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WRITER'S DIRECT DIAL:

December 20, 2006

Via Facsimile and ECF

The Honorable Denis R. Hurley
United States District Judge
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

Re: Augustin v. Jablonsky, et al., 99-CV-3126 (DRH) /
Nassau County Strip Search Cases 99-CV-2844 (DRH)

Dear Judge Hurley:

Per Your Honor's request at the last conference, we are writing to address the issue of providing notice to all class members while balancing their privacy interests and the confidentiality of sealed criminal records.

As an initial matter, it has long been established that state law privileges do not apply in federal civil rights actions. See King v. Conde, 121 F.R.D. 180 (E.D.N.Y. 1988). Rather, the Court must balance the interests favoring and opposing disclosure. In this case, the interests in unsealing the records far outweigh any confidentiality concerns. Absent disclosure, notice would be impossible and potentially thousands of individuals to whom the County has conceded liability would be denied the notice necessary to vindicate their constitutional rights. This would wholly thwart the class action mechanism and the Second Circuit's mandate in this case. While we have not found other published decisions in the strip search realm, given the number of strip search class actions, including in New York State, in which notice of certification and/or settlement has been served, it is clear that other courts have made a similar calculus. Any confidentiality concerns can be addressed by thoughtful design of actual notice to class members. Some possibilities include sending notice in a plain envelope with the federal court's address as a return address and having the notice come on the Court's letterhead.

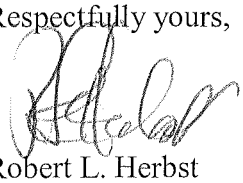
Even if arguendo the state law privilege did apply in this federal civil rights action, the clear language of CPL § 160.50 permits the unsealing and production of sealed criminal records to a "designated agent" of the defendant. In this case, given that the class has been certified and we represent all members of the liability class, we believe we are designated agents for purposes of compliance with the statute.

If the Court has any lingering concerns, it could issue an unsealing order for any sealed records in the interest of permitting aggrieved individuals to have notice sufficient to vindicate their federal civil rights. Similar unsealing orders have been issued in other federal civil rights class actions. For instance, in MacNamara v. City of New York, 2006 WL 3298911 (S.D.N.Y. Nov. 13, 2006), Magistrate Judge Francis issued an unsealing order for the arrest records of all individuals arrested at various Republican National Convention demonstrations.

The need for unsealing criminal records in the instant case is even more compelling than in MacNamara. In that case, class certification has not yet been granted, and the principal purpose of the request for the unsealing order was to help the individual plaintiffs establish a Monell claim and establish grounds for class certification. Here, those whose records would be unsealed are already members of a certified class, and it is their constitutional interests which would be directly thwarted absence unsealing and notification.

For these reasons, we believe that providing the information necessary to serve notice on all class members would be appropriate and necessary to vindicate these civil rights claims.

Respectfully yours,



Robert L. Herbst

cc: All counsel