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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

11	S.A. THOMAS,	)	Case No. CV 04-08448 DDP (SHx)
12)	
12	Plaintiff,	)	ORDER GRANTING IN PART AND
13		)	DENYING IN PART PLAINTIFFS'
13	v.	)	RENEWED MOTION FOR SUMMARY
14		)	ADJUDICATION AND GRANTING IN PART
14	LEROY BACA, MICHAEL	)	AND DENYING IN PART DEFENDANTS'
15	ANTONOVICH, YVONNE BURKE,	)	MOTION FOR SUMMARY JUDGMENT, OR,
15	DEANE DANA, DON KNABE,	)	IN THE ALTERNATIVE, SUMMARY
16	GLORIA MOLINA, ZEV	)	ADJUDICATION
16	YAROSLAVSKY,)	
17		)	[Motions filed on April 3, 2006,
17	Defendants.	)	and June 28, 2006, respectively]

This matter comes before the Court on Plaintiffs' and Defendant's cross-motions for summary adjudication. After reviewing the papers submitted by the parties and considering the arguments raised therein, the Court grants in part and denies in part Plaintiffs' motion and grants in part and denies in part Defendant's motion, and adopts the following order.

I. PROCEDURAL HISTORY

S.A. Thomas and E.L. Gipson bring this class action under 42 U.S.C. § 1983 against Sheriff Leroy Baca in his official and individual capacities. The class includes pre-trial detainees and

1019

1 post-conviction prisoners who allege that they were required to
2 sleep on the floor of Los Angeles County jail facilities in
3 violation of their constitutional rights. The class is defined as
4 "individuals who, while in Los Angeles Sheriff Department ("LASD")
5 custody, were required to sleep on the floor of a LASD facility
6 with or without bedding." (Order (1) Granting Mot. Class Cert. and
7 (2) Granting Mot. Order Permit Ident. 15, May 17, 2005 ("Class
8 Cert. Order").)¹ The dates of class membership are limited from
9 December 18, 2002, to May 17, 2005. (Order Denying Pls.' Mot. Class
10 Not. 6-7, Dec. 20, 2005.) Individuals forced to sleep on the floor
11 "between December 18, 2000, and December 17, 2002, and who remained
12 in prison until at least December 18, 2002, are also included in
13 the class." (Id. 6.)

14 Plaintiffs move for summary adjudication of three issues:
15 (1) that there is a custom in the Los Angeles County jail system of
16 requiring inmates to sleep overnight on the floor because there are
17 insufficient available bunks; (2) that the custom is
18 unconstitutional; and (3) that Sheriff Baca is legally responsible
19 for the custom. (Pls.' Mot. for Summ. J. 1-2, May 24, 2006.)
20 Defendant also moves for summary judgment or, in the alternative,
21 summary adjudication. Defendant argues that he is entitled to
22 summary judgment because (1) the conditions of confinement do not
23 give rise to a constitutional violation; and (2) Defendant, in his
24 individual capacity, is entitled to qualified immunity. (Def.'s

25

26 ¹ The practice of requiring inmates to sleep on the floor
27 will hereinafter be referred to as "floor-sleeping," as it is the
28 term used by LASD officials and inmates alike. For the same
reason, inmates who sleep on the floor will be referred to as
"floor sleepers."

1 Mot. for Summ. J. 1-2, June 28, 2006 ("Def. Mot.") 1.) The Court
2 has concluded that Plaintiffs' are entitled to summary adjudication
3 that 1) there was a custom during the class period of requiring
4 inmates to sleep on the floor at LASD facilities, and 2) that the
5 custom violates the Eighth and Fourteenth Amendments to the United
6 State Constitution. The Court grants summary adjudication to
7 Defendant on the question of qualified immunity.

8

9 **II. LEGAL STANDARD**

10 A. Summary Adjudication

11 Summary adjudication of an issue, like summary judgment, is
12 appropriate where "the pleadings, depositions, answers to
13 interrogatories, and admissions on file, together with the
14 affidavits, if any, show that there is no genuine issue as to any
15 material fact and that the moving party is entitled to a judgment
16 as a matter of law" on that issue. Fed. R. Civ. P. 56(c). A
17 genuine issue exists if "the evidence is such that a reasonable
18 jury could return a verdict for the nonmoving party," and material
19 facts are those "that might affect the outcome of the suit under
20 the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S.
21 242, 248 (1986). In adjudicating a motion for summary judgment or
22 summary adjudication, the court must draw all reasonable inferences
23 in favor of the nonmoving party. Id. at 255.

24 B. Monell Liability under § 1983

25 Plaintiffs seek summary adjudication of issues related to
26 their official capacity claims against the defendant. Official
27 capacity suits provide "another way of pleading an action against
28 an entity of which an officer is an agent." Monell v. Dep't of

1 Soc. Servs., 436 U.S. 658, 690 n.55 (1978). Therefore, this suit
 2 against Sheriff Baca in his official capacity is to be treated as a
 3 suit against the County of Los Angeles.

4 The government as an entity is liable for the deprivation of
 5 a plaintiff's constitutional rights under § 1983 when "execution of-
 6 a government's policy or custom, whether made by its lawmakers or
 7 by those whose edicts or acts may fairly be said to represent
 8 official policy, inflicts the [constitutional] injury." Id. at
 9 694. While a municipal entity may not be held liable through §
 10 1983 under a respondeat superior theory, it may be found liable for
 11 a custom or persistent practice. Id. at 691, 694.

12 Here, Plaintiffs seek to establish liability based upon a
 13 custom of requiring inmates to sleep on the floor. A practice that
 14 has not received formal approval by an appropriate decision-maker
 15 may fairly subject an entity to liability on the theory that the
 16 relevant practice is so "permanent and well settled as to
 17 constitute a custom or usage with the force of law." Id. at 691
 18 (internal quotation marks omitted). Because of the causation
 19 requirement implicit in § 1983, Plaintiffs must also establish that
 20 the custom is the "moving force" behind their constitutional
 21 injuries. Bd. of the County Comm'rs v. Brown, 520 U.S. 397, 404
 22 (1997).² A custom is the moving force behind a constitutional

23
 24 ² Defendant contends that, in addition to proving that the
 25 custom was the moving force behind their injuries, Plaintiffs must
 26 also show that it constitutes deliberate indifference on the part
 27 of the government entity in order to establish municipal liability.
 28 (Def.'s Mot. 1-2.) Not so. A plaintiff must demonstrate
 deliberate indifference when it seeks to hold a municipality liable
 for "failing to prevent a deprivation of federal rights." Gebser
v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 291 (1998). Here,
 by contrast, Plaintiffs argue that an affirmative custom exists of
 (continued...)

1 violation when it is "closely related to the ultimate injury" and
2 when the plaintiff can "establish that the injury would have been
3 avoided had proper policies been implemented." Long v. County of
4 L.A., 442 F.3d 1178, 1190 (9th Cir. 2006) (internal quotation marks
5 omitted).

