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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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KIMBERLY KOZLOWSKI; JASMINE  
TAGGART, a minor, by and  
through her Guardian Ad Litem,  
her custodial parent, Barbara  
Perry; and ALICIA ANDERSON, a  
minor, by and through her  
Guardian Ad Litem, her  
custodial parent, Priscilla  
Hairston, on behalf of  
themselves and all those  
similarly situated,

Plaintiffs,

v.

SACRAMENTO COUNTY; SACRAMENTO  
COUNTY PROBATION DEPARTMENT;  
SACRAMENTO COUNTY CHIEF  
PROBATION OFFICER VERNE  
SPEIRS, in his individual and  
official capacity; SACRAMENTO  
COUNTY ASSISTANT CHIEF  
PROBATION OFFICER SUZANNE  
COLLINS, in her individual and  
official capacity; and DOES 1  
THROUGH 150,

Defendants.

NO. CIV. S-04-2381 FCD PAN

MEMORANDUM AND ORDER

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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.<sup>1</sup>

10 **BACKGROUND**

11 Plaintiffs Kimberly Kozlowski ("Kozlowski"), Jasmine Taggart  
12 ("Taggart"), and Alicia Anderson ("Anderson") bring this action  
13 on behalf of themselves and all those similarly situated against  
14 defendants, asserting violations of the Fourth and Fourteenth  
15 Amendments pursuant to 42 U.S.C. § 1983.<sup>2</sup> (Pls.' First Amended  
16 Complaint ("Compl."), filed Nov. 30, 2004, at 2:14-17.) In  
17 addition, plaintiffs assert claims under the Unruh Civil Rights  
18 Act (Cal. Civ. Code § 52.1(b)) and California Penal Code § 4030.  
19 (Compl. at 2:18-25.)

20 Each of the plaintiffs, at one point in time, has been held  
21 at Sacramento County's B.T. Collins Juvenile Detention Center  
22 ("Juvenile Hall"). In or about 1997, and again on December 31,  
23 2002, Kozlowski was arrested for misdemeanor offenses and  
24 transported to the Juvenile Hall. (Compl. at 5:19-23.)

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

<sup>2</sup> Hereinafter all references to "Section 1983" are to  
Title 42 of the United States Code.

1 Kozlowski alleges that prior to a detention hearing she was  
2 subjected to visual body cavity searches. (Id.) On or about  
3 April 27, 2004, Taggart was arrested for misdemeanor offenses and  
4 was transported to the Juvenile Hall. (Compl. at 6:3-8.) At the  
5 Juvenile Hall, Taggart claims to have been subjected to visual  
6 body cavity searches. (Id.) On or about August 7, 2004,  
7 Anderson was arrested and transported to the Juvenile Hall.  
8 (Compl. at 6:19-24.) Anderson claims to have been subjected to  
9 visual body cavity searches. (Id.) These allegations form the  
10 basis of plaintiffs' claims against each of the defendants.

11 At all relevant times, Speirs and Collins were the  
12 Sacramento County Chief Probation Officer and the Sacramento  
13 County Assistant Chief Probation Officer, respectively. (Id. at  
14 3:28-4:10.) Defendants claim they are immune from liability  
15 under the Eleventh Amendment on the ground that in Sacramento  
16 County, the Chief Probation Officer acts on behalf of the state  
17 rather than the county when administering the intake function at  
18 the Juvenile Hall. (Defs.' Mot. to Dismiss, ("Defs.' Mot."),  
19 filed January 11, 2005, at 6:28-7:4.) In addition, defendants  
20 ask the court to dismiss plaintiffs' state law claims due to  
21 various immunities contained in the California Government Code.  
22 (Defs.' Mot. at 9:1-12.) Plaintiffs claim that Speirs is  
23 responsible for making, overseeing, and implementing the policies  
24 challenged in this case relating to the operation of the Juvenile  
25 Hall on behalf of Sacramento County. (Compl. at 3:28-4:4.)  
26 Plaintiffs assert that Collins is responsible for assisting in  
27 the administration of these policies at the Juvenile Hall on  
28 behalf of Sacramento County. (Id. at 4:5-10.)

