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8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

11 S.A. THOMAS and E.L. GIPSON,) Case No. CV 04-08448 DDP (SHx)
 12)
 12 Plaintiffs,) ORDER GRANTING IN PART AND
 13) DENYING IN PART SUPERVISOR
 13 v.) DEFENDANTS' MOTION TO DISMISS AND
 14) FOR SUMMARY JUDGMENT
 14 LEROY BACA, MICHAEL)
 15 ANTONOVICH, YVONNE BURKE,) [Motion filed on 3/10/05]
 15 DEANE DANA, DON KNABE,)
 16 GLORIA MOLINA, and ZEV)
 16 YAROSLAVSKY,)
 17)
 17 Defendants.)

18
 19 This matter is before the Court on a motion to dismiss and for
 20 summary judgment brought by six current and former Los Angeles
 21 County Supervisors. After reviewing the papers submitted by the
 22 parties and considering the arguments raised therein, the Court
 23 grants in part and denies in part the motion and adopts the
 24 following order.

26 I. Background

27 The plaintiffs in this case, Steve Thomas and Eric Gipson,
 28 were detained in the Los Angeles County Jail during May, June, and

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1 July 2004. (First Amended Complaint ("FAC") ¶¶ 15-20.) Both
2 plaintiffs allege that they were forced to sleep on the floor of
3 their cells during their detentions. (FAC ¶¶ 19-20.) Further
4 Thomas alleges that he was over-detained for two days following his
5 ordered release date. (FAC ¶ 17.) The plaintiffs bring claims for
6 violations of their Fourth and Fourteenth Amendment rights against
7 Los Angeles County Sheriff Leroy Baca, six Los Angeles County
8 Supervisors, and ten unknown named defendants.¹ (FAC ¶ 25.) They
9 bring their claims as representative of two classes of Los Angeles
10 County jail inmates who have suffered identical injuries. (FAC ¶¶
11 30-46.)

12 The FAC sets out four theories as the bases for the
13 supervisors' liability in this action. First, the FAC alleges that
14 prior decisions by the supervisors to indemnify County officers
15 from punitive damage awards were made in bad faith and proximately
16 caused a violation of the plaintiffs' constitutional rights. (FAC
17 ¶ 13.) Second, the FAC alleges that the supervisors failed to
18 appropriate sufficient funds for the County Sheriff's Department,
19 and that this failure proximately caused the constitutional
20 violations suffered by the plaintiffs. (FAC ¶ 28.) Third, the FAC
21 alleges that the supervisors failed to investigate prior police
22 misconduct, discipline officers, and otherwise exercise appropriate
23 supervision over the Sheriff's Department, and that these omissions
24 proximately caused the plaintiffs' injuries. (FAC ¶ 14, 28.)

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26 ¹ The six Los Angeles County Supervisors named as defendants
27 in this action are: Michael Antonovich, Yvonne Burke, Deane Dana,
28 Don Knabe, Gloria Molina, and Zev Yaroslavsky (the "supervisors").
As discussed below, the supervisors allege that Deane Dana is not
currently a Los Angeles County Supervisor and hasn't been one since
1996.

1 Fourth, the FAC alleges that the supervisors conspired with Sheriff
2 Baca and other County officers to violate the plaintiffs'
3 constitutional rights. (FAC ¶ 26-28.) The plaintiffs sue "[e]ach
4 and every defendant" on the basis of both personal and official
5 liability. In this motion, the supervisors move to dismiss the
6 claims brought against them in their individual capacities.

7
8 **II. Discussion**

9 **A. Legal Standard**

10 Dismissal under 12(b)(6) is appropriate when it is clear that
11 no relief could be granted under any set of facts that could be
12 proven consistent with the allegations set forth in the complaint.
13 Newman v. Universal Pictures, 813 F.2d 1519, 1521-22 (9th Cir.
14 1987). The court must view all allegations in the complaint in the
15 light most favorable to the non-movant and must accept all material
16 allegations - as well as any reasonable inferences to be drawn from
17 them - as true. North Star Int'l v. Arizona Corp. Comm'n, 720 F.2d
18 578, 581 (9th Cir. 1983). The court need not accept conclusory
19 legal assertions as true. Benson v. Arizona State Bd. of Dental
20 Exam'rs, 673 F.2d 272, 275-76 (9th Cir. 1982).

