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

KEVIN M. SCHILLING, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

TRANSCOR AMERICA, LLC, *et al.*,

Defendants.

No. C 08-941 SI

**ORDER GRANTING DEFENDANTS’  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT AND DENYING  
PLAINTIFFS’ MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Currently before the Court are the parties’ cross motions for summary judgment. The Court held argument on the motions on July 27, 2012, and having considered the arguments of the parties and the papers submitted, the Court GRANTS defendants’ motion as to plaintiffs’ class claims and DENIES plaintiffs’ motion.

**BACKGROUND**

**1. Procedural Background**

Plaintiffs Kevin Schilling, John Pinedo and William Tellez filed this lawsuit against TransCor America, LLC (“TransCor”). TransCor is a Tennessee corporation licensed to do business in California, whose business entails the transportation of pretrial detainees and prisoners throughout the United States on behalf of federal, state and local governments.<sup>1</sup>

Plaintiffs allege that TransCor transports pretrial detainees and prisoners in conditions that

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<sup>1</sup> The Second Amended Complaint also names as defendants Sgt. John Smith and Officer John Brummett, employees and/or agents of TransCor who allegedly assaulted Plaintiff Schilling. Second Amended Complaint, ¶ 24.

1 amount to cruel and unusual punishment. Each of the named plaintiffs alleges that he was transported  
2 by TransCor for more than 24 hours and subjected to inhumane conditions during his journey, including  
3 being shackled and kept sitting upright, thereby being prevented from sleeping, and also deprived of  
4 access to toilets and sanitation facilities.<sup>2</sup> The Second Amended Complaint alleges two class claims for  
5 relief: (1) a claim under 42 U.S.C. § 1983 for violations of the Eighth and Fourteenth Amendments, and  
6 (2) a claim under Cal. Civ. Code § 52.1 (the Bane Act) for violation of civil rights under California law.

7 On February 16, 2010, the Court granted in part plaintiffs' motion for class certification and  
8 certified the following classes:

9 1. A class of all pretrial detainees and prisoners who were transported by TransCor America  
10 LLC, its agents and/or employees between February 14, 2006 and the present, and who were  
11 forced to remain in restraints in the transport vehicle for more than 24 hours without being  
12 allowed to sleep overnight in a bed. The class includes pretrial detainees and prisoners who  
13 were removed from one transport vehicle and placed directly onto another, without being housed  
14 overnight, whose combined trip lasted more than 24 hours. The class only includes those  
15 pretrial detainees and prisoners who were transported by TransCor on behalf of a state agency,  
16 and does not include pretrial detainees and prisoners who were transported on behalf of a federal  
17 agency.

18 2. A subclass of all pretrial detainees and prisoners who were transported by TransCor  
19 America LLC, its agents and/or employees in the State of California between February 14, 2006  
20 and the present, and who were forced to remain in restraints in the transport vehicle for more  
21 than 24 hours without being allowed to sleep overnight in a bed. The class includes pretrial  
22 detainees and prisoners who were removed from one transport vehicle and placed directly onto  
23 another, without being housed overnight, whose combined trip lasted more than 24 hours. The  
24 class only includes those pretrial detainees and prisoners who were transported by TransCor on  
25 behalf of a state agency, and does not include pretrial detainees and prisoners who were  
26 transported on behalf of a federal agency.

19 February 16, 2010 Order [Docket No. 110] at 18-19.

20 Defendants moved for clarification of the Court's class certification Order and/or decertification.  
21 On July 9, 2012, the Court denied that motion, and affirmed the certification of plaintiffs' "Eighth and  
22 Fourteenth Amendment claims regarding the use of restraints, lack of overnight rest, lack of access to  
23 sanitation facilities and inadequate provision of food during transportation." Docket No. 200 at 2.

24 Plaintiffs now move for partial summary judgment on plaintiffs' first claim for relief; for  
25 violation of Eighth and Fourteenth Amendment rights based on TransCor's policy and practice of: (1)  
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28 <sup>2</sup> The Second Amended Complaint also contains allegations regarding inadequate provision of  
water and food, but plaintiffs do not rely on those allegations in moving for summary judgment.

1 keeping prisoners<sup>3</sup> in transport vehicles for more than 24 hours, without rest overnight; (2) restraining  
2 prisoners in handcuffs with black boxes, leg irons, waist chains, and connector chains; and (3) restricting  
3 prisoner's access to toilet and sanitation facilities. Plaintiffs also move for summary judgment on their  
4 second claim for relief under California's Bane Act.

