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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

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12 EMILY ROBINSON, a minor, by
13 and through her Guardian Ad
14 Litem, her custodial parent,
15 Michael Robinson, and HEATHER
16 J. HARRISON, a minor, by and
17 through her Guardian Ad Litem,
18 her custodial parent, Nicki J.
19 Evans, RYAN PRICE, a minor, by
20 and through this Guardian Ad
21 Litem, his custodial parent,
22 Michael D. Price, and on
23 behalf of themselves and all
24 those similarly situated,

25 Plaintiffs,

26 v.

NO. CIV. S-04-1617 FCD PAN

MEMORANDUM AND ORDER

21 SACRAMENTO COUNTY; SACRAMENTO
22 COUNTY PROBATION DEPARTMENT;
23 SACRAMENTO COUNTY CHIEF
24 PROBATION OFFICER VERNE
25 SPEIRS, in his individual and
26 official capacity, SACRAMENTO
27 COUNTY ASSISTANT CHIEF
28 PROBATION OFFICER SUZANNE
COLLINS, in her individual and
official capacity; and DOES 1
THROUGH 150,

Defendants.

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2 This matter is before the court on motion by defendants
3 Sacramento County (the "County"), Sacramento County Probation
4 Department ("Probation Department"), Sacramento County Chief
5 Probation Officer Verne Speirs ("Speirs"), and Sacramento County
6 Assistant Chief Probation Officer Suzanne Collins ("Collins"),
7 for dismissal, pursuant to Federal Rule of Civil Procedure
8 12(b)(6). For the reasons stated below, defendants' motion is
9 DENIED in part and GRANTED in part.¹

10 **BACKGROUND**

11 Plaintiffs Emily Robinson ("Robinson"), Heather J. Harrison
12 ("Harrison"), and Ryan Price ("Price") bring this action against
13 all defendants, asserting violations of the Fourth and Fourteenth
14 Amendments pursuant to 42 U.S.C. § 1983.² (Pls.' Second Amended
15 Complaint ("Compl."), filed Sept. 17, 2004, at 2:15-18.) In
16 addition, plaintiffs assert claims under the Unruh Civil Rights
17 Act (Cal. Civ. Code § 52.1(b)) and California Penal Code § 4030.
18 (Compl. at 2:19-26.)

19 Each of the plaintiffs, at one point in time, has been held
20 at Sacramento County's B.T. Collins Juvenile Detention Center
21 ("Juvenile Hall"). In or about June 2002, and again in October
22 2002, Robinson was arrested for a misdemeanor offense and
23 transported to the Juvenile Hall. (Compl. at 5:17-22.) Robinson
24 alleges that prior to a detention hearing she was subjected to a

25 ¹ Because oral argument will not be of material
26 assistance, the court orders the matter submitted on the briefs.
27 See E.D. Cal. L.R. 78-230(h).

28 ² Hereinafter all references to "Section 1983" are to
Title 42 of the United States Code.

1 visual body cavity search. (Id.) In or about June 2003,
2 Harrison was arrested for a misdemeanor offense and transported
3 to the Juvenile Hall. (Id. at 5:23-28.) At the Juvenile Hall,
4 Harrison claims to have been subjected to a visual body cavity
5 search prior to a detention hearing. (Id.) On or about June 11,
6 2004, Price was arrested for a misdemeanor offense and
7 transported to the Juvenile Hall. (Id. at 6:1-9.) Price alleges
8 that he was subjected to multiple visual body cavity searches
9 prior to a detention hearing. (Id.) Price claims that four
10 times during a five-day period, he "was strip searched after
11 returning to the unit from making a phone call or visiting his
12 attorney." (Id.) These allegations form the basis of
13 plaintiffs' claims against each of the defendants.

14 At all relevant times, Speirs and Collins were the
15 Sacramento County Chief Probation Officer and the Sacramento
16 County Assistant Chief Probation Officer, respectively. (Id. at
17 3:27-4:9.) Defendants claim they are immune from liability under
18 the Eleventh Amendment on the ground that in Sacramento County,
19 the Chief Probation Officer acts on behalf of the state rather
20 than the county when administering the intake function at the
21 Juvenile Hall. (Defs.' Mot. to Dismiss, filed October 15, 2004,
22 at 5:6-14.) Plaintiffs claim that Speirs is responsible for
23 making, overseeing, and implementing the policies challenged in
24 this case relating to the operation of the Juvenile Hall on
25 behalf of Sacramento County. (Compl. at 3:27-4:3.) Plaintiffs
26 assert that Collins is responsible for assisting in the
27 administration of these policies at the Juvenile Hall on behalf
28 of Sacramento County. (Id. at 4:4-9.)