6 C. Constitutional Framework

7 Plaintiffs have asserted causes of action under both the
8 Eighth and Fourteenth Amendments to the United States Constitution.
9 This is because the Plaintiff class includes both pre-trial
10 detainees and post-conviction inmates. Questions about the
11 constitutionality of the conditions of pre-trial detainees "are
12 properly addressed under the due process clause of the Fourteenth
13 Amendment" because such individuals have not yet been convicted of
14 any crime. Or. Advocacy Center v. Mink, 322 F.3d 1101, 1120 (9th
15 Cir. 2003); see Bell v. Wolfish, 441 U.S. 520 (1979). Questions
16 involving the treatment of post-conviction prisoners are, by
17 contrast, addressed under the Eighth Amendment. See Farmer v.
18 Brennan, 511 U.S. 825 (1994). Because "the due process rights of
19 pretrial detainees are 'at least as great as the Eighth Amendment
20 protections available to a convicted prisoner,'" the Ninth Circuit
21 has held that, "even though the pretrial detainees' rights arise

22
23 ² (...continued)

24 requiring pre-trial and post-conviction detainees to sleep on the
25 floor. "Where a plaintiff claims that a particular municipal action
26 *itself* violates federal law, or directs an employee to do so, . .
27 .[s]ection 1983 itself contains no state-of-mind requirement
28 independent of that necessary to state a violation of the
underlying federal right." Brown, 520 U.S. at 404-05. Therefore,
Plaintiffs need not show deliberate indifference to establish a
threshold of potential liability under Monell. However, Plaintiffs
must nonetheless "establish the state of mind required to prove the
underlying violation." Id. at 405.

1 under the Due Process Clause, the guarantees of the Eighth
2 Amendment provide a *minimum standard of care* for determining their
3 rights." Mink, 322 F.3d at 1120 (quoting City of Revere v. Mass.
4 Gen. Hosp., 463 U.S. 239, 244 (1983)). As will be explained, the
5 Court finds that the custom of floor sleeping in LASD facilities
6 violates the Eighth Amendment. As the constitutional floor, an
7 Eighth Amendment violation necessarily signifies a Fourteenth
8 Amendment violation. Accordingly, the Court will rely on Eighth
9 Amendment analysis.

10 The Eighth Amendment "prohibits the infliction of 'cruel and
11 unusual punishments' on those convicted of crimes." Wilson v.
12 Seiter, 501 U.S. 294, 297 (1991) (quoting U.S. Const. amend. VIII).
13 The Supreme Court has held that this prohibition extends beyond
14 physically barbarous punishments. Estelle v. Gamble, 429 U.S. 97,
15 102 (1976). Because the Eighth Amendment "embodies 'broad and
16 idealistic concepts of dignity, civilized standards, humanity and
17 decency,'" it proscribes punishments that are "incompatible with
18 'the evolving standards of decency that mark the progress of a
19 maturing society.'" Id. (quoting Trop v. Dulles, 356 U.S. 86, 101
20 (1958)).

21 Establishing a violation has both an objective and a
22 subjective prong. The objective prong requires that the
23 "deprivation [be] sufficiently serious," because "only those
24 deprivations denying the minimal civilized measure of life's
25 necessities are sufficiently grave to form the basis of an Eighth
26 Amendment violation." Wilson, 501 U.S. at 298 (internal quotation
27 marks and citation omitted). Such necessities include "adequate
28 shelter, food, clothing, sanitation, medical care, and personal

1 safety." Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000),
2 (citing Farmer v. Brennan, 511 U.S. 825, 832 (1994)).

3 Under the subjective prong, Plaintiffs must show that "the
4 prison officials had a 'sufficiently culpable state of mind,'
5 acting with deliberate indifference." Hearns v. Terhune, 413 F.3d
6 1036, 1040 (9th Cir. 2005) (quoting Farmer, 511 U.S. at 834).
7 "'Deliberate indifference entails something more than mere
8 negligence but is satisfied by something less than acts or
9 omissions for the very purpose of causing harm or with knowledge
10 that harm will result.'" Id. (quoting Farmer, 511 U.S. at 834)
11 (internal alterations omitted).³

12
13 **III. DISCUSSION**

14 **A. Evidentiary Issues**

15 Before reaching the merits of Plaintiffs' constitutional
16 claims, several evidentiary matters must be addressed. In support
17 of their motion for summary judgment, Plaintiffs offer: (1)
18 deposition transcripts of LASD officials; (2) an August 30, 2005
19 letter to an inmate signed by Captain Timothy C. Cornell; (3) a
20 summary exhibit listing inmates who have provided information to
21 Plaintiffs' counsel concerning their own floor-sleeping; (4) a
22 summary exhibit listing floor sleepers from records provided to
23 Plaintiffs by Defendant pursuant to this Court's orders; (5)
24 Plaintiff Thomas's declaration; (6) declarations of inmates who

25
26 ³ The deliberate indifference standard does not "govern[] the
27 due process rights" of pretrial detainees; instead, analyzing Due
28 Process claims requires courts to balance the interests of the
detainees against the "legitimate interests of the state." Mink,
322 F.3d at 1120-21.

1 claim they were forced to sleep on the floor while in LASD custody;
2 (7) newspaper articles regarding floor-sleeping in LASD facilities;
3 and (8) records produced by Defendant detailing 688 additional
4 instances of floor sleeping in February 2006. Defendant also
5 offers the following evidence in support of its motion and in
6 opposition to Plaintiffs' motion: (1) the Commitment Order in the
7 criminal matter against Plaintiff Thomas issued May 17, 2005; and
8 (2) a declaration of Captain John H. Clark. Both parties have also
9 submitted excerpts of the depositions of Plaintiffs Thomas and
10 Gipson, which have been lodged with the Court.

11 1. Information Provided by Captain John H. Clark

12 Captain Clark has stated both that floor-sleeping was a daily
13 occurrence, and that on some days no inmate slept on the floor.
14 This contradictory recollection raises the question of whether a
15 genuine issue of material fact has been created about the existence
16 of daily floor-sleeping, which could preclude summary adjudication.

17 After reviewing his various testimony, The Court finds that
18 Captain Clark's inconsistent statements do not create a genuine
19 issue of material fact.

20 In his deposition, Captain Clark stated that Men's Central
21 Jail ("MCJ") has floor sleepers. (Clark Dep. 19:6-11, March 11,
22 2005.) He testified that the number of floor sleepers varies
23 "depending on the population as it moves in and out of our jail,"
24 but agreed that "from late August - very late August 2004 to date
25 [] the number of floor sleepers on any given day ranges between 35
26 and 500." (Id. at 19:17-19; 20:20-24) emphasis added.) However,
27 in a subsequent declaration attached to Defendant's opposition to
28 Plaintiffs' motion for summary adjudication, Captain Clark states:

1 [T]here are days when all inmates are afforded a bunk upon
2 which to sleep. On those occasions when some inmates are
not afforded a bunk, there are typically between zero and
3 300 such inmates." (U)

4 (Clark Decl. ¶ 4 (emphasis in original).)

5 "[A]n affidavit submitted in response to a motion for summary
6 judgment which contradicts earlier sworn testimony without
7 explanation of the difference does not automatically create a
8 genuine issue of material fact." Scamihorn v. Gen. Truck Drivers,
9 282 F.3d 1078, 1086 n.7 (9th Cir. 2002). While "minor
10 inconsistencies that result from an honest discrepancy, a mistake,
11 or newly discovered evidence afford no basis for excluding an
12 opposition affidavit," a "sham" contradiction will not preclude
13 summary judgment. Id. (internal quotation marks omitted).

