

FILED

MAR 25 1999

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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

JOHN ARMSTRONG, et al.,  
Plaintiffs,  
v.  
GRAY DAVIS, et al.,  
Defendants.

No. C 94-02307 CW

ORDER GRANTING IN  
PART DEFENDANTS'  
MOTIONS TO  
DISMISS AND  
DENYING  
PLAINTIFFS'  
MOTION FOR  
RECONSIDERATION

Defendants James Nielsen and the Board of Prison Terms (BPT) move to dismiss Plaintiffs' second amended complaint for failure to exhaust alternative judicial remedies as required by Heck v. Humphrey. In the alternative, Defendants Nielsen and the BPT move to dismiss the § 1983 claim against the BPT on the ground that Plaintiffs fail to state a claim on which relief can be granted because the BPT is not a "person" within the scope of § 1983. In addition, in a separate motion, all Defendants move to dismiss or strike Plaintiffs' second amended complaint on the grounds that Plaintiffs may not assert new or amended claims against Defendants as to whom liability previously has been settled by this Court's orders. Defendants also seek to leave to file a motion for summary judgment and for continuance of the trial date.

1 Plaintiffs request that the Court reconsider its January 8,  
2 1999 order, and request that the Court set a date by which  
3 Defendants must assert any challenges to the negotiated aspects of  
4 the remedial plan, in the event that Defendants believe those  
5 provisions go further than the ADA requires.

6 The Court denies Defendants Nielsen and the BPT's motion to  
7 dismiss the entire second amended complaint, but grants the motion  
8 as to Plaintiffs' § 1983 claims asserted against Defendant BPT.  
9 The Court grants Defendants' motion to strike Plaintiffs' second  
10 amended complaint as to the California Department of Corrections  
11 Defendants Cal A. Terhune, Susanne Steinberg, Judith McGillivray,  
12 David Tristan, and Midge Carroll, but denies that motion as to  
13 Defendants Governor Gray Davis and the Secretary of the California  
14 Youth and Corrections Agency (YACA), Robert Presley. The Court  
15 denies Plaintiffs' motion for reconsideration. Finally, the Court  
16 denies Defendants' motion for leave to file a motion for summary  
17 judgment and for continuance of the trial date.

#### 18 DISCUSSION

19 I. Defendants Nielsen and the BPT's Motion to Dismiss

20 Defendants James Nielsen and the BPT move to dismiss  
21 Plaintiffs' § 1983 claim in their second amended complaint as to  
22 the BPT for failure to state a claim upon which relief can be  
23 granted, on the grounds that the BPT is not a "person" within the  
24 scope of § 1983. Plaintiffs withdrew their § 1983 action against  
25 the BPT in their opposition to Defendants' motion. The Court  
26 therefore grants Defendant Nielsen and BPT's motion to dismiss  
27 Plaintiffs' § 1983 claims asserted against the BPT.

1 Defendants also move to dismiss on the ground that Plaintiffs  
2 failed to exhaust alternative judicial remedies and are therefore  
3 barred from bringing their claims under § 1983 by the Supreme  
4 Court's holding in Heck v. Humphrey, 512 U.S. 477, 486-87 (1994).

5 In Heck, the Supreme Court held that a prisoner's claim under  
6 § 1983 was not cognizable if it would invalidate a conviction or  
7 sentence that had not otherwise been reversed, expunged, declared  
8 invalid by a State tribunal, or called into question by a federal  
9 court's writ of habeas corpus. 512 U.S. at 486-87. In Edwards v.  
10 Balisok the Court held that in cases in which prisoners sought to  
11 challenge the procedures used, rather than the resulting conviction  
12 or sentence, the determination of whether the claim is cognizable  
13 under § 1983 turns on whether "the nature of the challenge to the  
14 procedures [is] such as necessarily imply the invalidity of the  
15 [resulting] judgment." Edwards v. Balisok, 520 U.S. 641; 117 S.  
16 Ct. 1584, 1587 (1997).