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In ruling upon a motion to dismiss, the court may consider only the complaint, any exhibits thereto, and matters which may be judicially noticed pursuant to Federal Rule of Evidence 201. See Mir v. Little Co. Of Mary Hospital, 844 F.2d 646, 649 (9th

1 Cir. 1988); Isuzu Motors Ltd. v. Consumers Union of United
2 States, Inc., 12 F.Supp.2d 1035, 1042 (C.D. Cal. 1998).

3 ANALYSIS

4 I. Eleventh Amendment Immunity

5 The Eleventh Amendment provides: "The judicial power of the
6 United States shall not be construed to extend to any suit in law
7 or equity, commenced or prosecuted against one of the United
8 States by citizens of another State, or by citizens or subjects
9 of any foreign state." U.S. Const. amend. XI. Thus, in the
10 absence of any waiver of state immunity, states are immune from
11 private damage actions brought in federal court. Pennhurst State
12 Sch. and Hosp. v. Halderman, 465 U.S. 89, 100 (1984). The
13 Eleventh Amendment has been held applicable to suits brought
14 against a state by its own citizens as well. Id. Moreover,
15 because a suit against a state officer in his/her official
16 capacity is no different from a suit against the state itself,
17 state officers sued in their official capacity are also entitled
18 to Eleventh Amendment immunity. Will v. Michigan Dept. of State
19 Police, 491 U.S. 58, 71 (1989). However, a municipality or other
20 local government entity may be sued under Section 1983 for
21 constitutional torts committed by its officials according to an
22 official policy, practice, or custom. Monell v. N.Y. Dept. of
23 Soc. Servs., 436 U.S. 658, 690-691 (1978).

24 Defendants seek dismissal of the claims brought against
25 Speirs and Collins in their official capacity, arguing that they
26 were acting in their capacity as state officials and are
27 therefore entitled to Eleventh Amendment immunity. Defendants
28 also argue that because Speirs and Collins were acting in their

1 capacity as state officials rather than as a local policymaker
2 for the County, no County policy exists to form the basis for
3 municipal liability under Section 1983. Thus, the threshold
4 issue is in what capacity did Speirs and Collins act in
5 conducting the subject "strip" searches of plaintiffs.

6 **A. Speirs and Collins Are Not Immune From Section 1983**
7 **Liability.**

8 Whether Speirs and Collins acted as county officials is
9 governed by the analytical framework set out in McMillian v.
10 Monroe County, Alabama, 520 U.S. 781 (1997). In that case, the
11 Supreme Court held that an Alabama sheriff could not be sued
12 under Section 1983 for intimidating witnesses into making
13 materially false statements and for suppressing exculpatory
14 evidence because the sheriff was exercising state authority. In
15 reaching this result, the Supreme Court cautioned against a
16 categorical approach. Id. at 785. Instead, the Court held,
17 "[T]o hold a local government liable for an official's conduct, a
18 plaintiff must first establish that the official (1) had final
19 policymaking authority 'concerning the action alleged to have
20 caused the particular constitutional or statutory violation at
21 issue' and (2) was the policymaker for the local governing body
22 for the purposes of the particular act." Weiner v. San Diego
23 County, 210 F.3d 1025, 1028 (9th Cir. 2000) (quoting McMillian,
24 520 U.S. at 785). When determining a county's liability under
25 McMillian, the Ninth Circuit has instructed that "while [courts]
26 must conduct an independent examination of California's
27 Constitution, codes, and caselaw with respect to each 'particular
28 area' or each 'particular issue,' [this] circuit['s] caselaw

1 'provides the starting point for our own analysis.'" Cortez v.
2 County of Los Angeles, 294 F.3d 1186, 1189 (9th Cir. 2002)
3 (quoting Brewster v. Shasta County, 275 F.3d 803, 806 (9th Cir.
4 2001)).

