999.

-----End Footnotes----- [**16]

Even if this Court were to address this issue without the guidance of the *Giles* and *Nava* decisions, the Court finds that plaintiffs have shown a sufficient personal stake to warrant standing in this case. The evidence on the record shows that plaintiffs' allegations of future injury are not speculative. Although none of the four plaintiffs are currently incarcerated at the Ventura County Jail, defendant Lloyd is in custody at Metropolitan ...

... [*589] [**16] pattern or practice of abuse of that chair. See generally Burns Decl. As such, "the possibility or recurring injury ceases to be speculative when actual repeated incidents are documented." *Nicacio v. INS*, 797 F.2d 700, 702 (9th Cir. 1986).

B. CLASS CERTIFICATION

Plaintiffs move for class certification under Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil Procedure. Rule 23(a) provides that ...

... [*590] [**16] 23(b). In this case, plaintiffs move under Rule 23(b)(2), which provides that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2). The party moving for certification bears the burden of demonstrating that it meets Rule 23's requirements. See *Doninger v. Pacific Northwest Bell, Inc.*, 564 F.2d 1304, 1308 (9th Cir. 1977).

In deciding a motion for class certification, the district court exercises its discretion to determine whether or not to certify a class. See *id.* at 1309. [**19] When making this determination, a district court should bear in mind the two goals behind Rule 23: Class actions promote judicial economy because they minimize the multiplicity of identical suits, and they permit parties with small claims to assert them when they otherwise might not, because of litigation costs that outweigh any potential recovery. See *Crown Cork & Seal Co.* ...

... [*590] [**19] 61 L. Ed. 2d 176, 99 S. Ct. 2545 (1979). Accordingly, the existence of individual issues remaining "after the common questions of the defendant's liability have been resolved [*591] does not dictate the conclusion that a class action is impermissible." *Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1197 (6th Cir. 1988). Therefore, commonality is met when the court is convinced that class members share enough issues that predominate over their claims that a class action is the most efficient method for adjudicating those claims. See *Califano*, 442 U.S. at 701.

Nevertheless, courts have struggled to formulate a standard for determining when proposed class members share enough common issues [**22] to warrant certification. In two recent civil rights decisions, the Ninth Circuit recognized that when proposed members are moving for certification under Rule 23(a) in conjunction with Rule 23(b)(2), a district court may relax the commonality requirement. See *Hodgers-Durgin v. De La Vina*, 165 F.3d 667, 675-79 (9th Cir. 1999); *Walters v. Reno*, 145 F.3d 1032, 1045-48 (9th Cir. 1998), cert. denied, 526 U.S. 1003, 119 S. Ct. 1140, 143 L. Ed. 2d 208 (1999). These decisions appear to follow the Third and Seventh Circuits' lead in liberalizing Rule 23(a)(2)'s commonality standard by stressing shared interests rather than differences among proposed class members that seek declaratory or injunctive relief. See *Hodgers-Durgin v. De La Vina*, 165 F.3d at 678-79 (citing *Baby Neal v. Casey*, 43 F.3d 48, 56-57 (3d Cir. ...

... [*591] [**22] plaintiffs assert disparate legal remedies. These holdings sit squarely with the Advisory Committee Notes to Rule 23, which state that Rule 23(b)(2) enables the prosecution of civil rights actions seeking declaratory or injunctive relief. See Fed. R. Civ. P. 23(b)(2) (Advisory Committee Notes); *Walters v. Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998)

(noting that Rule 23(b)(2) facilitates civil rights actions). In these types of cases, class members typically aim to invalidate a law or practice on constitutional or statutory grounds. The central ...

... [*591] [**22] efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so . . . that the absentees' interests will be fairly represented" *Hodgers-Durgin v. Vina*, 165 F.3d 667, 679 (9th Cir. 1999) (quoting *Baby Neal v. Casey*, 43 F.3d 48, 57 (3d Cir. 1994)). Under this factor, a district court must inquire as to whether the named plaintiffs' individual circumstances ...

... [*592] [**22] under-inclusive class. If it is found that the policies of the VCSD associated with the use of the chair are in violation of the inmates' constitutional or statutory rights, then that policy would be unconstitutional as to all Ventura County Jail detainees. Moreover, plaintiffs pray for injunctive relief that would affect every Ventura County detainee subject to the use of the Pro-strait chair. They do not request relief that requires the Court to make an inquiry into the facts surrounding each plaintiffs' claims. All these factors support the typicality ...