5 Defendants oppose and also cross-move for summary judgment, arguing that the conditions  
6 plaintiffs complain of are not sufficiently serious deprivations to support an Eighth Amendment violation,  
7 but even if they were, legitimate security concerns justified those deprivations. Defendants also argue  
8 that plaintiffs have failed to prove and cannot satisfy the independent "interference" requirement of the  
9 Bane Act.<sup>4</sup>

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11 **2. Factual Background**

12 The following facts are not in dispute. Between February 14, 2006 to date, <sup>5</sup> thousands of  
13 prisoners and pretrial detainees were transported by TransCor for more than 24 continuous hours on at  
14 least one leg of their journeys. From 2006 through the end of 2008, TransCor operated a "hub and  
15 spoke" system of prisoner transportation, providing both "Extradition Services" (typically orders to  
16 move a single prisoner from one point in the county to another distant jurisdiction) and "Special  
17 Operations" (moves of a larger number of prisoners from one secured facility to another). Affidavit of  
18 Curtiss Sullivan ("C. Sullivan Aff.," Docket No. 95-1 at 8), ¶¶ 20, 22. Ideally, the Extradition Trips  
19 were designed to last no longer than 108 hours to ensure the crew did not violate the Department of  
20 Transportation's "hours of service" regulations. Third Affidavit of James Crouch ("Crouch Aff.,"  
21 Docket No. 95-1 at 18), ¶ 5. Prisoners, however, could be in transit for more than five days.  
22 Declaration of Jack Atherton ("Atherton Decl.," Docket No. 144), ¶ 7. The trips were designed to depart  
23 from one hub, follow a circular route, and return to the same hub. Crouch Aff., ¶ 5. TransCor asserts

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26 <sup>3</sup> The class consists of both prisoners and pretrial detainees. However, the Court will refer to  
27 them collectively as "prisoners."

28 <sup>4</sup> Plaintiffs and defendants move for summary judgment on all claims except for plaintiff  
Schilling's individual Fourth Amendment excessive force claim.

<sup>5</sup> The class period is February 14, 2006 to the present.

1 – and plaintiffs do not dispute – that for Extradition Services after February 1, 2006: 19% of “order  
2 segments” were less than 30 hours; 39% were less than 36 hours; 55% were less than 42 hours; and 68%  
3 were less than 48 hours. Crouch Aff., ¶ 10<sup>6</sup>. The median order segment duration was 39.78 hours. *Id.*

4 In order to facilitate transport to a prisoner’s final destination, prisoners are sometimes dropped  
5 off – housed or “stashed” – at correctional facilities or TransCor “hubs” overnight. When housed, the  
6 facilities are expected to provide prisoners with medical examination, food, clothes, laundry and  
7 recreation. C. Sullivan Aff., ¶¶ 23, 26. After being housed, the prisoners are then loaded onto different  
8 transporters for the next stage of their transfer. TransCor’s goal is to “deliver all inmates within 10 days  
9 of pickup,” which includes both transit and housing time. Affidavit of W. Ken Katsaris (Katsaris Aff.,  
10 Docket No. 145), ¶ 3. TransCor places no limit on the amount of time a prisoner can remain in transport  
11 vehicles prior to overnight housing or delivery to the destination. *Id.*

12 At the end of 2008, TransCor stopped Extradition Services to focus instead on local transports  
13 serving correctional facilities near its hubs (Defined Services), but TransCor continues to provide its  
14 Special Operations mass-transit services, directly from one location to another. C. Sullivan Aff., ¶ 21;  
15 Crouch Aff., ¶ 3. Special Operations are provided for entities, including the State of Vermont and the  
16 California Department of Corrections, which “request” that their prisoners be moved directly from  
17 origin to destination without stops. Crouch Aff., ¶ 12. Some of these Special Operations trips last under  
18 24 hours and some last 31 - 36 hours. *Id.*, ¶¶ 16-18.

19 TransCor’s policy and practice is that restraints, including handcuffs, belly chains, leg irons,  
20 interconnects and black boxes, are applied to all prisoners, with the exception that pregnant women  
21 are not required to wear a belly chain or shackles. C. Sullivan Aff., ¶ 14. An “interconnect” is a chain  
22 approximately two feet long that is used to connect two prisoners together. Handcuffs are attached to  
23 the belly chain to prevent the prisoner from raising his or her arms. The black boxes are placed over  
24 the links connecting a prisoner’s handcuffs and they restrict wrist movement.

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<sup>6</sup> 26% lasted between 48 and 72 hours; 6% lasted between 72 and 96 hours and 0.25% lasted  
longer than 96 hours. Crouch Decl., ¶ 10.

1 TransCor’s policy and practice is to train and require Transportation Specialists<sup>7</sup> to check the  
2 prisoners’ restraints at each stop. If an inmate complains about the tightness of his or her restraints and  
3 swelling is present, Transportation Specialists will report the incident to their supervisors and, if  
4 approved, are allowed to modify the restraints, use larger restraints, use flexible Grip restraints, or even  
5 remove an entire portion of the restraint system. C. Sullivan Aff., ¶ 14; Expert Report of George Earl  
6 Sullivan (G.E. Sullivan Report, Docket No. 195-2 at 2), ¶ 24<sup>8</sup>. The use of the restraints at issue can lead  
7 to swelling of extremities and numbness, as well as abrasions and lacerations in some instances.  
8 Katsaris Aff., ¶ 10; Atherton Decl., at 10. Despite TransCor’s policy of having its Transportation  
9 Specialists check on prisoners’ restraints during stops, instances of excessive swelling, abrasions, and  
10 skin being rubbed raw by the restraints occurred and TransCor was aware of these instances. See  
11 Plaintiffs’ Opposition at 15-16 (citing deposition testimony of former TransCor CEO). TransCor has  
12 no written policy or practice stating the maximum number of hours a prisoner can be held in restraints  
13 without a break. Katsaris Aff., ¶ 3.

