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MAR 23 2006

CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTYUNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIAKAREN CRAFT, RANETTE SANCHEZ,)
GEORGINA FROST, ELROY HARDY,)
BETTY WALSH, ROSEMARY RYAN,)
and VERONICA WILLIAMS,)
individually and as class)
representatives,)

Plaintiffs,)

vs.)

COUNTY OF SAN BERNARDINO,)
SAN BERNARDINO SHERIFF'S)
DEPARTMENT, and GARY PENROD,)

Defendants.)

NO. EDCV 05-359-SGL

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

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MAR 24 2006

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This is a class action suit concerning San Bernardino County Sheriff Department's alleged policy sanctioning the systematic strip searching of all detainees who pass through the county jail system regardless of the nature of the crime prompting their detention. The strip searches allegedly occurred in full view of jailors and detainees of the opposite sex, and took place even when the detainee in question was ordered released on bail after making an appearance in court. Plaintiffs' complaint asserts both federal and state law causes of action: A 42 U.S.C. § 1983 federal claim for violations of

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1 the Fourth and Eighth Amendment; California Civil Code § 52.1(b);
2 Article One, Sections 1, 7, 13, and 17 of the California
3 Constitution; California Penal Code section 4030; and California
4 Government Code section 815.6. Defendants have filed a motion to
5 dismiss most, if not all, of the state law causes of action and to
6 dismiss Sheriff Gary Penrod on the section 1983 claim. For the
7 reasons set forth below, the motion to dismiss is **GRANTED IN PART**
8 and **DENIED IN PART**.

9 When a party asserts that a complaint should be dismissed
10 pursuant to Federal Rule of Civil Procedure 12(b)(6), the court must
11 accept as true all the material allegations contained in the
12 complaint and must also construe those allegations in the light most
13 favorable to the complaining party. See Sanders v. Kennedy, 794
14 F.2d 478, 481 (9th Cir. 1986).

15 When judging the allegations in the complaint, a court is not
16 confined solely to what is contained in the complaint itself. A
17 court may also "consider . . . material which [was] properly
18 submitted as part of the complaint." Hal Roach Studios, Inc. v.
19 Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990).

20 Moreover, "documents whose contents are alleged in a complaint and
21 whose authenticity no party questions, but which are not physically
22 attached to the pleading, may be considered" Branch v.
23 Tunnell, 14 F.3d 449, 454 (9th Cir. 1994).

24 After reviewing the allegations in the complaint in this
25 manner, it must appear beyond a doubt that "no relief could be
26 granted under any set of facts that could be proved consistent with
27 the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73
28 (1984).

1 Plaintiffs sued Sheriff Gary Penrod both in his official
2 capacity and his individual capacity. The latter is based on the
3 allegation that he "was responsible for the development,
4 establishment and/or implementation of the procedures, policies,
5 regulations, practices and/or customs of the [San Bernardino
6 Sheriff's Department] with respect to its detention of prisoners."
7 (Second Am. Compl. ¶ 14). Defendants assert that suit cannot be
8 maintained Sheriff Penrod in either capacity.

9 A suit against an individual in his official capacity is, in
10 reality, a suit against the government entity itself. See Gomez v.
11 Vernon, 255 F.3d 1118, 1126 (9th Cir. 2001). Where the government
12 entity is also being sued, there is no purpose served by maintaining
13 the suit against a individual defendant sued in his official
14 capacity. Insofar as plaintiffs are already suing the County, their
15 complaint against Sheriff Penrod in his official capacity is
16 superfluous and therefore it is **DISMISSED**. See Green v. Baca, 306
17 F.Supp.2d 903, 907 (C.D. Cal. 2004) ("a suit against a state official
18 in his or her official capacity is not a suit against the official
19 but a suit against the official's office"); Vance v. County of Santa
20 Clara, 928 F. Supp. 993, 996 (N.D. Cal. 1996) ("if individuals are
21 being sued in their official capacity as municipal officials and the
22 municipal entity itself is also being sued, then the claims against
23 the individuals are duplicative and should be dismissed").

24 Defendants also assert that Sheriff Penrod cannot be held
25 individually liable for promulgating and implementing the policy
26 challenged in the complaint as such a basis for liability is barred
27 when a Monell claim is lodged against the governmental entity for
28 that same policy. "When plaintiffs assert they were injured by the

1 execution of a government's policy or custom, the government is
2 liable for the injury under § 1983, and a claim against any person
3 in an individual capacity is precluded." (Defs' Mot. Dismiss at 6).
4 This is an incorrect statement of the law.