... [*592] [**22] named parties and the class they seek to represent." *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 625, 138 L. Ed. 2d 689, 117 S. Ct. 2231 (1997). In the Ninth Circuit, representation is "adequate" when counsel for the class is qualified and competent, the representatives' interests are not antagonistic to the interests of absent members, and the action is not collusive in nature. See *Dalkon Shield IUD Prod. Liab. Litig.*, 693 F.2d 847, 855 (9th Cir. 1982). [**27]

Defendants do not dispute this factor. As discussed above, the named plaintiffs and the class members raise identical claims, and no evidence exists to suggest that the representatives are antagonistic to other members of the class. Furthermore, plaintiffs' ...

... [*592] [**27] b).. Plaintiffs move for class certification under Rule 23(b)(2), which provides that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2). The Advisory Committee Notes to Rule 23 recognize that subdivision (b)(2) enables the prosecution of civil rights claims. See Fed. R. Civ. P. 23(b)(2) (Advisory Committee Notes); *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1999) [**28] (noting how Rule 23(b)(2) facilitates civil rights actions).

Defendants claim that the proposed class certification is improper because the plaintiffs are primarily seeking money damages. To support their argument, defendants claim that (1) the pursuit of injunctive relief is illusory; (2) plaintiffs lack standing; and (3) the plaintiffs cannot possibly be seeking injunctive relief because they are no longer in custody. The Court addresses these arguments seriatim.

a. Injunctive Relief is not Illusory

Disputes over whether the action primarily seeks injunctive relief rather than money damages neither promote the disposition of the case on the merits nor represent a useful expenditure of energy. See 7A Wright et al., *Federal Practice and Procedure* § 1775, at 470 (2d ed. 1986). Therefore, they should be avoided. See *id.* If the Rule 23(a) prerequisites have been met and injunctive relief has been requested, the action should be allowed to proceed under subdivision (b)(2). See *id.* It is true that injunctive relief, in a Rule 23(b)(2) [*593] class, must be the primary goal of the cause of action. See *Probe v. State Teachers' Retirement Sys.*, 780 F.2d 776, 780 (9th Cir. 1986). [**29] Nonetheless, most of the reported cases dealing with this "predominance" issue have done so conclusorily and have not enunciated clear rules for applying the test. See *Arnold v. United Artist Theater Circuit, Inc.*, 158 F.R.D. 439, 451 (N.D. Cal. 1994) (citing 1 H. Newberg, *Class Actions* § 4.14, at 4-49 (3d. ed 1992)). Nevertheless, the hallmark of a 23(b)(2) class action is homogeneity. See *Arnold*, 158 F.R.D. at 451. It is this characteristic that allows the court to dispense with the notice requirement and bind all members to a judgment on the merits without an opportunity to opt out. See *id.* For example, in class actions alleging employment discrimination, homogeneity is usually ensured because the defendant's allegedly discriminatory conduct affects the class as a whole, and makes final injunctive relief appropriate. See *Wetzel v. Liberty Mutual Ins. Co.*, 508 F.2d 239, 250, 253 (3d Cir. 1975); *Arnold*, 158 F.R.D. at 451. This interpretation of the policy concerns underlying the restrictions on the sorts of suits that may be certified under Rule 23(b)(2) is supported by the fact that civil rights class actions [**30] are generally certified under the Rule. See *Arnold*, 158 F.R.D. at 452. In analyzing the claims at hand, it is clear that the claims of the class members are extremely homogeneous. Here, the class members all challenge the same behavior: the policy and ...

... [*593] [**30] created.

Furthermore, this principle of predominance has been applied in cases where plaintiffs sought to incorporate the damage portion of their claim into the Rule 23(b)(2) certification. It is not the case here. Plaintiffs only seek class status [**31] as to the injunctive relief claim. Furthermore, it is within the discretion of the trial judge to limit the issues in a class action to "those parts of a lawsuit which lend themselves to convenient use of the class action motif." *Society for Individual Rights, Inc. v. Hampton*, 528 F.2d 905, 906 (9th Cir. 1975). As such, this Court finds that the class can be certified under Rule 23(b)(2) as to the injunctive remedy only.

b. Standing

Next, defendants allege that plaintiffs will not be able to succeed on their claim for an injunction because they lack standing to seek such an injunction. This argument was addressed above. Under the aforementioned analysis, the Court finds that plaintiffs do have standing to bring this injunction.

c. Actual Recovery

Next, defendants argue that even if plaintiffs establish standing, they will not be able to recover prospective relief because they are not likely to establish "that a credible threat exists that they will again be subject to the specific injury for which they seek injunctive or

declaratory relief." *Buritica v. United States*, 8 F. Supp. 2d 1188, 1196 (N.D. Cal. 1998). What defendants argue [**32] here is that the plaintiffs will not be able to succeed on the merits of the injunction.

