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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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SHIRLEY NEWMAN and ANTHONY BUTLER,

NO. CIV. 2:09-3441 WBS KJN

Plaintiffs,

MEMORANDUM AND ORDER RE:  
MOTION TO DISMISS

v.

SAN JOAQUIN DELTA COMMUNITY COLLEGE DISTRICT; DANIELE RULEY; and JAMES WOOD,

Defendants.

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Plaintiffs Shirley Newman and Anthony Butler brought this action under 42 U.S.C. § 1983 against defendants San Joaquin Delta Community College District ("Delta College"), Daniele Ruley, and James Wood for alleged violations of their constitutional rights. Presently before the court is defendant Wood's motion to dismiss plaintiffs' Second Amended Complaint ("SAC") pursuant to Federal Rule of Civil Procedure 12(b)(6).

1 I. Factual and Procedural Background

2 In 2008, plaintiffs were students at Delta College.  
3 (SAC ¶ 11.) Plaintiff Newman allegedly suffers from post-  
4 traumatic stress disorder and spinal damage and disease. (Id. ¶  
5 10.) Delta College was allegedly aware of Newman's ailments,  
6 since she had suffered anxiety attacks on numerous occasions.  
7 (Id. ¶ 13.) Newman wears a medic-alert bracelet on her wrist as  
8 a result of her medical conditions that lists her medical  
9 ailments and Butler as an emergency contact. (Id. ¶ 10) Butler  
10 is Newman's husband and legally designated care provider. (Id. ¶  
11 11.)

12 On March 13, 2008, plaintiffs were attending class at  
13 Delta College. (Id. ¶ 12.) At approximately 11:30 a.m., Butler  
14 was attending a writing lab class in the Holt Building on the  
15 Delta College campus. (Id.) At the time, Newman was attending a  
16 different class in the Holt Building. (Id.) During her class,  
17 Newman allegedly began suffering from extreme anxiety and left  
18 her classroom to go to Butler's class, as she normally would  
19 during an anxiety attack. (Id. ¶ 13.) Upon entering the  
20 classroom Butler occupied, the class's instructor, Dr. Elizabeth  
21 Maloney, allegedly escorted Newman and Butler into a private  
22 classroom. (Id.) In the room, Newman allegedly knocked some  
23 items off of a desk and said she was "looking for something to  
24 hurt somebody." (Id.) Patti Lynn Drake, who was in the room at  
25 the time, left and called the Delta College police, mentioning  
26 that Newman was ill. (Id.)

27 The Delta College Police call center dispatched Delta  
28 College Police Officers Ruley and Wood to investigate. (Id. ¶

1 14.) When Ruley and Wood arrived at the classroom, plaintiffs  
2 were allegedly peacefully leaving. (Id. ¶ 15.) Wood allegedly  
3 attacked Butler without provocation and used unreasonable force  
4 in dragging him to the ground, restraining Butler face-down.  
5 (Id.) Ruley allegedly threw Newman against a wall with a great  
6 amount of force. (Id.) Ruley allegedly remarked that she had  
7 just had a great workout using force against Newman and made  
8 racially derogatory remarks. (Id. ¶¶ 15-16.) Plaintiffs were  
9 allegedly then detained by Ruley and Wood. (Id. ¶¶ 15, 18.)

10 On March 14, 2008, plaintiffs received a letter from  
11 Delta College's Vice President of Student Services, Jose Michel,  
12 temporarily suspending them for an alleged assault on a Delta  
13 College police officer. (Id. ¶ 20(l).) Michel sent plaintiffs  
14 another letter on March 17, 2008, suspending them through the  
15 summer of 2008 for assaulting a campus police officer and causing  
16 a disturbance. (Id. ¶ 20(m).) Delta College upheld the  
17 suspensions on April 8, 2008, allegedly based in part on false  
18 testimony from Ruley that plaintiffs were struggling with each  
19 other. (Id. ¶ 20(o).)