1                                 **STANDARD**

2           On a motion to dismiss, the allegations of the complaint  
3 must be accepted as true. Cruz v. Beto, 405 U.S. 319, 322  
4 (1972). The court is bound to give plaintiffs the benefit of  
5 every reasonable inference to be drawn from the "well-pleaded"  
6 allegations of the complaint. Retail Clerks Int'l Ass'n v.  
7 Schermerhorn, 373 U.S. 746, 753 n.6 (1963). Thus, the plaintiff  
8 need not necessarily plead a particular fact if that fact is a  
9 reasonable inference from facts properly alleged. See id.

10           Given that the complaint is construed favorably to the  
11 pleader, the court may not dismiss the complaint for failure to  
12 state a claim unless it appears beyond a doubt that the plaintiff  
13 can prove no set of facts in support of the claim which would  
14 entitle him or her to relief. Conley v. Gibson, 355 U.S. 41, 45  
15 (1957); NL Industries, Inc. v. Kaplan, 792 F.2d 896, 898 (9th  
16 Cir. 1986).

17           Nevertheless, it is inappropriate to assume that plaintiffs  
18 "can prove facts which it has not alleged or that the defendants  
19 have violated the . . . laws in ways that have not been alleged."  
20 Associated Gen. Contractors of Calif., Inc. v. Calif. State  
21 Council of Carpenters, 459 U.S. 519, 526 (1983). Moreover, the  
22 court "need not assume the truth of legal conclusions cast in the  
23 form of factual allegations." United States ex rel. Chunie v.  
24 Ringrose, 788 F.2d 638, 643 n.2 (9th Cir. 1986).

25           In ruling upon a motion to dismiss, the court may consider  
26 only the complaint, any exhibits thereto, and matters which may  
27 be judicially noticed pursuant to Federal Rule of Evidence 201.  
28 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 In a related case, Robinson, et al. v. Sacramento County, et  
6 al., Civ. S-04-1617 FCD PAN (hereinafter Robinson), pending  
7 before this court, a different set of plaintiffs brought  
8 identical claims against the same defendants in this case. In a  
9 previously filed motion to dismiss in Robinson, defendants  
10 claimed they were immune from Section 1983 liability under the  
11 Eleventh Amendment on the ground that in Sacramento County, the  
12 Chief and Assistant Probation Officer act on behalf of the State  
13 rather than the County when administering the intake function at  
14 the Juvenile Hall. After reviewing California's constitutional,  
15 statutory, and regulatory scheme, as well as California case law,  
16 this court rejected defendants' arguments. (Robinson, Mem. &  
17 Order, filed Feb. 4, 2005.) The court found that the challenged  
18 policies were administrative in nature and were performed on  
19 behalf of the County, not on behalf of the State. (Id.) In the  
20 instant motion to dismiss, defendants raise the exact arguments  
21 they raised in Robinson. Thus, for the reasons stated in  
22 Robinson, Speirs' and Collins' motion to dismiss plaintiffs'  
23 claims brought under Section 1983 is DENIED. In addition,  
24 Sacramento County's motion to dismiss plaintiffs' claims brought  
25 under Section 1983 is DENIED. (Id. at 6-16.)

26 Unlike the motion to dismiss brought in Robinson, defendants  
27 now assert that Sacramento County Probation Department is an  
28 improper party to a civil action brought under Section 1983.

1 (Defs.' Mot. at 8:4-10.) Plaintiffs do not respond to this  
2 argument. The court finds that the County is a proper defendant  
3 in a Section 1983 claim, but an agency of the County is not. See  
4 Vance v. County of Santa Clara, 928 F. Supp. 993, 996 (C.D. Cal.  
5 1996) (finding that the Department of Corrections of Santa Clara  
6 County was an improper party to a Section 1983 claim because  
7 municipal departments are not "persons" under the statute.)  
8 Thus, Sacramento County Probation Department's motion to dismiss  
9 plaintiffs' claims brought under Section 1983 is GRANTED.