14 Each of TransCor’s transport vehicles is divided into compartments or cages. Prisoners are  
15 locked inside the compartments and seated in leather chairs. The transports have televisions which show  
16 movies during the day. C. Sullivan Aff., ¶ 16. No movies are shown between the hours of 10:00 pm and  
17 6:00 am. *Id.* The transport vehicles have a chemical toilet on board, and prisoners are permitted to use  
18 the toilet only when the vehicle is stopped and they are escorted to the toilet by a TransCor employee,  
19 along with the other prisoner they are chained to. C. Sullivan Aff., ¶ 16. Stops are made every 3.5 to  
20 4 hours, and prisoners are also allowed to use the toilet any time the transporter stops. Supp. Snell Decl.,  
21 Ex. 3 at 116. Prisoners remain in restraints and are chained to one another while using the toilet. Other  
22 than the toilet, prisoners do not have access to sanitation facilities on the transporters. There is no  
23 running water and prisoners are provided with hand sanitizer after using the toilet and before meals. C.

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25 <sup>7</sup> “Transportation Specialists” are TransCor employees who are responsible for driving and  
26 guarding the prisoners.

27 <sup>8</sup> Four of the nine class members who were deposed testified that they had their restraints  
28 altered. See Defendants’ Exhibit 5 at 56, 59-60 (Arno restraints altered after complaint); Ex. 6 at 61  
(Kincheloe restraints altered after complaint); Ex. 7 at 45-46 (Wright restraints altered after complaint);  
Ex. 15 at 115, 140 (Pinedo not fitted with a black box).

1 Sullivan Aff., ¶ 16. TransCor’s policy is not to provide prisoners with soap, tooth brushes or the ability  
2 to shave on the transporters, because of security concerns. C. Sullivan Aff., ¶ 27. During transit, the  
3 prisoners are not allowed to change clothes, although if a prisoner is housed during his or her trip, the  
4 prisoner’s clothes will be laundered. *Id.*, ¶ 26.

5 TransCor’s policy is to advise prisoners against lying down in the transport vehicle to sleep, due  
6 to possibility of injury and the difficulty of being chained to another prisoner. Katsaris Aff., ¶ 6.  
7 Therefore, if prisoners sleep, they sleep sitting in their seats *Id.*; see also Atherton Decl., ¶¶ 14-15. The  
8 ability to sleep varies depending on the prisoner, the number of stops the transporter makes and other  
9 factors. TransCor’s policy is to allow prisoners to stand up and stretch – within the limits of their  
10 restraints and dependent upon the agreement of the prisoner they are chained to – during stops. Katsaris  
11 Aff., ¶ 7. Prisoners are permitted to walk up and down the transporter’s aisle, two at a time, during  
12 restroom breaks once those inmates who need to use the restroom have done so. *Id.*

13 The parties dispute why overnight housing was not provided. TransCor asserts that it was not  
14 able to house prisoners at local detention facilities because of jail overcrowding and a lack of facilities  
15 that could separately house the TransCor prisoners in appropriate accommodations. C. Sullivan Aff.,  
16 ¶¶ 23-24. In particular, TransCor asserts that only one California facility, in Southern California, agreed  
17 to provide housing services for TransCor prisoners. Crouch Aff., ¶ 11. As a result, TransCor secured  
18 larger vehicles with “sleeper berths” for the Transportation Specialists, so that TransCor could continue  
19 to move the prisoners without violating the Department of Transportation regulations on hours of service  
20 for drivers. C. Sullivan Aff., ¶ 25. For its ongoing Special Operations trips, some of which last 31-36  
21 hours, TransCor contends that its customers (State of Vermont and California Department of  
22 Corrections) request and/or require that the prisoner be delivered without stops overnight. Crouch Aff.,  
23 ¶¶ 12, 19.

24 Plaintiffs contend that “contract facilities” would be readily available to house TransCor  
25 prisoners overnight. Katsaris Aff., ¶ 25; Brook Decl., ¶¶ 5-6. Plaintiffs also contend that TransCor did  
26 not plan or attempt to secure overnight housing – but instead purchased larger transports with sleeping  
27 berths for its own employees – to save time and avoid the need to look for overnight facilities. Snell  
28 Decl., Ex. 4 (Rion Depo.) at 71-72. Plaintiffs’ affiants declare that they know of no other agency or

1 company which transports prisoners for more than 24 continuous hours rather than housing them  
2 overnight in a contract facility. Katsaris Aff., ¶ 15 Brooks Decl., ¶ 6. Defendants’ affiants and experts  
3 do not address whether any other agencies or companies transport prisoners for 24 continuous hours  
4 without housing them overnight.