20 In May 2008, Delta College allegedly provided that  
21 Newman could be reinstated for the summer 2008 session if she  
22 brought a recent evaluation by a licensed psychiatrist regarding  
23 her treatment plan. (Id. ¶ 20(p).) Newman was denied summer  
24 enrollment after she provided a letter from a therapist instead  
25 of a psychiatrist. (Id. ¶ 20(q).) In June 2008, Delta College  
26 contacted Newman and identified that her fall 2008 enrollment  
27 would also be contingent upon receiving a letter from a  
28 psychiatrist about her treatment plan. (Id. ¶ 20(r).) On July

1 21, 2008, Newman's suspension was rescinded and her student  
2 record was allegedly cleared. (Id. ¶ 20(s).)

3 Plaintiffs filed this action on September 12, 2008, in  
4 San Joaquin County Superior Court and subsequently filed a First  
5 Amended Complaint on November 19, 2009. (Docket No. 1.)  
6 Defendants subsequently removed the case to this court on  
7 December 11, 2009. (Id.) Defendant Woods filed a motion to  
8 dismiss the First Amended Complaint on January 5, 2010. (Docket  
9 No. 8.) In response, plaintiffs filed a statement of non-  
10 opposition and requested leave to file a Second Amended Complaint  
11 ("SAC") (Docket No. 12), which the court granted. (Docket No.  
12 25.) Currently before the court is Wood's motion to dismiss the  
13 SAC pursuant to Federal Rule of Civil Procedure 12(b)(6).<sup>1</sup>

## 14 II. Discussion

15 On a motion to dismiss, the court must accept the  
16 allegations in the complaint as true and draw all reasonable  
17 inferences in favor of the plaintiff. Scheuer v. Rhodes, 416  
18 U.S. 232, 236 (1974), overruled on other grounds by Davis v.  
19 Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S. 319, 322  
20 (1972). To survive a motion to dismiss, a plaintiff needs to  
21 plead "only enough facts to state a claim to relief that is  
22 plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S.  
23 544, 570 (2007). This "plausibility standard," however, "asks  
24 for more than a sheer possibility that a defendant has acted  
25 unlawfully," and where a complaint pleads facts that are "merely  
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27 <sup>1</sup> Plaintiffs have conceded that their tenth cause of  
28 action for injunctive relief is inappropriate as to Wood and  
should be dismissed.

1 consistent with" a defendant's liability, it "stops short of the  
2 line between possibility and plausibility." Ashcroft v. Iqbal,  
3 129 S. Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 556-  
4 57).

5 A. Battery Claims

6 Plaintiffs' first causes of action assert claims  
7 against defendants for common law battery. Under California law,  
8 the elements of battery are "(1) defendant intentionally  
9 performed an act that resulted in a harmful or offensive contact  
10 with the plaintiff's person; (2) plaintiff did not consent to the  
11 contact; and (3) the harmful or offensive contact caused injury,  
12 damage, loss or harm to plaintiff." Brown v. Ransweiler, 171  
13 Cal. App. 4th 516, 526-27 (2009) (internal citations omitted).  
14 When a state law battery claim is brought against a police  
15 officer, "a plaintiff must prove that the peace officer's use of  
16 force was unreasonable . . . . The question is whether a peace  
17 officer's actions were objectively reasonable based on the facts  
18 and circumstances confronting the peace officer." Id. at 527.

19 Plaintiffs have alleged that they were peacefully  
20 leaving a classroom at Delta College when Wood forcefully dragged  
21 Butler to the ground and restrained him there face-down. (SAC ¶  
22 15.) Plaintiffs allege that they did not fail to comply with any  
23 of Wood's commands and never attempted to resist Wood or flee the  
24 area. (Id. ¶ 17.) While Wood contends that he did not use  
25 excessive force because there was a legitimate threat of violence  
26 from plaintiffs, at this stage of the proceedings, plaintiffs'  
27 allegations must be taken as true. See Scheuer, 416 U.S. at 236.  
28 Accordingly, the SAC has plausibly plead that Wood acted

1 unreasonably by dragging Butler to the ground and holding him  
2 there in response to plaintiffs peaceful departure from a  
3 classroom. Butler has therefore adequately pled a claim for  
4 battery against Wood. However, the SAC does not allege that Wood  
5 used any force against Newman. Without such allegations, Newman  
6 cannot sustain a cause of action for battery against Wood, and  
7 the court must therefore dismiss Newman's battery claim against  
8 him.

