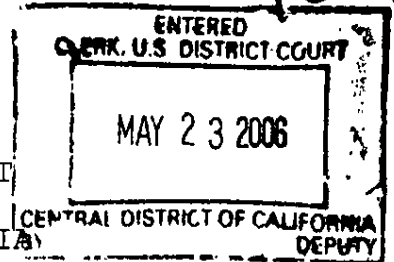


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ELVETA LOUISE FRANCIS,
individually, and as class
representative,

Plaintiff,

v.

STATE OF CALIFORNIA;
CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.

Defendants.

Case No. CV 04-00039 DDP (RZx)

ORDER GRANTING DEFENDANTS' MOTION
TO DISMISS FOURTH AMENDED
COMPLAINT

[Motion filed on April 24, 2006]

This matter is before the Court on the defendants' motion to
dismiss, or, in the alternative, for judgment on the pleadings.
After reviewing the parties' papers, the Court grants the motion.

I. Background

A. Factual Background

On September 6, 2000, the plaintiff, Elveta Louise Francis
(the "plaintiff") was convicted in California state court,
sentenced to a term of three years, and ordered to pay \$79,442.60
in restitution. (Fourth Amended Complaint ("FAC") ¶ 14.) She was

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1 subsequently transferred to the California Community Correctional
 2 Center ("the 4Cs")¹ in Los Angeles, a work-release correctional
 3 facility that houses inmates who are gainfully employed in the
 4 private sector and are paying restitution as ordered by the courts.
 5 (Id. ¶ 4(c).)

6 Wages earned by an inmate of the 4Cs are paid directly to the
 7 California Department of Corrections and Rehabilitation ("CDCR")
 8 pursuant to California Penal Code § 6231. (Id. ¶ 23.) These
 9 monies are administered through Inmate Trust Accounts ("ITAs") that
 10 are managed by the Director of the CDCR. The CDCR uses an inmate's
 11 after-tax wages to reimburse the inmate for employment related
 12 costs including transportation, special tools or clothing, meals
 13 away from the center, union dues, and other employee-mandated
 14 costs. Cal. Pen. Code § 6231(b). The CDCR distributes any
 15 remaining wages as follows: one third is transferred to the CDCR to
 16 pay the costs of operating and maintaining the 4Cs; one-third is
 17 paid as restitution to the inmate's victims; and one-third is
 18 placed in a savings account for the inmate, to be used for the
 19 inmate's personal needs or to provide her family with support (the
 20 "tripartite division"). (Id.)

21 On August 13, 2002, the plaintiff's probation officer informed
 22 her that, according to the Statement of Restitution Obligations,
 23 issued by the CDCR's Office of Victim Services and Restitution

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25 ¹ In 2001, defendant Volunteers of America ("VOA") and the
 26 California Department of Corrections and Rehabilitation ("CDCR")
 27 entered into a contract under which VOA began operating two
 28 restitution centers. La Cienega houses male inmates and Pico Union
 houses female inmates. The plaintiff was originally incarcerated
 in the 4Cs, but she then transferred to Pico Union. (FAC ¶¶ 11-
 12.)

1 ("OVSR"), the balance owing on her restitution account was
2 \$79,370.50. (FAC ¶ 15.) The plaintiff's restitution obligation
3 had thus decreased by only \$72.10 over approximately two years.
4 (Id. ¶ 18.) However, records obtained from the accounting office
5 of the 4Cs showed that \$6,323.80 had been credited toward her
6 restitution obligation as a result of her earnings during the same
7 period. (Id.) The plaintiff alleges that the difference between
8 these two amounts remains unexplained. (Id.) The plaintiff also
9 alleges that the CDCR has failed to reimburse her for her
10 employment related costs. (Id. ¶ 21.)

11 B. Procedural Background

12 On November 2, 2005, the plaintiff filed a Fourth Amended
13 Complaint ("FAC") against (1) the State of California, the CDCR,
14 the 4Cs and the OVSR (the "Public Entity Defendants"); (2) seven
15 individuals (the "Public Employee Defendants" or the "Policy Making
16 Defendants," in the complaint the Public Entity Defendants and the
17 Public Employee Defendants are collectively the "Government
18 Defendants"); and (3) VOA. (FAC ¶¶ 4-5, 8-9.) The FAC alleges
19 that the defendants failed to maintain accurate accounts of
20 inmates' restitution accounts and failed to credit inmates for
21 monies earned by the inmates for the purpose of reducing their
22 restitution debt. (Id. ¶¶ 18-23(d), 26.) The plaintiff also
23 alleges that the defendants failed to reimburse inmates for
24 employment-related expenses, including transportation, special
25 tools or clothing, and meals away from the center. (Id. ¶¶ 23,
26 26.)