5 Plaintiffs’ affiants also contend that depriving prisoners of sleep for over 24 hours, keeping  
6 prisoners in restraints for 24 hours, and depriving prisoners of sanitation facilities (running water, free  
7 use of a toilet) for 24 hours alone and in combination deprive prisoners of basic human needs and violate  
8 the custodian’s duty to provide humane treatment to prisoners. Atherton Decl., at 7; Katsaris Aff., ¶ 8.  
9 Defendants’ expert does not address the use of restraints and lack of overnight rest for more than 24  
10 hours directly. Instead, he states: “I do not read any complaint or condition that does not comport with  
11 sound correctional practices or are not within the Standard of Care.” G. E. Sullivan Report, Opinion 4.  
12 TransCor’s Vice President and Chief Operating Officer asserts that the practice of transporting prisoners  
13 in a vehicle or combination of vehicles in excess of 24 hours is “an acceptable and humane practice.”  
14 C. Sullivan Aff., ¶ 31.

## 16 LEGAL STANDARD

17 Summary judgment is proper if the pleadings, the discovery and disclosure materials on file, and  
18 any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled  
19 to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party bears the initial burden of  
20 demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317,  
21 323 (1986). The moving party, however, has no burden to disprove matters on which the non-moving  
22 party will have the burden of proof at trial. The moving party need only demonstrate to the Court that  
23 there is an absence of evidence to support the non-moving party’s case. *Id.* at 325.

24 Once the moving party has met its burden, the burden shifts to the non-moving party to “set  
25 out specific facts showing a genuine issue for trial.” *Id.* at 324 (quoting then Fed. R. Civ. P. 56(e)).  
26 To carry this burden, the non-moving party must “do more than simply show that there is some  
27 metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*,  
28 475 U.S. 574, 586 (1986). “The mere existence of a scintilla of evidence . . . will be insufficient; there

1 must be evidence on which the jury could reasonably find for the [non-moving party].” *Anderson v.*  
2 *Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

3 In deciding a summary judgment motion, the Court must view the evidence in the light most  
4 favorable to the non-moving party and draw all justifiable inferences in its favor. *Id.* at 255.  
5 “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from  
6 the facts are jury functions, not those of a judge . . . ruling on a motion for summary judgment.” *Id.*  
7 However, conclusory, speculative testimony in affidavits and moving papers is insufficient to raise  
8 genuine issues of fact and defeat summary judgment. *Thornhill Publ’g Co., Inc. v. GTE Corp.* 594 F.2d  
9 730, 738 (9th Cir. 1979). The evidence the parties present must be admissible. Fed. R. Civ. P. 56(c).

## 11 DISCUSSION

### 12 1. Plaintiffs’ Federal Constitutional Claims

#### 13 A. Legal Standard

14 The Eighth Amendment’s prohibition of cruel and unusual punishment requires that prison  
15 officials take reasonable measures for the safety of inmates. *See Farmer v. Brennan*, 511 U.S. 825, 834  
16 (1994). An official violates the Eighth Amendment only when two requirements are met: (1) the  
17 deprivation alleged is, objectively, sufficiently serious and (2) the official is, subjectively, deliberately  
18 indifferent to the inmate’s safety. *See id.* at 834. “[O]nly those deprivations denying ‘the minimal  
19 civilized measure of life’s necessities,’ are sufficiently grave to form the basis of an Eighth Amendment  
20 violation.” *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (citation omitted). Neither negligence nor gross  
21 negligence is actionable under § 1983 in the prison context. *See Farmer*, 511 U.S. at 835-36 & n.4.

22 “[W]hile the eighth amendment proscribes cruel and unusual punishment for convicted inmates,  
23 the due process clause of the fourteenth amendment proscribes any punishment of pretrial detainees.”  
24 *Redman v. County of San Diego* 942 F.2d 1435, 1440 at n.7 (9th Cir. 1991). “[E]ven though the pretrial  
25 detainees’ rights arise under the Due Process Clause the guarantees of the Eighth Amendment provide  
26 a minimum standard of care for determining their rights.” *Or. Advocacy Ctr. v. Mink*, 322 F.3d 1101,  
27 1120 (9th Cir. 2003).