9 B. Section 1983 Claims

10 Plaintiffs' second claims are for violations of their  
11 civil rights under 42 U.S.C. § 1983. While § 1983 is not itself  
12 a source of substantive rights, it provides a cause of action  
13 against any person who, under color of state law, deprives an  
14 individual of federal constitutional rights or limited federal  
15 statutory rights. 42 U.S.C. § 1983; Graham v. Connor, 490 U.S.  
16 386, 393-94 (1989). Plaintiffs allege that Wood violated their  
17 rights to be free from unreasonable seizures, both by detention  
18 absent probable cause and by the use of excessive force, under  
19 the Fourth and Fourteenth Amendments.<sup>2</sup> (SAC ¶ 25.)

20 Wood contends that plaintiffs' § 1983 claims fail  
21 because he is entitled to qualified immunity. The doctrine of  
22 qualified immunity protects government officials "from liability  
23 for civil damages insofar as their conduct does not violate  
24 clearly established statutory or constitutional rights of which a  
25 reasonable person should have known." Pearson v. Callahan, 129

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27 <sup>2</sup> At oral argument plaintiffs clarified that they are  
28 asserting a violation of the Fourteenth Amendment only insofar as  
the Fourteenth Amendment incorporates the Fourth Amendment  
against the states.

1 S. Ct. 808, 815 (2009) (quoting Harlow v. Fitzgerald, 457 U.S.  
2 800, 818 (1982)) (internal quotations omitted).

3 To determine whether an official is entitled to  
4 qualified immunity, a court may begin with the question of  
5 whether, "[t]aken in the light most favorable to the party  
6 asserting the injury, do the facts alleged show the officer's  
7 conduct violated a constitutional right?" Saucier v. Katz, 533  
8 U.S. 194, 201 (2001) (citing Siegert v. Gilley, 500 U.S. 226, 232  
9 (1991)) rev'd Pearson, 129 S. Ct. 808 (2009) (holding that the  
10 Saucier two-step procedure for determining qualified immunity in  
11 which the court must first determine whether there is a  
12 constitutional violation is not mandatory). Assuming there is a  
13 constitutional violation, the second question the court must ask  
14 is whether the officer's conduct violated a clearly established  
15 right. Id. Finally, if the right is clearly established, the  
16 court should then determine whether a reasonable officer would  
17 know that his conduct violated the clearly established right.  
18 See Anderson v. Creighton, 483 U.S. 635, 640 (1987). If the  
19 court finds the constitutional right was clearly established such  
20 that a reasonable officer would be aware that his or her conduct  
21 was unconstitutional, then the officer is not entitled to  
22 qualified immunity. Pearson, 129 S. Ct. at 816.

23 The facts plaintiffs allege plead conduct by Wood that  
24 would violate Butler's Fourth and Fourteenth Amendment rights.<sup>3</sup>

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26 <sup>3</sup> As previously noted, the SAC does not plead any facts  
27 indicating that Wood used force against Newman. The court must  
28 therefore dismiss Newman's § 1983 claim against Wood, since  
plaintiffs' § 1983 claim relies solely on the use of excessive  
force in violation of the Fourth Amendment.

1 Under the Fourth Amendment, police may use only such force during  
2 an arrest as is objectively reasonable under the circumstances.  
3 Graham v. Connor, 490 U.S. 386, 397 (1989). A determination of  
4 whether the force an officer used was reasonable "requires  
5 careful attention to the facts and circumstances of each  
6 particular case, including the severity of the crime at issue,  
7 whether the suspect poses an immediate threat to the safety of  
8 the officers or others, and whether he is actively resisting  
9 arrest or attempting to evade arrest by flight." Id. (citing  
10 Tennessee v. Garner, 471 U.S. 1, 8-9 (1985)). Taking plaintiffs'  
11 allegations as true, Wood used unreasonable force against Butler  
12 by dragging him to the ground and pinning him there because  
13 plaintiffs allegedly posed no danger to the officers, did nothing  
14 to provoke them, and there was no severe crime at issue. See  
15 Robinson, 278 F.3d at 1014 (holding an officer's use of force was  
16 excessive in the absence of any of the factors enumerated in  
17 Graham); see also Felix v. McCarthy, 939 F.2d 699, 701-02 (9th  
18 Cir. 1991); Priester v. City of Riviera Beach, 208 F.3d 919, 927  
19 (11th Cir. 2000). Accordingly, Butler has sufficiently alleged a  
20 violation of his constitutional rights by Wood.