## 10 **II. State Law Claims**

11 Plaintiffs bring two state law claims against defendants.  
12 In Count Two, plaintiffs allege that defendants violated Section  
13 52.1 of the California Civil Code by requiring plaintiffs to  
14 submit to pre-detention hearing visual body cavity searches.  
15 (Compl. at ¶¶ 46-49.) Plaintiffs further allege in Count Three  
16 that defendants violated Section 4030 of the California Penal  
17 Code by requiring plaintiffs to submit to pre-detention hearing  
18 visual body cavity searches. (Compl. at ¶¶ 51-52.) Defendants  
19 ask the court to dismiss these state law claims due to various  
20 immunities contained in the California Government Code. The  
21 court addresses each of these arguments in turn.<sup>3</sup>

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25 <sup>3</sup> In a factually similar case, the United States District  
26 Court for the Northern District of California (Jenkins, J.)  
27 evaluated similar immunity claims put forth by a defendant faced  
28 with similar state law claims as we have here. (See Order  
Granting in Part and Denying in Part Defs.' Mot. To Dismiss,  
Chatoian v. County of Marin, Civ. 04-2790 MJJ, filed December 14,  
2004, N.D. Cal.) The Chatoian court's reasoning is well-crafted  
and particularly relevant to this case.

1           **A.     Plaintiff Kozlowski's State Law Claims**

2           Defendants assert that plaintiff Kozlowski's state law  
3 claims must be dismissed due to Kozlowski's failure to comply  
4 with the claim presentation requirements of the California Tort  
5 Claims Act.<sup>4</sup> (Defs.' Mot. at 13:2-12.) In opposition,  
6 plaintiffs "concede that plaintiff Kozlowski will not be able to  
7 remedy this pleading deficiency...." (Pls.' Opp'n to Defs.' Mot.  
8 to Dismiss ("Pls.' Opp'n"), filed February 11, 2005, at 19:11-  
9 14.) Accordingly, defendants' motion to dismiss plaintiff  
10 Kozlowski's state law claims is GRANTED.

11           **B.     Immunity Under the California Tort Claims Act**

12           Defendants move for dismissal of the remaining plaintiffs'  
13 state law claims on the grounds that the County, Probation  
14 Department, Speirs, and Collins are entitled to immunity under  
15 various provisions of the California Government Code.<sup>5</sup>  
16 Defendants argue that the County and the Probation Department are  
17 immune under Section 844.6 and Section 815.2(b). In addition,  
18 defendants argue that Speirs and Collins are entitled to  
19 discretionary immunity under Section 820.2 or, alternatively,  
20 Speirs and Collins are entitled to immunity under Section 802.8.  
21 Initially, the court notes that these immunity provisions do not  
22 apply to claims for declaratory and injunctive relief. Rodriguez  
23 v. Cal. Highway Patrol, 89 F. Supp. 2d 1131, 1138 (N.D. Cal.  
24 2000) (citing CAL. GOV'T CODE § 814). The immunity provisions

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26           <sup>4</sup>     CAL. GOV'T CODE § 900 et seq.

27           <sup>5</sup>     All references hereafter to the "Code" or to a specific  
28 "Section" are to the California Government Code unless specified  
otherwise.

1 cited by defendants apply only to claims for damages. Id. In  
2 this case, plaintiffs seek declaratory and injunctive relief, and  
3 money damages. (Compl. at 1:27-28 to 2:1-13.) Thus, the state  
4 law claims for declaratory and injunctive relief against  
5 defendants remain intact. Before turning to each of defendants'  
6 claims of immunity, the court notes that the California Supreme  
7 Court has instructed that "in governmental tort cases, the rule  
8 is liability, immunity is the exception." Lopez v. Southern Cal.  
9 Rapid Transit Dist., 40 Cal.3d 780 (1985) (internal quotation  
10 marks and citations omitted).

11 **1. Sacramento County's and the Probation Department's**  
12 **Immunity Under Section 844.6**

13 Section 844.6 of the California Government Code provides  
14 that a public entity is not liable for injury to a prisoner  
15 "except as provided in this section and in Sections 814, 814.2,  
16 845.4 and 845.6, or in Title 2.1 (commencing with Section 3500)  
17 or part 3 of the Penal Code." CAL. GOV'T CODE § 844.6. There is  
18 no question that those exceptions do not apply here.  
19 Notwithstanding the lack of an applicable, specific exception,  
20 the court must determine whether Section 844.6 immunizes the  
21 County and the Probation Department from liability for claims  
22 made pursuant to California Penal Code section 4030 and  
23 California Civil Code section 52.1.