1           **B.       Sufficiently Serious**

2           As an initial matter, the Court is required – in light of the class definition – to confine its  
3 analysis to determining whether the conditions complained of inflict a constitutional deprivation if their  
4 duration is “more than 24 hours.” As 24 hours plus one minute is the lowest common denominator for  
5 the class, the Court must determine whether depriving prisoners of a bed, and/or holding them in  
6 restraints, and/or depriving them of sanitation facilities for 24 hours and one minute is “sufficiently  
7 serious” to amount to a constitutional deprivation. Plaintiffs – in their evidence and argument – do not  
8 differentiate between prisoners transported under the challenged conditions for 24 hours plus one minute  
9 and prisoners transported for longer periods of time. Similarly, plaintiffs’ experts do not address or  
10 provide evidence regarding the impact of the complained of conditions on prisoners as the time  
11 increases above 24 hours. As such, the Court has no evidentiary basis to consider whether prisoners  
12 subjected to the complained of conditions for significantly more time than 24 hours have stated a  
13 constitutional claim. *But see, Hoptowitz v. Ray*, 682 F.2d 1237, 1258 (9th Cir. 1982) (“in considering  
14 whether a prisoner has been deprived of his rights, courts may consider the length of time that the  
15 prisoner must go without these benefits. . . . The longer the prisoner is without such benefits, the closer  
16 it becomes to being an unwarranted infliction of pain.”).

17           Plaintiffs contend that alone or collectively, transporting prisoners over 24 hours without  
18 allowing for overnight sleep in a bed, while in full restraints and without free access to sanitation  
19 facilities, deprives the prisoners of the basic life necessities of sleep, freedom from pain and hygiene.  
20 Regarding the lack of overnight rest, plaintiffs rely on cases finding that forcing inmates to sleep on the  
21 floor is sufficient to state Eighth and Fourteenth Amendment claims. However, those cases were  
22 analyzed in the context of jails and prisons where – either due to an intent to discomfort prisoners or  
23 because of overcrowding – inmates were forced to sleep on mattresses on the floor, often in  
24 inappropriate areas. *See, e.g., Union County Jail Inmates v. Di Buono* 713 F.2d 984, 996 (3d Cir. N.J.  
25 1983) (forcing detainees to sleep on mattresses placed on the floor adjacent to the toilet). The Courts  
26 found that there was no legitimate government justification for forcing inmates to sleep on the floor,  
27 simply because there may not be sufficient capacity in the current facilities. *See, e.g., Thompson v. Los*  
28 *Angeles*, 885 F.2d 1439, 1448 (9th Cir. 1989) (forcing pretrial detainee to sleep on cement floor for two

1 nights served no legitimate governmental objective); *Thomas v. Baca*, 514 F. Supp. 2d 1201, 1217  
2 (C.D. Cal. 2007) (“The basic humanity inherent in providing access to a bed highlights the practice of  
3 forced floor-sleeping as one of the unconstitutional effects of prison overcrowding.”); *see also Lyons*  
4 *v. Powell*, 838 F.2d 28, 31 (1st Cir. 1988) (“subjecting pretrial detainees to the use of a floor mattress  
5 for anything other than brief emergency circumstances may constitute an impermissible imposition of  
6 punishment”).

7 Here, the Court is addressing conditions on a prisoner transport vehicle, a situation that is starkly  
8 different from a brick and mortar prison. The parties do not dispute that transportation of these inmates  
9 is necessary, and that some deprivations will occur because the prisoners are being transported outside  
10 of secure facilities, e.g., restraints must be used for security purposes. As the Ninth Circuit recognized  
11 in *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. Ariz. 2000), “[t]he circumstances, nature, and duration  
12 of a deprivation of these necessities must be considered in determining whether a constitutional  
13 violation has occurred.” This case, therefore, does not fall within the generally recognized prohibition  
14 against forcing pretrial detainees and inmates to sleep on the floor of jails or prisons.<sup>9</sup>

15 As defendants point out, in deposition testimony, some inmates testified that they were unable  
16 to sleep on the transporter, but others said they were able to sleep or nap. See Defendants’ Ex. 5 at 65-66  
17 (Arno; was not able to get an hour or more of sleep, but could nap 20 or 30 minutes); Ex. 6 at 59  
18 (Kincheloe; was able to nap); Ex. 8 at 67-68 (Cedillo; was able to nap and others able to sleep).  
19 TransCor would not play movies from 10:00 p.m. through 6:00 a.m. in order to allow rest, and there is  
20 no evidence that TransCor employees tried to prevent inmates from sleeping during their transport.  
21 Significantly, plaintiffs’ affidavits do not state, or provide any support for the proposition, that sleep  
22 deprivation for a 24-hour period has any significant ill effects that would cause it, alone, to constitute

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24 <sup>9</sup> Nor does this case fall into the category of cases where, either by intentional conduct or by  
25 facility design, prisoners are routinely deprived of sleep. *See, e.g., Keenan v. Hall*, 83 F.3d 1083, 1090  
26 (9th Cir. 1996) (denying motion for summary judgment because there was no “legitimate penological  
27 justification” for constant illumination of cell where prisoner was placed for six months). The Court  
28 agrees with plaintiffs that defendants’ cases – addressing situations where temporary jail overcrowding  
forced authorities to make pretrial detainees sleep on the floor overnight – are largely inapposite.  
However, those cases underscore the fact that the context in which the Eighth Amendment claim is  
raised – e.g., in emergency/temporary situations in defendants’ cases versus ongoing overcrowding in  
plaintiffs’ cases – is important in determining whether a constitutional deprivation has occurred. Here,  
the Court is addressing transport vehicles during a 24-hour plus one minute time frame.