21 The next consideration is whether Wood's conduct  
22 violated a clearly established right. For the purposes of  
23 qualified immunity, "clearly established" means that, "[t]he  
24 contours of the right must be sufficiently clear that a  
25 reasonable official would understand that what he is doing  
26 violates that right." Anderson, 483 U.S. at 640. The Supreme  
27 Court has further explained "that what 'clearly established'  
28 means . . . depends largely 'upon the level of generality at



1 which the relevant "legal rule" is to be identified.'" Wilson v.  
2 Layne, 526 U.S. 603, 614 (1999) (quoting Anderson, 483 U.S. at  
3 639). Defined broadly enough, every § 1983 case could have a  
4 clearly established right at issue, while a rigid, fact-bound  
5 interpretation of the right at stake would make it extremely  
6 difficult to prove that any right is clearly established. See  
7 Anderson 483 U.S. at 639-40 ("This is not to say that an official  
8 action is protected by qualified immunity unless the very action  
9 in question has previously been held unlawful, but it is to say  
10 that in the light of pre-existing law the unlawfulness must be  
11 apparent."). A court's definition of the right at issue must  
12 therefore strike a balance between these two extremes.

13           The right not to be subjected to unprovoked force from  
14 a police officer by being dragged to the ground and held there  
15 while attempting to peacefully leave an area is clearly  
16 established. The Supreme Court and Ninth Circuit have found that  
17 an unprovoked use of force is unreasonable under the Fourth  
18 Amendment in the absence of any resistance, attempt at flight,  
19 danger to the officer, or any other exigent circumstance. See  
20 Graham, 490 U.S. at 397; Garner, 471 U.S. at 8-9; Robinson, 278  
21 F.3d at 1014; Priester, 208 F.3d at 927. "[P]olice officers do  
22 not have the right to shove, push, or otherwise assault innocent  
23 citizens without any provocation whatsoever." Lanigan v. Village  
24 of E. Hazel Crest, Ill., 110 F.3d 467, 475 (7th Cir. 1997).  
25 Wood's allegedly unprovoked attack on Butler therefore violated  
26 Butler's clearly established right to be free from unprovoked  
27 force by being dragged to the ground and pinned there.

28           The final question is whether a reasonable officer

1 would know that the conduct as alleged in the Complaint violated  
2 Butler's clearly established right. Over the last thirty years,  
3 courts have clearly articulated that police officers may not use  
4 force against a suspect without any provocation whatsoever. See  
5 Graham, 490 U.S. at 397; Garner, 471 U.S. at 8-9; Robinson, 278  
6 F.3d at 1014; Priester, 208 F.3d at 927; Lanigan, 110 F.3d at  
7 475. Given this history, any reasonable officer would know that  
8 he or she does not have the right to drag a person to the ground  
9 and pin that person there in the absence of flight, provocation,  
10 or other exigent circumstances. At this preliminary stage of the  
11 proceedings, the facts as pled do not entitle Wood to qualified  
12 immunity. Accordingly, the court will deny Wood's motion to  
13 dismiss Butler's § 1983 claim.

14 C. Intentional Infliction of Emotional Distress Claims

15 The elements for the tort of intentional infliction of  
16 emotional distress are "(1) extreme and outrageous conduct by the  
17 defendant with the intention of causing, or reckless disregard of  
18 the probability of causing, emotional distress; (2) the  
19 plaintiff's suffering severe or extreme emotional distress; and  
20 (3) actual and proximate causation of the emotional distress by  
21 the defendant's outrageous conduct." Christensen v. Superior  
22 Court, 54 Cal. 3d 868, 904 (1991) (internal quotations and  
23 citations omitted). To be outrageous, conduct "must be so  
24 extreme as to exceed all bounds of that usually tolerated in a  
25 civilized community." Christensen, 54 Cal. 3d at 904; see also  
26 Cook v. Lindsay Olive Growers, 911 F.2d 233, 239 (9th Cir. 1990).