24 The court is guided by the *expressio unius est exclusio*  
25 *alterius* canon of statutory interpretation. Clearly, Section  
26 844.6 sets forth specific exceptions to a government entity's  
27 immunity and does not enumerate Penal Code section 4030 or Civil  
28 Code section 52.1 among those exceptions. The legislature's



1 expression of certain exceptions suggests that omitting others  
2 was intentional and that a government entity is immune from  
3 liability for plaintiffs' Penal Code section 4030 and Civil Code  
4 section 52.1 claims. Moreover, where governmental tort liability  
5 immunity exists it is only withdrawn "by a clear indication of  
6 legislative intent that statutory immunity is withheld or  
7 withdrawn in the particular case." Caldwell v. Montoya, 10 Cal.  
8 4th 972, 986 (1995) (italics omitted). There is nothing in Penal  
9 Code section 4030 which indicates that the legislature intended  
10 to withdraw immunity as to government entities sued pursuant to  
11 that statute. Similarly, nothing in Civil Code section 52.1  
12 indicates that statutory immunity is to be withheld or withdrawn.  
13 Accord Chatoian v. County of Marin, Civ. 04-2790 MJJ at 20:20-25  
14 to 21:1-9.

15 Plaintiffs argue that Section 844.6 immunity does not apply  
16 to their state law claims because plaintiffs were not "prisoners"  
17 at the time of the alleged injury. (Pls.' Reply at 15:4-8.) The  
18 term "prisoner" as used in Section 844.6 is defined in California  
19 Government Code section 844. Section 844 provides, in pertinent  
20 part, "'prisoner' includes an inmate of a prison, jail, or penal  
21 or correctional facility." The Legislative Committee Comment to  
22 section 844.6 states, "[t]he immunity provided to public entities  
23 by this section prevails over all other provisions of the  
24 statute. Thus, the public entity is immune from liability for  
25 injuries to prisoners (which includes wards of the juvenile  
26 court)." Jiminez v. County of Santa Cruz, 42 Cal. App. 3d 407,  
27 409 (1974). Clearly, a ward of the juvenile court is a  
28 "prisoner" in terms of governmental tort immunity under Section

1 844.6.

2 Plaintiffs contend that they had not yet appeared before a  
3 judicial officer when the alleged strip search took place and, as  
4 such, they cannot be classified as "wards of the juvenile court."  
5 However, Section 844.6 has been held to apply to juveniles who  
6 are confined in a juvenile facility. Jiminez, 42 Cal. App. 3d at  
7 413. While the court is bound to give plaintiffs the benefit of  
8 every reasonable inference to be drawn from the allegations of  
9 the complaint, plaintiffs allege in their own complaint that the  
10 alleged strip searches took place while each plaintiff was in  
11 custody at the Juvenile Hall. The court finds that, by  
12 plaintiffs' own admission, plaintiffs were confined in a juvenile  
13 facility at the time of the alleged injury and, as such,  
14 plaintiffs are "prisoners" under Section 844.6.

15 Thus, defendants' motion to dismiss plaintiffs' claims  
16 against Sacramento County and Sacramento County Probation  
17 Department for violations of California Penal Code section 4030  
18 and Civil Code section 52.1 for damages is GRANTED. Defendants'  
19 motion to dismiss plaintiffs' Section 4030 and Section 52.1  
20 claims against Sacramento County and Sacramento County Probation  
21 Department for declaratory and injunctive relief is DENIED.