5 Under McMillian, the first question the court must address
6 is whether Speirs and Collins had "final policymaking authority"
7 concerning the enactment and administration of a strip search
8 policy at the Juvenile Hall. Here, neither party disputes that
9 Speirs and Collins have final policymaking authority regarding
10 the intake procedures at the Juvenile Hall.³ The court finds
11 that the first prong of the McMillian test is satisfied.
12 Therefore, the court turns to the second question posed by
13 McMillian; namely, whether Speirs and Collins acted as a
14 policymaker for the County or for the State for the purposes of
15 the particular act in question (e.g., strip searching detainees
16 as they are admitted to the Juvenile Hall).

17 The determination of whether a county official acts for the
18 State or for the County is a question of federal law informed by
19 how state law defines the official's functions. McMillian, 520
20 U.S. at 786. The question the court must examine is not whether
21 the official acts for the state or county in a categorical, "all
22 or nothing" manner, but rather whether he is a "final
23 policymaker[]" for the local government in a particular area, or

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25 ³ The parties do not raise an issue as to the "final
26 policymaking authority" of Assistant Chief Probation Officer
27 Collins. Nevertheless, the court finds that because the
28 California Code of Regulations permit an Assistant Chief
Probation Officer to develop written policies and procedures
regarding the intake procedures at juvenile detention centers,
she is also properly considered a "final policymaker." See 15
C.C.R. §§ 102, 1350, 1360 (2004).

1 on a particular issue." Id. at 785. In this case, the court
2 must decide whether Speirs and Collins acted as policymakers for
3 Sacramento County or for the State in creating and administering
4 a strip search policy at the Juvenile Hall.

5 McMillian instructs that the determination of whether a
6 local officer is a state or a county actor depends entirely on an
7 analysis of the particular function at issue. McMillian, 520
8 U.S. at 785. The function at issue here is the strip searching
9 of juveniles as they are admitted into the Juvenile Hall.⁴ This
10 precise factual circumstance appears to be one of first
11 impression. However, the enactment and administration of intake
12 and confinement policies (including strip searching inmates and
13 subjecting inmates to visual body cavity searches) at a *county*
14 *jail* were recently found to be administrative functions performed
15 on behalf of the county, not the state. (Order Granting in Part
16 and Denying in Part Defs.' Mot. to Dismiss, Chatoian v. County of
17 Marin, Civ. 04-2790 MJJ, filed December 14, 2004, N.D. Cal., at
18 10:21-22.) The Chatoian court's reasoning is well-crafted and
19 particularly relevant to this case.

20 As in Chatoian, the court finds that the function at issue
21 here involves jail administration, not law enforcement. The
22 policies at issue relate to the intake procedures and housing of
23 minors at the Juvenile Hall. Chatoain, Order at 6:27-28 (stating
24 "[S]uch policies are enacted and implemented not to prevent
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26 ⁴ Plaintiffs allege, and the court accepts as true for
27 deciding this motion, that the practice at the Juvenile Hall is
28 to strip search those admitted into the facility. The Court
shall refer to this function as the "intake policy" or the
"intake procedures" at the Sacramento County Juvenile Hall.

1 crime, but to ensure safety and security within jail walls.") As
2 such, these policies are enacted and implemented in furtherance
3 of the administration of the Juvenile Hall, not to enforce the
4 law.

5 **1. Under California Law, a County Probation Officer**
6 **is a County Policymaker When Engaged in Juvenile**
7 **Hall Administration.**

8 Having found that the conduct at issue is an administrative
9 function, the Court must now, by reviewing state law, as dictated
10 by McMillian, determine whether defendants performed this
11 function on the County's behalf or the State's behalf. This
12 analysis is informed by evaluating the California Constitution,
13 appropriate statutes and regulations, and relevant case law.

14 **a. California Constitution**

15 As in McMillian, our analysis must begin with the California
16 Constitution. The McMillian Court relied heavily on two
17 provisions of the Alabama Constitution. First, and "especially
18 important for our purposes," is the provision in the Alabama
19 Constitution designating a county sheriff as an executive
20 officer. McMillian, 520 U.S. at 787. Under the California
21 Constitution, probation officers are not designated as members of
22 the executive branch. Indeed, probation officers are not listed
23 in the California Constitution. Given the weight the McMillian
24 court afforded to the listing of the sheriff as an executive
25 officer, the lack of such a provision in the California
26 Constitution pertaining to probation officers is important to the
27 court's analysis.

