UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

PAUL MARIOTT, BARBARA DAVIS, and ANDY RIVERA, both individually and on behalf of a class of others similarly situated, Plaintiffs, v. THE COUNTY OF MONTGOMERY, THE MONTGOMERY COUNTY SHERIFF'S DEPARTMENT, MICHAEL AMOTO, both individually and in his official capacity as Sheriff of the County of Montgomery, JEFFREY SMITH, both individually and as Undersheriff of the County of Montgomery, KEVIN SNELL, both individually and as the former Undersheriff of the County of Montgomery, JOHN PECORA , both individually and as Jail Administrator in the Montgomery County Sheriff's Department, SUE BUDDLES, both individually and as Lieutenant in the Montgomery County Sheriff's Department, Defendants.	Index No.03 CV 0531 (DNH)(DEP) **FIRST AMENDED CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

INTRODUCTION

1. This is a class action brought to redress the deprivation by Defendants of rights secured to the Plaintiffs and proposed Class by the United States Constitution and the laws of the United States of America. For at least the past five years, the Montgomery County Sheriff's Department has had a policy of strip-searching all individuals who enter the Montgomery County Jail and booked into the facility, regardless of reasonable suspicion. Upon information and belief, this policy is derived from the written procedures of the Montgomery County Sheriff's Department, and was promulgated by senior Department officials; specifically, Defendants Sheriff Michael Amato, Undersheriffs Kevin Snell and Jeffrey Smith, Jail Administrator John Pecora, and Corrections Lieutenant Sue Buddles.

2. It has been well established in this judicial circuit for many years that individuals charged with misdemeanors or violations cannot be strip-searched absent particularized reasonable suspicion that they possess weapons or contraband. In short, the policy of Montgomery County and the Montgomery County Sheriff's Department to force those charged with minor crimes to undergo the indignities of a strip search upon entry into the Montgomery County Jail is not only clearly illegal, but is insensitive and unnecessary.

3. Plaintiffs bring this action on behalf of themselves, and on behalf of a class of thousands of others who were strip searched after being charged with petty crimes, to vindicate the clear and unnecessary violation of their civil rights and those of the class members they propose to represent. They seek monetary damages for themselves and each member of the proposed class, a declaration that the Sheriff's Department's policies are unconstitutional, and an injunction precluding Montgomery County and the Montgomery County Sheriff's Department from continuing to violate

the rights of those placed into their custody. With this as a background, Plaintiffs complain as follows:

JURISDICTION

4. This Court has jurisdiction over this action under the provisions of 28 U.S.C. § 1331, 1341 & 1343 because it is filed to obtain compensatory damages, punitive damages, and injunctive relief for the deprivation, under color of state law, of the rights of citizens of the United States secured by the Constitution and federal law pursuant to 42 U.S.C. §§ 1981 & 1983. This Court also has jurisdiction over this action under the provisions of 28 U.S.C. §2201, as it is filed to obtain declaratory relief relative to the Constitutionality of the policies of a local government.

5. Venue is proper under 28 U.S.C. § 1391(e)(2) because the events giving rise to Plaintiffs' claims and those of proposed class members occurred in this judicial district.

PARTIES

6. Plaintiff Paul Marriott ("Marriott") is 37 years old and resides in Montgomery County. On or about September 13, 2001, Marriott was arrested and placed in the Montgomery County Jail on charges of Failure to Provide Proper Sustenance (failure to feed and water horses), a misdemeanor under New York's Agricultural and Markets Law.

7. Plaintiff Barbara Davis is 50 years old and resides in Montgomery County. On May 2, 2001, Ms. Davis was arrested on a Family Court civil warrant, and booked into the Montgomery County Jail.

8. Plaintiff Andrew Rivera is 47 years old and resides in Montgomery County. On June 1, 2004, Mr. Rivera was arrested for aggravated harassment in the second degree, a misdemeanor. Presently, Mr. Rivera is the subject of an order of protection to have no contact with another

individual.

