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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARCELLE CHATOIAN, ET AL.,

Plaintiffs

v.

COUNTY OF MARIN, ET AL.

Defendants

/

No. C-04-2790 MJJ

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS

INTRODUCTION

Before the Court is a motion to dismiss brought by Defendants County of Marin and Robert T. Doyle in this section 1983 case concerning intake and housing procedures at the Marin County Jail. Plaintiffs oppose the motion. For the reasons set forth below, the Court **GRANTS IN PART** and **DENIES IN PART** Defendants' motion.

FACTUAL BACKGROUND

Plaintiffs Darcelle Chatoian and Cynthia Tasca allege that as prearraignment detainees at Marin County Jail, they were strip searched, subjected to visual body cavity searches, and placed naked in cells, pursuant to the policies and practices of the entity Defendants, as implemented by the individual Defendants. Plaintiffs claim that no reasonable suspicion existed that they possessed weapons or contraband.

On July 12, 2004, Plaintiffs filed a Complaint against Defendants County of Marin, the Marin County Sheriff's Department, Marin County Sheriff Robert T. Doyle (in both his individual

and official capacities), and unnamed Marin County Sheriff's Deputies. Against all Defendants, Plaintiffs allege that their treatment at the Marin County Jail violated their Fourth and Fourteenth Amendment rights, recoverable under 42 U.S.C. section 1983. Plaintiffs also allege that their treatment violated California Civil Code sections 52 and 52.1 and California Penal Code section 4030.

Defendants Robert T. Doyle and the County of Marin filed the instant motion to dismiss, arguing, under several different theories, that said Defendants are immune from liability. Defendants also contend that Plaintiffs' claims are time-barred under California Government Code section 335.1. Additionally, Defendants move for a more definite statement, pursuant to Federal Rule of Civil Procedure 12(e), regarding Plaintiffs' allegations that the class period includes all persons injured on or since June 23, 2000.

At the October 19, 2004 hearing on the instant motion, the Court asked the parties to submit supplemental briefing on certain provisions of the California Code of Regulations, raised by defense counsel at oral argument, and on whether the immunities set forth in the California Tort Claims Act adhere, if at all, to public employees sued in their individual, as well as their official capacities. This Order reflects the Court's careful consideration of the parties' arguments as submitted in their initial briefing, at oral argument, and in their supplemental briefing.

LEGAL STANDARD

A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of the claims asserted in the complaint. *See Cahill v. Liberty Mutual Ins. Co.,* 80 F.3d 336, 337 (9th Cir. 1996). Dismissal of an action pursuant to Rule 12(b)(6) is appropriate only where it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Levine v. Diamanthuset, Inc.*, 950 F.2d 1478, 1482 (9th Cir. 1991) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-6 (1957)). In reviewing such a motion, the Court must assume all factual allegations to be true and must construe them in the light most favorable to the nonmoving party. *See North Star v. Arizona Corp. Comm.*, 720 F.2d 578, 580 (9th Cir. 1983). The Court will dismiss the complaint or any claim in it without leave to amend only if "it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).

In the context of a motion to dismiss, review is limited to the contents of the complaint. *Allarcom Pay Television, Ltd. v. Gen. Instrument Corp.*, 69 F.3d 381, 385 (9th Cir. 1995). However, matters properly presented to the court, such as those attached to the complaint and incorporated within its allegations, may be considered as part of the motion to dismiss. *See Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1989).

Motions to dismiss for failure to state a claim "are generally viewed with disfavor." *Ramos*, 857 F. Supp. at 704. "Each averment of a pleading shall be simple, concise, and direct." FED. R. CIV. PROC. § 8(e)(1). Under this liberal pleading standard, "a complaint should not be dismissed unless it appears 'beyond doubt' that plaintiff can prove no set of facts in support of the claim which would entitle him or her to relief." *Ramos*, 857 F. Supp. at 704 (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). Moreover, courts must assume that all general allegations "embrace whatever specific facts might be necessary to support them." *Peloza v. Capistrano Unified School Dist.*, 37 F.3d 517, 521 (9th Cir. 1994).

If a pleading to which a responsive pleading is permitted is so vague and ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. FED. R. CIV. PROC. 12(e).

ANALYSIS

I. Eleventh Amendment Immunity

As a threshold matter, the Court must determine whether or not Sheriff Robert T. Doyle is a state actor such that he is immune, pursuant to the Eleventh Amendment, from section 1983 liability.

A. Sheriff Robert T. Doyle Is Not Immune From Section 1983 Liability.

Sovereign immunity under the Eleventh Amendment creates a subject matter jurisdictional hurdle for plaintiffs suing state governments in federal court. *See Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 98 (1984) (declaring that "the principle of sovereign immunity is a constitutional limitation on the federal judicial power established in Art. III"). Specifically, "[t]he Eleventh Amendment bars suits which seek either damages or injunctive relief against a state, an 'arm of the state,' its instrumentalities, or its agencies." *Franceschi v. Schwartz*, 57 F.3d 828, 831 (9th Cir. 1995) (citing *Durning v. Citibank, N.A.*, 950 F.2d 1419, 1422-23 (9th Cir. 1991)). The

Supreme Court has held that an individual defendant acting in his official capacity receives the same immunity as the government agency for which he works. *Hafer v. Melo*, 502 U.S. 21, 25 (1991). This means that individuals acting as policymakers on behalf of a state cannot be liable under section 1983. *McMillan v. Monroe County, Alabama*, 520 U.S. 781 (1998).

Here, Defendants contend that Defendant Robert Doyle, the Sheriff of Marin County, is a policy maker for the State of California, not for the County of Marin, and that as such, he has Eleventh Amendment immunity from section 1983 liability. Defendants rely, almost exclusively, on a California Supreme Court case, *Venegas v. County of Los Angeles*, 32 Cal 4th 820 (2004), and reject on-point Ninth Circuit precedent directing the opposite result. For the following reasons, the Court disagrees with Defendants.