28 The McMillian Court also gave weight to the fact that the
Alabama Supreme Court had authority to impeach a county sheriff

1 for neglect of office. Id. at 788. The impeachment of a sheriff
2 by the Alabama Supreme Court signified to the Court that the
3 office of sheriff shared "the same impeachment procedures as
4 state legal officers and lower state court judges, rather than
5 county and municipal officers." Id. at 788-789. Defendants
6 contend that Speirs and Collins must be state actors because the
7 judge of the juvenile court has the power to remove them from
8 office. However, McMillian made clear that if local officials
9 are to be considered "state actors" for Eleventh Amendment
10 purposes then the method of impeachment (*i.e.*, removing the
11 official from office) should be the same process that exists
12 under state law for state legal officers and lower state court
13 judges. Id. Moreover, the California Constitution does not list
14 probation officers in Article IV, section 18, which provides for
15 impeachment of a variety of state officers before the
16 Legislature. Instead, probation officers can be removed from
17 office following the accusation of the county grand jury. Cal.
18 Gov't Code §§ 3060 et seq. (2004). Therefore, unlike the Alabama
19 Constitution, the California Constitution fails to establish any
20 legislative intent that probation officers are to be considered
21 officers of the state.

22 **b. California Statutes and Regulations**

23 The court next turns to California statutory law. A review
24 of California statutory law points to the conclusion that a
25 probation officer acts for the County when enacting and
26 administering intake policy at the Juvenile Hall. Under
27 California law, monetary damages for Section 1983 claims are paid
28 by the County, and not the State. Cal. Gov't Code § 815.2

1 (2004). This is a critical factor in finding that, in terms of
2 the administration of intake procedure at the Juvenile Hall,
3 Speirs and Collins are County actors. The McMillian Court stated
4 that it was "strong evidence in favor of the . . . conclusion
5 that sheriffs act on behalf of the State" that a judgment against
6 the sheriff would be a suit paid by the state, and that the
7 county would not be liable for a sheriff's acts. McMillian, 520
8 U.S. at 789.

9 In addition, the following statutory provisions further
10 suggest that a probation officer acts on behalf of the County
11 when administering intake procedures at the Juvenile Hall: (1)
12 Cal. Wel. & Inst. Code § 270 states that a probation officer is
13 an officer of the county; (2) Cal. Wel. & Inst. Code § 850
14 requires the board of supervisors of every county to provide and
15 maintain a juvenile hall at the expense of the county; (3) Cal.
16 Wel. & Inst. Code § 853 mandates that the board of supervisors
17 provide for the management and expense of operating a juvenile
18 hall; and (4) Cal. Wel. & Inst. Code §§ 272 and 278 allow for the
19 board of supervisors to delegate certain responsibilities away
20 from the probation officer. These California statutes illustrate
21 that, in terms of managing the juvenile hall (e.g., developing
22 and administering intake policies and procedures), the County is
23 primarily responsible for juvenile hall administration.

24 Defendants cite to Cal. Wel. & Inst. Code §§ 209(a) and 210,
25 in support of their argument that Speirs and Collins acted on
26 behalf of the State, not as a County policymaker, when operating
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1 the Juvenile Hall. However, the specific responsibilities⁵
2 granted to the State Board of Corrections and the judge of the
3 juvenile court by the Legislature hardly can be said to convert a
4 county juvenile hall into a state facility. The court finds that
5 the limited enforcement remedies found in the cited statutes
6 suggest that state control over a juvenile hall is not so
7 significant as to transform the administration of intake policy
8 and procedures by a probation officer into state action.⁶

9 The Court next turns to the California regulatory scheme
10 regarding juvenile halls. Defendants contend that Section 1360
11 of Title 15 of the California Code of Regulations specifically
12 establishes standards regarding strip searches at juvenile halls
13 and, thus, a probation officer acts on behalf of the state when
14 administering these policies.⁷ The Court finds, however, that

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16 ⁵ The State Board of Corrections is to adopt minimum
17 standards for facilities housing juveniles. Cal. Wel. & Inst.
18 Code § 210. A judge is to inspect these facilities each year.
19 Cal. Wel. & Inst. Code § 209(a). The judge is to notify the
20 operator of any facility not in compliance with the Board's
21 minimum standards. Id. In addition, the Board is to inspect
22 each facility every two years and must also notify the operator
23 of any facility not in compliance with its minimum standards.
Id. If the facility is thereafter found not to be "a suitable
place for the confinement of minors," the juvenile court or the
Board is required to "give notice of its findings to all persons
having authority to confine minors...." Id. Sixty days after
such notification, "the facility shall not be used for
confinement of minors" until "the facility is a suitable
place...." Id.