9. Defendant County of Montgomery (the "County") is a county government organized and existing under the laws of the State of New York. At all times relevant hereto, the County, acting through its Sheriff's Department, was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the Montgomery County Jail and was responsible for the appointment, training, supervision and conduct of all Sheriff's Department personnel, including those working in the Montgomery County Jail. In addition, at all relevant times, the County was responsible for enforcing the rules of the Montgomery County Jail, and for ensuring that Sheriff's Department personnel employed in the Jail obeyed the Constitution and laws of the United States and of the State of New York.

10. Defendant Montgomery County Sheriff's Department (the "Sheriff's Department") is a County Sheriff's Department organized and existing under the laws of the State of New York. At all times relevant hereto, the Sheriff's Department was responsible for operating, organizing, overseeing and administering the Montgomery County Jail ("MCJ"). At all times relevant hereto, Defendant Sheriff's Department, together with the County of Montgomery, was responsible for the polices, practices, supervision, implementation and conduct of all matters pertaining to the MCJ, and was responsible for the appointment, training, supervision and conduct of all Sheriff's Department personnel, including those working in the MCJ. In addition, at all times relevant hereto, Defendant Sheriff's Department, together with the County of Montgomery, was responsible for enforcing the rules of the Montgomery County Jail, and for ensuring that Sheriff's Department personnel employed in the MCJ obeyed the Constitution and laws of the United States and of the State of New York.

11. Defendant Michael Amato ("Sheriff Amato") is the duly elected Sheriff of Montgomery County, and, as such, is a policy maker and/or implemented an unconstitutional policy with respect to the treatment of pre-trial and other detainees over which the MCJ exercises custodial or other control. Sheriff Amato's principal place of business is the Montgomery County Public Safety Building, 200 Clark Drive, P. O. Box 432, Fultonville, NY 12072. Sheriff Amato is made a Defendant in this action in his individual and official capacities.

12. Defendant Jeffrey Smith ("Undersheriff Smith") is the duly appointed Undersheriff of Montgomery County, and, as such, is a policy maker and/or implemented an unconstitutional policy with respect to the treatment of pre-trial and other detainees over which the MCJ exercises custodial or other control. Upon information and belief, Undersheriff Smith was appointed to be Undersheriff within the past five months. Undersheriff Smith's principal place of business is the Montgomery County Public Safety Building, 200 Clark Drive, P. O. Box 432, Fultonville, NY 12072. Undersheriff Smith is made a Defendant in this action in both his individual and official capacities.

13. Defendant Kevin Snell ("Kevin Snell") was the duly appointed Undersheriff of Montgomery County until, upon information and belief, December 31, 2002, and, as such, is a policy maker and/or implemented an unconstitutional policy with respect to the treatment of pre-trial and other detainees over which the MCJ exercises custodial or other control. Kevin Snell's principal place of business is the Montgomery County Office of District Attorney, Montgomery County Courthouse, 58 Broadway, Fonda, NY 12068. Kevin Snell is made a Defendant in this action in his individual and official capacities.

14. Defendant John Pecora ("Jail Administrator Pecora") is the duly appointed Jail Administrator of the Montgomery County Sheriff's Department and is the officer in charge of the operation of the

Montgomery County Jail. As such, Jail Administrator Pecora is a policy maker and/or implemented an unconstitutional policy with respect to the treatment of pre-trial and other detainees over which the MCJ exercises custodial or other control. Jail Administrator Pecora's principal place of business is the Montgomery County Public Safety Building, 200 Clark Drive, P. O. Box 432, Fultonville, NY 12072. Jail Administrator Pecora is made a Defendant in this action in his individual and official capacities.