21 **B. Plaintiffs' Punitive Damage Indemnification Theory**

22 The plaintiffs allege that prior decisions by the supervisors
23 to indemnify County officers from punitive damage awards were made
24 in bad faith and proximately caused a violation of the plaintiffs'
25 constitutional rights. (FAC ¶ 13.) The supervisors contend that
26 because they never voted to indemnify punitive damages, this theory
27 of liability must be dismissed.

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1 In their motion, the supervisors cite for support Trevino v.
2 Gates, 99 F.3d 911 (9th Cir. 1996). In that case, the Ninth
3 Circuit held that "[a] city council does not violate section § 1983
4 if it indemnifies officers against punitive damage awards on a
5 discretionary, case by case basis, and complies in good faith with
6 the requirements of Cal. Gov. Code § 825(b)." Id. at 918; see also
7 Cunningham v. Gates, 229 F.3d 1271, 1292-93 (9th Cir. 2000). Thus,
8 to prove a § 1983 claim against the supervisors in this action, the
9 plaintiffs must demonstrate that the supervisors indemnified
10 officers against punitive damages without individualized
11 consideration and in bad faith. If they prove this, they still
12 bear the additional burden of proving that the "rubberstamped"
13 indemnifications proximately caused the plaintiffs' injuries.

14 The supervisors argue that the plaintiffs have not presented
15 any facts showing that the supervisors ever approved such awards,
16 even though the County maintains a public internet site that
17 catalogs all their past votes. The plaintiffs, however, dispute
18 this assertion and present evidence of County payment in settlement
19 of an action that had resulted in a punitive damages award. Thus,
20 the supervisors' argument is premature. At this stage, the Court's
21 task is not to examine the evidence, but rather to review the
22 complaint to see if "it appears beyond doubt that the plaintiff can
23 prove no set of facts in support of his claim which would entitle
24 him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). With
25 regard to the punitive damage indemnification theory, the
26 plaintiffs have set out allegations that, if proven true, would
27 permit them to seek relief under Trevino. For this reason, the
28 Court denies this part of the supervisors' motion. If, following

1 discovery, the evidence shows that there is no genuine issue of
2 material fact, summary judgment would be appropriate.²

3 C. Plaintiffs' Inadequate Funding Theory

4 The supervisors next move to dismiss the plaintiffs' theory
5 that the their failure to adequately fund the Sheriff's Department
6 caused the violation of the plaintiffs' constitutional rights. The
7 supervisors contend that this theory of liability is precluded by
8 absolute legislative immunity. See San Pedro Hotel Co., Inc. v.
9 City of Los Angeles, 159 F.3d 470, 476 (9th Cir. 1998). The
10 plaintiffs respond that such absolute immunity only extends to
11 legislative acts, and that the acts in question were not
12 legislative.

13 "Legislators are entitled to 'absolute common-law immunity
14 against civil suits for their legislative acts, which is parallel
15 to the immunity provided by the Speech or Debate Clause.'" San
16 Pedro Hotel, at 476 (quoting Chappell v. Robbins, 73 F.3d 918, 920
17 (9th Cir. 1996)). A unanimous Supreme Court has held that "[l]ocal
18 legislators are entitled to absolute immunity from
19 § 1983 liability for their legislative activities." Bogan v.
20 Scott-Harris, 523 U.S. 44, 54 (1998). To determine whether an act
21 is legislative a court should consider two questions: (1) whether
22 the act involves "ad hoc decisionmaking, or the formulation of
23 policy," and (2) whether the act applies "to a few individuals, or
24 to the public at large." Chappell, 73 F.3d at 920.

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26 _____
27 ² While the supervisors point out that the plaintiffs'
28 counsel lost on this issue twice before, the Court notes that he
did so only after failing to present evidence in his support at the
summary judgment stage. See, e.g., Moore v. Baca, 2002 WL 1040997,
at *4.

