Ex no 5-6

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

MONIQUE WILLIAMS, et al., individually and as class representatives, Plaintiffs, vs. SHERIFF SHERMAN BLOCK, individually, COUNTY OF LOS ANGELES, a governmental entity; UNDERSHERIFF JERRY HARPER, ASSISTANT SHERIFF MICHAEL GRAHAM, CHIEF BARRY KING, CHIEF BOB PASH, COMMANDER DANIEL BURT, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, and DOES 2 through 1000, individually, et al., Defendants.	Case No. CV 97-3826 WJR (Ex) Judge William J. Rea ~~[PROPOSED]~~ ORDER DENYING IN PART AND GRANTING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE WILLIAM J. REA OF THE CENTRAL DISTRICT AND ATTORNEYS OF RECORD HEREIN:

The Motion of Defendants County of Los Angeles, Sherman Block, Jerry Harper, Michael Graham and Barry King for Summary Judgment came on regularly for hearing on April 26, 1999, before the Honorable William J. Rea in Courtroom 10 of the above-referenced court. Oral argument was presented by David Lawrence and Chandra Spencer of

Franscell, Strickland, Roberts, & Lawrence, attorneys for Defendants. Donald Cook and Mary Anna Henley appeared and orally argued on behalf of Plaintiffs.

After full consideration of the pleadings, the authorities and exhibits and declarations submitted by counsel as well as counsels' oral arguments, the Court orders as follows:

The Court granted Defendants' Motion for Summary Judgment in part. Specifically as to Plaintiffs' Fourth Cause of Action for relief under Civil Code section 52.1, the court found that it fails as a matter of law. In addition, the Court granted summary judgment as to Plaintiff Courie's Thirteenth Amendment Claim.

The Court denied Defendants' Motion for Summary Judgment as to all other issues raised by Defendants.

The Indicated Ruling on these issues is to be attached to this Order as Exhibit A.

IT IS SO ORDERED.

DATED: 8-10-99

HONORABLE WILLIAM J. REA
United States District Judge

Presented by:

FRANSCELL, STRICKLAND,
ROBERTS & LAWRENCE

By
Chandra Gehri Spencer

Exhibit A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TENTATIVE RULING

Case Number: CV 97-3826 WJR (Ex) **Docket Number:** 3

Title: Munique Williams, et al. v. Sheriff Sherman Block, et al.

Date: Monday, April 26, 1999

Nature of Motion: Defendants' Motion for Summary Judgment

HON. WILLIAM J. REA, JUDGE

Marva Dillard, Deputy Clerk

TENTATIVE RULING

The Court is inclined to GRANT IN PART Defendants' Motion for Summary Judgment. Specifically, the Court is inclined to find that Plaintiffs' Fourth Cause of Action for relief under California Civil Code § 52.1 fails as a matter of law. In addition, if Plaintiffs cannot provide the Court with any evidence from which a reasonable jury could find that Plaintiff Courie was forced or coerced to work while "over-detained," the Court would be inclined to grant summary judgment as to Plaintiff Courie's Thirteenth Amendment claim.[1] However, the Court is inclined to DENY Defendants' Motion for Summary Judgment as to all other issues and causes of action asserted by Plaintiffs.[2]

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[1] Specific questions regarding this issue are posed in section D of this tentative ruling.

[2] The Court notes that Plaintiffs have objected to the untimely declaration and statement of additional uncontroverted facts submitted with Defendants' reply. However, the Court need not take action as to Plaintiffs' request that these papers be stricken or, in the alternative, that Plaintiff be given an opportunity to respond as the Court's instant analysis is not

3 EXHIBIT A

DISCUSSION

Defendants have filed a motion for summary judgment setting forth numerous arguments as to why the Court should grant summary judgment as to Plaintiffs' entire case. Each argument raised by Defendants will be addressed separately below.

A. Eleventh Amendment Immunity

Defendants argue that since the Sheriff functions as a state rather than county official in operating the county jail, the County cannot be liable under 42 U.S.C. § 1983. The Court has already addressed this argument in reference to Defendants' motion to dismiss heard on March 8, 1999. There, the Court held that although the Sheriff represents the State while performing law enforcement duties, the Sheriff does not act pursuant to state authority at all times. Specifically, there is a distinction between law enforcement duties and operational or administrative duties.