The question of a sheriff's section 1983 liability is "governed by the analytical framework set out in *McMillan v. Monroe County, Alabama*, 520 U.S. 781." *Streit v. County of Los Angeles*, 236 F.2d 552, 559 (9th Cir. 2001). In *McMillan*, the plaintiff, a criminal defendant, sued an Alabama county under section 1983 for constitutional violations undertaken by the county sheriff. The sheriff had allegedly intimidated the plaintiff's co-defendant into making false statements and had suppressed exculpatory evidence. The issue before the Supreme Court was whether, for immunity purposes, the sheriff was acting on behalf of the state or the county in executing this law enforcement function. If the sheriff was a state actor, he and the county were immune from suit; if the sheriff was a county actor, he and the county were not immune. The court offered two principles to guide the resolution of such a question. First, the court cautioned against employing a "categorical, 'all or nothing' approach." *McMillan*, 520 U.S. at 785. Instead, courts are to determine "whether governmental officials are final policymakers for the local government in a particular area, or on a particular issue." *Id.* Second, although the question of municipal liability under section 1983 is one of federal law, a court's "understanding of the actual function of a governmental official, in a particular area, will necessarily be dependent on the definition of the official's functions under relevant state law." *Id.* at 786 (citation omitted). After examining Alabama's constitutional provisions concerning sheriffs, the historical development of those provisions, the state supreme court's interpretation of those provisions, and relevant portions of the state code, the Supreme Court

found that the county sheriff, when performing the law enforcement functions at issue, was a State officer and was immunized by the Eleventh Amendment from suit. The Court expressly held, however, that it was not making a categorical "characterization of Alabama sheriffs that will hold true for every type of official action they engage in" and limited its inquiry and its finding to those situations in which the sheriff "acts in a law enforcement capacity."[1] *Id.* at 785-86.

Two Ninth Circuit cases, both of which employ the *McMillan* analysis, are directly on point here. In *Cortez v. County of Los Angeles*, 294 F.3d 1186 (9th Cir. 2002), at issue was whether the county sheriff acted as a county policymaker or a state policymaker when he established and implemented policies and procedures for the safekeeping of inmates in the county jail. Similarly, in *Streit v. County of Los Angeles*, 236 F.3d 552, the issue before the Ninth Circuit was whether the Los Angeles County sheriff acted on behalf of the County or the State of California when he adopted and administered a county jail policy which required a records check on prisoners before their release. *Streit* and *Cortez* are controlling precedent on this Court. Defendants urge the Court to ignore Ninth Circuit case law that speaks directly to the issue of whether a sheriff is a county actor or a state actor when administering county jails, and to, instead, rely nearly exclusively on California state court case law. As the Ninth Circuit held in *Streit*, "[a]lthough we must consider the state's legal characterization of the government entities which are parties to these actions, federal law provides the rule of decision in section 1983 actions." *Id.* at 560 (citation omitted). "[W]hile we must conduct an independent examination of California's Constitution, codes, and caselaw with respect to each 'particular area' or each 'particular issue,' our circuit caselaw 'provides the starting point for own analysis.'" *Cortez*, 294 F.3d at 1190 (citation omitted). The Court declines to assign greater weight to California state court decisions than to on-point decisions out of the Ninth Circuit.[2]

To determine whether Sheriff Doyle is immune from 1983 liability here, the Court first

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[1] The *McMillan* Court also rejected a "uniform, national characterization of all sheriffs" as "such a blunderbuss approach would ignore a crucial axiom of our government: the States have wide authority to set up their state and local governments as they wish." 520 U.S. at 795.

[2] Moreover, as discussed below, *Venegas* and other state court cases relied on by Defendants, such as *County of Los Angeles v. Superior Court of Los Angeles (Peters)*, 68 Cal. App. 4th 1166 (1998), are factually distinguishable from the case at bar and therefore would not control the Court's decision in any event.

examines the nature of his conduct, then looks at state law to determine whether that type of conduct was executed on behalf of the County of Marin, or the State of California.

1. The Enactment and Implementation of Intake and Confinement Policies at the County Jail Are Administrative Functions Concerning County Jail Management, Not Law Enforcement Functions.

In *Cortez* and *Streit*, the Ninth Circuit found that the conduct at issue looked more like administrative oversight and management of the county jail than like law enforcement. In *Cortez*, the county sheriff enacted and implemented policies regarding the safekeeping of jail inmates. Specifically, in accordance with the sheriff's policies, an inmate was placed the gang section of the county jail where he was subsequently beaten to death. The court first examined state statutes providing sheriffs with broad statutory authority to manage county jails. 294 F.3d at 1190 (citing CAL. GOV'T CODE § 26605 ("sheriff shall take charge of and be the sole and exclusive authority to keep the county jail and the prisoners in it"); CAL. PEN. CODE § 400 (providing that the county sheriff operates the county jail)). The court held that as administrator of the county jail, a sheriff is "responsible for developing and implementing policies pertaining to inmate housing" and is the final policymaker on such issues. 294 F.3d at 1190 (citation omitted). The court then found that policies regarding the housing of jail inmates were made by sheriffs "not as law enforcement officials, but as administrators wielding control over persons entrusted to their custody." 294 F.3d at 1191 (citation omitted). In *Streit*, the policy at issue, less similar to the one in the case at bar, concerned administrative searches for outstanding warrants, wants, or holds on inmates to be conducted before permitting inmates' release. The Ninth Circuit found that this conduct, although quite similar to conduct found to constitute law enforcement function in *County of Los Angeles v. Superior Court of Los Angeles (Peters)*, 68 Cal. App. 4th 1166 (1998), *see* discussion *infra*, constituted an administrative function of jail operation.