1 Here, the plaintiffs allege that the supervisors failure to
2 fund the Sheriff's Department resulted in the plaintiffs being
3 forced to sleep on the floor of the county jail as well as the
4 over-detention of plaintiff Thomas. Budget decisions bear all "the
5 hallmarks of traditional legislation." Bogan, 523 U.S. at 55.
6 They reflect discretionary policymaking that determines the
7 services the County provides to its citizens. Perhaps, most
8 importantly, they require tradeoffs that apply to the public at
9 large, and thus inevitably leave some portion of the citizenry
10 dissatisfied. Such decisions inherently involve the formulation of
11 policy and affect the public at large. See Chappell, supra at 920.
12 The traditional and best means of recourse for this dissatisfaction
13 is that ultimate check on legislative abuse, the electoral process.
14 Accordingly, the Court finds that this theory of liability is
15 precluded by the supervisors' absolute legislative immunity. "The
16 exercise of legislative discretion should not be inhibited by
17 judicial interference or distorted by the fear of personal
18 liability." Bogan 523 U.S. at 52.

19 D. Plaintiffs' Failure to Supervise Theory

20 The supervisors next claim that the plaintiffs' failure to
21 supervise theory is precluded because they allegedly have no
22 supervisory authority over the Sheriff's administration of the
23 county jail, and because they are entitled to both absolute and
24 qualified immunity.

25 The supervisors first argue that the Sheriff is a state actor
26 under California law, and that he is thus removed from the
27 supervisory authority of the County Board. They rely on a line of
28 California cases culminating with Venegas v. County of Los Angeles,

1 32 Cal. 4th 820 (2004). In Venegas, the California Supreme Court
2 held that, for § 1983 purposes, the Los Angeles County Sheriff is a
3 state actor protected by the Eleventh Amendment when he acts in his
4 law enforcement capacity. Id. at 839. While this is contrary to
5 prior Ninth Circuit holdings that a California county sheriff acts
6 on behalf of the county, see, e.g., Brewster v. Shasta County, 275
7 F.3d 803 (9th Cir. 2001), the supervisors point out that those
8 federal court holdings were decided without the benefit of the
9 California Supreme Court's decision in Venegas.

10 The framework for determining whether an official qualifies
11 for Eleventh Amendment immunity in § 1983 claims was set forth by
12 the United States Supreme Court in McMillian v. Monroe County,
13 Alabama, 520 U.S. 781 (1997). First, a court should "ask whether
14 governmental officials are final policymakers for the local
15 government in a particular area, or on a particular issue."
16 McMillian, 520 U.S. at 785. Second, the actual function of a
17 governmental official, in a particular area, depends "on the
18 definition of the official's functions under relevant state law."
19 McMillian, 520 U.S. at 786.

20 While state law serves as valuable evidence for this
21 determination, federal courts need not blindly accept the
22 California Supreme Court's "balancing of the different provisions
23 of state law in determining liability under § 1983." Weiner v. San
24 Diego County, 210 F.3d 1025, 1029 (9th Cir. 2000). McMillian
25 instructs that state law cannot "answer the question for us by, for
26 example, simply labeling as a state official an official who
27 clearly makes county policy." McMillian, 520 U.S. at 786. The
28 federal analysis of state law to determine § 1983 liability

1 includes an inquiry into the "state's constitution, statutes, and
2 case law." Brewster v. Shasta County, 275 F.3d 803, 806 (9th Cir.
3 2001). Therefore, this Court is not bound by the California
4 Supreme Court's recent interpretation of state law regarding
5 § 1983 liability. However, as relevant case law, it is an
6 important part of the analysis.