22 **2. Speirs' and Collins' Immunity Under Section 820.2**

23 California Government Code section 820.2 provides, in  
24 pertinent part, that "a public employee is not liable for an  
25 injury resulting from his act or omission where the act or  
26 omission was the result of the exercise of the discretion vested  
27 in him, whether or not such discretion be abused." Defendants  
28 argue that Speirs and Collins are entitled to immunity under this

1 statute because "the alleged actions are the result of the  
2 exercise of the discretion vested in them by the nature of their  
3 respective positions in 'promulgating' policies." (Defs.' Mot.  
4 at 11:25-27.) The court finds that the alleged policy enacted  
5 and implemented by Speirs and Collins regarding strip search  
6 procedures at the Juvenile Hall constitutes a discretionary act  
7 within the meaning of Section 820.2. See, e.g., Johnson v. State  
8 of California, 69 Cal.2d 782, 793 (1968) (discretionary actions  
9 are those involving basic policy decisions). Plaintiffs do not  
10 oppose this finding. Rather, plaintiffs argue that Section 820.2  
11 does not apply to the statutes under which plaintiffs bring their  
12 state law claims. Specifically, plaintiffs argue that to find  
13 that Section 820.2 immunized Speirs and Collins would effectively  
14 emasculate Penal Code section 4030 and Civil Code section 52.1.  
15 (Pls.' Opp'n at 17:13-18.)

16 The California Supreme Court has held that the discretionary  
17 immunity set forth in Section 820.2 "cannot be abrogated by a  
18 statute which simply imposes a general duty or liability on  
19 persons including public employees." Caldwell, 10 Cal. 4th at  
20 986. As discussed earlier, immunity is withdrawn only "by a  
21 clear indication of legislative intent that statutory immunity is  
22 withheld or withdrawn in the particular case." Id. (italics  
23 omitted).

24 In Caldwell, the court held that under Section 820.2, a  
25 school board was immune from California's Fair Housing and  
26 Employment Act ("FEHA") liability for its refusal to renew a  
27 superintendent's contract. Id. at 989. The court found that the  
28 decision by the members of the school board as to whether to

1 renew the contract was a basic policy decision, "and thus a  
2 discretionary act of the kind for which public employees are  
3 entitled to personal immunity under section 820.2 of the Tort  
4 Claims Act." Id. The court reasoned that FEHA, which created a  
5 general statutory duty and liability for violation of its  
6 provisions, did not abrogate Section 820.2 immunity because it  
7 did not expressly withdraw immunity. Id.

8 The issue to determine here, as in Caldwell, is whether  
9 California Penal Code section 4030 and/or California Civil Code  
10 section 52.1 contain an express legislative intent to withdraw  
11 discretionary immunity under Section 820.2.<sup>6</sup> The court addresses  
12 each of these statutes in turn.

13 **a. No Immunity From Penal Code Section 4030**  
14 **Liability**

15 California Penal Code section 4030 was expressly enacted "to  
16 protect the state and federal constitutional rights of the people  
17 of California by establishing a statewide policy strictly  
18 limiting strip and body cavity searches." CAL. PENAL CODE §  
19 4030(a). The Legislature found "that law enforcement policies  
20 and practices for conducting strip or body cavity searches of  
21 detained persons vary widely throughout California." Id.  
22 Subsection (b) declares that the statute applies "to any minor  
23 detained prior to a detention hearing on the grounds that he or  
24 she is a person described in Section 300, 601, or 602 of the  
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26 <sup>6</sup> In Chatoian, the court found that California Penal Code  
27 section 4030 and California Civil Code section 52.1 did express  
28 the legislature's intent to withdraw otherwise applicable  
immunity under the California Tort Claims Act. Chatoian, Civ.  
04-2790 MJJ at 18:6-23, 19:6-11.

1 Welfare and Institutions Code alleged to have committed a  
2 misdemeanor or infraction offense." CAL. PENAL CODE § 4030(b).  
3 According to the statute, it is a misdemeanor to "knowingly and  
4 willfully authorize[] or conduct[] a body cavity search in  
5 violation of this section." CAL. PENAL CODE § 4030(n). Subsection  
6 (p) affords a person so searched statutory civil remedies  
7 including recovery of actual damages. CAL. PENAL CODE § 4030(p).

