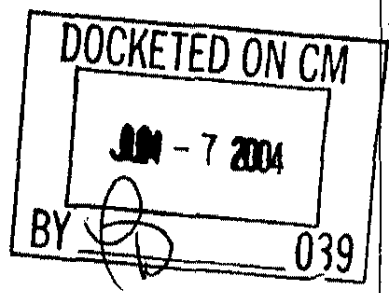
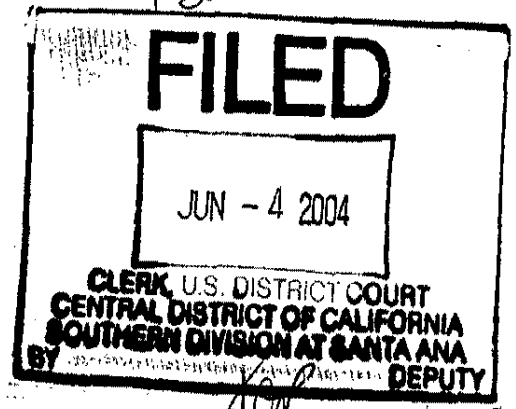


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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

12	FRED PIERCE, et al.,	)	Case No. SA CV 01-981-GLT(MLGx)
13	Plaintiffs,	)	
14	vs.	)	ORDER ON DEFENDANT'S MOTION TO
15	COUNTY OF ORANGE, et al.,	)	DISMISS THE FIFTH AMENDED
16	Defendants.	)	COMPLAINT
17		)	

18 Defendant Orange County's motion to dismiss the Fifth Amended  
19 Complaint is DENIED.

20 I. BACKGROUND

21 Plaintiffs, pre-trial detainees at four Orange County jails,  
22 brought class action claims under 42 U.S.C. § 1983 against Defendants  
23 Orange County and Sheriff Michael Carona alleging violations of  
24 Plaintiffs' civil rights, rights established under Stewart v. Gates, 450  
25 F.Supp. 583 (C.D. Cal. 1978), constitutional rights, and the Americans  
26 with Disabilities Act ("ADA"). Plaintiffs allege Defendants, in  
27 violation of Stewart, impermissibly denied Plaintiffs seats in holding  
28 cells, outdoor exercise, day room and telephone access, fifteen minute

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1 meal breaks, visitation, and also violated the ADA and the United  
2 States and California constitutions. Plaintiffs seek injunctive relief  
3 and monetary damages.

4 In July 2003, Plaintiffs stipulated to dismiss the state law  
5 claims against Defendant Orange County from the Fourth Amended  
6 Complaint. In March 2004, the Court granted Defendant Carona's summary  
7 judgment on all counts, granted Defendant Orange County summary judgment  
8 on Plaintiffs' claims for mental and emotional damages,<sup>1/</sup> and  
9 decertified the damages class.

10 In April 2004, the Court granted Plaintiffs leave to file a Fifth  
11 Amended Complaint ("5AC"), but noted all prior rulings, including  
12 Plaintiffs' voluntary dismissals of claims and parties, would apply to  
13 the 5AC. The 5AC contains all prior allegations, and adds state law  
14 claims against Defendant Orange County.

15 Defendant Orange County, the only remaining named defendant, now  
16 moves to dismiss the 5AC, arguing the new state claims are barred by:  
17 (1) the Court's earlier orders and Plaintiffs' voluntary dismissal; (2)  
18 California immunity provisions; and (3) Plaintiffs' failure to file  
19 claims under the California Tort Claims Act.<sup>2/</sup> Defendant also contends  
20 Plaintiffs' federal claims must be dismissed because Plaintiffs failed  
21 to comply with the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. §  
22 1997e.<sup>3/</sup>

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23  
24 <sup>1/</sup> Plaintiff Timothy Conn's claims for mental and emotional  
damages arising from his van accident were not dismissed.

25 <sup>2/</sup> In its reply, Defendant appears to abandon its argument  
26 regarding the California Tort Claims Act. It will not be  
27 addressed any further.

28 <sup>3/</sup> In an earlier ruling on Defendant's motions for summary

(continued...)

1 II. DISCUSSION

2 The function of a Rule 12(b)(6) motion is to test the legal  
3 sufficiency of the claims stated in the complaint. The Court construes  
4 the complaint in the light most favorable to Plaintiffs and accepts all  
5 well-pleaded factual allegations as true. See Cahill v. Liberty Mut.  
6 Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). Dismissal is proper  
7 only where there is either a "lack of a cognizable legal theory or the  
8 absence of sufficient facts alleged under a cognizable legal theory."  
9 Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990).  
10 Thus, the question is whether the facts alleged, if true, would entitle  
11 Plaintiffs to any form of relief. See Conley v. Gibson, 355 U.S. 41,  
12 45-46 (1957); Parks Sch. of Bus., Inc. v. Symington, 51 F.3d 1480, 1484  
13 (9th Cir. 1995).