14 The Court finds that Captain Clark's statement in his
15 declaration that on some days there are no floor sleepers in MCJ is
16 a "sham" contradiction, in that it is an attempt to avoid summary
17 judgment by creating an issue of fact rather than to clarify his
18 testimony. In his deposition, Captain Clark stated that counts of
19 floor sleepers are taken each day at MCJ and that the lowest number
20 of floor sleepers he could recall on any such daily count was
21 thirty five. Captain Clark's declaration does not clarify this
22 statement, but rather "flatly contradicts" it. See Kennedy v.
23 Allied Mut. Ins. Co., 952 F.2d 262, 267 (9th Cir. 1991). The Court
24 does find, however, that the portions of Captain Clark's
25 declaration in which he discusses the population at MCJ and the
26 reason for floor-sleeping clarify and supplement his prior
27 deposition. Accordingly, while those statements will be
28 considered, the Court will disregard Captain Clark's statements

1 that on some days during the relevant period there were no floor
2 sleepers.

3 2. Summary of Floor Sleepers Compiled by Plaintiffs'
4 Counsel from Records Provided by Defendant (v)

5 On May 17, 2005, the Court certified the class in this case
6 and ordered Defendant to "maintain records that identify by full
7 name and booking number each person who was required to sleep on a
8 floor, with or without bedding. The record for each person shall
9 also include the date, time and location for each occurrence."

10 (Class Cert. Order 15.) On July 1, 2005, the Court ordered
11 Defendant to produce to Plaintiffs copies of any and all records
12 that it had maintained in compliance with the May 17 Order and to
13 supplement the production at regular intervals. (See Prod. Order,
14 July 1, 2005.)

15 From those records, Plaintiffs' counsel compiled summaries of
16 floor sleepers in six LASD facilities during the period May 29,
17 2005, to September 29, 2005 ("Floor Sleeper Summaries").⁴ The
18 first summary lists 24,688 instances where individuals were
19 required to sleep on the floor.⁵ The second summary lists 5,181
20 individuals who were required to sleep on the floor for more than
21 one night. (See Pls.' Addit. Evidence.)

22 ⁴ On January 31, 2006, Plaintiffs submitted the full records
23 that Defendant produced in response to the Court's May 17 and July
24 1 Orders. (See Floor Sleeper Summaries.) On February 9, 2006 and
25 March 2, 2006, Plaintiffs submitted a summary of those individuals
required to sleep on the floor for more than one night. (See Pls.'
Tabulations of Repeat Floor Sleepers; Pls.' Addit. Evidence.)

26 ⁵ Plaintiffs' initial summary listed 24,713 instances of
27 floor sleeping. (See Floor Sleeper Summaries.) On March 2, 2006,
28 Plaintiffs filed a corrected summary of repeat floor sleepers.
Plaintiffs reduced the number of repeat floor sleepers by twenty-
five, accordingly, the number of instances of floor sleeping
considered by the Court is reduced by twenty-five.

1 The majority of the inmates slept on the floor for between two
2 and seven nights. For example, 2,523 individuals slept on the
3 floor twice, 1,148 individuals slept on the floor three times, and
4 668 slept on the floor four times. (Id.) The incidence of floor-
5 sleeping varies widely among the jail facilities. At the February
6 6, 2006 hearing on this motion, the Court ordered Defendant to file
7 notice of any objections to the summaries. Defendant Baca has
8 raised several objections to these summaries, and the Court
9 addresses them in turn.

10 i. Factual Objections

11 Defendant objects that the summary of repeat floor sleepers
12 contains misspelled names and inaccurate booking numbers. (Def.'s
13 Object. Floor Sleepers 6-7.) These are minor errors that do not
14 impact the overall accuracy of the material. Defendant also argues
15 that the summary contains an unspecified number of repeat entries
16 and that one entry incorrectly indicates that an inmate spent
17 twenty-six nights rather than two nights on the floor. (Id.)
18 Plaintiffs' counsel concedes that the actual number of repeat floor
19 sleepers is 5,181 and not 5,206 as originally calculated. (Pls.'
20 Reply to Def.'s Object. 7-9.) Further, Plaintiffs' counsel
21 concedes that one entry incorrectly listed an inmate sleeping on
22 the floor twenty six times. (Id. at 5-6.) Plaintiffs' counsel has
23 submitted a corrected summary that does not contain any substantive
24 inaccuracies.

25 ii. Rule 1006 Objection to Summary Exhibit

26 Defendant argues that the summaries fail to satisfy the
27 requirements of Federal Rule of Evidence 1006, which precludes the
28 use of summaries when the underlying records (1) are not too

1 voluminous to be conveniently examined in court; (2) are
2 inadmissible; or (3) were not made available to the opposing party
3 for inspection. See Amarel v. Connell, 102 F.3d 1494, 1516 (9th
4 Cir. 1996). This contention is without merit.

5 First, the Court finds that the underlying records of
6 thousands of instances of floor-sleeping over the course of four
7 months in multiple LASD jail facilities are too voluminous to be
8 conveniently examined.

9 Second, the underlying records upon which the summary exhibit
10 is based are admissible in evidence. Defendant objects that the
11 underlying records are inadmissible hearsay under Federal Rules of
12 Evidence 803 and 804. (Def.'s Obj. Floor-Sleepers at 5.) However,
13 the underlying records were prepared by Defendant and disclosed to
14 Plaintiffs pursuant to the Court's order. (See Class Cert. Order
15 15.) As statements made by and offered against Defendant, the
16 underlying records are not hearsay. See Fed. R. Evid. 801(d)(2)
17 (providing that a statement is not hearsay if it is offered against
18 a party and is "(C) a statement by a person authorized by the party
19 to make a statement concerning the subject, or (D) a statement by
20 the party's agent or servant concerning a matter within the scope
21 of the agency or employment, made during the existence of the
22 relationship"). Accordingly, the objection is overruled.

23 Defendant further objects that the records of floor sleepers
24 between May 28, 2005 and September 29, 2005 are inadmissible as
25 irrelevant because class membership dates from December 18, 2002 to
26 May 17, 2005 - prior to the records in question. (Def.'s Obj.
27 Floor-Sleepers 2; see also Order Denying Pls.' Mot. Class Notif.)

28

1 Although the incidents of floor-sleeping referred to in the
2 summary exhibit occurred after the class period closed, "'post-
3 event evidence' may be used to prove the existence of a municipal
4 policy in effect at the time" of the alleged constitutional
5 violation, and indeed "may be highly probative with respect to that
6 inquiry." Henry v. County of Shasta, 132 F.3d 512, 519 (9th Cir.
7 1997), as amended on denial of rehearing, 137 F.3d 1372 (9th Cir.
8 1998). In the instant case, evidence that over 24,000 instances of
9 floor-sleeping occurred in the four month period immediately
10 following the close of the class is "highly probative" as to the
11 likelihood that the practice was similarly in place during the
12 class period.

13 Third and finally, Defendant's objection that the underlying
14 materials were not made available to Defendant is overruled because
15 the underlying materials belong to Defendant. Accordingly, the
16 Court finds that the summary exhibit satisfies Federal Rule of
17 Evidence 1006.