The conduct that is at issue--releasing individuals from jail who are entitled to be released--is an administrative function. There is no dispute as to whether Plaintiffs were entitled to be released. Once the Plaintiffs were entitled to be released, the Sheriff had a duty to effectuate that release within a reasonable period of time. Therefore, releasing such individuals merely involves the sheriff department in its administrative capacity. Accordingly, the Sheriff is not immune from suit regarding the instant matters under the Eleventh Amendment.

B. Proximate Cause

Defendants argue that the actions of the Los Angeles Sheriff's Department ("LASD") personnel were not the proximate cause of any constitutional or state tort. In support of this argument, Defendants claim that there are numerous reasons, notwithstanding any actions by Defendants, as to why individuals are not physically released from jail in a timely fashion. To that end, Defendants make general allegations as to the large size of the jail system and the resulting transportation and communication difficulties that Defendants encounter in attempting to release individuals such as Plaintiffs.

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affected by these filings.

However, some of the difficulties Defendants refer to are associated with staffing problems at the LASD's Inmate Reception Center ("IRC"). Furthermore, Plaintiffs have provided the Court with evidence that Defendants have been aware of and to some extent are responsible for addressing the problem of over-detentions. Therefore, notwithstanding Defendants' arguments, a reasonable juror could find that Defendants' actions or inactions in each case are the proximate cause of the alleged wrongdoing. Accordingly, the Court is inclined to find that Defendants' proximate cause argument is not sufficient to support a summary judgment ruling in their favor.

C. Qualified Immunity for Individual Defendants

Defendants argue that the individual Defendants are entitled to qualified immunity for all claims brought under 42 U.S.C. § 1983. Qualified immunity generally shields government officials from "liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 318 (1982). A two-part test is used to determine whether an official is entitled to qualified immunity: "(1) is there a clearly established right?; and (2) did the officer act reasonably in the face of that right?" Fowler v. Block, 2 F. Supp. 2d 1268, 1273 (C.D. Cal. 1998).

1. Is there a clearly established right?

In demonstrating that the right at issue is clearly established, Plaintiffs "must point to a sufficiently concrete general principle that reasonable officers and deputies would be able to apply to the specific situation of this case and determine that their conduct was inappropriate." Id. at 1274. A court's order or final judgment is sufficient to define a "clearly established" right as it is "concise, [it] deals with the specific criminal defendant at issue, and [it] is known or easily knowable by all the officers and deputies involved." Id. at 1275-76. Contrary to Defendants' arguments, the right to be released is the right at issue, and it was clearly established in each of Plaintiffs' cases.

Plaintiffs Williams, Cooper, Courie, Mitchell, White, and Yousif were all subject to release pursuant to a court order. Accordingly, under the rationale set forth in Fowler, such orders would be sufficient to "clearly establish" Plaintiffs' rights to

be released.

In reference to Plaintiff Sellers, Plaintiffs argue that her right to be released was clearly established by the District Attorney's decision not to prosecute her case. A "teletype was sent to the Los Angeles County Jail authorizing the release of Sellers" two days prior to Plaintiff Sellers' actual release from custody. (Defendants' Motion for Summary Judgment at 5.) Although the actual teletype does not appear to be submitted with the Court at this time, it appears that such a document is comparable to a court order that releases an individual and would be sufficient to "clearly establish" Plaintiff Sellers' right to be released.[3]

In reference to Plaintiffs Borrup and Ramirez, Plaintiffs argue that their right to be released was clearly established after 48 hours passed without a probable cause determination. The Ninth Circuit, in the context of a qualified immunity analysis, has recognized that "Supreme Court precedent clearly establish[es] that an arrested individual must be taken before a magistrate 'promptly after arrest.'" Hallstrom v. City of Garden City, 991 F.2d 1473, 1482-83 (9th Cir. 1992) (citing Gerstein v. Pugh, 420 U.S. 103, 125 (1975)). Although "prompt" had not been defined at the time of the detention at issue in the Hallstrom case, it has since been defined by the Supreme Court in County of Riverside v. McLaughlin, 500 U.S. 44 (1991). Specifically, detention longer than 48 hours after an arrest is not justified where there is no probable cause determination or arraignment, unless there are exigent circumstances. See McLaughlin, 500 U.S. at 55-57. Therefore, by 1991--several years prior to the detentions at issue here--Supreme Court precedent clearly established that in order to detain an arrested individual beyond 48 hours, a probable cause determination or arraignment must have been conducted. Defendants have presented no evidence or arguments indicating that there were exigent circumstances in these cases.