17 In Edwards, a prisoner asserted a § 1983 claim for damages and  
18 declaratory relief for denial of due process in a disciplinary  
19 hearing that led to the loss of good time credits. The Supreme  
20 Court found that the claim was barred by Heck, because the  
21 plaintiff's specific allegations of bias and deceit were the type  
22 of claims that would "necessarily imply the invalidity of the  
23 punishment imposed." Id. at 1589.

24 Defendants assert that Plaintiffs' challenge to the procedures  
25 used by the BPT similarly "necessarily implies the invalidity" of  
26 the fact or length of Plaintiffs' confinement. Defendants are  
27 incorrect.



1 Plaintiffs' ability to pursue their claims pursuant to § 1983  
2 before exhausting other remedies turns on the nature of Plaintiffs'  
3 claims, and not on the type of relief sought. See Edwards, 117 S.  
4 Ct. at 1587. The Supreme Court has recognized that not all  
5 procedural challenges necessarily imply the invalidity of the  
6 underlying conviction or sentence. See Heck, 512 U.S. at 482;  
7 Edwards, 117 U.S. at 1287. In Heck, and later in Edwards, the  
8 Court referred to Wolff v. McDonnell, 418 U.S. 539 (1974) as an  
9 example of a case in which a procedural challenge did not implicate  
10 the rule in Heck.

11 In Wolff, a prisoner brought a § 1983 action challenging the  
12 procedures used to deprive prisoners of good time credits and  
13 seeking restoration of his credits and damages for the deprivation  
14 of his civil rights. Id. at 554. The Supreme Court found that  
15 although the plaintiff's claim for good-time credits was  
16 foreclosed, the damages claim was not, and required a determination  
17 of the validity of the procedures the plaintiff challenged. Id.

18 The Supreme Court in Heck later distinguished Wolff on the  
19 grounds that the claim in Wolff did not necessarily vitiate the  
20 denial of the plaintiff's good-time credit and, thus, did not  
21 necessarily call into question the plaintiff's confinement. 512  
22 U.S. at 482. The Supreme Court in Edwards likewise cited Wolff to  
23 underscore that whether a procedural challenge necessarily implies  
24 the invalidity of an underlying judgment depends on the nature of  
25 the claim, not simply whether the claim challenged the procedures  
26 or the result. 117 S. Ct. at 1587-88. In her concurrence in  
27 Edwards, Justice Ginsburg noted that although the decision in  
28

1 Edwards was based on specific allegations of wrongdoing that  
2 necessarily implied the invalidity of the plaintiff's sentence,  
3 cognizable claims for other procedural defects could still be  
4 brought under Wolff. Id. at 1589.

5 In this case, Plaintiffs state such a cognizable claim.  
6 Plaintiffs do not seek to invalidate their underlying parole  
7 denials or revocations. Neither do they seek damages for  
8 violations related to particular hearings. Rather, Plaintiffs  
9 claim that Defendants failed reasonably to modify the policies,  
10 practices, and procedures used in BPT hearings so that disabled  
11 prisoners and parolees could participate fully in those hearings.  
12 Plaintiffs seek prospective injunctive and declaratory relief  
13 pursuant to those claims.

14 As in Wolff, the specific procedural defects raised in  
15 Plaintiffs' claims, if proven, do not "necessarily imply the  
16 invalidity" of Plaintiffs' underlying parole denials or  
17 revocations, nor do such procedural defects vitiate the results of  
18 Plaintiffs' prior BPT hearings.

19 Defendants assert that Plaintiffs' challenges to the BPT  
20 hearing procedures necessarily imply the invalidity of Plaintiffs'  
21 confinement because the purpose of the BPT, and of BPT hearings, is  
22 to determine whether, and for how long, prisoners should remain in  
23 custody. The validity of a § 1983 challenge under Heck does not  
24 turn on the entity to which the procedures apply, but, rather, on  
25 whether the nature of the claim itself implies the invalidity of  
26 Plaintiffs' confinement.