27 The plaintiff alleges five causes of action under 42 U.S.C. §
28 1983: (1) Fourteenth Amendment due process violation against all of

1 the defendants; (2) Fourteenth Amendment equal protection violation
2 against all of the defendants; (3) Fifth Amendment takings
3 violation against the Public Entity Defendants and VOA; (4)
4 Fourteenth Amendment due process violation for negligent
5 supervision, training and retention against the Public Employee
6 Defendants, and (5) Eighth Amendment excessive fines violation
7 against the Public Entity Defendants. (Id. ¶¶ 35-43, 45-47,
8 51-61.) In addition, the plaintiff alleges state claims under
9 Article I, §§ 7 and 19 of the California Constitution, California
10 Civil Code § 526(a), and common law.² (Id. ¶¶ 44-48, 48-50, 62-
11 113.) The plaintiff seeks actual damages, punitive damages,
12 attorney's fees and costs, declaratory and injunctive relief, and a
13 proper accounting of the plaintiff's and class members' trust
14 and/or restitution accounts. (Id. ¶¶ 114-116, 118-122.)
15 Additionally, the plaintiff seeks restitution for the defendants'
16 failure to reimburse inmates' employment-related costs. (Id. ¶
17 117.)

18 On March 17, 2006, the plaintiff filed a motion for
19 certification of a failure to credit class and a failure to
20 reimburse class. The Court vacated the motion. The defendants now
21 move the Court to dismiss the federal claims. The plaintiff has
22 also filed a renewed motion for class certification.

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27 ² On January 12, 2006, the Court dismissed the plaintiff's
28 causes of action for unlawful handling of funds and fraud. (See
Order Granting in Part and Denying in Part Mot. to Dismiss Fourth
Amended Complaint, Jan. 12, 2006 at 7-9.)

1 **II. Discussion**

2 A. Legal Standard

3 Dismissal under Rule 12(b)(6) is appropriate "only if it is
4 clear that no relief could be granted under any set of facts that
5 could be proved consistent with the allegations." Newman v.
6 Universal Pictures, 813 F.2d 1519, 1521-22 (9th Cir. 1987) (quoting
7 Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)). Accordingly,
8 the Court must "accept all factual allegations of the complaint as
9 true and draw all reasonable inferences in favor of the nonmoving
10 party." Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912,
11 923 (9th Cir. 2001) (citation omitted). Nonetheless, "conclusory
12 allegations of law and unwarranted inferences are insufficient to
13 defeat a motion to dismiss" Adams v. Johnson, 355 F.3d 1179,
14 1183 (9th Cir. 2004).

15 B. Analysis

16 The defendants move the Court to dismiss the plaintiff's
17 federal claims on several grounds.

18 1. Standing and Mootness

19 The defendants argue that the plaintiff does not have standing
20 to bring her federal claims because the CDCR credited her account
21 on February 3, 2004, and discharged her from parole on April 12,
22 2005. Therefore, the defendants argue, the plaintiff does not have
23 a stake in the outcome of this case. (Defs.' Mot. 6.)

24 Standing is determined at the commencement of litigation.
25 White v. Lee, 227 F.3d 1214, 1243 (9th Cir. 2000). The plaintiff
26 filed this action on September 22, 2003. At that time, the CDCR
27 had not credited the plaintiff's account or discharged her from
28 parole. Therefore, she has standing to bring claims against the

1 defendants for failure to credit her account. Further, the CDCR
2 has not reimbursed the plaintiff for her employment-related
3 expenses. Therefore, she also has standing to bring claims against
4 the defendants for failure to reimburse her for those expenses.

5 The defendants argue that the plaintiff's federal claims for
6 injunctive and declaratory relief are moot because the CDCR
7 credited her account and discharged her from parole. (Defs.' Mot.
8 7.) The plaintiff's claims for injunctive relief are moot because
9 the CDCR discharged her from parole and she no longer owes
10 restitution. See Cooney v. Edwards, 971 F.2d 345-346 (9th Cir.
11 1992). However, voluntary cessation of allegedly illegal conduct
12 does not make a case moot. United States v. W.T. Grant Co., 345
13 U.S. 629, 632 (1953). Therefore, the fact that the CDCR credited
14 the plaintiff's account after she filed this lawsuit does not moot
15 her claim for declaratory relief. Furthermore, the plaintiff filed
16 this class action suit so that the other individuals who worked in
17 the restitution centers and did not receive credit could obtain
18 declaratory and injunctive relief without having to file individual
19 lawsuits. The CDCR is not allowed to moot each individual's action
20 by crediting their account after they file a lawsuit. Therefore,
21 the plaintiff's class claims for declaratory and injunctive relief
22 are not moot. In addition, the plaintiff's claim for restitution
23 for failure to reimburse employment-related costs is not moot, as
24 the CDCR has failed to reimburse any of the expenses.

25 2. All Federal Claims Against the Public Entity
26 Defendants

27 The plaintiff alleges causes of action under § 1983 against
28 the Public Entity Defendants for violations of the Fourteenth

Amendment, the Fifth Amendment and the Eighth Amendment. However, the state and state agencies are not subject to § 1983 actions. Arizonans for Official English v. Arizona, 520 U.S. 43, 69 (1997).