In addition, government officials, including those responsible for the jails, are "charged with the knowledge of controlling Supreme Court precedent." Hallstrom, 991 F.2d at

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[3] Plaintiff Sellers' right may have been clearly established prior to the issuance of the teletype if the decision not to prosecute was made and documented in a manner that could have been known to the sheriff's department at a prior time.

1483 (reversing a district court's determination that the jail commander had qualified immunity from personal liability for a violation of the plaintiff's right to be taken before a magistrate in a timely fashion). The individual Defendants cannot shield themselves from liability by blaming the district attorney's office or others for a delayed detention that violates the Fourth Amendment. See id. ("A judicial officer's misjudgment will not obviate or excuse another official's obligation to act with objective reasonableness.").

Accordingly, Plaintiff Borrup's and Ramirez' right to be released where a probable cause determination or arraignment was not conducted within 48 hours of their arrest was clearly established by Supreme Court precedent.

2. Did the officer act reasonably in the face of that right?

It is evident "that certain administrative steps are both necessary and reasonable despite the incident effect of limited over-detention." Fowler, 2 F. Supp. 2d at 1278 (citing Lewis v. O'Grady, 853 F.2d 1366, 1370 (7th Cir. 1988)). However, whether the individual Defendants acted reasonably with respect to Plaintiffs' clearly established right to be released is in dispute. Although the individual Defendants are "high-ranking" officials, whether they have acted reasonably by condoning or failing to implement certain policies regarding the physical release of individuals over whom they have no legal authority to detain is a question for the jury. Accordingly, the Court is inclined to refrain from ruling on the issue of qualified immunity upon summary judgment.

D. Thirteenth Amendment Claims

With respect to Plaintiffs' Thirteenth Amendment claims, Defendants argue that summary judgment must be granted due to Plaintiffs' failure to show that they were forced to work. Indeed, "[i]n order to prove a violation of the thirteenth amendment the prisoner must show he was subjected to involuntary servitude or slavery." Watson v. Graves, 909 F.2d 1549, 1552 (5th Cir. 1990).

With regard to Plaintiff Courie, Defendants contend that she was asked to work and then voluntarily agreed to do so. Plaintiff Courie's deposition strongly indicates that she was

given a choice to work, which she then accepted. While the Court is inclined to grant summary judgment as to Plaintiff Courie's Thirteenth Amendment claim, the Court will refrain from doing so until the following issues have been addressed at oral argument. Specifically, Plaintiffs argue that Plaintiff Courie was coerced into working. Notwithstanding Plaintiff Courie's deposition indicating that she did not choose the type of work she was assigned to, has any evidence been submitted to the Court from which a reasonable juror could infer that Plaintiff Courie was in fact coerced? Additionally, at the time that Plaintiff Courie was given the option to work or stay in her dorm, would Plaintiff Courie's status as compared to the general detainee population have changed at all if she had chosen not to work?

As to Plaintiffs Cooper and Yousif, the Court is inclined to find that there exists a dispute as to whether the Plaintiffs were forced to work or whether the tasks they were assigned to do were characterized as work. Specifically, with regard to Plaintiff Cooper, Defendants contend that Cooper did not tell personnel that he did not want to work and therefore he agreed to do so. This appears to be disputed as there is evidence indicating that Cooper did contest to working due to the fact that he had been ordered released.

With regard to Plaintiff Yousif, Defendants contend that Yousif was only engaged in the basic housekeeping tasks. Defendants argue that under Hause v. Vaught, 993 F.2d 1079 (4th Cir. 1993), such duties are not included in what is considered "work." The Hause opinion applied to the cleaning of one's own cell and a common area. See id. at 1085. Here, there appears to be a dispute as to whether Yousif was responsible for cleaning his own general space or that of other inmates.