1 a significant deprivation of basic human needs.

2 Plaintiffs also argue that the use of the restraints – leg shackles, handcuffs, belly chains and black  
3 boxes to restrict wrist movement – creates an unconstitutional deprivation when used for more than 24  
4 hours. Plaintiffs rely on *Hope v. Pelzer*, 536 U.S. 730 (2002). There, the Supreme Court held that  
5 attaching an inmate to a hitching post for seven hours in the sun, during which time he was given water  
6 only once or twice and given no access to a bathroom, was an unconstitutional deprivation under the  
7 Eighth Amendment. The Court held that use of the hitching post clearly constituted an Eight  
8 Amendment violation because, “[d]espite the clear lack of an emergency situation, the respondents  
9 knowingly subjected him to a substantial risk of physical harm, to unnecessary pain caused by the  
10 handcuffs and the restricted position of confinement for a 7-hour period, to unnecessary exposure to the  
11 heat of the sun, to prolonged thirst and taunting, and to a deprivation of bathroom breaks that created  
12 a risk of particular discomfort and humiliation,” and was “punitive treatment” amounting “to gratuitous  
13 infliction of ‘wanton and unnecessary’ pain.” *Id.*, at 738. Here, there is no evidence that the use of the  
14 restraints is punitive or gratuitous. The use of the extensive restraints is a policy TransCor adopted to  
15 comply with the requirements of the Jeanna Act, *see* 42 U.S.C. § 13726,<sup>10</sup> and to ensure security while  
16 transporting prisoners outside of secure facilities, where accidents and other events that heighten the risk  
17 of prisoner escape can occur.

18 Plaintiffs also rely on *Myers v. Transcor America, LLC* 2010 WL 3824083 (M.D.Tenn. 2010).  
19 In *Myers*, a prisoner brought an Eighth Amendment excessive force claim based on TransCor’s “custom  
20 of placing and leaving inmates in restraints in such a manner that the restraints caused inmates to suffer  
21 unnecessary pain and physical injury which were obvious and apparent and for which no relief was  
22 offered by the transport officers.” *Id.*, \*4. The plaintiff and other affiants submitted evidence that  
23 although they each suffered extreme swelling, bleeding and other obvious ill effects from the restraints,  
24 the TransCor employees ignored the complaints and failed to take any action to provide relief. Here,  
25 plaintiffs’ claim is that the use of the restraints for 24 hours, by itself, is the constitutional deprivation.  
26 Plaintiffs do not allege – or submit any evidence – that use of the restraints for 24 hours will necessarily

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28 <sup>10</sup> Jeanna’s Act subjects “private prisoner transport companies” to various regulations “in order  
to enhance public safety.” 42 U.S.C. § 13726(5).

1 cause extreme swelling, bleeding, or other injuries on a classwide basis. Additionally, while there is  
2 evidence that some of the class members' restraints were too tight and/or caused swelling, chafing, and  
3 abrasions there are *no* allegations that TransCor had a customor policy of ignoring prisoner complaints  
4 about excessive swelling or abrasions from ill-fitting restraints. The *Myers* analysis of the individual  
5 excessive force claim, therefore, is inapposite.

6 In *Bain v. Transcor America, LLC*, 2009 WL 562586 (M.D.Tenn. 2009), the Court denied a  
7 motion to dismiss plaintiff's Eighth Amendment claims that he "suffered pain for over 50 straight hours  
8 while restrained, was denied prescribed medication, and suffered swelling, bruising, and lacerations on  
9 his wrists, legs, and ankles which did not abate for nearly two weeks." *Id.*, \*7. The Court noted that  
10 plaintiff had alleged that the particular restraints, the tightness of the restraints, and their refusal to  
11 loosen any restraints were mandated by TransCor's policies. Here, the only policy at issue is the use  
12 of restraints. There are no classwide allegations of use of "overly tight" restraints or an alleged policy  
13 to refuse to loosen restraints. *Bain*, therefore, is likewise inapposite.<sup>11</sup>

14 The Court finds that use of the restraints at issue for a period exceeding 24 hours, by itself and  
15 given the context of transporting prisoners outside of secure facilities, is not an unconstitutional  
16 deprivation under the Eighth Amendment. For example, in *Key v. McKinney*, 176 F.3d 1083, 1085 (8th  
17 Cir. 1999) a plaintiff was put in restraints for 24 hours as a disciplinary measure; he complained that  
18 restraints made it difficult to sleep and were painful, that it was difficult to take care of bodily functions,  
19 and that his requests to have handcuffs loosened were denied. The Court found that he failed to state  
20 an Eighth Amendment claim. The Court noted that he was provided with bedding, food, or bathroom  
21 facilities, and he was checked on by a nurse and guard at regular intervals. The Court concluded that,  
22 "[w]hile the shackles made it more difficult to sleep and relieve himself, he has not shown that he  
23 suffered a serious deprivation of 'the minimal civilized measure of life's necessities.'" *Id.*, at 1086.

