

**KEVIN M. SCHILLING, on behalf of himself and all others similarly situated,
Plaintiff, v. TRANSCOR AMERICA, LLC, et al., Defendants.**

No. C 08-941 SI

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

2008 U.S. Dist. LEXIS 64016

**August 11, 2008, Decided
August 11, 2008, Filed**

SUBSEQUENT HISTORY: Motion denied by, Motion granted by *Schilling v. Transcor Am.*, 2009 U.S. Dist. LEXIS 100447 (N.D. Cal., Oct. 14, 2009)

COUNSEL: [*1] For Kevin M. Schilling, Plaintiff: Andrew Charles Schwartz, LEAD ATTORNEY, Casper Meadows Schwartz & Cook, Walnut Creek, CA; Joshua Kaizuka, Mark E. Merin, Esq., LEAD ATTORNEYS, Law Office of Mark E. Merin, Sacramento, CA; Karen Leigh Snell, LEAD ATTORNEY, Karen L. Snell, Attorney at Law, San Francisco, CA.

For Transcor America LLC, Defendant: Justus C. Spillner, III, LEAD ATTORNEY, McCormick Barstow Sheppard Wayte & Carruth LLP, Fresno, CA; Matthew Edward Fletcher, LEAD ATTORNEY, Attorney at Law, Fresno, CA.

For Sgt. John Smith, Officer Blanden, Defendants: Matthew Edward Fletcher, LEAD ATTORNEY, Attorney at Law, Fresno, CA.

JUDGES: SUSAN ILLSTON, United States District Judge.

OPINION BY: SUSAN ILLSTON

OPINION

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS WITH LEAVE TO AMEND

Defendants' motion to dismiss and for a more definite statement is scheduled for a hearing on August 15, 2008. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matter is appropriate for resolution without oral argument, and VACATES the hearing. For the reasons set forth below, the Court GRANTS in part and DENIES in part defendants' motion, and GRANTS plaintiff leave to amend the complaint.

BACKGROUND

On [*2] February 14, 2008, plaintiff Kevin Schilling filed this lawsuit against Transcor America, LLC ("Transcor"), Sergeant John Smith, Officer Blanden, and Does 1-100. The complaint alleges that Transcor is a for-profit Tennessee corporation licensed to do business in California whose business entails the transportation of pretrial detainees and prisoners throughout the United States on behalf of federal, state and local governments. Complaint P 10. The complaint also alleges that at all material times, each of the defendants was acting under color of state and federal law. *Id.* P 14.

Plaintiff alleges that in or about early September 2006, he was arrested at his home in Vallejo, California on a no-bail warrant issued by a court in Las Vegas. *Id.* P 18. After being detained for several days at a detention facility in Fairfield, California, plaintiff was picked up at the detention facility by agents and/or employees of Transcor. *Id.* P 19. The complaint alleges that plaintiff was strip searched before boarding the transport van, and that he "was then handcuffed, a restraint was applied that secured his hands to his waist, and he was shackled. After boarding the transport van,

plaintiff was seated [*3] on a metal bench in a small, locked metal cage in which it was impossible for him to stand up or sit down." *Id.* The complaint alleges that for the next several days, plaintiff remained in the transport van, restrained and shackled in the metal cage, while the van meandered around California picking up and dropping off pretrial detainees and/or prisoners. *Id.* P 20. Plaintiff alleges that during approximately 6 days total in the transport van, he was provided with only two meals per day; he was not permitted to lie down, stand up, bathe, shave, brush his teeth or change his clothes; he was forced to use the on-board toilet at defendants' convenience; and aside from the steps from his cage to the toilet and back, he was allowed no physical activity. *Id.* PP 21-22. Plaintiff also alleges that after being in the van for several days, he realized that the van was headed back to Fairfield and he demanded to speak to the warden. *Id.* P 22. The complaint alleges that in response, and while he was detained as described above, defendants Blanden and Smith grabbed him, sprayed pepper spray in his face, purposely walked him into poles, and along with an unknown Transcor employee, punched him. *Id.* [*4] Plaintiff alleges that he was not allowed to see a doctor or a nurse until the transport van reached Imperial County Jail. *Id.*

Plaintiff filed this action on behalf of class consisting of all pretrial detainees and prisoners who were transported by Transcor and forced to remain in the transport van for more than 24 hours, from two years preceding the filing of the complaint to the date this case is resolved. *Id.* P 28. The complaint also alleges a similar subclass of all pretrial detainees and prisoners transported in California. *Id.* P 29. The complaint alleges claims under 42 U.S.C. § 1983 for violations of the *Fourth, Eighth and Fourteenth Amendments to the U.S. Constitution*, and the California State Unruh Act. Plaintiff seeks declaratory and injunctive relief, as well as monetary damages.

DISCUSSION

Defendants contend that plaintiff Schilling, who was a pretrial detainee when he was transported by Transcor, lacks standing to assert any claims under the *Eighth Amendment*, which defendants assert only applies to claims by convicted prisoners. Defendants also contend that Schilling lacks standing to seek injunctive and declaratory relief because the complaint does not - and could not - [*5] allege the likelihood that he would suffer a future injury, namely being arrested, charged with a crime, transported to a correctional facility by Transcor, and that he would be subjected to the same constitutional deprivations as alleged in the complaint.

Plaintiff responds, and the Court agrees, that defendants' arguments are premature and can be renewed in the context of a motion for class certification. At the time of class certification and upon a fuller factual record, the Court will consider whether Schilling could adequately represent convicted prisoners. Plaintiff also states that he will consider amending the complaint to define subclasses prior to moving for class certification. Similarly, the Court cannot determine solely on the basis of the complaint and in the absence of any discovery that plaintiff cannot maintain a claim for declaratory and injunctive relief.

Defendants also move for a more definite statement related to plaintiff's claim under the California Unruh Act. Plaintiff concedes that the complaint cites to a different California statute, the Tom Bane Act, and not the Unruh Act, and seeks leave to correct this error. The Court GRANTS plaintiff leave to so amend [*6] the complaint.

CONCLUSION

For the foregoing reasons, the Court GRANTS in part and DENIES in part defendants' motion to dismiss the complaint and for a more definite statement. (Docket No. 4). Plaintiff shall file an amended complaint no later than **August 22, 2008**.

IT IS SO ORDERED.

Dated: August 11, 2008

/s/ Susan Illston

SUSAN ILLSTON

United States District Judge