The policies alleged to have violated Plaintiffs' constitutional rights in the case at bar relate to the intake procedures and housing of county jail inmates – jail administration, not law enforcement. If the conduct at issue in *Streit* is a function of jail administration, certainly strip searching detainees and housing them nude are. Such policies are enacted and implemented not to prevent crime, but to ensure safety and security within jail walls. The Court finds that these are

policies enacted and implemented in furtherance of the oversight and administration of the county jail, not to enforce the law.

2. According to California Law, a County Sheriff is a County Policymaker When Engaged in Jail Administration

Having found that the conduct at issue concerned jail administration rather than law enforcement, the Court must now engage, as the Ninth Circuit in both *Streit* and *Cortez* did, in a *McMillan*-type analysis to determine whether such duties are executed on the county's behalf or the state's behalf. In those cases, the court reviewed relevant portions of the California Constitution, the California Code, and relevant case law, and concluded that when acting as the administrator of the county jail, a county sheriff in California is a policymaker for the county, not the state, and is therefore not immune from section 1983 liability under the Eleventh Amendment.[3]

a. California Constitution

In contrast to the Alabama Constitution, the *Streit* court found, California's Constitution does not list county sheriffs as part of the state executive department (deemed by the *McMillan* court as "especially important" for determining liability). 236 F.3d at 561. Indeed, Article XI, section 1(b) of the California Constitution designates sheriffs as county officers. Even more critically, the Ninth Circuit held, the California Constitution nowhere states that a county sheriff's department acts for the State when managing its local jails. *Id.* "'[N]ot only does the California Constitution lack the provisions most important to the Supreme Court's decision in *McMillan*, its provisions read much like those of the Alabama Constitution prior to that State's determined effort to clarify that sheriffs were acting for the State when exercising their law enforcement functions.'" *Id.* (quoting *Roe v. County of Lake*, 107 F. Supp. 2d 1146, 1149 (N.D. Cal. 2000)). Therefore, as the Ninth Circuit found in *Streit*, a county sheriff's department is generally a county agency under the state Constitution. 236 F.3d at 561.

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[3] It is worth noting that the Ninth Circuit does not necessarily rely on the distinction between the sheriff's function as jail administrator and the sheriff's duties regarding law enforcement to determine whether or not the sheriff is a county or a state actor. Indeed, the Circuit has found that some of a county sheriff's law enforcement activities are made on behalf of the county, not the state. *See, e.g. Brewster v. Shasta County*, 275 F.3d 803 (9th Cir. 2001).

b. California Statutes and Regulations

Defendants point to sections of the California Code that suggest sheriffs are state actors when engaged in their law enforcement duties, but ignore those portions of the Code that speak to jail policy and administration. While California Government Code section 12560 grants the California Attorney General statutory control over sheriffs acting in their law enforcement capacity, California Government Code section 25303 grants counties the ultimate power over county jails. Other statutes cited by Defendants, such as Government Code sections 26605 and 26610 and Penal Code sections 4000 and 4015, confer upon the sheriff responsibility for jail administration, but do not establish the sheriff as an actor on behalf of the state when he takes on that statutorily prescribed role. Moreover, as the Ninth Circuit noted in *Streit*, section 23013 grants counties the power to transfer control of jails from the sheriff to a county corrections department, which "suggest[s] that counties actually control and operate the jails, and not the state via sheriffs." 236 F.3d at 561. The Court therefore finds, as the Ninth Circuit in *Streit* found, that these Code sections "weigh heavily in favor of [the] conclusion that the [county's] jail . . . policies are a county function and a county concern," "the [c]ounty, not the state, oversees the local jails, and the [county sheriff's department], as the administrator of those jails, acts for the [c]ounty." *Id.* at 562.

Defendants additionally contend that Title 15 of the California Code of Regulations ("CCR"), pertaining to Crime Prevention and Corrections, demonstrates that a sheriff acts on behalf of the State when overseeing a county jail. The Court finds, however, that the CCR sections cited by Defendants do not dictate that result. Specifically, Defendants contend that section 1005 of Title 15 of the CCR permits a county jail to adopt its own standards for employees and facilities. While that code section, in conjunction with Penal Code section 6030 *et seq.*, explains that county jail standards must meet or exceed, and may not conflict with, the standards imposed by the State of California Board of Corrections and that the State's Board of Corrections reviews the standards established for the county jails, this does not render county jail supervision a state action. As Plaintiffs point out in their supplemental brief, California's codes and regulations are replete with directives to local governmental agencies and their employees but those statutes and regulations do not cloak the local governmental entities with Eleventh Amendment immunity. *See, e.g., Beentjes v. Placer County Air*

Pollution Control Dist., 254 F. Supp. 2d 1159, 1171 (E.D. Cal. 2003) (local air pollution control districts, which derive their authority from the State and are granted wide latitude to conduct their affairs as they see fit so long as they maintain standards at least as stringent as those adopted by the State, are not local agencies and are not entitled to Eleventh Amendment immunity.) Moreover, the Ninth Circuit in *Cortez* acknowledged those provisions of Title 15 that assign broad authority to sheriffs for county jail management, but still held that when a sheriff acts as administrator of the county jail, he acts on behalf of the county, not the state. 294 F.3d at 1190. Defendants' argument that Title 15 of the CCR dictates that a sheriff acts on behalf of the State of California when administering a county jail fails.

c. California Case Law

As noted *supra*, Defendants urge the Court to rely on and extend the California Supreme Court's holding in *Venegas*, 32 Cal. 4th 820. Notwithstanding the Court's conclusion that it is not bound by a California state court decision when determining issues of section 1983 liability, *see* discussion *supra*, the Court finds that even if *Venegas* were binding precedent, it would not compel a different result.