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25 <sup>11</sup> Plaintiffs also rely on *Anderson-Bey v. District of Columbia*, 466 F. Supp. 2d 51 (D.D.C.  
26 2006). In that case, the Court denied summary judgment based on plaintiffs' allegations that "each  
27 prisoner's restraints were applied far too tightly, with the handcuffs cutting off circulation and digging  
28 into and sometimes cutting the skin. . . . The restraints remained too tight throughout the trip, despite  
the prisoners' complaints." *Id.*, at 58-59. Here, the complaint is that the restraints were applied, not that  
they were applied too tightly or otherwise manipulated in order to harm the plaintiffs. Similarly, the  
allegation that prisoner complaints were ignored, is not made on a class-wide basis here.

1 Here, while the plaintiffs did not have bedding, they had access to food, drinking water, and the toilet  
2 (restricted to stops). The prisoners also had their restraints checked on by TransCor employees during  
3 stops and could have asked employees to loosen the restraints if significant problems occurred.

4 As to the claims of inadequate access to sanitation, the Court finds that the allegations do not  
5 result in a constitutional deprivation for a period of 24 hours plus one minute. Plaintiffs do not dispute  
6 that the transports stopped every 3.5 to 4 hours. Plaintiffs do not dispute that prisoners were able to use  
7 the toilet during any of the stops, except for plaintiff Pinedo's complaint that TransCor employees  
8 refused to remove his restraints so that he could defecate. Snell Decl., Ex. I at 7.<sup>12</sup> There were  
9 situations where the chemical toilet on board was dirty and not cleaned. However, the question before  
10 the Court is not whether particular class members suffered a constitutional deprivation because they  
11 were unable to use the toilet at a specific time. Instead, the question is whether TransCor's policy of  
12 not allowing prisoners at-will use of the toilets, instead restricting use to every 3.5 to 4 hours, and  
13 TransCor's failure to provide running water, soap, toothbrushes and a change of clothes over a period  
14 of 24 hours plus one minute imposes a constitutional deprivation of minimal hygiene. The Court  
15 concludes it does not.<sup>13</sup>

16 Plaintiffs' reliance on *Hoptowit v. Spellman*, 753 F.2d 779 (9th Cir. 1985) is misplaced. There,  
17 the Ninth Circuit found "that various aspects of the penitentiary's 'old, dilapidated, and ill-maintained'  
18 physical plant," including unsatisfactory plumbing, vermin infestation and unavailable or inadequate  
19 cell cleaning supplies violated the Eighth Amendment. *Id.*, at 783. Similarly, in *Keenan v. Hall*, 83  
20 F.3d 1083, 1091 (9th Cir. 1996), the Ninth Circuit held that requiring an indigent prisoner to purchase  
21 his own hygiene supplies created a "sanitation" claim under the Eighth Amendment, precluding  
22 summary judgment. These cases are wholly inapposite to the case at hand, which deals with a 24-hour  
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24 <sup>12</sup> Pinedo's testimony is ambiguous on why he was not allowed to defecate. The interrogatory  
25 responses cited by plaintiffs reference Pinedo's complaints about "noise" and not being let off the  
26 transport, in conjunction with his inability to defecate. *Id.* at 5, 7-10. Another class member testified  
27 that because the toilet was locked while the vehicle was in transit, fellow passengers soiled themselves.  
28 Snell Decl., Ex. LL.

<sup>13</sup> The Court notes that a lack of access to running water and other hygiene measures for longer  
periods of time raise different questions in terms of deprivation of rights, but the Court cannot reach  
those questions here in light of the posture of and evidence in this case.

1 plus one minute deprivation while prisoners are in transit. *But see Walker v. Sumner*, 14 F.3d 1415,  
2 1421 (9th Cir. 1994) (denial of adequate clothing might constitute Eighth Amendment violation);  
3 *Toussaint v. McCarthy*, 597 F. Supp. 1388, 1409 (N.D. Cal. 1984) (“leaking pipes and fixtures, clogged  
4 drains, rotting sewer lines, and other plumbing and sewage deficiencies are a major cause of the serious  
5 health hazards”).<sup>14</sup>

6 Plaintiffs argue that even if none of the three conditions in isolation amounts to a constitutional  
7 deprivation, the combination of them creates a “mutually enforcing effect” that deprived plaintiffs of  
8 the basic human needs of sleep and adequate shelter. Plaintiffs’ Motion at 18. Plaintiffs rely on *Wilson*  
9 *v. Seiter*, 501 U.S. 294, 304 (1991). There, the Supreme Court explained that “[s]ome conditions of  
10 confinement may establish an Eighth Amendment violation ‘in combination’ when each would not do  
11 so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single,  
12 identifiable human need such as food, warmth, or exercise – for example, a low cell temperature at night  
13 combined with a failure to issue blankets.” Here, however, the sanitation conditions complained of do  
14 not combine – either with the lack of sleep or the use of restraints – to cause the deprivation of a single  
15 identifiable need over the 24-hour plus one minute period.