Therefore, the Court may find that summary judgment should be granted as to Plaintiff Courie's Thirteenth Amendment claim. However, as to Plaintiffs Cooper and Yousif there exist disputes as to material issues of fact relating to these Plaintiffs' Thirteenth Amendment claims. Accordingly, the Court is inclined to deny summary judgment as to the Thirteenth Amendment claims asserted by Plaintiffs Cooper and Yousif.

E. Statutory Immunities

First, Defendants argue that they cannot be held liable for acts or omissions of others under California Government Code

§ 820.8.[4] However, the allegations and evidence provided by Plaintiffs involve the acts and omissions of the individual Defendants themselves. Although the evidence is disputed, Plaintiffs have submitted evidence from which a reasonable jury could find that the individual Defendants were among those supervisors responsible for promoting, sanctioning, and/or ratifying the department policies causing over-detentions. Accordingly, California Government Code § 820.8 does not protect the individual Defendants from liability for their actions or omissions connected with the alleged over-detention of Plaintiffs.

Second, Defendants argue that the individual Defendants are immune from liability under California Government Code § 820.2 because the acts at issue are discretionary acts.

The case law confirms that determining whether certain activity is "discretionary" can be a difficult process that requires "delicate decisions." See Johnson v. State of California, 69 Cal. 2d 782, 794 (1968). In an attempt to guide future courts in determining what qualifies as protected "discretionary" activity as opposed to non-protected activity, the California Supreme Court in Johnson proposed an approach that distinguishes between "planning" decisions and "operational" decisions. See id. This approach has been relied upon in many cases since that time. See, e.g., Caldwell v. Montoya, 10 Cal. App. 4th 972, 981 (1995); Taylor v. Buff, 172 Cal. App. 3d 384, 389 (1985).

After a court has ordered the release of individuals or it is otherwise made clear that individuals are legally entitled to be released, a jailer's decision to release such individuals within a reasonable amount of time appears to be an operational decision rather than a planning decision. See Martinez v. City of Los Angeles, 141 F.3d 1373 (9th Cir. 1998) (finding that LAPD officers were not immune, under Cal. Govt. Code § 820.2, from plaintiff's negligence claim based on his prolonged detention); Sullivan v. County of Los Angeles, 12 Cal. 3d 710, 722 n.11

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[4] California Government Code § 820.8 states: "Except as otherwise provided by statute, a public employee is not liable for an injury caused by the act or omission of another person. Nothing in this section exonerates a public employee from liability for injury proximately caused by his own negligent or wrongful act or omission."

("Release of a prisoner after dismissal of charges against him is non-discretionary since it is specifically mandated by Penal Code section 1384."[5]). Moreover, it appears that the custodians must effectuate the release of individuals entitled to their release either by enforcing pre-existing release procedures or adopting release procedures if none are in place. To argue that Defendants' had discretion to not effectuate the release of Plaintiffs within a reasonable period of time is contrary to law.

Defendants admit that an inmate must be released once a release order or the equivalent documentation is issued. Therefore, there must be a mechanism in place to release these individuals within a reasonable period of time. While Defendants' decisions regarding the specific logistics of releases may be within their discretion, Defendants' decisions regarding the enforcement or institution of *some* means to effectuate releases within a reasonable time are not discretionary. Accordingly, to the extent that Defendants failed to institute appropriate policies or improperly sanctioned inappropriate policies regarding the prompt release of Plaintiffs, the individual Defendants are not protected by discretionary immunity as such activity does not fall within their discretion. Thus, Plaintiffs' claims against the individual Defendants are not precluded by statutory immunities.