In that case, the plaintiffs sued, *inter alia*, the county and its sheriff's department, under section 1983, for violations of their constitutional rights during the sheriff's department's investigation of criminal activity. As part of a task force operated by the sheriff, a police officer stopped the plaintiffs (husband and wife) while investigating the husband's brother for car theft. The husband was arrested and detained but no charges were filed. There, unlike in the case at bar, the sheriff and his task force were engaged in a criminal investigation. The *Venegas* court repeatedly characterized the sheriff's department's actions as law enforcement activities or functions. *See, e.g.*, 32 Cal. 4th at 826, 828, 829, 834, 838, 839, 852. The conditions of jail detention were not at issue; intake procedures were not raised. The question at bar, here, is on which entity's behalf a sheriff acts when engaging in county jail administration duties. *Venegas* simply does not speak to that question.

Defendants contend that *Venegas* is instructive here because of its approval of a more on-point California appellate court decision in *Peters*, 68 Cal. App. 4th 1166. In *Peters*, a sheriff was accused of violating the plaintiffs' constitutional rights by detaining them beyond their release date

in order to comply with an outstanding warrant. The *Peters* case is equally unavailing for Defendants. First, again, California state case law on this issue is not binding on this Court, as discussed *supra*. Moreover, however, *Peters*, like *Venegas*, is distinguishable on its facts from the case at bar. The court in *Peters* expressly held that determining whether to release someone subject to arrest on an outstanding warrant was "a law enforcement function" that could not be "characterize[d] . . . as merely operational or administrative." 68 Cal. App. 4th at 1177; *see also Streit*, 236 F.3d 552 (concluding that the *Peters* sheriff's conduct – complying with a warrant – constituted law enforcement, and was distinguishable from the administrative jail policy of checking to see if any warrants existed). Defendants additionally cite to the California Supreme Court's holding in *Pitts v. County of Kern*, 17 Cal. 4th 340 (1998). Again, reliance on this state court case is misplaced. First, even if *Pitts* were on point, it would not be binding on the Court. Second, the issue in *Pitts* concerned whether district attorneys were state actors or county actors when bringing and dismissing criminal charges. The court found that district attorneys acted on the state's behalf in preparing and prosecuting crimes. This case is wholly uninstructive on whether a sheriff, engaged in jail oversight and management as opposed to law enforcement, acts on behalf of the county or the state.

There is a clearly-established distinction between overseeing and managing a county jail on the one hand, and engaging in law enforcement functions on the other, for purposes of assessing a sheriff's immunity from section 1983 liability. Having examined the California Constitution and relevant state statutes and regulations, and in accordance with the Ninth Circuit's holdings in *Streit* and *Cortez*, the Court finds that a county sheriff, purely engaged in jail oversight and administration, acts on behalf of the county, not the State. The California state court cases cited by Defendants do nothing to alter the Court's conclusion. Because the Court finds that strip searching detainees and confining them, naked, in cells, are intake and housing policies and procedures that fall into the category of jail oversight and administration, the Court concludes that Sheriff Robert T. Doyle was acting on behalf of the County of Marin in enacting and implementing those alleged policies. As such, the Court finds that Sheriff Doyle is not immune, pursuant to the Eleventh Amendment, from section 1983 liability. Defendants' motion to dismiss on this ground is therefore **DENIED.**

B. The County of Marin Is Thereby Also Not Immune

Under *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658 (1978), a county is subject to section 1983 liability for unconstitutional actions taken by the county's sheriff if the county's "policies, whether set by the government's lawmakers 'or by those whose edicts or acts that may fairly be said to represent official policy' caused the particular constitutional violation at issue." *Streit*, 236 F.3d 552, 559 (citing *Monell*, 436 U.S. at 694). If the sheriff is a policymaker for the state, no liability lies against the county under *Monell*. However, where, as here, the sheriff was acting on behalf of the County in instituting the policies that are the subject of the constitutional violation in question, the County is subject to section 1983 liability. Having concluded that Sheriff Doyle was acting in his capacity as a policymaker for the County in implementing the jail policies and procedures at issue, and that as such, Sheriff Doyle is not immune from section 1983 liability, the Court finds that Defendant County of Marin is also not immune. Defendants' motion to dismiss on that ground is therefore **DENIED.**[4]

II. Statute of Limitations

Defendants contend that the statute of limitations has run as to any claims that accrued before January 1, 2003. California's statute of limitations for personal injury claims governs both the state law and federal causes of action in this case. *See, e.g.*, *Johnson v. State of California*, 207 F.3d 650, 653 (9th Cir. 2000) ("Because § 1983 does not contain a statute of limitations, federal courts apply the forum state's statute of limitations for personal injury claims"). This means that Defendants' statute of limitations argument pertains to all of Plaintiffs' claims.

On January 1, 2003, California Government Code section 335.1 was enacted, extending the limitations period on personal injury actions (and correspondingly, to federal civil rights claims, *see Wilson v. Garcia*, 471 U.S. 261 , 271-72 (1985)) from one year, under former section 340(3), to two years. Defendants contend that the amendment to the operative statute of limitations does not work

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[4] Defendants argue next that Plaintiffs' pendant state law claims against Defendant County of Marin should be dismissed for lack of jurisdiction. This argument is expressly conditioned on the Court's dismissal of Plaintiffs' federal claims. (Motion at 12-13.) As the Court has denied Defendants' motion to dismiss Plaintiffs' federal claims, the Court views Defendants' jurisdictional argument as moot and declines to reach it.

to extend the limitations period for claims accrued before the date of amendment.[5] In other words, for any alleged conduct that accrued before January 1, 2003, Defendants suggest that no claim may be filed more than one year afterwards. Defendants contend that because the Complaint in this action was not filed until July 12, 2004, any claims based on pre-January 1, 2003 conduct are time-barred. The Court disagrees.