In considering a motion for class certification, the Court should not make a preliminary determination on the merits of the action. See *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 178, 40 L. Ed. 2d 732, 94 S. Ct. 2140 (1974). Indeed, in determining the propriety of a class action, the question is not whether the plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met. See *id.* at 177-178. As such, the Court is bound to take the substantive allegations in the complaint as true. See *Blackie v. Barrack*, 524 F.2d 891, 901 n.17 (9th Cir. 1975).

[*594] The complaint alleges that plaintiffs fear that they will be deprived again of all decency and privacy, and be forced to endure inhumane pain, cramps and indignity while forced to withhold voiding of urine and feces. See Consolidated Pls.' First Am. Compl. at 6,7-8, 9-10. On its face, the complaint alleges enough to sustain plaintiffs' demand of injunctive relief. As such, a discussion of the merits of plaintiffs' claim is inappropriate [**33] at this juncture.

6. DEFINITION OF THE CLASS

Therefore, the Court finds that plaintiffs have met all the requirements to warrant class certification in this case. However, the class sought is certified only with respect to the ...

... [*594] [**33] County jail, and who are subject to being restrained in the Pro-strait chair in violation of their Eighth Amendment rights. Issues of damages for past use of the chair will be addressed individually.

C. PRELIMINARY INJUNCTION

1. LEGAL STANDARD FOR PRELIMINARY INJUNCTIONS.

The Supreme Court "has repeatedly held that the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312, 72 L. Ed. 2d 91, 102 S. Ct. ...

... [*594] [**33] renders a final decision on the merits inappropriate. See *Brown v. Chote*, 411 U.S. 452, 456, 36 L. Ed. 2d 420, 93 S. Ct. 1732 (1973).

In the Ninth [**34] Circuit, two interrelated tests exist for determining the propriety of the issuance of a preliminary injunction. Under the first test, the Court may not issue a preliminary injunction unless: (1) the moving party has established a strong likelihood of success on the merits; (2) the moving party will suffer irreparable injury and has no adequate remedy at law if injunctive relief is not granted; (3) the balance of hardships tips in favor of the movant; and (4) granting the injunction is in the public interest. See *Martin Int'l Olympic Comm.*, 740 F.2d 670, 674-75 (1984) *Greene v. Bowen*, 639 F. Supp. 554, 558 (E.D. Ca. ...

... [*594] [**34] 2d at 675. The two tests are not, however, separate and unrelated. Each represents the "extremes of a single continuum." *Benda v. Grand Lodge of Int'l Ass'n of Machinists*, 584 F.2d 308, 315 (9th Cir. 1978). [**35]

2. APPLICATION

a. Likelihood of success

Plaintiffs here are pre-trial detainees who allege violations of their Eighth and Fourteenth Amendment rights. Claims by pre-trial detainees are analyzed under the Fourteenth Amendment ...

... [*594] [**35] trial detainees' rights under the Fourteenth Amendment are comparable to prisoners' rights under the Eighth Amendment, courts apply the same standard. See *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998).

The history of the constitutional prohibition of "cruel and unusual punishment" has been recounted at length in prior Supreme Court opinions and need not be repeated here. See, e.g., *Estelle v. Gamble*, 429 U.S. 97, 102, ...

... [*595] [**35] draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop*, 356 U.S. at 101 (plurality opinion). In *Spain v. Proconier*, 600 F.2d 189, 197 (9th Cir. 1979), the Ninth Circuit upheld an injunction against the Director of the California State Department of Correction, thereby prohibiting the Director from using mechanical restraining devices n4 on prisoners when they traveled from a high-security area of the prison for court appearances or family visits. See *id.* The trial court in that case found that the use of these devices for all out of cell movement was "dehumanizing" and that it was cruel and unusual punishment. See *id.* The Ninth Circuit agreed with the trial court's determination and held that "if the physical or mental pain that results [from the use of neck chains] is cruel and unusual, it is a violation of the Eighth Amendment regardless of the intent or the purpose of those who inflict it." See *id.* n5 ...