8 Defendants argue that the language of Section 4030 does not  
9 contain an express withdrawal of immunity as required by  
10 Caldwell. Moreover, defendants argue that the sanctions imposed  
11 by Section 4030 "are imposed only against an individual who  
12 conducts the ministerial act of 'authorizing or conducting' strip  
13 searches, not on a person who performs the discretionary function  
14 of setting policy."<sup>7</sup> (Defs.' Reply to Pls.' Opp'n to Mot. to  
15 Dismiss ("Defs.' Reply"), filed February 18, 2005, at 12:8-12.)  
16 Defendants' position is unpersuasive. The statute imposes a  
17 legal duty to abstain from engaging in or *authorizing* such  
18 searches, and the statute provides express civil remedies when  
19 its provisions are violated.

20 The court is thus left with defendants' argument that in  
21 passing Penal Code section 4030 "the Legislature did not express  
22 a specific intent to hold state officials personally accountable  
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24 <sup>7</sup> The court finds defendants' argument inconsistent.  
25 Speirs and Collins claim *discretionary* immunity from liability  
26 under California Penal Code section 4030 and simultaneously  
27 contend that this *same* section only imposes liability for  
28 ministerial conduct. The statute creates liability for conduct  
that can be described as discretionary (*i.e.*, "authorize a strip  
search") or ministerial (*i.e.*, "conduct a strip search"). The  
plain language of the statute demands that the court reject  
defendants' argument.

1 for violations of Penal Code Section 4030," (Defs.' Reply at  
2 12:16-17), and as such, Speirs and Collins are entitled to  
3 immunity under Section 820.2. Plaintiffs urge, to the contrary,  
4 that the court should find that Section 820.2 is overridden by  
5 Penal Code section 4030 because Section 4030 is "a narrowly drawn  
6 statute aimed to prohibit specific government conduct and  
7 provides redress to those harmed by the violation." (Pls.' Opp'n  
8 at 14:22-23.) Plaintiffs argue to find that Speirs and Collins,  
9 who are alleged to have enacted, overseen, and implemented the  
10 policies and procedures at issue in this lawsuit, immune from  
11 Section 4030 liability would render Section 4030 a nullity. The  
12 court agrees.

13 Plaintiffs correctly argue that this case is more like  
14 Shoemaker v. Myers, 2 Cal. App. 4th 1407 (1992) and Southern  
15 California Rapid Transit Dist. v. Superior Court, 30 Cal. App.  
16 4th 713 (1994), than like Caldwell. In Shoemaker, a California  
17 appellate court found Government Code section 19683, a whistle-  
18 blowing statute, to abrogate governmental tort liability. The  
19 court reasoned that the whistle-blower statute was directed  
20 chiefly against state employees who otherwise would be protected  
21 by the immunity statute. Shoemaker, 2 Cal. App. 4th at 1424-25.  
22 Thus, the court found that conferring immunity on a public  
23 employee violating the whistle-blower statute would render the  
24 protection afforded by the whistle-blower statute illusory. Id.  
25 The court went on to hold that to grant governmental tort  
26 immunity to a party violating the whistle-blower statute would be  
27 "totally inconsistent with the design of section 19683." Id. at  
28 1425.

1 In Caldwell, on the other hand, the California Supreme Court  
2 considered the analysis in Shoemaker and determined that the  
3 statute at issue, FEHA, unlike Section 19638, did not abrogate  
4 governmental tort immunity under the California Tort Claims Act.  
5 Caldwell, 10 Cal. 4th at 972. The court held that while Section  
6 19683's "specific nature and purpose . . . provide[s] a 'clear  
7 indication of . . . intent' [such that] the personal immunities  
8 of public employees are abrogated," by contrast, "FEHA promotes  
9 much more general policies throughout the public and private  
10 sectors and advances no specifically *governmental* interest that  
11 would support a finding of intent to abrogate any immunity of  
12 public employees." Id. at 986 n.7 (emphasis in original).