18 3. Declaration of Plaintiff Thomas

19 Defendant objects to a number of paragraphs within Plaintiff
20 Thomas's Declaration of August 28, 2006. (See Decls. and Exs. in
21 Opp. to Mot. Sept. 11, 2006 ("Decls. & Exs."), Thomas Decl. 4-7.)
22 Defendant objects to each paragraph, except the first, on the
23 grounds that it either lacks foundation, is inadmissible hearsay,
24 is vague and ambiguous, or irrelevant. (Def.'s Obj., Oct. 6, 2006,
25 6-8.) These objections are overruled. Defendant further objects
26 to paragraphs 25 through 31 on the grounds that they concern an
27 incarceration that is not alleged in the operative pleading and is
28 therefore irrelevant. (Id.).

1 As alleged in the Third Amended Complaint ("TAC"), during the
2 relevant period Thomas was incarcerated once, from May 17, 2004 to
3 June 23, 2004. (TAC ¶ 15.) Defendant contends that Thomas was a
4 post-conviction prisoner, rather than a pretrial detainee during
5 that incarceration. (Def.'s Mot. at 6.) Thomas concedes he was a
6 post-conviction prisoner during that period. (Thomas Dep. 11-22.)
7 However, he also raises for the first time a previous occasion
8 during which he was forced to sleep on the floor of a LASD facility
9 while he was a pre-trial detainee in March of 2003. (See Pls.'
10 Stmt. of Genuine Issues 2 ("Plaintiff Thomas also previously was
11 incarcerated at the LASD Jail in March 2003 as a pretrial detainee
12")) The Court finds that Plaintiff Thomas's reference to
13 his 2003 detention is irrelevant because it was not alleged in the
14 operative pleadings.

15 As such, the Court grants Defendant's motion to strike
16 paragraphs 25 through 31 of Plaintiff Thomas's declaration and
17 considers Plaintiff Thomas to have been a post-conviction inmate at
18 all times relevant to the instant case.

19 4. Declarations of Inmates Regarding Floor Sleeping

20 i. 1,150 Declarations of Floor Sleepers

21 Plaintiffs submitted 1,150 declarations of persons who alleged
22 they were forced to sleep on the floor of various LASD facilities.
23 (Evid. in Support of Pls.' Mot., April 3, 2006.) Defendant
24 objects to a number of declarations.

25 a. Irrelevancy

26 Defendant objects to 56 declarations as irrelevant because
27 they contain allegations unrelated to floor-sleeping. In fact, the
28 majority of these declarations describe in detail the conditions in

1 which the declarants were required to sleep on the floor. To the
2 extent that the declarations describe general conditions of
3 confinement that existed in combination with floor-sleeping - such
4 as the existence of staphylococcus infections, overflowing toilets,
5 vermin infestations, overcrowded cells, violent fights over which
6 inmate would receive a bunk, etc. - those allegations are
7 admissible. See Wilson, 501 U.S. at 304 (noting that the totality
8 of the conditions of confinement may in combination establish a
9 constitutional violation "when they have a mutually enforcing
10 effect that produces the deprivation of a single, identifiable
11 human need"). To the extent, however, that a number of
12 declarations include allegations unrelated to floor-sleeping, such
13 as denial of medical care, retaliation by jail officials, and food
14 poisoning, to name a few, such allegations are not relevant to the
15 instant case and are not admissible.

16 b. Vague and Ambiguous

17 Defendant objects to 87 declarations on the grounds that they
18 are impermissibly vague and ambiguous because "[t]he declarants
19 cannot identify the specific dates or lengths of time for which
20 they purportedly slept on the floor." (Def.'s Obj. 8-11, April 27,
21 2006.) Whether these declarants remember the exact dates they
22 slept on the floor is immaterial to the declarations'
23 admissibility. The allegation that an inmate slept on the floor of
24 an LASD facility, even without mention of the dates and length of
25 time, is probative on the existence of a custom of floor sleeping.

26 c. No Allegation of Floor Sleeping in LASD
27 Facilities

28 ///

1 Upon the objection of Defendant, the Court strikes the
2 declarations of Stephen Razo, Edward Reed, Ricky Saldenas, and
3 Lawrence Johnson because they do not state that the declarant was
4 required to sleep on the floor or do not allege floor-sleeping in
5 an LASD facility. Insofar as these declarations are admitted to
6 establish the existence of a custom of floor-sleeping, the Court
7 will only consider the declarations to which Defendant has not
8 specifically objected. The 74 declarations that allege physical
9 injuries or harm that resulted from floor-sleeping are not
10 admissible to prove that the declarants' injuries were caused by
11 floor-sleeping. However, they are admissible to show that certain
12 illnesses, staphylococcus infections in particular, occur within
13 the Los Angeles County jail system.

14 B. Existence of a Custom of Floor Sleeping

15 Plaintiffs contend that their evidence establishes that no
16 reasonable jury could find that a custom of floor did not exist in
17 the Los Angeles County jail system during the class period.⁶ The
18 Court agrees.

19 A custom is a "longstanding practice . . . which constitutes
20 the standard operating procedure of the local government entity."
21 Menotti v. City of Seattle, 409 F.3d 1113, 1151 (9th Cir.
22 2005) (internal citation omitted). "Isolated or sporadic incidents"

23

24 ⁶ Indeed, Plaintiffs urge the Court to apply a presumption
25 that a custom of floor-sleeping exists. In Thompson v. City of Los
26 Angeles, 885 F.2d 1439 (9th Cir. 1989), the Ninth Circuit applied a
27 presumption that there was a custom of floor-sleeping in the Los
28 Angeles County jail system because such a custom had been found to
exist just seven years earlier in Rutherford v. Pitchess, 475
F.Supp. 104 (C.D. Cal. 1978). At present, however, because nearly
eighteen years have elapsed since Thompson, the Court will not
presume that a custom of floor-sleeping persists.

1 are insufficient to establish liability; an "improper custom . . .
2 [must be] founded upon practices of sufficient duration, frequency
3 and consistency that the conduct has become a traditional method of
4 carrying out policy." Id.; cf. Meehan v. County of Los Angeles,
5 856 F.2d 102, 107 (9th Cir. 1988) (two incidents are not sufficient
6 to establish a custom).

7 Plaintiffs have presented evidence that, according to
8 Defendant's own records, over 24,000 instances of floor sleeping
9 throughout the Los Angeles County jail system occurred in just a
10 four month period. (Pls.' Add'l. Evid. 2-3, Jan. 17, 2006.) In
11 addition, 885 individuals submitted declarations that documented
12 their floor sleeping ordeals at LASD facilities. According to the
13 deposition of Captain Clark, on any given day in Men's Central Jail
14 alone there are anywhere from thirty five to 500 floor sleepers.
15 (Clark Dep. 20:6-12, March 11, 2005). Other LASD officials saw
16 inmates lying on the floor of the Inmate Reception Center ("IRC")
17 between April 2004 and January 2005, (Decls. and Exs., Ex. 10, Yim
18 Decl. 12:10-13:10), and explained that if an inmate admitted to the
19 IRC does not complete processing by nighttime, he is not moved to a
20 bunk until he is permanently housed unless he has medical or mental
21 health issues, (id. Ex. 11 at 143, Klugman Dep. 32:15-23). A
22 different LASD official, Captain Cornell, confirmed in a letter
23 that floor-sleeping is "a necessary result of temporary
24 insufficient bed space to accommodate every inmate." (Pls. Add'l
25 Brief. on Mot., Ex. 2, March 6, 2006.)