It is settled that the section 335.1 amendment does not apply retroactively to revive expired claims. *See, e.g. Krupnick v. Duke Energy MORRO Bay*, 115 Cal. App. 4th 1026, 1029 (2004). It is also settled that generally, "an amendment which enlarges a period of limitation applies to pending matters where not otherwise expressly excepted." *Mudd v. McColgan*, 30 Cal. 2d 463, 468 (1947). However, in the context of section 335.1, there is a divergence of opinion among federal district courts in California as to whether the extended limitations period is applicable to claims accrued, but not expired, before January 1, 2003, when the amendment took effect. *Compare Abreu v. Ramirez*, 284 F. Supp. 2d 1250 (C.D. Cal. 2003), *with Kiss v. City of Santa Clara*, 2004 U.S. Dist. LEXIS 19470 (N.D. Cal. September 15, 2004), *and Jordan v. Herrera*, 2003 U.S. Dist. LEXIS 25537 (C.D. Cal. Nov. 7, 2003). In *Jordan*, a federal district court found that section 335.1, in accordance with the rule set forth in *Mudd*, applies retrospectively to pending claims. 2003 U.S. Dist. LEXIS 25537, at *9-13; *accord Kiss*, 2004 U.S. Dist. LEXIS 19470, at *7-8. In contrast, the district court in *Abreu* held that "unless otherwise specified, the statute of limitations in effect at the time a claim accrues is the limitation applicable to that claim for all time." 284 F. Supp. 2d at 1256. The court there found that "[n]othing in the legislation extending California's personal-injury limitations period suggests that the California Legislature intended section 335.1 to apply retroactively, except to claims made by victims of terrorist actions on September 11, 2001." *Abreu*, 284 F. Supp. 2d at 1256 (citing S.B. 688, Ch. 448, Stats. of 2002, §§ (c) & (d)). The court explained that it was most persuaded by the legislature's express carve-out language for September 11, 2001 victims. If the legislature had otherwise intended section 335.1 to apply to pending claims, the court reasoned, the carve out would not have been necessary. *Id.* at 1256.

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[5] Federal law controls the question of when a claim accrues. *Johnson*, 207 F.3d at 653 (citation omitted). Under federal law, a claim accrues when a plaintiff knows, or should know, of the factual predicate underlying the potential cause of action. *Id.* (citation omitted).

The Court respectfully disagrees with the result in *Abreu*. The California Legislature need not have affirmatively stated that the extended limitations period was to apply to pending claims because, according to *Mudd* and its progeny, the rule is that it would so apply unless otherwise specified. Defendants contend that Section 335.1's express application to claims arising out of the September 11, 2001 terrorist attacks constitutes such an express exception to the rule in favor of retrospective application under *Mudd*. In essence, *expressio unius est exclusio alterius*. But Defendants have it wrong. The carve-out language in section 335.1 directed toward September 11, 2001 victims creates an exception, not to some non-existent rule against its application to pending claims, but to the well-established rule against reviving expired claims. As of January 1, 2003, when the new limitations statute was enacted, claims arising out of the September 11, 2001 attacks were long-expired under the old one-year statute of limitations. The legislature expressly carved out an exception to the anti-revival rule so that terrorism victims might have a remedy for their injuries. The carve-out exception does not, however, speak to pending claims. Therefore, in accordance with *Jordan*, *Kiss*, and *Mudd*, the Court finds that for any unexpired personal injury claims that accrued before January 1, 2003, the applicable statute of limitations is the newly enacted California Government Code section 335.1 – a two-year limitations statute – because those claims were pending when the new limitations statute was enacted.

Here, Plaintiffs filed their class action on July 12, 2004. This means that any claims that accrued on or after July 12, 2002 are properly before the Court. Defendants' motion to dismiss all claims that accrued before January 1, 2003 as time-barred is therefore **DENIED.**

The Court must address, however, the claims raised by Plaintiffs' Complaint that accrued before July 12, 2002. In paragraph 12 of the Complaint, Plaintiffs raise claims on behalf of unnamed plaintiffs who, at any time after June 23, 2000, were subjected to the same jail treatment that Plaintiffs Chatoian and Tasca allege. Pursuant to Federal Rule of Civil Procedure 12(e), Defendants move for a more definite statement regarding this portion of Plaintiffs' complaint. In their Opposition to the instant motion, Plaintiffs appear to have offered a clarification and now contend that for the state law claims only, Plaintiffs raise claims on behalf of unnamed plaintiffs that accrued

no later than July 23, 2003, six months prior to the filing of their class claim.[6] (Opposition at 24-25.) The Court assumes that this clarification is made in light of the California Tort Claims Act ("CTCA") requirement, specifically California Government Code section 911.2, that a claim against a public entity must be presented in writing to the entity no later than six months after the accrual of the claim.[7] Because the class claim was presented to the appropriate government entity[8] on January 23, 2004, only claims that accrued on or after July 23, 2003 are at issue. The Court accepts Plaintiffs' more definitive statement and finds that in light of that clarification, no claims raised by Plaintiffs are time-barred.

III. State Law Claims

Plaintiffs bring three state law claims against Defendants. Plaintiffs' third and fourth causes of action allege that Defendants violated California Civil Code sections 52 and 52.1 and California Penal Code section 4030, respectively, for subjecting Plaintiffs to strip searches. Plaintiffs' fifth cause of action alleges that Defendants violated sections 52 and 52.1 for confining Plaintiffs in cells naked. In addition to the unavailing statute of limitations argument addressed *supra*, Defendants move to dismiss Plaintiffs' state law claims on the several bases discussed more fully below.

A. Plaintiff Tasca's State Law Claims Are Dismissed

Defendants contend that Plaintiff Cynthia Tasca's Government Tort Claim (attached to the Complaint as Exhibit B) does not comply with the CTCA requirements. Plaintiff Tasca concedes that her claim was insufficiently specific. The Court, therefore, **GRANTS** Defendants' motion on this ground and dismisses Plaintiff Tasca's state law claims (the Third, Fourth, and Fifth Counts of the Complaint).