14 A. The Court's Earlier Orders and Plaintiffs' Dismissal

15 Defendant first argues Plaintiffs' new state law claims should be  
16 dismissed because Plaintiffs dismissed all state claims against  
17 Defendant Orange County in July 2003, and the Court's earlier order  
18 granting leave to file the 5AC indicated this dismissal would apply to  
19 the 5AC. Plaintiffs contend their dismissal was only to damages causes  
20 of action, and any dismissal of equitable and injunctive claims was  
21 either inadvertent or without prejudice.

22 The stipulation is not limited to damages claims, but voluntary  
23

24 \_\_\_\_\_  
25 <sup>3/</sup>(...continued)

26 judgment, the Court held these PLRA arguments were untimely and  
27 had been waived. Defendant does not address this earlier ruling  
28 in its moving or reply papers, or explain why these earlier-  
addressed arguments are timely brought in this motion. The  
defense twice moved to dismiss earlier complaints, but failed to  
argue non-exhaustion under the PLRA. These arguments are waived  
and will not be addressed further.

1 dismissals are without prejudice. See Fed. Rule Civ. Proc. 41(a)(1).  
2 The Court's order granting leave to file the 5AC does not make  
3 Plaintiffs' earlier dismissal a dismissal with prejudice.

4 The Court ordered no further discovery on Plaintiffs' new state  
5 law claims, and there does not appear to be any prejudice to Defendant  
6 from the addition of these equitable and injunctive claims. Defendant's  
7 motion to dismiss on this basis is DENIED.

8 B. Immunity

9 Defendant next contends the immunities in California Government  
10 Code §§ 844.6<sup>4/</sup> and 845.2<sup>5/</sup> bar Plaintiffs' new state law claims,  
11 regardless of the relief sought.<sup>6/</sup> Plaintiffs argue these immunity  
12 provisions are inapplicable because they seek only injunctive and  
13 equitable relief. See Cal. Govt. Code § 814 ("Nothing in this part  
14 affects liability based on contract or the right to obtain relief other  
15 than money or damages against a public entity or public employee."); see  
16 also Gates v. Superior Court, 32 Cal.App.4th 481, 494 (1995) ("Section  
17 845 is only an immunity from the payment of monetary damages – it is  
18 inapplicable to a suit for equitable relief.").

19 In support of its position, Defendant cites Schooler v. State of  
20 California, 85 Cal.App.4th 1004 (2000). In Schooler, the plaintiff  
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22 <sup>4/</sup> "[A] public entity is not liable for ... [a]n injury to  
23 any prisoner...." Cal. Govt. Code § 844.6.

24 <sup>5/</sup> "[N]either a public entity nor a public employee is  
25 liable for failure to provide a prison, jail or penal or  
26 correctional facility or, if such facility is provided, for  
27 failure to provide sufficient equipment, personnel or facilities  
28 therein." Cal. Govt. Code § 845.2.

<sup>6/</sup> Defendant initially asserted immunity under Government  
Code §§ 820.2 and 820.8, but appears to have abandoned these  
sections in its reply. These sections will not be addressed.

1 argued the immunity in Government Code § 831.25 did not apply because he  
2 sought only injunctive and equitable relief. Id. at 1013. The  
3 California Court of Appeal rejected this argument because the equitable  
4 and injunctive relief the plaintiff sought was merely an end-run around  
5 immunity, undercutting the legislative policy of § 831.25 (reducing the  
6 state's financial burden from "injuries caused by natural conditions of  
7 public land"). Id. at 1014. The court explained "any 'relief' allowed  
8 under section 814 cannot create duties that immunity provisions guard  
9 against." Id.

10 Defendant contends the same circumstances are present here, i.e.,  
11 the equitable and injunctive relief Plaintiffs seek will undercut the  
12 County's immunities, and the Court should follow the result in Schooler.  
13 The Court disagrees.

14 The relevant portion of Schooler dealt with a unique factual  
15 scenario, and the holding of the case is narrow: a plaintiff cannot use  
16 a claim for equitable and injunctive relief to circumvent the financial  
17 protections immunity provides a governmental entity. These facts are  
18 not present here.


19 Unlike Schooler where the plaintiff sought to use equitable and  
20 injunctive relief to impose a duty to maintain a property the state did  
21 not otherwise have a duty to maintain, Plaintiffs here seek to enforce  
22 compliance with mandatory state jail regulations, the California  
23 Disabled Persons Act, and the due process and equal protection clauses  
24 of the California Constitution. Plaintiffs are not seeking to expose  
25 the County to financial burdens it would not otherwise have incurred, as  
26 Defendant is already under the duty to comply with these laws.

27 Defendant's motion to dismiss on this basis is DENIED.

28 III. DISPOSITION

1 Defendant Orange County's motion to dismiss the Fifth Amended  
2 Complaint is DENIED. The June 7, 2004, hearing is ordered off-calendar.

3  
4 DATED: June 4, 2004

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7 GARY L. TAYLOR  
UNITED STATES DISTRICT JUDGE

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