26 The class representatives provide vivid examples of when and
27 how floor-sleeping occurs in LASD facilities:

28 ///

1 Plaintiff E.L. Gipson was a pre-trial detainee while in LASD
2 custody and therefore represents class members who were pre-trial
3 detainees when they were forced to sleep on the floor. Plaintiff
4 Gipson has, at various times, been in custody at several LASD jail
5 facilities, including the Twin Towers Correctional Facility, Men's
6 Central Jail, and the Pitchess Detention Center. Gipson's
7 deposition reveals that from the moment he was admitted to Twin
8 Towers in 2004, he was forced to sleep on the floor.

9 While being processed, Gipson was held in a holding cell with
10 approximately 200 other inmates for approximately forty-eight
11 hours. (Gipson Dep. vol. I, 77:15 - 78:79.) Within the holding
12 cell, there were twenty benches, each of which could seat ten
13 people, but no place to sleep. (Id. 78:10-16.) As a result,
14 Gipson and the other inmates were forced to lie down on the floor
15 to sleep. (Id. 80:18.) After spending forty-eight hours in that
16 holding cell, Plaintiff Gipson stated that he was moved to a second
17 cell, "maybe 10 by 20, . . . [where there were] people laying down
18 like snakes huddled all up together trying to get rest because
19 they're tired from being up for 48 hours or whatever." (Id. 82:14-
20 22.)

21 Plaintiff Gipson explained that after spending several hours
22 in that cell, he was taken to a third, virtually identical cell
23 where he was held for twenty-four to forty-eight hours, again
24 without a bunk. (Id. 84:2-23.) Once Gipson was eventually moved
25 to a module, he was assigned to a day room without a bunk on which
26 to sleep. (Id. 85:24 - 87:3.) When he arrived, the only available
27 place for him to place his mattress was on the floor directly under
28 the staircase. (Id. 87:4-9.) On yet another occasion, Gipson was

1 required to sleep on the floor of a shower, where he was held along
2 with sixty other inmates, none of whom were provided bunks or a
3 bed. (Id. vol. 2, 177:25 - 179:16.)

4 During another incarceration in 2004 at Men's Central Jail,
5 Gipson again was not provided a bunk and was forced to sleep on the
6 floor. (Id. vol. I 112:1, 9-11.) He was placed in a six-man cell
7 that was already filled to capacity when he arrived, such that he
8 had no choice but to sleep on the floor. He described the cell as
9 follows:

10 THE WITNESS: Okay. The cell is about 6 feet by 12
11 feet, I guess, or 8 feet by 12. It has six bunks and
12 a toilet. And I had to sleep on the floor in that
13 cell on a wet mattress that was by the toilet.

14 (Id. 111:12-25.)

15 The following excerpt from Plaintiff Gipson's deposition
16 provides one of the most illuminating descriptions of the
17 conditions in which inmates are forced to sleep on the floor:

18 [Plaintiffs' Counsel]: What conditions [in the jail] are
19 you talking about?

20 THE WITNESS: Okay. Five days of processing, . . . just
21 sitting on benches until you fall off into - you're just so
22 tired, you lay on the floor and you just wait and wait and
23 wait. And you're laying down with - packed on the floor,
24 cement, cold, with no blanket, nothing . . . and it's just 40
25 men in a 10-man day tank.

26 [Plaintiffs' Counsel]: What about at night?

27 THE WITNESS: It didn't matter if it was - you didn't know
28 if it was day or night. It just didn't matter. You were just
there until you fall out. And you have to rest. So you end
up on the floor with 30 other guys . . . until you said you're
not going to lay down on the floor, but you just don't have a
choice. You know, that breaks you. It makes you feel bad.

Q. How does that in particular make you feel bad?

A. Because, after that, you finally get processing [sic]
and they send you to a dirty, nasty cell, a six-man cell or a
five-man cell, and you're the sixth man, and you got to sleep
under a bunk.

And you think about hurting somebody. You think about -
you're bigger than that guy that's got a bunk, and you want to
take him off the bunk and smash him down and take his bunk,

1 but, you know, why you have to do this? Why should I have to
2 go through that? You think about that, and it just tears you
up inside.

3 And then you sleep on the floor and your back hurts, and
4 you're in pain . . . You can't do nothing. You feel like
5 you're just in a bad nightmare, like a - you know, they used
to talk about prisons in other countries, but that's right
here in Los Angeles County jail, the same conditions.

6 (Id. 52:19 - 54:12.)⁷

7 Plaintiff S.A. Thomas was a post-conviction inmate while in
8 LASD custody and thus represents post-conviction inmates required
9 to sleep on the floor. Plaintiff Thomas was also forced to sleep
10 on the floor. In his declaration, Thomas described the following:

11 13. The day room was very crowded, and there was only
12 about ten inches between my mattress and the mattress of
13 another inmate.

14 14. The only place I could find to sleep was under a
15 stairway leading up to a second tier which housed suicidal
16 inmates.

17 (Decls. and Exs., Thomas Decl. 3:13-18.)⁸

18 Defendant acknowledges that floor sleeping occurred during the
19 relevant period, but stresses that the vast majority of inmates
20 have a bunk on which to sleep. (Def. Opp. to Mot. at 9.)

21 Defendant Baca argues that if MCJ housed 5,400 inmates on a given
22 day, and 300 slept on the floor, 94.4% of inmates would receive a

23 ⁷ Although cleanliness and sanitation are not the focus of
24 the instant inquiry, the Court notes that Gipson reported seeing
25 vermin and roaches on a daily basis, (Gipson Dep. vol. I, 127:12-
26 23), that the bedding he did receive was wet, (id. 113:9-10), and
that he was forced to sleep in "molded and mildewed" rooms, (id.
vol. 2, 177:25-179:16). He also developed a staphylococcus
infection on his left heel during his ordeal that required
hospitalization; Gipson believed he contracted the infection from
the standing water on the floor of the cell in the area he was
required to sleep. (id. vol. I, 114:18-118:25)

27 ⁸ Like Gipson, Thomas reported unsanitary conditions suffered
28 by floor sleepers; he also developed chronic back and shoulder pain
during the period when he was forced to sleep on the floor. (Thomas
Dep. 49:29, 52:9-15.)

1 bunk on which to sleep. (Id. 11) Therefore, Baca contends that
2 "[w]hen the uncontroverted evidence demonstrates that a full 94.4%
3 of inmates at Men's Central Jail sleep on a bunk in the worst case
4 scenario, it would be improper to issue a ruling that suggests all
5 inmates sleep on the floor." (Id. 14.)