24 ⁶ See 83 Ops. Cal. Atty. Gen. 111 (2000) (stating that
25 the State Board of Corrections does not possess the additional
26 enforcement remedies of "filing a legal action or imposing
sanctions against public officials responsible for operating a
particular juvenile facility in violation of section 209.")

27 ⁷ Section 1360 of Title 15 of the California Code of
28 Regulations states, in pertinent part, "[T]he facility
(continued...)

1 the CCR section cited does not mandate that result. Defendants
2 fail to recognize that the standards governing strip searches
3 enumerated in 15 C.C.R. § 1360 only create a base level that
4 county juvenile facilities must not drop below. Each county
5 juvenile facility in California has the right to adopt its own
6 standards and requirements so long as "such standards and
7 requirements meet or exceed and do not conflict with these
8 standards and requirements." 15 C.C.R. § 1301 (2004). Even
9 though probation officers are given minimum standards to follow
10 by a state agency, it does not transform them into state actors
11 when conducting and establishing intake procedure. Cf. Beentjes
12 v. Placer County Air Pollution Control Dist., 254 F. Supp. 2d
13 1159, 1171 (E.D. Cal. 2003) (local air pollution control
14 districts, which derive their authority from the State and are
15 granted wide latitude to conduct their affairs as they see fit so
16 long as they maintain standards at least as stringent as those
17 adopted by the State, are not entitled to Eleventh Amendment
18 immunity.)

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21 ⁷(...continued)
22 administrator shall develop written policies and procedures
23 governing the search of minors, the facility, and visitors.
24 Searches shall be conducted to ensure the safety and security of
25 the facility, and to provide for the safety and security of the
26 public, visitors, minors, and staff. Searches may be conducted
27 as deemed necessary by the facility manager on a routine or
28 random basis. Searches shall not be conducted for harassment or
as a form of discipline or punishment. Body cavity searches, as
defined in Penal Code Section 4030, shall be conducted by medical
personnel." 15 C.C.R. § 1360 (2004). More specifically, the
regulation instructs the facility administrator that these
written procedures shall address "intake searches," "searching
minors who are returning from court," "facility searches," and
"limited administrative searches of visitors." Id.

1 **c. California Case Law**

2 Turning to the relevant case law, the parties do not cite to
3 any California case which holds that the enactment and
4 administration of intake policy by a probation officer at a
5 juvenile hall is done on behalf of the county or the state, nor
6 is the court, as stated above, aware of any such factually on-
7 point authority.⁸ However, there is some direct authority that
8 probation officers in California are considered county officials.
9 See Nicholl v. Koster, 157 Cal. 416, 423 (1910) (stating that
10 probation officers are "minor officers of the local county
11 government."); Gibson v. Civil Service Commission of Los Angeles
12 County, 27 Cal.App. 396, 399 (1915) (citing with approval the
13 Nicholl holding that a probation officer is an officer of the
14 county.) Nonetheless, the labeling of the position as a county
15 or state official does not end the inquiry.

16 The McMillian Court instructed, as discussed earlier, that
17 the particular function at issue must be analyzed. McMillian,

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19 ⁸ Defendants do cite to Venegas v. County of Los Angeles,
20 32 Cal.4th 820 (2004) (holding that sheriffs are state actors in
21 all matters related to crime investigation, officer training, and
22 law enforcement policies), but defendants do not contend that
23 Venegas should control our decision. Given defendants' lack of
24 emphasis on the Venegas decision, the court's discussion of this
25 case will be brief. First, the facts here do not involve a law
26 enforcement function as in Venegas, but rather the administration
27 of intake procedures at the Juvenile Hall. Thus, the Venegas
28 decision is factually distinguishable from this case. Second,
the holding in Venegas is not binding on this court because
"federal law provides the rule of decision in section 1983
actions." Streit v. County of Los Angeles, 236 F.3d 552, 560
(9th Cir. 2001) (citing Regents of the Univ. of Cal. v. Doe, 519
U.S. 425, 430 n.5, (1997) (finding that "the question whether a
particular state agency has the same kind of independent status
as a county...is a question of federal law...[b]ut that federal
question can be answered only after considering the provisions of
state law that define the agency's character.")).