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[6] Plaintiffs clarify that as to the federal claims, they raise claims on behalf of unnamed plaintiffs who were subjected to strip search and nude cell placement on or before July 12, 2002. This is appropriate as the California Tort Claims Act ("CTCA") requirement that a claim be presented to the governmental entity before filing a lawsuit applies only to state law claims and not to actions brought under section 1983. *Williams v. Horvath*, 16 Cal. 3d 834, 842 (1976).

[7] The CTCA further requires a judicial claim to be filed no more than six months after the claim is presented to the government entity. Plaintiffs complied with this requirement.

[8] With the exception of Plaintiff Tasca's state law claims, compliance with the California Tort Claims Act is not disputed here. The Court therefore assumes that Plaintiffs filed their class claim with the appropriate governmental entity.

B. Immunity Under the California Tort Claims Act

Defendants move for dismissal of Plaintiffs' state law claims on the grounds that the County of Marin and Sheriff Doyle are entitled to immunity under various provisions of the CTCA (California Government Code sections 810, *et seq.*). Defendants argue, *inter alia*, that Sheriff Doyle is entitled to discretionary immunity pursuant to section 820.2, that in the alternative, he is entitled to immunity under section 820.8, and that the County of Marin is immune under sections 815.2 and 844.6. Preliminarily, the Court notes that these governmental tort liability provisions do not apply to claims for declaratory and injunctive relief. *Rodriguez v. Cal. Highway Patrol*, 89 F. Supp. 2d 1131, 1138 (N.D. Cal. 2000) (citing CAL. GOV'T CODE § 814). The CTCA's immunity provisions apply only to claims for damages. *Id.* Here, Plaintiffs have prayed for declaratory and injunctive relief, and for money damages. (Complaint at 13-14.) Thus, the Court's consideration of Defendants' immunity arguments apply only to Plaintiffs' state law claims for damages. All of Plaintiffs' state law claims for declaratory and injunctive relief against Defendants Doyle and the County of Marin remain intact.

1. Sheriff Doyle's Immunity Under Section 820.2

California Government Code section 820.2 provides immunity to public employees for injuries resulting from their discretionary acts or omissions, except as otherwise provided by statute. Defendants contend that Sheriff Doyle's alleged acts were discretionary and that under section 820.2, he is immune from suit on Plaintiffs' state law claims. There is no doubt that the alleged policy enacted and implemented by Sheriff Doyle regarding intake and housing procedures for prearraignment jail detainees constitutes a discretionary act within the meaning of section 820.2. *See, e.g., Johnson v. State of California*, 69 Cal. 2d 782, 793 (1968) (discretionary actions are those involving basic policy decisions).[9] Plaintiffs do not suggest otherwise. Instead, Plaintiffs posit the theory that section 820.2 does not apply to, or is abrogated by, the statutes under which Plaintiffs bring their state law claims. Specifically, Plaintiffs claim that to find that the CTCA immunizes Sheriff Doyle and the County of Marin would effectively emasculate sections 4030, 52, and 52.1.

[9] Were Plaintiffs seeking to hold Sheriff Doyle liable for personally carrying out the strip search and naked cell placement policies, however, those ministerial acts might not be considered discretionary under 820.2. *See, e.g. Johnson*, 69 Cal. 2d at 793.

The California Supreme Court has held that the discretionary immunity set forth in section 820.2 "cannot be abrogated by a statute which simply imposes a general duty or liability on persons including public employees." *Caldwell v. Montoya*, 10 Cal. 4th 972, 986 (1995). Where immunity exists, it is only withdrawn "by a clear indication of legislative intent that statutory immunity is withheld or withdrawn in the particular case." *Id.* (italics omitted).

In *Caldwell*, the court held that under section 820.2, a school board was immune from California's Fair Housing and Employment Act ("FEHA") liability for its refusal to renew a superintendent's contract. The court reasoned that the board's decision was discretionary and that FEHA, which created a general statutory duty and liability for violation of its provisions, did not abrogate section 820.2 immunity because it did not expressly withdraw immunity.

The question here, as in *Caldwell*, is whether the statutes pursuant to which Plaintiffs bring their state law claims contain an express legislative intent to withdraw otherwise applicable immunity under the CTCA. The Court examines Penal Code section 4030 and Civil Code sections 52 and 52.1 separately.

a. No Immunity From Penal Code Section 4030 Liability

Penal Code section 4030 was expressly enacted to remedy the legislature's concern that law enforcement policies and practices for conducting strip and body cavity searches vary widely in California. CAL. PEN. CODE § 4030(a). The statute is aimed expressly at "protect[ing] the state and federal constitutional rights of the people of California by establishing a statewide policy strictly limiting strip and body cavity searches." *People v. Wade*, 208 Cal. App. 3d 304, 308 (1989) (citing CAL. PEN. CODE, § 4030(a)). Subsection (b) declares that the statute applies to prearraignment detainees arrested for infraction or misdemeanor offenses. According to the statute, it is a misdemeanor to "knowingly and willfully authorize[] or conduct[] a body cavity search in violation of this section." PEN. CODE § 4030(n). Subsection (p) affords a person so searched statutory civil remedies including recovery of actual damages.

Defendants argue that the language of section 4030 does not reflect a clear indication of legislative intent to withdraw or withhold immunity as to county sheriffs or any individual actors accused of enacting unlawful strip searching policies or conducting such searches, as is required

under *Caldwell*. Defendants acknowledge that the statute imposes a legal duty to abstain from engaging in or authorizing such searches and it provides civil remedies when its provisions are violated. But, Defendants argue that as the court found in *Caldwell* as to FEHA, Penal Code section 4030 "contains no indicia of an additional intent that individual public officials or employees may be sued despite a specific statutory immunity that would otherwise apply in a particular case." 10 Cal. 4th at 986.