5 In Kirkpatrick v. City of Los Angeles, 803 F.2d 485 (9th Cir.
6 1986), an action was filed challenging the strip searching of police
7 officers accused of misconduct. A Monell claim was lodged against
8 the City and a section 1983 claim was filed against the Chief of
9 Police in his individual capacity for promulgating the "unwritten
10 policy" that led to such strip searches. The Chief of Police
11 asserted that he could not be held individually liable "because he
12 did not personally participate in the decision to search the
13 officers" and that, absent such direct participation, he could not
14 be held liable. Id. 491 n.5. In other words, drafting the policy
15 itself was not sufficient for individual liability to attach as it
16 was subsumed within the Monell claim itself. The Ninth Circuit did
17 not address the argument, finding that the Chief was entitled to
18 qualified immunity.

19 The question left unresolved in Kirkpatrick was answered five
20 years later by the Ninth Circuit, sitting en banc, in Redman v.
21 County of San Diego, 942 F.2d 1435 (9th Cir. 1991) (en banc), a case
22 which neither defendants nor plaintiffs cite in their pleadings.¹

24
25 ¹ It must be noted that, even before Kirkpatrick, the
26 Ninth Circuit had noted that individual liability remained post-
27 Monell. "After Monell v. Department of Social Servs., 436 U.S.
28 658, 690 (1978), however, suit may be brought directly against a
local governmental unit, rendering suit against the individuals
unnecessary unless they are sued in their personal capacity."
Soffer v. City of Costa Mesa, 798 F.2d 361, 363 (9th Cir.
1986) (emphasis added).

1 Redman concerned the County's policy regarding the housing of
2 homosexual detainees. The plaintiffs brought a Monell claim against
3 the County and also sought to hold the sheriff individually liable
4 for his participation in the promulgation of the policy in question.
5 The Ninth Circuit held that the sheriff could be held individually
6 liable. The court noted that in order for individually liability to
7 attach to state officials, they must have had either a "personal
8 involvement in the constitutional deprivation," or there must exist
9 a sufficient causal connection between the action complained of and
10 the official sued. Id. at 1446. With respect to prison policies,
11 the court found that

12 liability exists even without overt personal
13 participation in the offensive act if
14 supervisory officials implement a policy so
15 deficient that the policy "itself is a
repudiation of constitutional rights" and is
"the moving force of the constitutional
violation."

16 Id. Thus, the requisite causal connection can be established by the
17 state official setting in motion a policy which the official knows
18 or reasonably should know would cause others to inflict the
19 constitutional injury. Id. at 1447. Merely being familiar with the
20 policy or implementing it as directed by one's supervisor, however,
21 is not sufficient to attach liability. Rather, the official "must
22 have been responsible for developing and promulgating the policies
23 in question." Id. at 1449. This is exactly what the plaintiffs'
24 complaint alleges that Sheriff Penrod did: He drafted and then
25 implemented the policy that was the source of their asserted
26 constitutional injury. As such, he can be held directly liable in
27 his individual capacity.

28 Defendants next challenge plaintiffs' efforts to pursue a class

1 action for a violation of California Civil Code section 52.1(b),
2 asserting that such a remedy is not available for that claim. They
3 note that a federal district court for the Eastern District of
4 California has so held. See Taggart v. Solano County, 2005 WL
5 3325752 (E.D. Cal. Dec. 6, 2005). That court reasoned that section
6 52.1(b) expressly limits civil actions brought by private parties to
7 those "on his or her own behalf," and that subsection (a) provides a
8 class action remedy but limits such relief to suits filed by the
9 state Attorney General, district attorneys, and city attorneys "in
10 the name of the people of the State of California." Id. at * 4. As
11 the Taggart court explained: "[T]he legislation addresses
12 representative actions but only provides for such actions under
13 Section 52.1(a), not Section 52.1(b). Because the language and
14 structure of the statute reveal that Section 52.1(b) does not
15 authorize a representative action, the Section 52.1(b) class claim
16 is dismissed." Id.

17 The Court finds such a rationale less than persuasive. The
18 Taggart court, first and foremost, appears to read too much into the
19 fact that subsection (b) uses the term "on his or her own behalf."
20 The subsection's use of that term may more simply be read as a means
21 to distinguish itself from subsection (a), which authorized suits by
22 the state Attorney General for statutory violations. Cf. Corbett v.
23 Superior Court, 101 Cal.App.4th 649, 670 (2002) (refusing to read
24 particular section of unfair competition laws as precluding the
25 ability to seek a class action without a "suggestion" in the
26 statutory text). The import of the "distinction" cited to by the
27 Taggart court is therefore far from clear, or even that suggestive.
28 Even more damaging to the Taggart court's construction of the

1 statute is the fact that subsection (g) makes clear that any of the
2 remedies available under section 52.1 are in addition to "any other
3 action, remedy, or procedure that may be available to an aggrieved
4 individual under any other provision of law." Such "other remedy"
5 includes that provided by California Code of Civil Procedure section
6 382, the class action statute. Far from suggesting a limitation on
7 a private citizen's ability to bring a class action subsection (b)
8 claim, the "language and structure" of section 52.1 suggest that
9 class actions remain as a viable alternative for individuals
10 pursuing a subsection (b) cause of action. Finally, nowhere in the
11 statute's legislative history is there any suggestion by the state
12 legislature that it intended to limit class action relief for a
13 violation of 52.1(b). Indeed, other than the single decision out of
14 the Eastern District, the defendants have been unable to cite to one
15 federal or state case so limiting 52.1(b). Such silence is all the
16 more remarkable given that the statute has been on the books since
17 1987. Accordingly, the Court holds that a class action is a viable
18 procedure for private parties litigating a claim under section
19 52.1(b).