6 The Court is not persuaded. Plaintiffs are not asking for a
7 ruling that "all inmates sleep on the floor," nor does the law
8 require such a showing in order to establish the existence of a
9 custom. Plaintiffs have submitted sufficient evidence, based in
10 important part on Defendant's own records, to prove that it is the
11 "'standard operating procedure' of the local government entity" to
12 require inmates to sleep on the floor when there are insufficient
13 bunks available, and that, over the period of relevant time,
14 multiple inmates were denied bunks on a daily basis. Menotti, 409
15 F.3d at 1151. That the majority of inmates receive a bunk on which
16 to sleep does nothing to rebut the consistency with which many
17 inmates are forced to sleep on the floor, a practice that occurred
18 as frequently as 24,000 times over the course of just four months.
19 See Thompson, 885 F.2d at 1448-49 (holding that there was a
20 rebuttable presumption of floor sleeping in LASD facilities because
21 seven years earlier "the county jail was often not providing each
22 inmate with a bed" (emphasis added)); Anela v. City of Wildwood,
23 790 F.2d 1063, 1069 (3d Cir. 1986) (holding that city defendant
24 could be held liable for custom of unconstitutional prison
25 conditions, including floor-sleeping, where the evidence "revealed
26 a longstanding condition that had become an acceptable standard and
27 practice," and where the city "offered no evidence rebutting the
28 absence of beds or mattresses"). Drawing all inferences in favor

1 of Defendant Baca, the Court finds that no reasonable jury could
2 find that a custom of floor-sleeping did not exist in the Los
3 Angeles County jail system during the class period. See Anderson,
4 477 U.S. at 248. Accordingly, the Court grants Plaintiffs' motion
5 for summary adjudication on the existence of a custom of floor-
6 sleeping.

7 C. Constitutionality of Floor-Sleeping at LASD Facilities

8 Plaintiffs seek summary adjudication of whether this custom of
9 floor sleeping is unconstitutional. (See TAC ¶ 25; Reply 22.) The
10 Court finds that the practice of requiring inmates to sleep on the
11 floor of LASD jails violates the Eighth Amendment.

12 1. Objective Prong - Floor Sleeping is Sufficiently
13 Serious

14 The Court finds that Defendant's custom of floor-sleeping is,
15 objectively, a sufficiently serious deprivation of "the minimal
16 civilized measure of life's necessities" to warrant protection by
17 the Eighth Amendment. Wilson, 501 U.S. at 298 (internal quotation
18 marks omitted). With this conclusion the Court must,
19 unfortunately, join in nearly thirty years of judicial recognition
20 and condemnation of the practice in LASD facilities.

21 Judge William Gray first identified floor-sleeping at LASD
22 facilities as unconstitutional in 1978. See Rutherford v.
23 Pitchess, 457 F. Supp. 104 (C.D. Cal. 1978), aff'd in part and
24 rev'd in part on other grounds, 710 F.2d 572 (9th Cir. 1983), rev'd
25 sub nom., Block v. Rutherford, 468 U.S. 576 (1984)). In that case,
26 a class of pre-trial detainees and post-conviction inmates
27 challenged various conditions of confinement at Los Angeles County
28 Central Jail, including the practice of floor-sleeping. The court

1 concluded that it was "intolerable" that some inmates were "obliged
2 to sleep on mattresses on the concrete floor of the cell or of the
3 walkway that fronts a row of cells." Id. at 109. He explained
4 that "[i]f the public . . . finds it necessary to incarcerate a
5 person, basic concepts of decency, as well as reasonable respect
6 for constitutional rights, require that he be provided a bed." Id.
7 (internal quotation marks omitted).⁹

8 Eleven years later, the Ninth Circuit confirmed that floor-
9 sleeping in LASD facilities could violate the Constitution.
10 See Thompson v. City of Los Angeles, 885 F.2d 1439 (9th Cir. 1989).
11 In that case, the court, relying on the findings in Rutherford,
12 reversed the district court's grant of summary judgment in favor of
13 the defendant, holding that the plaintiff's "uncontroverted
14 allegation that he was provided with neither a bed nor even a
15 mattress unquestionably constitutes a cognizable" constitutional
16 claim."¹⁰ Id. at 1448.

17 Defendant Baca argues that Thompson is distinguishable because
18 Plaintiffs here were generally afforded mattresses. The
19

20 ⁹ The court did not expressly indicate whether its ruling
21 hinged upon the Eighth or the Fourteenth Amendment. See
22 Rutherford, 457 F. Supp. at 108 (quoting Supreme Court cases about
23 both Amendments). However, the court's reliance on the Eighth
24 Amendment "evolving standards of decency" language, as well its
25 recognition that the class included post-conviction inmates - the
conditions of whom are governed by the Eighth Amendment - suggests
that its conclusion was at least in large part rooted in Eighth
Amendment analysis. See id. (quoting language regarding the Eighth
Amendment from Trop v. Dulles, 356 U.S. 86, 100 (1958)).

26 ¹⁰ Because that case dealt with a pre-trial detainee
27 plaintiff, the court used Fourteenth Amendment, rather than Eighth
28 Amendment, analysis. Thompson, 885 F.2d at 1448. However, its
reliance on Rutherford indicates that it may have questioned the
constitutionality of the practice under the Eighth Amendment as
well.

1 Court cannot agree. Nothing in the Ninth Circuit's reasoning
2 hinged on the lack of a mattress, rather than the lack of a bunk.
3 To the contrary, the court emphasized cases holding that "a jail's
4 failure to provide detainees with a mattress and bed or bunk runs
5 afoul of the commands of the Fourteenth Amendment." Id. (emphasis
6 added) (citations omitted). The issue of whether floor-sleeping
7 with mattresses is unconstitutional was not before the court in
8 Thompson. Nevertheless, its reliance on Rutherford - which held
9 unconstitutional the practice of forcing inmates to sleep on a
10 mattress on the floor - suggests that the Ninth Circuit views
11 floor-sleeping, with or without a mattress, as offending "basic
12 concepts of decency, as well as reasonable respect for
13 constitutional rights," id., language that directly implicates the
14 Eighth Amendment.

15 Following in the footsteps of this jurisprudence, the Court
16 finds that requiring inmates to sleep on the floor deprives them of
17 a minimum measure of civilized treatment and access to life's
18 necessities because access to a bed is an integral part of the
19 "adequate shelter" mandated by the Eighth Amendment. Johnson, 217
20 F.3d at 731. The "routine discomfort inherent in the prison
21 setting" may not state a constitutional claim, id., but depriving
22 inmates of beds goes deeper. The Constitution clearly does not
23 allow prisoners to suffer the deprivation of adequate food or
24 water. See id. at 730 (identifying a cognizable constitutional
25 violation when inmates alleged they were, inter alia, given
26 "spoil[ed]" food and limited water for several days). Just so,
27 prisons may not deprive those in their care of a basic place to
28 ///

1 sleep - a bed; for like wearing clothing, sleeping in a bed
2 identifies our common humanity.

3 That many individuals, for cultural or health reasons, choose
4 to sleep on the floor in no way detracts from this point. A
5 predilection for camping under the stars or the soothing touch a
6 hard futon may have on a sore back is entirely different in kind
7 from stripping an individual of the option of using a bed. Quite
8 simply, that a custom of leaving inmates nowhere to sleep but the
9 floor constitutes cruel and unusual punishment is nothing short of
10 self-evident.