13 The statute at issue in this case is analogous to the one at  
14 issue in Shoemaker. Penal Code section 4030, like Government  
15 Code section 19638, is "directed chiefly, if not exclusively,  
16 against state employees otherwise protected by [CTCA] immunity,"  
17 rather than at private actors. Shoemaker, 2 Cal. App. 4th at  
18 1425. The text of Penal Code section 4030 indicates that the  
19 legislature's intent was that the statute was to apply to law  
20 enforcement policies and procedures with respect to pre-  
21 arraignment detainees.<sup>8</sup> Whereas the statute at issue in  
22 Caldwell, FEHA, is directed at both public and private

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24 <sup>8</sup> "The Legislature finds and declares that law  
25 enforcement policies and practices for conducting strip or body  
26 cavity searches of detained persons vary widely throughout  
27 California. Consequently, some people have been arbitrarily  
28 subjected to unnecessary strip and body cavity searches after  
arrests for minor misdemeanor and infraction offenses. Some  
present search practices violate state and federal constitutional  
rights to privacy and freedom from unreasonable searches and  
seizures." CAL. PENAL CODE § 4030(a).

1 discrimination, Penal Code section 4030 is not aimed at the  
2 conduct of private citizens. Penal Code section 4030 can only be  
3 understood as an effort by the legislature to streamline the  
4 strip-searching policies of public law enforcement officials.  
5 See CAL. PENAL CODE § 4030(a)-(b). Defendants cannot contest the  
6 fact that the statute only applies to government employees.  
7 Moreover, like Government Code section 19683, subsection (p) of  
8 Section 4030 creates direct civil liability for violations of the  
9 statute. Therefore, the court finds that, similar to the statute  
10 at issue in Shoemaker, Penal Code section 4030 expresses the  
11 legislature's intent to withdraw otherwise applicable immunity  
12 under Section 820.2. To hold otherwise would frustrate the  
13 legislature's expressly stated purpose and would render Penal  
14 Code section 4030 a nullity. Thus, the court finds that Section  
15 820.2 does not immunize Speirs and Collins from liability on  
16 plaintiffs' Section 4030 claim for damages. Defendants' motion  
17 to dismiss plaintiffs' Penal Code section 4030 claim against  
18 Speirs and Collins is DENIED.

19 **b. No Immunity From Civil Code Section 52.1**  
20 **Liability**

21 California Civil Code section 52.1 contains a liability  
22 provision that has been interpreted as an express intention to  
23 withdraw immunity. See Doe v. Petaluma City Sch. Dist., 830 F.  
24 Supp. 1560 (N.D. Cal. 1993). In Doe, the court found that  
25 governmental tort "immunity is not available for a violation of  
26 Civil Code § 52.1 since ... section 52.1 specifically provides  
27 liability for individuals 'whether or not acting under color of  
28 law.'" Doe, 830 F. Supp. at 1582. Thus, defendants' motion to



1 dismiss plaintiffs' claim brought against Speirs and Collins  
2 under Section 52.1 is DENIED.

3 **3. Speirs' and Collins' Immunity Under Section 820.8**

4 California Government Code section 820.8 provides, in  
5 pertinent part, "[A] public employee is not liable for an injury  
6 caused by the act or omission of another person. Nothing in this  
7 section exonerates a public employee from liability for injury  
8 proximately caused by his own negligent or wrongful act or  
9 omission." Defendants argue that plaintiffs' failure to allege  
10 that Speirs and Collins personally conducted any of the alleged  
11 strip searches necessarily means that Speirs and Collins must be  
12 immune under Section 820.8. (Defs.' Mot. at 12:9-18.) However,  
13 plaintiffs do not allege that Speirs and Collins are liable for  
14 personally strip searching plaintiffs. Rather, plaintiffs allege  
15 that Speirs and Collins are liable for "'making, implementing,  
16 and overseeing' the illegal strip search procedures, practices,  
17 and customs which caused plaintiffs' injuries." (Pls.' Opp'n at  
18 18:1-3.) Defendants' Section 820.8 immunity argument is without  
19 merit. The court DENIES defendants' motion based upon immunity  
20 under Section 820.8.