20 Defendants next assert that plaintiffs cannot bring a suit for
21 monetary damages for a violation of sections seven or thirteen to
22 article one to the California Constitution. On this point,
23 defendants are on firm footing as the California Supreme Court has
24 held litigants cannot bring a damage claim directly under those
25 sections to the California Constitution, in part because alternative
26 statutory and/or common law causes of action remain available to
27
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1 redress such grievances.² See Katzberg v. Regents of Univ. Cal.,
2 29 Cal.4th 300, 303 (2002). Accordingly, plaintiffs' third cause of
3 action for violations of sections seven and thirteen to article one
4 to the California Constitution is hereby **DISMISSED**.

5 This leaves the last point raised by defendants - that the
6 failure of class representatives Karen Craft and Elroy Hardy to file
7 a California Tort Claim with the County prior to filing suit bars
8 those representatives' ability to recover on any of the state law
9 claims asserted in the complaint.

10 Before a party can file a tort action seeking monetary damages
11 against state or local officials, he or she must first present a
12 timely claim with the appropriate governmental body for its
13 consideration. See CAL. GOVT. CODE §§ 905.2, 915(b); Mazzola v.
14 Feinstein, 154 Cal. App.3d 305 (1984). In the words of the
15 California Supreme Court, "[c]ompliance with the claims statutes is
16 mandatory; and failure to file a claim is fatal to the cause of
17 action." City of San Jose v. Superior Court, 12 Cal.3d 447, 452
18 (1974); see also Karim-Panahi v. Los Angeles Police Dept., 839 F.2d
19 621 (9th Cir. 1988) (holding that failure to comply with state-
20 imposed procedural conditions to sue the state bars consideration of
21 even pendent state law claims by the federal courts).

22 Craft and Hardy admit that they never presented a claim to the
23 County Board of Supervisors before the instant suit was filed.
24 (Opp. at 2-3). They argue, however, that they did not need to as
25

26 ² Defendants have not argued that plaintiffs' effort to
27 seek monetary damages for violations of sections one or seventeen
28 to article one to the California Constitution is similarly barred
and, accordingly, those claims remain undisturbed by this Court's
ruling.

1 another class representative, Ranettee Sanchez, had done so before
2 the suit was filed. This argument is predicated upon the California
3 Supreme Court's holding in San Jose. There the court held that an
4 administrative claim may be filed on behalf of a class such that
5 individual claims need not be filed by each class member. For this
6 to happen, however, the court noted the information presented in the
7 tort claim filed with the governmental body must be in "substantial
8 compliance" with the Government Code section's 910 statutory
9 requirements.

10 Here, Sanchez's tort claim submitted to the County Board of
11 Supervisors was done so on her on behalf as well as "all others
12 similarly situated" who have been "wrongly subjected to strip and
13 body cavity searches while in the custody of the San Bernardino
14 County Sheriff's Department." Defendants concede that Sanchez's
15 tort claim substantially complied with the statute for purposes of
16 her individual claim. They dispute whether it did so for purposes
17 of making out a class claim. Whether the phrase "all others
18 similarly situated" would constitute substantial compliance was left
19 open by the California Supreme Court. Two California appellate
20 court decisions, however, have shed some light on the subject. See
21 Eaton v. Ventura Port District, 45 Cal.App.3d 862 (1975); Dhuyvetter
22 v. City of Fresno, 110 Cal.App.3d 659 (1980).

23 Both California courts started from the proposition that, "in
24 order for a class claim to be considered to substantially comply
25 with Government Code section 910, it must contain sufficient
26 information to enable the governmental entity . . . to reasonably
27 determine the circumstances which it is claimed give rise to
28 liability and the possible outer limits of that liability." Eaton,

1 45 Cal.App.3d at 868. That means that "the circumstances of the
2 occurrence and a description of the liability" set forth in the
3 class claim must "establish a well-defined community of interest in
4 questions of law and fact" so as "to portray [a] community of
5 interest." Id. at 869. Class claims containing "diverse and
6 individualized" theories of liability or factual scenarios
7 underlying those theories do not meet this test. Id.