Plaintiffs urge the Court to find that section 820.2 is overridden by Penal Code section 4030 because, Plaintiffs contend, section 4030 is a narrowly-drawn statute aimed at law enforcement officials who conduct unlawful strip searches and at law enforcement officials who enact and implement policies for conducting such strip searches. To find that Sheriff Doyle, who is alleged to have enacted, overseen, and implemented the policies and procedures at issue in this lawsuit, immune from section 4030 liability, Plaintiffs argue, would render section 4030 a nullity. The Court agrees.

Plaintiffs argue that this case is more like *Shoemaker v. Myers*, 2 Cal. App. 4th 1407 (1992), than like *Caldwell*. In *Shoemaker*, a California appellate court found Government Code section 19683, a whistle-blowing statute, to abrogate CTCA governmental tort immunity. Section 19683 "subjected 'any' state 'officer or employee' to direct civil liability for using official power against the efforts of another state officer or employee to report job-related violations of law to appropriate agencies." *Id.* at 1424-25. The appellate court found that because section 19683 was primarily, if not exclusively, aimed at public actors and because it created direct civil liability for any violation of the law, to find that the CTCA provision at issue immunized public employees from liability from the whistle-blowing statute "would largely emasculate the latter section and thereby frustrate the legislative purpose behind its enactment." *Id.* at 1425. The court went on to hold that to grant CTCA immunity to a party violating section 19683 is "totally inconsistent with the design of section 19683." *Id.*

In *Caldwell*, on the other hand, the California Supreme Court considered the analysis in *Shoemaker* and determined that the statute at issue, FEHA, unlike section 19638, did not abrogate CTCA immunity. 10 Cal. 4th 972. The court held that while section 19638's "specific nature and

purpose . . . provide[s] a 'clear indication of . . . intent' [such that] the personal immunities of public employees are abrogated," by contrast, "FEHA promotes much more general policies throughout the public and private sectors and advances no specifically *governmental* interest that would support a finding of intent to abrogate any immunity of public employees." *Id.* at 986 n.7 (emphasis in original).

The statute at issue in this case is analogous to the one at issue in *Shoemaker*. There is no doubt that like section 19638, section 4030 is "directed chiefly, if not exclusively, against state employees otherwise protected by [CTCA] immunity," rather than at private actors. *Shoemaker*, 2 Cal. App. 4th at 1425. The very text of section 4030 expresses the legislature's intent that the statute apply to law enforcement policies and procedures with respect to prearraignment detainees. CAL. PEN. CODE § 4030(a). Whereas the statute at issue in *Caldwell*, FEHA, is directed at both public and private discrimination, section 4030 is not aimed at the conduct of private citizens and can only be understood as an effort by the legislature to streamline the strip-searching policies employed by public law enforcement officials. *See* CAL. PEN. CODE § 4030(a)-(b). Under no interpretation could this statute apply to anyone but a government employee. Moreover, like section 19683, subsection (p) of section 4030 creates direct civil liability for violations of the strip-searching statute. Therefore, the Court finds that like the statute at issue in *Shoemaker*, and unlike the one at issue in *Caldwell*, section 4030 expresses the legislature's intent to withdraw otherwise applicable immunity under the CTCA. To find law enforcement policymakers immune from section 4030 liability would frustrate the legislature's purpose in enacting section 4030 in the first place. Thus, the Court finds that section 820.2 does not immunize Defendant Doyle from liability on Plaintiffs' section 4030 claim for damages. Defendants' motion to dismiss Plaintiffs' Penal Code section 4030 claim against Defendant Sheriff Doyle is **DENIED**.

b. Immunity From Civil Code Section 52 Liability

Unlike Penal Code section 4030, Civil Code section 52 cannot be read to withdraw CTCA immunity. Indeed, California state and federal courts have held that California Tort Claims Act immunities apply to claims brought under the Unruh Civil Rights Act. *See, e.g., Gates v. Superior Court*, 32 Cal. App. 4th 481, 494 (1995); *Gibson v. County of Riverside*, 181 F. Supp. 2d 1057, 1086

(C.D. Cal. 2002). The Court declines to find otherwise. Therefore, the Court **GRANTS** Defendants' motion on this ground and dismisses Plaintiffs' section 52 claims for damages against Sheriff Robert T. Doyle. Plaintiffs' section 52 claims for declaratory and injunctive relief against Sheriff Doyle remain in play.[10]

c. No Immunity From Civil Code Section 52.1 Liability

Civil Code section 52.1 contains a liability provision that has been interpreted as an express intention to withdraw immunity. In *Doe v. Petaluma City Sch. Dist.*, 830 F. Supp. 1560 (N.D. Cal. 1993), the court found that governmental tort "immunity is not available for a violation of Civil Code § 52.1 since . . . section 52.1 specifically provides liability for individuals 'whether or not acting under color of law.'" Therefore, the Court **DENIES** Defendants' motion to dismiss Plaintiffs' section 52.1 claims against Sheriff Doyle. Those claims remain in play.

2. Sheriff Doyle's Immunity Under Section 820.8.

California Government Code section 820.8 provides immunity to public employees for injuries caused by the act or omission of another person. Defendants contend that Sheriff Doyle is immune from suit under section 820.8 because Plaintiffs have failed to allege a causal link between any act of Sheriff Doyle and the injuries allegedly sustained by Plaintiffs.[11] As Plaintiffs point out, however, Plaintiffs do not seek to hold Sheriff Doyle vicariously liable for the actions of his subordinates (e.g. carrying out the strip searches and holding Plaintiffs in cells naked). Instead, Plaintiffs seek to hold Sheriff liable for his own conduct – for enacting and implementing policies that violate Penal Code section 4030 and Civil Code section 52.1. Therefore, the Court finds that Defendants' 820.8 immunity argument is without merit and **DENIES** this aspect of Defendants' motion.