7 McMillian requires courts to inquire "whether governmental
8 officials are final policymakers for the local government in a
9 particular area or on a particular issue." McMillian, 520 U.S. at
10 785. McMillian "clearly instructs" that resolution of whether a
11 sheriff acts as a state or county official depends on an "analysis
12 of the precise function at issue." Brewster, 275 F.3d at 806, n.1.
13 Applying the McMillian analysis, the Ninth Circuit held that when
14 administering the county's policy for release from local jails, the
15 Los Angeles County Sheriff acts as an official for the county.
16 "[E]ven if we view the function more broadly as the oversight and
17 management of the local jail, we are compelled to agree with the
18 district court that the Sheriff acts for the County in this
19 management function." Streit v. County of Los Angeles, 236 F.3d
20 552, 561 (9th Cir. 2001). While the California Supreme Court
21 arrived at a different answer in Venegas, that case involved a
22 search of the plaintiffs' home and vehicle, acts which clearly fall
23 within the Sheriff's law enforcement authority. The facts in the
24 instant case involve the Sheriff's release and housing practices at
25 the county jails. Given this, the Court finds Brewster and Streit
26 controlling, the Sheriff is not a state actor for purposes of this
27 § 1983 suit, and the supervisors cannot preclude the plaintiffs'
28 theory of liability with this argument.

1 The supervisors next assert that they are shielded from
2 supervisory liability by both absolute and qualified immunity. For
3 the former argument, they claim that "any act of supervision by the
4 Board would be legislative in nature" and that therefore liability
5 for such acts is precluded by absolute legislative immunity,
6 discussed supra.

7 This argument proves too much. Under Bogan and San Pedro
8 Hotel, supra, local legislators receive absolute immunity only for
9 their *legislative* acts, not for their administrative or executive
10 acts. At this stage in the litigation, the Court does not know
11 what specific acts or omissions allegedly led to the deprivation of
12 the plaintiffs' civil rights. Thus, it is impossible to classify
13 them as legislative or otherwise.³ Accordingly, the Court cannot
14 say that the supervisors should receive absolute legislative
15 immunity against the claims that they failed to adequately
16 supervise the Sheriff's Department. The supervisors, however, may
17 argue absolute immunity on the plaintiffs' supervisory theory at
18 summary judgment.⁴

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20 ³ At oral argument on this motion, the plaintiffs' attorney
21 alleged that the supervisors have a practice of "burying"
22 indemnifications paid to deputies in "global settlements." If
true, it is not clear to the Court that such acts would be
legislative in nature.

23 ⁴ The supervisors refer for support to a previous order this
24 Court issued in a different, but closely related, case, Berry v.
25 Baca, CV 01-02069, Order Re Motion to Strike Defendants' Ninth
Affirmative Defense, Filed Sept. 6, 2001. See Ex. I in Defs.' Mot.
26 In that order, the Court denied the plaintiff's motion to strike
the supervisors' affirmative defense of absolute legislative
27 immunity. There is no inconsistency between that ruling and the
one here. There, the Court held that the defendants were entitled
28 to raise absolute immunity as an affirmative defense; here the
Court finds that this defense, while properly made, cannot be
adjudicated without more factual development.

1 Next, the supervisors claim that they are protected from
2 liability for failure to supervise the Sheriff's Department by the
3 doctrine of qualified immunity. This doctrine shields government
4 officials "from civil damages liability as long as their actions
5 could reasonably have been thought consistent with the rights they
6 are alleged to have violated." Anderson v. Creighton, 483 U.S.
7 635, 638 (1987). The supervisors contend that, since the federal
8 and state authorities regarding the Eleventh Amendment status of
9 Sheriff Baca are in conflict, they could not have reasonably known
10 that their supervision of the Sheriff's Department was in violation
11 of the plaintiffs' rights.

12 There is some force to this argument. To hold a government
13 official personally liable for a violation of a person's right,
14 "[t]he contours of the right must be sufficiently clear that a
15 reasonable official would understand that what he is doing violates
16 that right." Id. at 640. However, "[t]his is not to say that an
17 official action is protected by qualified immunity unless the very
18 action in question has previously been held unlawful." Id. The
19 unlawfulness must nevertheless be "apparent." Id. As already
20 discussed, it is not clear precisely which of the supervisors' acts
21 or omissions the plaintiffs believe constituted the alleged
22 violations. Therefore, it is impossible to know at this point when
23 the alleged acts or omissions occurred. The California Supreme
24 Court decided Venegas in 2004, and the supervisor defendants
25 contend that this was the decision that conflicted with federal
26 cases such as Brewster. If the alleged acts occurred prior to the
27 decision in Venegas, this argument loses merit.