1 520 U.S. at 785. In light of the lack of state case law directly
2 on-point, the Court turns to a Ninth Circuit case of substantial
3 persuasive value.

4 In Cortez v. County of Los Angeles, 294 F.3d 1186 (9th Cir.
5 2002), at issue was whether the county sheriff acted as
6 policymaker for the state or county when he established and
7 implemented policies and procedures for the safekeeping of
8 inmates in the county jail.⁹ The court found that policies
9 regarding the housing of jail inmates were made by sheriffs "not
10 as law enforcement officials, but as administrators wielding
11 control over persons entrusted to their custody." Id. at 1191
12 (citation omitted). The court found that the sheriff in
13 executing his administrative duties was acting for the county,
14 not the state. Id. at 1190-1191. Similarly, in enacting and
15 administering the intake policy and procedures at the Juvenile
16 Hall, Speirs and Collins are wielding control over persons
17 entrusted to their custody. Like Cortez, this court has found
18 that the function at issue here is administrative and, as such,
19 following Cortez the court is compelled to find that defendants
20 performed that function on behalf of the County and not the
21 State.

22 Thus, for the reasons above, as supported by the California
23 Constitution, relevant statutes, regulations and case law,
24 Speirs' and Collins' motion to dismiss plaintiffs' claims brought
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26 ⁹ The policy at issue was the segregation of gang inmates
27 at the jail, 294 F.3d at 1188, which is admittedly different than
28 the search of minors when taken into custody in the case at bar.
However, importantly both the policies concern the control over
persons in custody.

1 under Section 1983 is DENIED.

2 **B. The County of Sacramento and Sacramento County**
3 **Probation Department Are Thereby Not Immune**

4 Cities, counties, and local officers sued in their official
5 capacity are themselves "persons" for purposes of Section 1983
6 and, although they cannot be held vicariously liable for unlawful
7 acts by subordinate officials, they may be held directly liable
8 for constitutional violations carried out under their own
9 regulations, policies, customs, or usages by persons having
10 "final policymaking authority" over the actions at issue.

11 Monell, 436 U.S. at 690-692. For purposes of deciding this
12 motion, the court must accept as true plaintiffs' allegation that
13 Speirs and Collins maintained an official policy, custom, or
14 practice which caused violations of plaintiffs' constitutional
15 rights. Since Speirs and Collins were acting on behalf of
16 Sacramento County in administering these intake procedures at the
17 Juvenile Hall, the County is subject to Section 1983 liability
18 under Monell. Thus, the County's and the Probation Department's
19 motion to dismiss plaintiffs' claims brought under Section 1983
20 is DENIED.

21 **II. State Law Claims**

22 Defendants assert that plaintiffs' state law claims must be
23 dismissed due to plaintiffs' failure to comply with the claim
24 presentation requirements of the California Tort Claims Act.¹⁰
25 (Defs.' Mot. to Dismiss at 8:3-5.) In opposition, plaintiffs
26 "acknowledge that [their] state law claims may not be maintained
27 because of the failure to file timely government tort claims

28 ¹⁰ Cal. Gov't Code § 900 et seq.

1 required as a prerequisite to suit on the state law claims."
2 (Pls.' Opposition to Defs.' Mot. to Dismiss, filed December 3,
3 2004, at 12:1-3.) Accordingly, defendants' motion to dismiss
4 plaintiffs' state law claims is GRANTED.

5 **CONCLUSION**

6 For the foregoing reasons, defendants' motion to dismiss is
7 DENIED in part with respect to plaintiffs' Section 1983 claims
8 and GRANTED in part with respect to plaintiffs' state law claims.

9 IT IS SO ORDERED.

10 DATED: February 4, 2005.

11 /s/ Frank C. Damrell Jr.
12 FRANK C. DAMRELL, Jr.
13 UNITED STATES DISTRICT JUDGE
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