1 Defendants rely on Butterfield v. Bail, 120 F.3d 1023, 1024  
2 (9th Cir. 1996), for the assertion that challenges to parole  
3 hearings implicate, per se, the validity of confinement. However,  
4 the claim asserted in Butterfield differs substantively from the  
5 claims asserted by Plaintiffs in the instant case. Butterfield  
6 alleged that the parole board relied on false information to find  
7 him ineligible for parole, and challenged the procedures used by  
8 the board. Although the Ninth Circuit noted in dicta that  
9 challenges to parole hearings directly implicated the validity of  
10 confinement, the court ultimately found that Butterfield's claim  
11 was barred by Heck because it "amounts to a collateral attack on  
12 his denial of parole and subsequent incarceration." Id. at 1024.  
13 As the court wrote, Butterfield "would not [have] challenge[d] the  
14 alleged procedural defects if he did not believe that, were those  
15 procedural defects remedied, he would be paroled." Id. at 1025.  
16 Unlike Butterfield, Plaintiffs do not assert the claims in this  
17 case to attack collaterally their parole denials or revocations.

18 Defendants nevertheless argue that a decision in this case  
19 could be collaterally applied in other cases which, in turn, could  
20 imply the invalidity of the fact or length of Plaintiffs'  
21 confinement. This is not the situation prohibited by Heck.  
22 Allowing Plaintiffs' procedural challenges to proceed under § 1983  
23 in this case does not relieve them of the requirement under Heck to  
24 exhaust alternative judicial remedies prior to bringing § 1983  
25 actions to challenge the terms of their confinement. The fact that  
26 Heck would properly apply to such challenges does not transform the



1 procedural challenges asserted in this case into those to which  
2 Heck's requirements apply.

3 The Court thus finds that Plaintiffs' claims do not  
4 necessarily imply the invalidity of the judgments against them, and  
5 that the requirement under Heck that Plaintiffs exhaust alternative  
6 judicial remedies prior to bringing the § 1983 claims asserted in  
7 this case does not apply. Accordingly, the Court denies Defendant  
8 Nielsen's motion to dismiss Plaintiffs' second amended complaint  
9 against him.

10 II. Defendants' Motion to Dismiss Second Amended Complaint

11 All Defendants move, collectively, to dismiss or strike  
12 Plaintiffs' second amended complaint on the ground that it asserts  
13 new or amended claims as to parties against whom issues of  
14 liability have been conclusively resolved. Defendants argue that  
15 because the stipulation, settlement, and remedial orders issued by  
16 the Court in this case resolved liability as to all Defendants,  
17 except James Nielsen and the BPT,<sup>1</sup> Plaintiffs are estopped from  
18 reasserting claims covered by the settlement agreement, see MWS  
19 Wire Indus., Inc. v. California Fine Wire Co., Inc., 797 F.2d 799,  
20 802 (9th Cir. 1986), and that any complaint alleging such claims is  
21

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22  
23 <sup>1</sup> The Court entered an order on the parties' stipulation in  
24 this case on July 6, 1996, in part to "resolve the litigation  
25 between plaintiffs and the Governor and state prison officials"  
26 involved in the case. The settlement specified that it did "not  
27 resolve any issues between plaintiffs and the Board of Prison Terms  
28 or defendant Nielsen." On September 20, 1996, pursuant to the  
terms of the stipulation, the Court entered a remedial order,  
resolving all claims of liability against all Defendants other than  
Nielsen and the BPT. Finally, in its January 8, 1999 order, the  
Court resolved most of the remedial issues in this case.

1 mooted by that agreement. See Arnold v. United States, 816 F.2d  
2 1306, 1309 (9th Cir. 1987).

3 In their opposition to Defendants' motion Plaintiffs agreed to  
4 dismiss the new claims and additional class members' claims as  
5 against California Department of Corrections Defendants Cal A.  
6 Terhune, Susanne Steinberg, Judith McGillivray, David Tristan, and  
7 Midge Carroll. The Court therefore grants Defendants' motion to  
8 dismiss the second amended complaint as to those Defendants.