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1 At oral argument, the supervisors' attorney stated that
2 because Venegas was decided prior to the plaintiffs' detentions in
3 May, June, and July 2004, the supervisors are entitled to qualified
4 immunity. This argument, however, mistakes the dates of the
5 detentions for the pertinent date for this claim. The plaintiffs
6 claim against the supervisors involves acts or omissions allegedly
7 committed by the supervisors at some time prior to their detentions
8 and which caused the alleged deprivations of the plaintiffs'
9 constitutional rights. The issue then is whether the supervisors
10 could have reasonably believed that their actions were consistent
11 with the plaintiffs' rights at the time that they acted, not at the
12 time of the plaintiffs' detentions. Because the Court does not yet
13 know when those acts occurred (if at all), it cannot determine the
14 state of the law at that time. Accordingly, this argument is
15 premature.

16 E. Conspiracy Claim

17 The supervisors next argue that the conspiracy claim contained
18 in the FAC is unsupported by specific factual allegations.
19 However, no heightened pleading standard applies to conspiracy
20 claims. All that is needed is a "short and plain statement"
21 putting the defendants on notice of the nature of the claim. Fed.
22 R. Civ. P. 8(a).

23 Here, the plaintiffs allege that

24 there was an agreement or understanding between or among all
25 defendants to engage in the conduct alleged herein to be
26 wrongful, and that there was the commission of overt acts in
27 furtherance of said conspiracies, to wit, illegally over-
28 detaining the plaintiff Thomas and forcing both plaintiffs to
sleep on the floor.

(FAC ¶ 26.) Further, "[t]he conspiracies were engaged in and the
constitutional violations were caused by the supervisors failing

1 and refusing to exercise appropriate supervision over the Sheriff's
2 Department . . ." (FAC ¶ 28.) These allegations are sufficient to
3 put the supervisors on notice of the nature of the claim. The
4 plaintiffs allege that the supervisors conspired with Sheriff Baca
5 and officers in his department to deliberately deprive the
6 plaintiffs of their constitutional rights. If the plaintiffs fail
7 to obtain material evidence in support of this claim, the
8 supervisors will have an opportunity to move for dismissal at
9 summary judgment.

10 F. Deane Dana

11 Finally, the supervisors contend that Deane Dana is not a
12 proper defendant in this case because he has not served as a county
13 supervisor since 1996. To that end, they have presented the Court
14 with a list of all the Los Angeles County Supervisors that shows
15 that Dana was last elected to the position of supervisor in 1994.
16 The plaintiffs have offered no evidence to rebut this evidence.

17 In a § 1983 action, a court should apply the forum state's
18 statute of limitations applicable to personal injury torts. Wilson
19 v. Garcia, 471 U.S. 261, 278 (1985). In California, this is two
20 years. See Jones v. Blanas, 393 F.3d 918, 927 (9th Cir. 2004).
21 Given that Deane Dana last served as a Los Angeles county
22 supervisor in 1996, it is inconceivable that he is liable for the
23 plaintiffs' injuries, which they sustained in 2004. Accordingly,
24 the Court grants the motion to dismiss Deane Dana from this case.

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26 **III. Conclusion**

27 For the foregoing reasons, the Court grants the supervisors'
28 motion in part and denies it in part. Specifically, the Court (1)

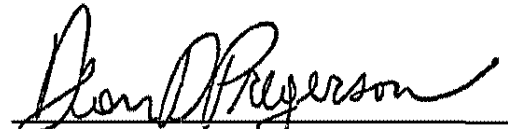
1 finds that the plaintiffs' inadequate funding theory of liability
2 is barred by the doctrine of absolute legislative immunity, (2)
3 grants the motion to dismiss Deane Dana as a defendant in this
4 action, and (3) denies the rest of the motion.

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6 IT IS SO ORDERED.

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9 Dated:

May 2, 2005



DEAN D. PREGERSON
United States District Judge

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