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[10] At oral argument, the Court asked Defendants to provide additional briefing on whether the immunities set forth in the CTCA apply to public employees sued in their individual capacities as well as in their official capacities. Defendants report finding no authority suggesting any distinction in how the CTCA immunities are applied based on the capacity in which a public employee is sued. The Court's exhaustive search rendered the same result. Moreover, the CTCA itself makes no such distinction. The Court finds, then, that Sheriff Doyle's immunity from Plaintiffs' section 52 claim renders him immune from suit in both his individual and his official capacity on that claim.

[11] Having already determined that Sheriff Doyle is immune from Civil Code section 52 liability pursuant to section 820.2, the Court only considers Defendants' section 820.8 immunity argument with respect to Plaintiffs' Penal Code section 4030 and Civil Code section 52.1 claims.

3. County of Marin's Immunity

a. Pursuant To Section 815.2, the County of Marin Is Immune From Liability on Civil Code Section 52 Claims For Damages.

According to California Government Code section 815.2(b), "a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability." Because the Court finds that Sheriff Doyle is immune, under section 820.2, from liability on Plaintiffs' section 52 claim for damages, the Court finds that under section 815.2, Defendant County of Marin is also immune on that claim. Therefore, Defendants' motion to dismiss Plaintiffs' section 52 claim for damages against County of Marin on derivative immunity grounds is **GRANTED**. Plaintiffs' section 52 claim against the County of Marin for declaratory and injunctive relief remains in play.

b. Pursuant to Government Code Section 844.6, the County of Marin is Immune From Liability on Penal Code Section 4030 and Civil Code Section 52.1 Claims For Damages

According to California Government Code section 844.6, a public entity is not liable for injury to a prisoner "except as provided in this section and in Sections 814, 814.2, 845.4 and 845.6, or in Title 2.1 (commencing with Section 3500) or part 3 of the Penal Code." The parties agree that none of those exceptions apply here. The question, then, is whether the CTCA immunizes the County from liability for claims made pursuant to California Penal Code section 4030 and California Civil Code section 52.1.[12]

The Court is guided by the *expressio unius est exclusio alterius* canon. Section 844.6 sets forth specific exceptions to a government entity's immunity and does not enumerate Penal Code section 4030 or Civil Code section 52.1 among those exceptions. The legislature's expression of certain exceptions suggests that omitting others was intentional and that a government entity is immune from liability for Plaintiffs' section 4030 and 52.1 claims. The Court is also guided by the California Supreme Court's holding in *Caldwell* that where immunity exists, it is only withdrawn

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[12] Whether section 844.6 immunizes the County from liability on the Civil Code section 52 claims for damages was also briefed by the parties. However, because the Court has already determined that section 815.2 provides derivative immunity to the County on this claim, the Court declines to address whether section 844.6's immunity applies to that claim.

"by a clear indication of legislative intent that statutory immunity is withheld or withdrawn in the particular case." 10 Cal. 4th at 986. Nothing in Penal Code section 4030 indicates that the legislature intended to withdraw immunity as to government entities sued pursuant to that statute. As discussed *supra*, section 4030 is specifically directed at those law enforcement officials who create and implement violative strip search policies. Nothing in section 52.1 indicates that statutory immunity is to be withheld or withdrawn. Therefore, Defendants' motion to dismiss Plaintiffs' claims against Defendant County of Marin for violations of California Penal Code section 4030 and Civil Code section 52.1 for damages is hereby **GRANTED**. Plaintiffs section 4030 and section 52.1 claims against the County of Marin for declaratory and injunctive relief remain in play.

CONCLUSION

For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART** Defendants' motion to dismiss as follows:

1. Defendants' motion to dismiss Sheriff Doyle from the entire action on the ground that he is a policy maker for the State, not the County, and as such, is immune from section 1983 liability under the Eleventh Amendment is **DENIED**.

2. Defendants' motion to dismiss Plaintiffs' federal claims against Defendant County of Marin on Eleventh Amendment immunity grounds is **DENIED.**

3. Defendants' motion to dismiss Plaintiffs' pendant state law claims against Defendant County of Marin on jurisdictional grounds is moot as it was conditioned upon the dismissal of the federal claims which the Court has not done.

4. Defendants' motion to dismiss all claims by class members that accrued before January 1, 2003 as barred by the statute of limitations is **DENIED**.

5. Defendants' motion to dismiss Plaintiff Tasca's state law claims for failure to comply with the California Tort Claims Act is **GRANTED**. Those claims are dismissed with prejudice.

6. Defendants' motion to dismiss Plaintiffs' Penal Code section 4030 claim against Defendant Sheriff Robert T. Doyle, on the ground that Defendant Doyle is immune under the CTCA, is **DENIED**. Plaintiffs' 4030 claim against Defendant Doyle remains in tact.

7. Defendants' motion to dismiss Plaintiffs' Civil Code section 52 claim for damages against Defendant Sheriff Robert T. Doyle, on the ground that he is immune under the CTCA, is **GRANTED**. That claim is dismissed with prejudice. Plaintiffs' section 52 claim for declaratory or injunctive relief against Defendant Doyle is still in play.

8. Defendants' motion dismiss Plaintiffs' Civil Code section 52.1 claim for damages against Defendant Sheriff Robert T. Doyle on the ground that he is immune under the CTCA is **DENIED**. Plaintiffs' section 52.1 claim against Defendant Doyle remains in tact.

9. Defendants' motion to dismiss Plaintiffs' state law claims for damages against Defendant County of Marin on immunity grounds is **GRANTED**. Those claims are dismissed with prejudice. Plaintiffs' state law claims for declaratory or injunctive relief against Defendant County of Marin are still in play.

IT IS SO ORDERED.

Dated: December 14 2004

MARTIN J. JENKINS
UNITED STATES DISTRICT JUDGE