9 Plaintiffs contend that Governor Gray Davis and the Secretary  
10 of the California YACA, Robert Presley, are properly subject to the  
11 new causes of action, and the claims of the expanded Plaintiff  
12 class, in their supervisory capacity over Defendants Nielsen and  
13 the BPT. The Court agrees.

14 The addition of new class members and additional claims in the  
15 second amended complaint does not constitute the reassertion of  
16 claims previously resolved by the settlement agreement, which  
17 covered actions against the California Department of Corrections,  
18 and not Defendants Nielsen or the BPT. Governor Davis and  
19 Secretary Presley may therefore be included in their supervisory  
20 capacities over Defendants Nielsen and the BPT.

21 The cases cited by Defendants do not require otherwise. MWS  
22 Wire involved the validity of an agreement in which the defendant  
23 acknowledged the validity of the plaintiff's trademark and agreed  
24 to stop infringing the plaintiff's rights in exchange for the  
25 plaintiff's promise not to sue the defendant for past infringement.  
26 In a subsequent action for breach of contract and trademark  
27 infringement, the Ninth Circuit held that the district court



1 erroneously considered the merits of the trademark infringement  
2 claim without first determining if the agreement was a binding  
3 contract. 797 F.2d at 802. Arnold likewise involved whether a  
4 settlement agreement had been breached such that the plaintiff  
5 could raise the merits of the claims underlying that agreement.  
6 816 F.2d at 1307, 1309.

7 In contrast, Plaintiffs in the instant action neither seek to  
8 enforce the settlement agreement against Defendants who are party  
9 to that agreement, nor do Plaintiffs seek to try the merits of the  
10 claims underlying the settlement agreement which, by its terms,  
11 does not pertain to Defendants Nielsen or the BPT. The Court  
12 therefore denies Defendants' motion to dismiss as to Governor Davis  
13 and Secretary Presley.

### 14 III. Plaintiffs' Motion for Reconsideration

15 Plaintiffs move for reconsideration of the Court's January 8,  
16 1999 order directing Defendants to comply with the Remedial Plan.  
17 In that Order, the Court found that the aspects of the plan  
18 originally proposed by Defendants (pursuant to the Remedial Order  
19 of September 20, 1996), and those that the Court ordered Defendants  
20 to alter, satisfied the requirements of the Prison Litigation  
21 Reform Act (PLRA). The Court did not make such a finding regarding  
22 the negotiated aspects of the plan, and instead held that  
23 Defendants could move for relief from those aspects of the plan at  
24 any time if those provisions go further than required by the ADA.

25 Plaintiffs contend that the negotiated sections of the plan  
26 cannot easily be identified because they are integrated with the  
27 rest of the plan and that allowing Defendants to challenge the  
28

1 negotiated provisions of the plan at any time undermines the  
2 enforceability of the plan. Plaintiffs therefore request that the  
3 Court set a firm deadline by which time Defendants must make a  
4 motion for relief from any aspect of the plan they believe goes  
5 further than the ADA requires.

6 Defendants erroneously assert that the Court lacks  
7 jurisdiction to hear this motion while an appeal is pending. See  
8 Stein v. Wood, 127 F.3d 1187, 1189 (9th Cir. 1997). Pursuant to  
9 Federal Rule of Procedure 62(c), the Court may issue orders to  
10 enforce its judgments during the pendency of an appeal. See Fed.  
11 R. Civ. Proc. 62(c); Hoffman v. Beer Drivers, 536 F.2d 1268, 1276  
12 (9th Cir. 1976). Under Rule 62(c) the Court retains jurisdiction  
13 as part of its duty to preserve the status quo while an appeal is  
14 pending; however, the Court may not "adjudicate anew the merits" of  
15 the issue on appeal or "finally adjudicate substantial rights  
16 involved in the appeal." McClatchy Newspapers v. Central Valley  
17 Typographical Union No. 46, 686 F.2d 731, 734 (9th Cir. 1982).