11 The Court is not alone in finding that a minimum degree of
12 civilized conduct demands such a conclusion. In Lareau v. Manson,
13 651 F.2d 96, 107-08 (2d Cir. 1981) (emphasis added), for example,
14 the Second Circuit affirmed the district court's ruling that
15 "forcing men to sleep on mattresses on the floors" violates the
16 Eighth Amendment because it does "not provide minimum decent
17 housing under any circumstances for any period of time."
18 Similarly, the Third Circuit, in holding that a county's remedial
19 plan to improve conditions in its jail would satisfy Eighth and
20 Fourteenth Amendment requirements of adequate shelter if, inter
21 alia, it provided inmates with "bunk-type beds of their own,"
22 characterized forced floor-sleeping, even with mattresses, as an
23 "unsanitary and humiliating practice." Union County Jail Inmates
24 v. Di Buono, 713 F.2d 984, 996, 1001 (3d Cir. 1983); see also Lyons
25 v. Powell, 838 F.2d 28, 30 (1st Cir. 1988) (holding that floor-
26 sleeping with mattress stated cognizable Fourteenth Amendment
27 violation); Anela, 790 F.2d at 1069 (same, in light of Lareau and
28 Union County); Albano v. Mitchell, No. C 97-3781, 1998 WL 101743,

1 at *1 (N.D. Cal. Feb. 24, 1998) (unpublished) (noting that
 2 allegations of floor-sleeping "may be sufficient to implicate
 3 denial of the minimum civilized measures of life's necessities");
 4 Loya v. Bd. of County Comm'rs, No. CV 91-216, 1992 WL 176131, at *2
 5 (D. Idaho May 4, 1992) (unpublished) (noting its own previous
 6 holding that "sleeping on the floor is constitutionally
 7 prohibited"); Balla v. Bd. of Corr., 656 F. Supp. 1108, 1114 (D.
 8 Idaho 1987) (enjoining floor-sleeping and characterizing it as
 9 "dehumanizing, intolerable and certainly of no penological
 10 benefit"); Capps v. Atiyeh, 495 F. Supp. 802 (D. Or. 1980) (holding
 11 that overcrowded conditions which led to practices including floor-
 12 sleeping violated the Eighth Amendment); Stewart v. Gates, 450 F.
 13 Supp. 583, 588 (C.D. Cal. 1978) (holding floor-sleeping
 14 unconstitutional).¹¹

15 The basic humanity inherent in providing access to a bed
 16 highlights the practice of forced floor-sleeping as one of the
 17 unconstitutional effects of prison overcrowding. While
 18 "[o]vercrowding itself is not a violation of the Eighth
 19 Amendment[, i]t can, under certain circumstances, result in
 20 specific effects which can form the basis for an Eighth Amendment
 21 violation." Hoptowit v. Ray, 682 F.2d 1237, 1248-49 (9th Cir.
 22 1982). This makes sense. Overcrowding is not itself the

23
 24 ¹¹ The Court is not persuaded by the decisions Defendant
 25 cites from other circuits summarily holding that floor-sleeping
 26 does not state a constitutional violation. See, e.g., Mann v.
 27 Smith, 796 F.2d 79, 85 (5th Cir. 1986) (holding claim that floor-
 28 sleeping is unconstitutional was "meritless" because "Mann has
 cited no case holding that the Constitution requires elevated beds
 for prisoners, and we know of no source for such a right."); Hamm
v. DeKalb County, 774 F.2d 1567, 1575 (11th Cir. 1985) (upholding
 grant of summary judgment for the defendant without considering the
 detailed facts of the floor sleeping).

1 constitutional harm; it is merely the reason behind the harm. As
2 the Ninth Circuit has emphasized, overcrowding "may dilute other
3 constitutionally required services such that they fall below the
4 minimum Eighth Amendment standards, and it may reach a level at
5 which the shelter of the inmates is unfit for human habitation."
6 Id. Forcing inmates to sleep on the floor stoops to that
7 unconstitutional level.¹²

8 International guidelines support this basic right. See, e.g.,
9 Roper v. Simmons, 543 U.S. 551, 578 (2005) (considering
10 "international opinion" in Eighth Amendment analysis); Atkins v.
11 Virginia, 536 U.S. 304 (2002) (same). For example, the United
12 Nations Standard Minimum Rules for the Treatment of Prisoners,
13 which contain guidelines regarding confinement conditions and set
14 forth minimum acceptable prison conditions, provide that "[e]very
15 prisoner shall, in accordance with local or national standards, be
16 provided with a separate bed, and with separate and sufficient
17 bedding which shall be clean when issued, kept in good order and
18 changed often enough to ensure its cleanliness." United Nations

19
20
21 ¹² For this reason, the Court does not subscribe to an
22 interpretation of the Eighth Amendment that protects only inmates
23 who have suffered some external, physical harm as a result of the
24 floor-sleeping. See, e.g., Ramirez v. City and County of San
25 Francisco, No. C. 89-4528, 1997 WL 33013, at *7 (N.D. Cal. Jan. 23,
26 1997) (concluding that "courts limit relief to those cases in which
27 inmates have suffered harm from sleeping on the floor"). It is the
28 degradation inherent in the forced floor-sleeping itself that is
the harm. See Thompson, 885 F.2d at 1448 (holding floor-sleeping
to present a cognizable constitutional claim without mention of any
external harm). Nevertheless, the Court cannot help but note that
Plaintiffs in this case have presented evidence that they suffered
significant external harm from the filthy conditions in which they
were forced to sleep on the floor, including back pain requiring
medical treatment, coughing from the dust and grime, staphylococcus
infections, exposure to leaking sewage, and exposure to cockroaches
and vermin. (Gipson Dep. 115:18-116:7, 121:7, 128:6-22.)

1 Standard Minimum Rules for Treatment of Prisoners, E.S.C. Res. 663
2 C (XXIV), U.N. ESCOR, 24th Sess., Supp. No. 1, ¶ 19, U.N. Doc
3 E/3048 (1957) (amended 1977) (emphasis added); see Lareau, 651 F.2d
4 at 106 (relying on these standards in assessing the meaning of
5 "adequate shelter" and holding floor-sleeping unconstitutional).

6 Defendant asks the Court to excuse the existence of floor-
7 sleeping because of the need to segregate prisoners for security
8 reasons. (Def.'s Opp'n 9.) According to Defendant, because "an
9 inmate of one classification cannot be indiscriminately placed with
10 inmates of other classifications," certain individuals may be
11 required to sleep on the floor even if a bunk is available with
12 inmates of another classification. (Clark Decl. ¶ 9.) In other
13 words, Defendant contends that the need to classify a large inmate
14 population causes, and thereby justifies floor-sleeping. The Court
15 disagrees.

16 Prisons have a legitimate interest in "maintain[ing] security
17 and order at the institution," and they may impose restrictions
18 that are reasonably related to that interest. Bell v. Wolfish, 441
19 U.S. 520, 540 (1979). However, as explained, access to a bed is a
20 fundamental human necessity under the Eighth Amendment. A
21 restriction that violates that constitutional floor cannot possibly
22 be reasonable. See Johnson v. California, 543 U.S. 499, 511 (2005)
23 (noting that "the integrity of the criminal justice system depends
24 on full compliance with the Eighth Amendment" and that
25 "[m]echanical deference to the findings of state prison officials
26 in the context of the eighth amendment would reduce that provision
27 to a nullity in precisely the context where it is most necessary"
28 (internal quotation marks omitted)).

1 Further, were there sufficient bunks to accommodate all
2 inmates once they are classified, inmates would not be required to
3 sleep on the floor. In other words, Defendant's argument implies
4 that floor-sleeping furthers an economic interest in housing more
5 inmates without expending the resources necessary to increase the
6 number of available beds. The Court cannot abide by such a rule.
7 Allowing a cost defense to neutralize constitutional requirements
8 would permit jails to maintain the most objectively abhorrent and
9 inhumane conditions simply because eliminating them would require
10 additional resources.