21 **4. Sacramento County's and the Probation Department's**  
22 **Immunity Under Section 815.2(b)**

23 California Government Code section 815.2(b) provides, in  
24 pertinent part, that "a public entity is not liable for an injury  
25 resulting from an act or omission of an employee of the public  
26 entity where the employee is immune from liability." Defendants  
27 argue that to the extent that Speirs and Collins are entitled to  
28 immunity pursuant to the Government Code, the County and the

1 Probation Department are entitled to immunity from those same  
2 state law claims under Section 815.2(b). Given that Speirs and  
3 Collins are not entitled to immunity, as discussed above,  
4 defendants' motion to dismiss plaintiffs' state law claims  
5 against the County and the Probation Department under Section  
6 815.2(b) is DENIED.

7 **C. Class Actions Under California Civil Code Section 52.1**

8 Defendants contend that the class action portion of Count  
9 Two is barred as a matter of law due to the language of Civil  
10 Code section 52.1. (Defs.' Mot. at 13:14-22.) Civil Code  
11 section 52.1(b) provides, in pertinent part,

12 Any individual whose exercise or enjoyment of  
13 rights secured by the Constitution or laws of  
14 the United States, or of rights secured by  
15 the Constitution or laws of this state, has  
16 been interfered with, or attempted to be  
17 interfered with, as described in subdivision  
18 (a), may institute and prosecute in his or  
19 her own name and on his or her own behalf a  
20 civil action for damages, including, but not  
21 limited to, damages under Section 52...

22 The court is unaware of, and the parties have failed to  
23 direct the court to, any authority on-point as to the propriety  
24 of class actions brought under Civil Code section 52.1. However,  
25 a plain reading of the statutory language indicates that class  
26 actions are not permitted under Civil Code section 52.1. When  
27 the language of a statute is clear, the court need not go any  
28 further to interpret the statute's meaning. People v. Flores, 30  
Cal. 4th 1059 (2003) ("The rules governing statutory construction  
are well settled. When the language of the statute is clear, we  
need go no further.")

1 Here, the statute *requires* that a plaintiff bring a cause of  
2 action under this statute "in his or her own name *and* on his or  
3 her own behalf." Additionally, subsection (a) of the statute  
4 allows "the Attorney General, or any district attorney or city  
5 attorney" to "bring a civil action for injunctive and other  
6 appropriate equitable relief in the name of the people of the  
7 State of California." The legislature obviously intended that  
8 representative claims be brought under subsection (a) of the  
9 statute and individual claims under subsection (b) of the  
10 statute.<sup>9</sup> Thus, defendants' motion to dismiss plaintiffs' class  
11 action claim brought in Count Two under California Civil Code  
12 § 52.1 is GRANTED.

### 13 CONCLUSION

14 For the foregoing reasons, defendants' motion to dismiss is  
15 decided in the following manner: (1) Speirs' and Collins' motion  
16 to dismiss plaintiffs' claims brought under Section 1983 is  
17 DENIED; (2) Sacramento County's motion to dismiss plaintiffs'  
18 claims brought under Section 1983 is DENIED; (3) Sacramento  
19 County Probation Department's motion to dismiss plaintiffs'  
20 claims brought under Section 1983 is GRANTED; (4) defendants'  
21 motion to dismiss plaintiff Kozlowski's state law claims is  
22 GRANTED; (5) defendants' motion to dismiss plaintiffs' state law  
23 claims for damages against Sacramento County and Sacramento  
24 County Probation Department is GRANTED; (6) defendants' motion to  
25 dismiss plaintiffs' state law claims for declaratory and

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26  
27 <sup>9</sup> This conclusion is further supported by subsection (a)  
28 which allows an individual who does not bring an action in her  
own name to receive money damages from a judgment prosecuted by  
the Attorney General, district attorney, or city attorney.

1 injunctive relief against Sacramento County and Sacramento County  
2 Probation Department is DENIED; (7) defendants' motion to dismiss  
3 plaintiffs' state law claims against Speirs and Collins is  
4 DENIED; and (8) defendants' motion to dismiss plaintiffs' class  
5 action claim brought in Count Two under California Civil Code  
6 § 52.1 is GRANTED.

7 IT IS SO ORDERED.

8 DATED: March 11, 2005.

9 /s/ Frank C. Damrell Jr.  
10 FRANK C. DAMRELL, Jr.  
11 UNITED STATES DISTRICT JUDGE  
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