F. Plaintiffs' Fourth Claim Pursuant to Cal. Civ. Code § 52.1

Defendants argue that Plaintiffs' Fourth Cause of Action for relief under California Civil Code § 52.1 fails as a matter of law because Plaintiffs have neither alleged or demonstrated invidious discriminatory animus. In Boccato v. City of Hermosa Beach, 29 Cal. App. 4th 1797 (1994), the court found that claims asserted under Civil Code § 52.1 must include allegations of discriminatory animus. See id. at 1809. This broad requirement of discriminatory animus has been followed by several courts since the Boccato decision. See, e.g, Dodd v. United States of America, Nos. C-98-0376-VRW, C-96-3633-VRW, 1998 WL 355611, at *2-*3 (9th Cir. June 15, 1998); Nelson v. City of Irvine, 143 F.3d 1196, 1206-07 (9th Cir. 1998); Casabuela v. Browning-Ferris Industries, 68 Cal. App. 4th 101, 111 (1998).

Plaintiffs did not respond to Defendants' arguments

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[5] Although this quote is dicta, it supports the rationale of this decision and is useful for that purpose.

regarding discriminatory animus as presented in the instant motion for summary judgment. Moreover, Plaintiffs have not argued that they can demonstrate such animus in reference to their § 52.1 claim. Accordingly, the Court is inclined to grant Defendants' motion for summary judgment as to Plaintiffs' Fourth Cause of Action pursuant to California Civil Code § 52.1.

G. Application of PLRA

Defendants contend that the Prison Litigation Reform Act ("PLRA") bars Plaintiffs' entire suit. Specifically, Defendants argue that 42 U.S.C. § 1997e(e) bars "[f]ederal civil action[s] . . . brought by a prisoner confined in jail." In response, Plaintiffs argue that, at all relevant times, they were not "prisoners" within the meaning of this statute. In particular, § 1997e(h) defines "prisoner" as "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law."

Here, Plaintiffs were entitled to be released and were then detained for varying periods of time until their release could be effectuated. Therefore, Plaintiffs were not "prisoners" within the meaning of § 1997e(h) as they did not fit into any of the definitions provided therein. Indeed, "[c]ontinued confinement cannot legally make [a plaintiff] a 'prisoner' when the jail term has expired; in the eyes of the law plaintiff is no longer a 'prisoner.'" Sullivan, 12 Cal. 3d at 717. Once Plaintiffs were entitled to be released, any "jail term" that may have existed expired. Therefore, they were not prisoners at the time the alleged injury occurred. Accordingly, the PLRA does not apply to the instant case.

Alternatively, the Court notes that even if Plaintiffs were considered prisoners within the meaning of § 1997e(h), it is unclear whether the PLRA would bar Plaintiffs' suit. Specifically, while Defendants rely on Zehner v. Trigg, 952 F. Supp. 1318 (S.D. Ind. 1997)--for the proposition that the PLRA bar applies to claims brought by former prisoners and not just current prisoners--there is more recent circuit authority that contradicts the Zehner holding. Both the Second and the Eighth Circuits have found the PLRA inapplicable where individuals, after their release, file actions relating to injury that occurred during custody. These courts looked to the legislative history of the PLRA and found that it was enacted, in part, to

deter suits by inmates "because filing lawsuits 'has become a recreational activity for long-term residents of our prisons,' [and] because prisoners 'have little to lose and everything to gain.'" Greig v. G Goord, No. 97-9340, 1999 WL 101425, at *2 (2d Cir. March 2, 1999). See also Doe v. Washington County, 150 F.3d 920 (8th Cir. 1998).

Here, all Plaintiffs were out of custody by the time they filed the instant suit. Accordingly, while the Ninth Circuit has not yet addressed this issue, it would appear that under Second and Eighth Circuit authority, the PLRA does not bar Plaintiffs' suit.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Debra L. Ard, am employed in the aforesaid County, State of California; I am over the age of 18 years and not a party to the within action; my business address is 225 South Lake Avenue, Penthouse, Pasadena, CA 91101-3005.

On July 29, 1999, I served the foregoing **[PROPOSED] ORDER DENYING IN PART AND GRANTING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

(SEE ATTACHED SERVICE LIST)

X BY MAIL

I placed such envelope for deposit in the U.S. Mail for service by the United States Postal Service, with postage thereon fully prepaid.

X As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business.

X (Federal) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 29, 1999, at Pasadena, California.

Debra L. Ard

SERVICE LIST

WILLIAMS, ET AL. V. COUNTY OF LOS ANGELES, ET AL.
CASE NO. CV 97-3826 WJR (Ex)

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