11 Of course, any inquiry into conditions of confinement
12 "spring[s] from constitutional requirements and . . . judicial
13 answers to them must reflect that fact rather than a court's idea
14 of how best to operate a detention facility." Bell, 441 U.S. at
15 539. Los Angeles County Jail is the largest jail in the country.
16 Providing the basic necessities of 19,500 inmates spread across
17 eight custody facilities, numerous patrol stations, and at least 40
18 courthouses, as well as addressing serious medical, mental health,
19 and security issues, is a complicated enterprise. Therefore, the
20 Court understands that in the case of exigent circumstances, such
21 as a "genuine emergency situation, like a fire or a riot," Lareau,
22 651 F.2d at 108, providing each inmate with a bed may be
23 impossible. See Anderson v. City of Kern, 45 F.3d 1310, 1314-15
24 (9th Cir. 1995) (affirming denial of injunction that would have
25 prevented prison officials from placing violent or suicidal inmates
26 in "safety cell" without a bed for "short periods of time" in the
27 face of evidence that such prisoners used objects, including beds,
28 to harm themselves). However, while the Court has no desire to

1 inject itself in the management of the jail, "'federal courts [must
2 nonetheless] discharge their duty to protect constitutional
3 rights.'" Rhodes v. Chapman, 452 U.S. 337, 352 (1981) (quoting
4 Procunier v. Martinez, 416 U.S. 396, 405-06 (1974)).

5 Accordingly, the Court holds as follows:

6 In the absence of exigent circumstances, the objective prong
7 of the Eighth Amendment requires LASD facilities to assign and
8 provide each inmate with a bunk for the night immediately following
9 the inmate's initial processing within the facility or transfer to
10 a medical center or other place of screening or treatment, and for
11 every night thereafter. Inmates must be processed within a
12 reasonable amount of time. See Vanke v. Block, No. CV 98-4111,
13 2002 WL 1836305, at *1 (C.D. Cal. Aug. 8, 2002) (referring to an
14 order that defendant LASD release those inmates entitled to release
15 within "the period of time that is required to perform the
16 administrative steps incident to release"), rev'd on other grounds,
17 77 F. App'x 948 (9th Cir. 2003). A sudden, extreme rise in inmate
18 population caused by an acute event, such as a civil disturbance,
19 may affect the length of time that is reasonable for processing.¹³
20 However, overcrowding or regular classification considerations do
21 not constitute exigent circumstances that would justify floor-
22 sleeping. In general, the Court expects that processing, including

23 _____
24 ¹³ Cf. Hernandez v. Denton, 861 F.2d 1421, 1435 (9th Cir.
25 1988) (holding that a plaintiff who alleged that he "was forced to
26 sleep on a sheet metal bunk without a mattress, for one night" did
27 not state a cognizable constitutional violation but not discussing
28 how long he was in processing or at what time of day or night he
entered the cell in question), vacated on other grounds sub nom.
Denton v. Hernandez, 493 U.S. 801 (1989). Hernandez is further
distinguishable because it is not a floor-sleeping case; the
plaintiff in that case alleged a lack of bedding, not the lack of a
bed.

1 any initial medical evaluation, should not take more than twenty-
2 four hours, and, as technology improves, the time should decrease.

3 2. Deliberate Indifference

4 Having found that Defendant has established a custom of floor-
5 sleeping in LASD facilities, and that forced floor-sleeping falls
6 below the Eighth Amendment's minimum standards of decency, the
7 subjective "deliberate indifference" prong follows easily.
8 Defendant undeniably knew of the practice; not only does it
9 acknowledge that floor-sleeping occurs (arguing instead that its
10 frequency does not constitute a custom or violate the Eighth
11 Amendment's objective prong), but it is in large part Defendant's
12 own records that convinced the Court of the custom's existence. It
13 is not necessary that Defendant intended to cause Plaintiffs harm.
14 See Hearns, 413 F.3d at 1040. Indeed, the Court believes that
15 Defendant would prefer to avoid floor-sleeping. Nevertheless,
16 there is no genuine issue of fact as to whether Defendant had
17 "actual knowledge of the risk" that inmates would be forced to
18 sleep on the floor; that knowledge is sufficient to grant summary
19 adjudication in favor of Plaintiffs. Id. 1041 (holding that a
20 "well-documented" string of violence that contravened the Eighth
21 Amendment's objective prong was sufficient to show actual knowledge
22 on the part of prison officials, and that actual knowledge would
23 constitute deliberate indifference) (internal quotation marks
24 omitted).

25 3. Policy as the Moving Force Behind the Violation

26 Plaintiffs must also show that Defendant's custom was "the
27 moving force behind the deprivation of a constitutional right."
28 Long, 442 F.3d at 1190. Because the injury - forced floor-sleeping

1 - "would have been avoided" had Defendant changed its custom, id.,
2 the Court finds this requirement met as well, and therefore
3 concludes that Plaintiffs are entitled to summary adjudication that
4 Defendant's custom violates the Eighth Amendment. Because the
5 Fourteenth Amendment provides greater protection for inmates, the
6 Court finds that the custom violates that portion of the
7 Constitution as well.

8 D. Individual Capacity Claim: Qualified Immunity

9 The parties have filed cross-motions for summary adjudication
10 of the issue of whether Sheriff Baca, in his individual capacity,
11 is legally responsible for the custom of floor-sleeping. The Court
12 rules in favor of Defendant.

13 Qualified immunity protects from civil liability government
14 officials whose conduct "does not violate clearly established
15 statutory or constitutional rights of which a reasonable person
16 would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).
17 A constitutional right is clearly established if "it would be clear
18 to a reasonable [official] that his conduct was unlawful in the
19 situation he confronted." Saucier v. Katz, 533 U.S. 194, 201
20 (2001). Although Rutherford and Thompson go far in establishing a
21 clear right against floor-sleeping, Thompson involved an inmate who
22 had neither bed nor mattress, and the court criticized that prison
23 condition on Fourteenth Amendment grounds. Further, neither case
24 speaks to the length of time LASD may allow inmates to wait to
25 receive a bunk while still comporting with constitutional
26 standards. Therefore, it was not unreasonable for Sheriff Baca to
27 believe that the presence of a mattress cured any constitutional
28 defect, and not to realize that floor-sleeping violated the Eighth

1 Amendment as well as the Fourteenth. Accordingly, the Court finds
2 that Sheriff Baca is entitled to qualified immunity and grants
3 summary adjudication on that issue for Defendant in his individual
4 capacity.

5
6 **IV. CONCLUSION**

7 Based on the foregoing reasons, the Court grants in part and
8 denies in part Plaintiffs' motion, and grants in part and denies in
9 part Defendant's motion.

10

11

12 IT IS SO ORDERED.

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16 Dated: 9-20-07

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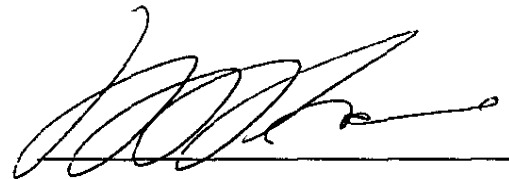
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DEAN D. PREGERSON

United States District Judge