8 In Eaton the class claim sought relief for "all [those]
9 similarly situated, who were owners of boats and other property
10 damaged, and/or destroyed or lost at the Ventura Marina in San
11 Buenaventura, California," "when, as a result of abnormally heavy
12 rains, the Santa Clara River overflowed, flooded the marina and
13 damaged boats and other property located there." The facts and
14 legal theories underlying the plaintiffs' were widely divergent. As
15 the court noted: "Some plaintiffs are lessees who leased varying
16 types of space in the marina, some are not. Some plaintiffs had
17 boats damaged, others lost them entirely. Some plaintiffs suffered
18 damage to other types of personal property. Some plaintiffs
19 apparently suffered personal injury, others did not."

20 The same divergence was also apparent in the legal theories
21 pressed by plaintiffs: "The claimed liability of the several
22 defendants varies according to their particular relationship to or
23 activity in connection with the marina in terms of diverting and
24 channeling the Santa Clara River, construction of the marina,
25 operation of the marina or providing police protection in the area."

26 The court held that such wide divergence and diversity in terms
27 of the factual and accompanying legal nature of the allegations
28 pressed in the class claim did not articulate a "community of

1 interest" sufficient to make it reasonable for the governmental
2 defendants to "determine the circumstances which it is claimed give
3 rise to the liability and the possible outer limits of that
4 liability." As the court succinctly stated: "The only common
5 feature appearing in the various allegations is the flooding of a
6 river."

7 In Dhuyvetter, the class claim was filed "on behalf of named
8 property owners adjacent to the Fresno Airport and 'those residing
9 with them' and 'on behalf of all persons similarly adversely
10 affected by jet aircraft operations at Fresno Air Terminal," namely
11 "damages resulting from overflights of airplanes using the air
12 field, alleging such inconveniences as noise, air pollution, etc.,
13 and diminution of property value." Later the plaintiffs sought to
14 amend their complaint to include the children of the homeowners as
15 additional class members. The question for the court was whether
16 the class claim provided sufficient notice that the children of the
17 homeowners were potential litigants. The court held that it was.
18 "[T]heir residence and the locale and source of the personal
19 injuries allegedly inflicted were the same as those of their
20 parents."

21 The Court finds that the class claim presented by Sanchez is
22 closer to that in Dhuyvetter than Eaton. Defendants' principal
23 argument in this regard is that Sanchez's claim makes reference to a
24 multitude of causes of action from "intentional infliction of
25 emotional distress" to "battery" to "conversion" to "false
26 imprisonment." To defendants such multiplicity is indicative of a
27 divergence of interests defeating any possibility that there exists
28 a community of interests among the class members sought to be

1 identified in Sanchez's claim. Defendants' argument would have much
2 to it if the various legal theories identified in Sanchez's claim
3 were tethered to a multitude of factual scenarios giving rise to
4 them. That, however, is not the case. As plaintiffs' counsel
5 persuasively noted during the oral argument the manifold of legal
6 theories identified in Sanchez's claim were listed as potential
7 avenues of recovering for the single act of the defendants in strip
8 searching all detainees. Thus, unlike Eaton, there does not appear
9 to be as much factual or legal diversity in the nature of the claim
10 pressed. All relate to a finite event - the allegedly "unnecessary,
11 unreasonable and illegal strip and body cavity searches" of those in
12 the County's custody. It is true that the legal and factual
13 justification sanctioning such searches would vary individual to
14 individual, but the nature of the claim pressed was that such
15 individualized suspicion was totally lacking as the County had a
16 policy to conduct the wholesale strip searching of individuals
17 regardless of the nature of the offense bringing them into the
18 defendants' custody.

19 Admittedly, Craft is listed in the complaint as a class
20 representative for those who were "taken from jail to court,"
21 "became entitled to release after going to court" and were
22 subsequently "strip and/or visual body cavity searched before
23 release." (Second Am. Compl. ¶ 42). This subset in the class,
24 however, was picked up by Sanchez's class claim that the injury she
25 suffered occurred "upon claimant's return to jail from the San
26 Bernardino courthouse and while in custody of the San Bernardino
27 Sheriff's Department."

28 The fact that class representatives Craft and Hardy did not

1 file a California Tort Claim prior to the filing of the instant suit
2 does not serve to foreclose their ability to pursue any of the state
3 law claims pressed in their complaint as one of the class
4 representatives did submit a class claim beforehand that was in
5 substantial compliance with Government Code section 910.

6 Accordingly, plaintiffs' section 1983 claim against Sheriff
7 Penrod in his official capacity is **DISMISSED**, and that portion
8 of plaintiffs' third cause of action for violations of sections
9 seven and thirteen to article one of the California Constitution is
10 **DISMISSED**. In all other respects, defendants' motion to dismiss is
11 **DENIED**.

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13 Date: 3-21-06

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17 STEPHEN G. LARSON
18 UNITED STATES DISTRICT JUDGE
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