18 In this case, Plaintiffs' request does not require that the  
19 Court adjudicate the merits of the issues on appeal nor the  
20 substantive rights of the parties. The requested modification  
21 would thus be permissible under Rule 62(c) and within the Court's  
22 enforcement power under McClatchy. However, the Court finds that  
23 it would be both arbitrary and premature to set a date by which  
24 Defendants would be required to assert any and all motions  
25 challenging the negotiated provisions of the plan. To establish  
26 any such requirement would force the parties into a dispute over  
27 aspects of the plan about which no dispute may arise during the

1 implementation of the plan. In addition, to establish this  
2 requirement would undermine the Court's directive in the January 8,  
3 1998 order that the parties attempt to resolve disputes informally  
4 prior to pursuing a judicial remedy.

5 The Court should therefore denies Plaintiffs' motion for  
6 reconsideration.

7 IV. Motion for Summary Judgment and to Continue Trial Date

8 Defendants seek leave to file a motion for summary judgment,  
9 and request that the trial be continued to accomodate that motion  
10 and ongoing discovery. Defendants assert that the Court should  
11 grant their request to file a motion for summary judgment after the  
12 case dispositive motion cut-off date because the complaint was  
13 amended to modify the class in January, 1999 which, in turn,  
14 complicated filing a case dispositive motion prior to the cut-off  
15 date. Defendants also argue that the motion for summary judgment  
16 will narrow the issues that proceed to trial. The Court disagrees.  
17 First, Defendants had time between the January 8, 1999 amendment  
18 and the February 23, 1999 cut-off date to at least notify the Court  
19 that it sought to file a motion for summary judgment. Second,  
20 Defendants' proposed motion for summary judgment addresses issues  
21 included in the previous complaint, and issues raised by the  
22 modification of the class and amendment of the complaint are not  
23 central to Defendants' motion.

24 Defendants did not indicate that they desired a continuance in  
25 the event that the Court did not grant Defendants leave to file a  
26 motion for summary judgment. Neither do Defendants present  
27 compelling reasons for continuing the trial date, nor claim they  
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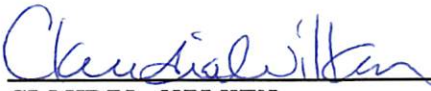
1 would be prejudiced by this Court's denial of a continuance. In  
2 addition, as the Court informed the parties at the hearing on these  
3 motions, the trial date is already likely to be moved forward due  
4 to criminal trials pending in this Court.

5 The Court therefore denies Defendants' motion seeking leave to  
6 file a motion for summary judgment and to continue the trial date.

7 CONCLUSION

8 The Court denies Defendant Nielsen's motion (Docket No. 371)  
9 to dismiss the second amended complaint against him, but grants the  
10 Defendant BPT's motion to dismiss Plaintiffs' § 1983 claims  
11 asserted against it. The Court grants in part Defendants' motion  
12 to strike Plaintiffs' second amended complaint (Docket No. 355),  
13 dismissing the claims against California Department of Corrections  
14 Defendants Cal A. Terhune, Susanne Steinberg, Judith McGillivray,  
15 David Tristan, and Midge Carroll, but denying dismissal of the  
16 claims against Defendants Governor Gray Davis and Secretary of the  
17 California YACA, Robert Presley. The Court denies Plaintiffs'  
18 motion for reconsideration of the January 8, 1999 order (Docket No.  
19 375). Finally, the Court denies Defendants' motion for leave to  
20 file a motion for summary judgment and for continuance of the trial  
21 date (Docket No. 389).

22  
23 Dated: MAR 25 1999

  
CLAUDIA WILKEN  
United States District Judge

24  
25  
26 Copies mailed to counsel  
27 as noted on the following page

United States District Court  
for the  
Northern District of California  
March 25, 1999

\* \* CERTIFICATE OF SERVICE \* \*

Case Number:4:94-cv-02307

Armstrong

vs

Wilson

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 25, 1999, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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