27 Plaintiffs' claims for intentional infliction of  
28 emotional distress incorporates the facts previously alleged in

1 the SAC. The SAC alleges that Wood engaged in extreme and  
2 outrageous conduct by dragging Butler to the ground unprovoked  
3 and that Butler suffered severe emotional distress as a result.  
4 Viewing the facts in a light most favorable to the plaintiffs, an  
5 allegedly unprovoked attack by a police officer against Butler  
6 could be considered extreme and outrageous conduct. See Graves  
7 v. City of Stockton, No. Civ. 04-0430 DFL KJM, 2006 WL 768831, at  
8 \*5 (E.D. Cal. Mar. 27, 2006); Lewis v. City of Portland, No. Civ.  
9 99-1279-AS, 2000 WL 254004, at \*3 (D. Or. Jan. 21, 2000);  
10 Restatement (Second) of Torts § 46 cmt. e (1965) ("In particular,  
11 police officers . . . have been held liable for extreme abuse of  
12 their position."). However, the SAC does not mention any conduct  
13 by Wood against Newman intended to cause infliction of emotional  
14 distress. The SAC has accordingly plead sufficient facts  
15 alleging intentional infliction of emotional distress for Butler,  
16 but not for Newman. The court will therefore deny Wood's motion  
17 to dismiss Butler's claim and will grant Wood's motion as to  
18 Newman's claim.<sup>4</sup>

19 D. Negligent Infliction of Emotional Distress Claims

20 "Negligent infliction of emotional distress is not an  
21 independent tort; it is the tort of negligence to which the  
22 traditional elements of duty, breach of duty, causation and  
23 damages apply." Ess v. Eskaton Props., Inc., 97 Cal. App. 4th  
24 120, 126 (2002). Under California law, police officers have a  
25 duty not to use excessive force. Knapps v. City of Oakland, 647

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27 <sup>4</sup> Wood's additional contention that there is no personal  
28 recovery available against him for intentional infliction of  
emotional distress relies on his incorrect assertion that he has  
been sued only in his official capacity.

1 F. Supp. 2d 1129, 1164 (N.D. Cal. 2009) (citing Munoz v. City of  
2 Union City, 120 Cal. App. 4th 1077, 1101 (2004)). “[W]hether an  
3 officer breached such duty is analyzed under the reasonableness  
4 standard of the Fourth Amendment to the United Constitution.”  
5 Id. (internal citations omitted). The court has already found  
6 that the facts alleged in the Complaint sufficiently state a  
7 violation of Butler’s Fourth Amendment rights by Wood and  
8 accordingly plead a breach of a cognizable duty by Wood. The  
9 Complaint further alleges that this breach of duty caused Butler  
10 to suffer severe emotional damage. Accordingly, Butler has  
11 stated a cause of action for negligent infliction of emotional  
12 distress against Wood.

13 Plaintiffs’ negligent infliction of emotional distress  
14 claims, however, do not distinguish between the emotional harm  
15 suffered by Butler and Newman. The court has already repeatedly  
16 noted that, according to the SAC, Wood allegedly only attacked  
17 Butler. The SAC lacks any factual or legal explanation as to how  
18 Wood breached a duty to Newman or any causal link between his  
19 conduct and damage to Newman. Accordingly, the court must  
20 dismiss Newman’s negligent infliction of emotional distress claim  
21 against Wood.

22 E. False Imprisonment Claims

23 “The elements of a tortious claim of false imprisonment  
24 are: (1) the nonconsensual, intentional confinement of a person,  
25 (2) without lawful privilege, and (3) for an appreciable period  
26 of time, however brief.” Easton v. Sutter Coast Hosp., 80 Cal.  
27 App. 4th 485, 496 (2000). Wood claims that plaintiffs’ fifth  
28 cause of action for false imprisonment must be dismissed “because

1 there was no arrest, which is a necessary element for the tort of  
2 false imprisonment." (Mot. Dismiss (Docket No. 27) at 9:9-10.)  
3 However, the SAC specifically alleges that defendants "restrained  
4 and detained" plaintiffs (SAC ¶ 37) and furthermore arrested  
5 them. (Id. ¶ 18.) Although Wood disputes that an arrest  
6 occurred, resolution of such factual questions is inappropriate  
7 on a motion to dismiss. The court will accordingly deny Wood's  
8 motion to dismiss plaintiffs' false imprisonment claims.