... [*595] [**35] chain, leg manacles, and a neck chain consisting of a chain attached to the back of the waist chain and extending over one shoulder, across the neck, over to the other shoulder and down the back.

n5 The Ninth Circuit did, however, differ in opinion as to the scope of the remedy granted by the trial court.

----- -End Footnotes- -----

In light of that standard, the Court analyzes defendants' use of the Pro-strait chair to determine whether plaintiffs have a strong ...

... [*597] [**35] not signs of violence. To use the chair because the arrestee has a bad attitude is tantamount to using the chair as a form of punishment.

However, the preliminary finding that there are ongoing violations of the Eighth/Fourteenth Amendment does not automatically require that an injunction be issued to stop the conduct. See *Easyriders Freedom*, 92 F.3d 1486, 1500. "Principles of equity, comity, and federalism . . . should inform the judgment of federal courts when asked to oversee state law enforcement authorities." *Lyons*, 461 U.S. at 112. In order to enjoin a state agency, the Supreme Court

requires a showing of an intentional and pervasive pattern of misconduct. See *Easyriders*, 92 F.3d at 1500. "Such a ...

... [*597] [**35] pattern of misconduct can be demonstrated [**46] by showing 'that the police misconduct flowed from a policy [or] plan.'" See *id.* (quoting *Thomas v. County of Los Angeles*, 978 F.2d 504, 508 (9th Cir. 1993)). Such showing has preliminarily been made here. There is a written policy in effect for the use and operation of the Pro-strait chair. See Pls.' Ex. 3. Sergeant Maciel, the person designated as "most knowledgeable" on the ...

... [*597] [**46] violates the Fourteenth Amendment. [*598] According to the evidence that was presented to it, the Court is only able to assess the likelihood of plaintiffs' success on this limited record.

b. Irreparable Injury

Defendants argue that plaintiffs are not entitled to a preliminary injunction because they cannot show that they stand to suffer irreparable injury for which there would be no adequate remedy at law. See Defs.' Mem. P. & A. Opp'n Prelim. [**48] Inj. at 15. Defendants do not argue that pain and suffering is not irreparable harm, nor could they. Rather they argue that the named plaintiffs, who are no longer incarcerated in the Ventura County jail, are not subject to being placed in the chair, and therefore are unlikely to face irreparable injury if the injunction is not granted.

To support their contention, defendants cite to *Nava v. City of Dublin*, 121 F.3d 453 (9th Cir. 1996). The Court in *Nava* held that even though a plaintiff may have standing to seek an injunction, his ability to actually obtain equitable remedies depends on his ability to make "a showing of irreparable injury, a requirement that cannot be met where there is no showing of any real and immediate threat that the plaintiff will be wronged again--a "likelihood of substantial and immediate irreparable injury.""*Nava*, 121 F.3d at 459 (quoting *Lyons*, 461 U.S. at 111 (citations omitted)). That principle has universally been recognized in virtually all circuits, and this Court is in no position to disagree with it. However, defendants seem to rely on one particular phrase in *Nava* which states that [**49] "even in the face of unconstitutional conduct on the part of state law enforcement officers, an injunction may not be issued to halt that conduct absent a great and immediate threat that the named plaintiff will suffer irreparable injury for which there would be an inadequate remedy at law." *Nava*, 121 F.3d at 458 (...)

... [*598] [**49] irons, and other alternative restraining devices. Therefore, the Ventura County Jail is not without means to safely restrain arrestees. Additionally, the VCSD owns no more than five Pro-strait chairs, thereby minimizing any hardship an injunction may cause. See Maciel Dep. at 25 ("at least three in the pre-trial facility"); Worthy Decl. at 5 ("four or five"). On the contrary, hardship to the putative plaintiffs is great. Unless the injunction is granted, they will suffer pain and suffering in violation of their constitutional rights.

d. Public Interest

Fourteenth Amendment considerations dictate that the public interest would be best served by granting the injunction. Furthermore, the safety of the VCSD deputies will not be

compromised by the injunction. As discussed above, the deputies [**51] have other methods of restraint that they can use for truly violent arrestees.

C. SCOPE OF PRELIMINARY INJUNCTION

Having decided that plaintiffs are entitled to a preliminary injunction, the Court must now decide the scope of such injunction. [*599] This Court must ensure that "the remedy protects the plaintiffs' federal constitutional and statutory rights but does not require more of state officials than is necessary to assure their compliance with federal law." *Easyriders Freedom*, 92 F.3d at 1496. This requires the scope of the injunction to be no broader than necessary to provide complete relief to the named and putative plaintiffs. See *id.*; *Meinhold v. United States Dep't of Defense*, 34 F.3d 1469, 1480 (9th Cir. 1994).