16 The combination of use of restraints and being continuously transported for 24 hours or more  
17 has a nexus with respect to a prisoner’s ability to rest comfortably during a 24-hour period, as both sides  
18 admit that the restraints are uncomfortable. However, as noted above, plaintiffs do not dispute that  
19 TransCor’s policy requires TransCor employees to check on the restraints for fit and for obvious signs

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21 <sup>14</sup> The two class certification cases relied on by plaintiffs are not apposite to the question now  
22 before this Court -- that is, the determination on summary judgment whether plaintiffs have shown that  
23 the conditions inflicted on them constitute unconstitutional deprivations. Those cases are also  
24 distinguishable on their facts. In *Tyler v. Suffolk County*, 253 F.R.D. 8 (D. Mass. 2008), prisoners were  
25 housed in cells that were not equipped with toilets or sinks. When the inmates were locked in at night,  
26 they could use the toilets only if they were permitted to do so by the guards. The inmates alleged “that,  
27 due to inattention (and, possibly, malice) of the guards on duty, their bathroom access was unreliable.  
28 . . .” *Id.*, at 9. Here, however, the issue is not inattention or malice of the guards, but instead the policy  
of allowing inmates to use the toilet only every 3.5 to 4 hours during stops. Moreover, given the context  
at issue – prisoners being moved outside secure facilities, transporters in motion, and prisoners in  
restraints – the Court does not find *Tyler* persuasive for purposes of determining the merits of plaintiffs’  
deprivation claim. Similarly, while the Court in *Dunn v. City of Chicago*, 231 F.R.D. 367 (N.D. Ill.  
2005), indicated it would certify a class of pretrial detainees who were held for an “unlawful period of  
time (greater than 16 hours) in interrogation rooms that lacked the most basic amenities,” including  
access to food service and sleeping facilities, the case does not provide support for plaintiffs’ summary  
judgment claims here.

1 of harm every time transporters stop. If a prisoner complains about discomfort and there are signs of  
2 swelling or ill-fitting restraints, TransCor employees are authorized, with approval from their  
3 supervisors, to take steps to address that discomfort. The Court finds that even in combination, the lack  
4 of sleep overnight and use of full restraints – with periodic checks – does not constitute an  
5 unconstitutional deprivation when applied for 24 hours plus one minute. *See, e.g., Key v. McKinney*,  
6 176 F.3d 1083 at 1085.

7 For the foregoing reasons, the Court finds that the conditions plaintiffs complain of – in the  
8 context of transportation of prisoners and over a 24-hour plus one minute period – do not, without more  
9 and on a class-wide basis, constitute unconstitutional deprivations under the Eighth or Fourteenth  
10 Amendments. To be clear, the Court does not find that the conditions alleged, if imposed for periods  
11 exceeding 24 hours or if imposed in different manners or with specific injuries, could not constitute  
12 unconstitutional deprivations to individual prisoners. As a class-wide matter, however, and on the  
13 record presented, the Court does not find that plaintiffs have established or can establish a constitutional  
14 violation.<sup>15</sup>

15  
16 **2. Plaintiffs’ Bane Act Claims**

17 California’s Bane Act, California Civil Code § 52.1, provides a cause of action for interference  
18 with constitutional rights. However, as the Court has granted defendants’ motion for summary judgment  
19 finding that the plaintiffs have not demonstrated classwide constitutional deprivations by being  
20 subjected to the complained of conditions for 24 hours plus one minute, plaintiffs’ classwide Bane Act  
21 claims must likewise fail.

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<sup>15</sup> In light of the above conclusion, the Court need not reach the issue of defendants’ deliberate  
28 indifference or penological necessity.

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**CONCLUSION**

For the foregoing reasons and for good cause shown, the Court hereby DENIES plaintiffs' motion for partial summary judgment and GRANTS defendants cross-motion for partial summary judgment on plaintiffs' class claims.<sup>16</sup>

**IT IS SO ORDERED.**

Dated: August 8, 2012

  
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SUSAN ILLSTON  
United States District Judge

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<sup>16</sup> Defendants also move for summary judgment as to the claims of named plaintiff William Tellez. Defendants argue that Tellez was a resident of Nevada when he was arrested in 2002, and therefore, even though he was imprisoned in California during early February 2006 – when his last transport by TransCor occurred – he is not entitled to tolling under California's Code of Civil Procedure § 352.1. Compare Defendants' Cross-Motion at 1, fn. 1 with Plaintiffs' Opposition at 23. However, neither side provides the Court with any authority on how the residence of a prisoner is determined for purposes of applying a statute of limitations defense. Therefore, defendants' motion as to any individual claim plaintiff Tellez may have is DENIED.