The plaintiff concedes that the FAC alleges the Fourteenth Amendment due process and equal protection claims against all of the defendants, but alleges the Fifth Amendment and the Eighth Amendment claims only against the Public Entity Defendants, i.e., the state and state agencies. (Opp'n 11-12.) The plaintiff seeks leave to amend to add the individual Public Employee Defendants to both claims. (Id.) However, the plaintiff had four opportunities to properly plead her claims. Therefore, the Court dismisses the Fourteenth Amendment claims against the Public Entity Defendants with prejudice, and dismisses the Fifth Amendment and Eighth Amendment claims with prejudice.

3. Fourteenth Amendment Claims Against the Public Employee Defendants and VOA

The plaintiff alleges causes of action against the Public Employee Defendants and VOA for violations of the due process and equal protection clauses of the Fourteenth Amendment. In addition, the plaintiff alleges a cause of action against the Public Employee Defendants (also called the Policy Making Defendants) for negligent training and supervision in violation of the due process clause of the Fourteenth Amendment.

I. Due Process

The plaintiff alleges that the Public Employee Defendants and VOA failed to credit the inmates' accounts and failed to reimburse them for employment-related expenses in violation of their due process rights under the Fourteenth Amendment. (FAC ¶¶ 35-39.)

1 The Supreme Court has held that "the Due Process Clause is
2 simply not implicated by a negligent act of an official causing
3 unintended loss of or injury to life, liberty, or property."
4 Daniels v. Williams, 474 U.S. 327, 328 (1986). The allegations in
5 the plaintiff's complaint do not assert that the defendants'
6 failure to credit and failure to reimburse the inmates constituted
7 anything more than negligent actions. (See FAC ¶¶ 18-23(d), 26.)
8 Specifically, the plaintiff does not allege that the defendants
9 acted intentionally or deliberately. Therefore, the Court finds
10 that the plaintiff's due process claim fails.

11 ii. Equal Protection

12 The plaintiff alleges that the Public Employee Defendants and
13 VOA treated the restitution inmates differently by taking monies
14 from them and depriving them of their property without due process
15 of law in violation of the Fifth Amendment. (FAC ¶¶ 45-47.)

16 On January 12, 2006, the Court denied the defendants' motion
17 to dismiss the plaintiff's federal and state equal protection
18 claims, finding that the plaintiff had sufficiently pled both
19 claims. However, the Court may revise its rulings at any time
20 before the entry of judgment. Fed. R. Civ. P. 54(b); see also
21 United States v. Houser, 804 F.2d 565, 567 (9th Cir. 1986) (all
22 rulings of a trial court are subject to revision at any time before
23 the entry of judgment). Upon further review, the Court finds that
24 the plaintiff has not alleged facts to support a Fourteenth
25 Amendment equal protection claim. Prisoners are not a suspect
26 class. Glauner v. Miller, 184 F.3d 1053, 1054 (9th Cir. 1999).
27 Therefore, to state a claim under § 1983, the plaintiff must show
28 that the unequal treatment between prisoners bears no relation to a

1 legitimate governmental objective. Coakley v. Murphy, 884 F.2d
2 1218, 1221-1222 (9th Cir. 1989). The plaintiff does not allege any
3 facts to show that the restitution inmates received different
4 treatment from other inmates. Further, the plaintiff does not
5 allege any facts to show that the defendants' actions bear no
6 relation to a legitimate governmental objective.

7 iii. Negligent Training and Supervision

8 The plaintiff alleges that the Public Employee Defendants
9 (also called the Policy Making Defendants) were negligent in
10 training and supervising personnel, and that the defendants did
11 this with deliberate indifference to the plaintiff's constitutional
12 rights. (FAC ¶¶ 8, 51-56); see also Canton v. City of Harris, 489
13 U.S. 378, 386-87 (1989). For supervisory liability, the plaintiff
14 must demonstrate a causal connection between the supervisor's
15 conduct and the constitutional violation. MacKinney v. Nielsen, 69
16 F.3d 1002, 1008 (9th Cir. 1995). Thus, a negligent training and
17 supervision claim is derivative of the underlying violation.
18 However, the Court finds that the plaintiff does not allege a
19 constitutional violation by the defendants. Therefore, the
20 plaintiff's negligent training and supervision claim fails.

21 The plaintiff had four opportunities to properly plead her
22 claims. Therefore, the Court is inclined to dismiss all of the
23 federal claims against the Public Employee Defendants and VOA with

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1 prejudice, and to remand this case to state court for adjudication
2 of the plaintiff's remaining state law claims.

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4 **III. Conclusion**

5 Based on the foregoing reasons, the Court grants the
6 defendants' motion and remands this case to state court.

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9 IT IS SO ORDERED.

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12 Dated: 5-22-06

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14 DEAN D. PREGERSON
15 United States District Judge
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