The plaintiffs allege that the chair is being used as a form of punishment for extended periods of time in violation of arrestees' constitutional rights. As such, they seek a full enjoinder of the use of the chair. The Court does ...

... [*599] [**51] unconstitutional restraint. However, the policies associated with the use of the chair by the VCSD raise serious constitutional [**52] questions. Therefore, it is the unlawful practices which must be enjoined. However, this presents a dilemma. On one hand, the Court may not issue an injunction which is too broad so as to "overcompensate" plaintiffs, and on the other the Court does not wish to run the everyday operations of the Ventura County Jail. In light of this dilemma, and in light of the fact that this injunction is temporary, the Court enjoins the VCSD from using the Pro-strait chair in any way until a full trial on the merits.

D. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants claim that they are entitled to summary ...

... [*599] [**52] *v. Zenith* [*600] *Radio Co.*, 475 U.S. 574, 588, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986).

2. APPLICATION

a. ELEVENTH [55] AMENDMENT CONSIDERATIONS**

i. Injunctive Relief

As a preliminary matter, the Court recognizes that plaintiffs are seeking different remedies: injunctive and monetary. Defendants' argument that the Sheriff ex officio is immune from suit--although arguable as to the damage claim--must fail as to the injunctive relief sought because such argument is inconsistent with clear precedent from the Supreme Court, which has allowed injunctive relief against even state officials. See *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 n.3, 105 L. Ed. 2d 45, 109 S. Ct. 2304 (1989) ("of course a state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because 'official-capacity actions for prospective relief are not treated as actions against the State.'" (quoting *Kentucky v. Graham*, 473 U.S. 159, 167, 87 L. Ed. 2d 114, 105 S. Ct. 3099 (1985))). As such, the summary judgment motion, as it relates to the injunctive relief, and as it is based on Eleventh Amendment grounds, is denied. n9

-----Footnotes-----

n9 Needless to say, because former Sheriff Carpenter is no longer the Sheriff ex officio, he is no longer subject to injunctive relief.

-----End Footnotes----- [**56]

ii. Claims for Damages

As to the claims for damages, the United States Supreme Court held in *Monell v. New York City Dep't of Social Services*, 436 U.S. 658, 694, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978) that a local government is liable under section 1983 for its policies that cause constitutional torts. See *McMillian v. Monroe County*, 520 U.S. 781, 784, 138 L. Ed. 2d 1, 117 S. Ct. 1734 (1997). "These policies ...

... [*600] [**56] officer in some respects. See *County of Los Angeles v. Superior Court*, 68 Cal. App. 4th 1166 (1998) (Peters). In that case, the California court ruled that the Sheriff was acting pursuant to his "law enforcement [**58] function" when he refused to release an inmate who may have been subject to an outstanding warrant. See *id. at 1177*. n10 The fact that the Sheriff was [*601] acting pursuant to his law enforcement function in relying on a warrant made the Sheriff a state actor. n11 That case, however illustrative, is not controlling here. The acts complained of in the instant complaint do not arise out of the Sheriff's law enforcement functions, but rather out of his "responsibility for operating jails." See Cal. Pen. Code § 4000. Part of that responsibility involves the making of policies for the keeping of inmates and arrestees.

-----Footnotes-----

n10 ...

... [*601] [**58] relied on *Pitts v. County of Kern*, 17 Cal. 4th 340, 949 P.2d 920 (1998). That case stood for the proposition that county prosecutors, when prosecuting criminal cases, and therefore acting in their law enforcement capacity, were acting under color of state law. See *id. at 356-58*. This was evidenced by the fact that the Attorney General had direct supervisory authority over the county prosecutors when they acted in their law enforcement function. See *id.* The Peters court then analogized that when county sheriffs act in their law enforcement capacity, they too are acting under color of state law. See *Peters*, 68 Cal. App. 4th at 1171. [**59]

n11 Defense counsel urges this Court that Peters stands for the proposition that sheriffs are immune from civil rights lawsuits both when acting in their law enforcement function and when they are acting in the day-to-day management of their jail. As discussed above, the Court does not read Peters quite as broadly as defendant does. In any event, even if Peters stood for the proposition that sheriffs are immune from ...