9 F. Disability Discrimination Claims

10 The SAC's sixth (violation of Section 504 of the  
11 Rehabilitation Act, 29 U.S.C. § 794), seventh (violation of  
12 Section 503 of the Americans with Disabilities Act ("ADA"), 42  
13 U.S.C. §§ 12101-12183), eighth (violation of California Civil  
14 Code section 51, the California Unruh Civil Rights Act ("UCRA"))  
15 and ninth (further violations of the UCRA) causes of action each  
16 allege that defendants retaliated against plaintiff Newman by  
17 suspending her for exercising her educational rights as a  
18 disabled person. To state a claim for discrimination under  
19 section 504 of the Rehabilitation Act, the ADA, or the UCRA  
20 against an educational institution, a plaintiff must allege that  
21 (1) she is disabled; (2) she is qualified to remain a student at  
22 the college; (3) there was some adverse education action by the  
23 college because of her disability; and (4) the college receives  
24 federal financial assistance (for the Rehabilitation Act claim)  
25 or is a public entity (for the ADA and UCRA claims). Zukle v.  
26 Regents of the Univ. of Cal., 166 F.3d 1041, 1045 (9th Cir.  
27 1999).

28 The SAC's claims for disability discrimination do not

1 identify what, if any, retaliatory actions were taken against  
2 Newman by Wood. There are no allegations that Wood was involved  
3 in any of Delta College's decisions to suspend Newman or had any  
4 decision making authority at Delta College. The sixth through  
5 ninth claims in the SAC only mention conduct by Delta College and  
6 unnamed Doe defendants; Wood is not so much as mentioned by name  
7 in any of the claims. The SAC does not contain any factual  
8 averments that make Wood's liability for any disability  
9 discrimination plausible. Without any allegation that Wood  
10 caused any discrimination against Newman based on her  
11 disabilities, her claims under the Rehabilitation Act, ADA, and  
12 UCRA cannot survive a motion to dismiss. See Iqbal, 129 S. Ct.  
13 at 1949; see also Pomerantz v. Los Angeles County, 674 F.2d 1288,  
14 1291 (9th Cir. 1982) (holding board of supervisors not liable for  
15 ADA claim when they did not participate in the allegedly  
16 discriminatory process).

17 At oral argument, plaintiffs contended that Harris v.  
18 Mills, 572 F.3d 66 (2d Cir. 2009), supports the proposition that  
19 Wood can be individually liable for disability discrimination  
20 under the ADA. However, Harris simply stands for the proposition  
21 that members of an education board can be sued in their official  
22 capacity for decisions made in violation of the ADA. See id. at  
23 72. Harris does not go so far as to impose individual ADA  
24 liability on a police officer because he issues a report that is  
25 later used by an educational institution to discriminate against  
26 a student in violation of the ADA. Plaintiff Newman has cited no  
27 other authority for this proposition. Regardless, the SAC does  
28 not plead any facts that indicate which, if any, of Wood's

1 actions violated the ADA. Accordingly, the court will grant  
2 Wood's motion to dismiss Newman's Rehabilitation Act, ADA, and  
3 UCRA-based claims.

4 IT IS THEREFORE ORDERED that Wood's motion to dismiss  
5 the SAC as to the claims against him be, and the same hereby is,  
6 GRANTED with respect to Newman's battery, § 1983, intentional  
7 infliction of emotional distress, negligent infliction of  
8 emotional distress, Rehabilitation Act, ADA, UCRA, and injunctive  
9 relief claims and Butler's injunctive relief claim and DENIED in  
10 all other respects.

11 Plaintiffs have twenty days from the date of this Order  
12 to file an amended complaint, if they can do so consistent with  
13 this Order.

14 DATED: May 27, 2010

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16 WILLIAM B. SHUBB  
17 UNITED STATES DISTRICT JUDGE  
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