... [*601] [**59] cost thereof. See *id. at 600*. The court did hold, however, that the sheriff, as a county officer, could be required to do so. See *id.* Having determined that there was no such duty on the part of the board of supervisors, the court found that the board of supervisors was not subject to the injunction. Having determined that no duty existed, the court did not need to go any further. However, in dicta, the court did state that the board of supervisors had no direct authority to use its budgetary power to control employment in or operation of the ...

... [*602] [**59] own name; (4) whether the entity has authority to hold property in its own name; and (5) whether the entity has the corporate status of a state agency." *Eaglesmith v. Ward*, 73 F.3d 857, 860 (9th Cir. 1996).

The Ninth Circuit has stated that the first factor, relating to who is legally obligated to pay the judgment, is the most important factor in the analysis. See *Hyland v. Wonder*, 117 F.3d 405, 413 (9th Cir. 1997). Here, there is no evidence which would suggest that any judgment against the county sheriff and personnel [**63] in their official capacities would come out of the state coffers. n13 On the contrary, the evidence on the record shows that the State of California is not a ...

... [*602] [**63] Rights, and the customary international law prohibition against such conduct. Defendants moved for summary judgment stating that these alleged violations do not give rise to a private cause of action under 42 U.S.C. § 1983. However, plaintiffs did not reassert the aforementioned cause of action in the Consolidated Plaintiffs' First Amended Complaint. Therefore, this argument is altogether moot. n15

-----Footnotes-----

n15 Additionally, resolution of defendants' motion for summary judgment ...

... [*603] [**63] grounds for the motion were never stated either in the notice of motion nor in the memorandum of points and authorities.

-----End Footnotes-----

This motion arises out of the "consolidated Plaintiffs' First Amended Complaint for Damages and Injunctive Relief" filed on September 1, 1999 whereby the four consolidated plaintiffs added defendants Smith, Johnson, Ilano, and Werre. Defendants stipulated to the filing of that complaint and waived further service.

[**67] **1. RULE 4(m)**

Rule ...

... [*603] [**67] fails to state a cause of action if it does not allege facts necessary to support a cognizable legal claim. See *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990); *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 533-34 (9th Cir. 1984).

In reviewing a Rule 12(b)(6) motion, a court must presume the truth of factual allegations in the complaint and draw all reasonable inferences in favor of the non-moving party. See *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). Dismissal under Rule 12(b)(6) is appropriate "only if it is clear that no relief could be granted under any set of facts that could be proved consistent [*69] with the allegations." *Hishon v. King & Spalding*, 467 U.S. ...

... [*603] [*69] appropriate only where "plaintiff can prove no set of facts in support of his claim which would entitle him to relief"); *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1152 [*604] (9th Cir. 1989). The issue is not whether the plaintiff will ultimately prevail but whether the plaintiff is entitled to offer evidence to support the plaintiff's claim. See *Usher*, 828 F.2d at 561.

b. APPLICATION

It is clear that prison officials can be liable in their personal capacities under Section 1983 if their conduct causes the violation. See *McRorie v. Shimoda*, 795 F.2d 780, 783-84 (9th Cir. 1986). As such, prisoners can state a claim against prison personnel under section 1983 "by establishing that prison personnel acted with 'deliberate indifference' in creating the condition that violates the Eighth Amendment." *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)). [*70]

The complaint alleges that defendants Carpenter, Brooks, and Kipp disregarded the unconstitutional conduct of the deputies and failed to adequately investigate and discover and correct such unconstitutional conduct, which "caused the violation of the plaintiffs' constitutional rights." See Consolidated ...

... [*604] [*70] *Id.* at 13. These allegations support a claim that the prison personnel "acted with 'deliberate indifference' in creating the condition that violates the Fourteenth Amendment." *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)). Therefore, defendants' motion to dismiss is denied.

Additionally, defendants seem to argue [*71] that because the County of Ventura has been named as a defendant, the inclusion of Carpenter, Brooks, and Kipp in their official capacities is duplicative and unnecessary. However, these defendants are properly ...

... [*604] [*71] issue at this stage.

V. CONCLUSION

For the foregoing reasons, the Court orders that (1) plaintiffs' motion to certify the class is GRANTED as to the class defined in this opinion; (2) plaintiffs' motion for a preliminary injunction is GRANTED thereby prohibiting the Ventura County Jail from using the Pro-strait chair in any way; (3) defendants' motion for summary judgment is DENIED; (4) plaintiff's motion to strike defendants' motion for ...

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