15. Defendant Sue Buddles ("Lieutenant Buddles") is a duly appointed Lieutenant in the Montgomery County Sheriff's Department and is, upon information and belief, the administrative officer for the Montgomery County Jail. Lieutenant Buddles is second in command to Jail Administrator Pecora in responsibility for jail operations. As such, Lieutenant Buddles is a policy maker and/or implemented an unconstitutional policy with respect to the treatment of pre-trial and other detainees over which the MCJ exercises custodial or other control. Lieutenant Buddles' principal place of business is the Montgomery County Sheriff's Department, 200 Clark Drive, P. O. Box 432, Fultonville, NY 12072. Lieutenant Buddles is made a Defendant in this action in both her individual and official capacities.

16. Collectively, Sheriff Amato, Undersheriff Smith, Kevin Snell, Jail Administrator Pecora and Lieutenant Buddles will be referred to as the "Policy Making Defendants."

CLASS ACTION ALLEGATIONS

17. Plaintiffs bring this action pursuant to Rules 23(b)(1), 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and a class of similarly situated individuals who were charged with misdemeanors or minor crimes and were strip searched upon their entry into the Montgomery County Jail.

18. The class that Plaintiffs seek to represent is defined as follows:

> All persons in the United States who have been or will be placed into the custody of the Montgomery County Jail after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions or other minor crimes, or held on civil matters, and were or will be strip searched upon their entry into the Montgomery County Jail pursuant to the policy, custom and practice of the Montgomery County Sheriff's Department and the County of Montgomery. The class period commences on April 29, 2000, and extends to the date on which the Montgomery County Sheriff's Department and/or the County of Montgomery are enjoined from, or otherwise cease, enforcing their unconstitutional policy, practice and custom of conducting strip searches absent reasonable suspicion.
> Specifically excluded from the proposed class are Defendants, and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

19. This action has been brought and may properly be maintained as a class action under Federal law and satisfies the numerosity, commonality, typicality and adequacy requirements for maintaining a class action under Fed. R. Civ. P. 23(a).

20. The members of the class are so numerous as to render joinder impracticable. Upon information and belief, there are scores of people arrested for misdemeanors and violations who are placed into the custody of the Montgomery County Jail every month – all whom are members of the proposed class. Upon information and belief, the size of the proposed class totals at least 2,000 individuals, some of whom have had their civil rights violated on multiple occasions.

21. Upon information and belief, joinder of all of these individuals is impracticable because of the large number of class members and the fact that class members are likely dispersed over a large geographical area, with some members presently residing outside of Montgomery County and this Judicial District. Furthermore, upon information and belief, many members of the class are low-income persons, may not speak English, and likely would have great difficulty in pursuing their rights individually.

22. Common questions of law and fact exist as to all members of the Class, in that they all had

their right to be free from unreasonable searches violated by Defendants' conducting strip searches absent particularized suspicion. All members of the class were charged with misdemeanors or violations when placed into the custody of the Montgomery County Jail, and all were illegally strip searched in violation of the clearly established law in this judicial circuit.

23. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the class sustained damages arising out of Defendants' course of conduct. The harms suffered by the Plaintiffs are typical of the harms suffered by the class members.

24. The representative Plaintiffs have the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the Class. Plaintiffs have no interests that are adverse to the interests of the members of the Class.

25. Plaintiffs have retained counsel who has substantial experience and success in the prosecution of class action and civil rights litigation. The named Plaintiffs are being represented by Elmer Robert Keach, III; Bruce Menken and Jason Rozger of Berenbaum Menken Ben-Asher & Bierman, LLP; and Gary E. Mason and Charles Schneider of The Mason Law Firm, PLLC. Mr. Keach is an experienced civil rights and class action attorney who has litigated a wide variety of civil rights actions before this Court, and has litigated class action lawsuits in state and federal courts in seven states. Mr. Keach has successfully litigated strip search cases against the Troy City Police Department and the Schenectady City School District, and has previously litigated several other cases relating to police and corrections misconduct before this Judicial District.

26. Bruce Menken and Jason Rozger are both experienced civil rights attorneys from New York City, having litigated scores of civil rights cases against a number of Defendants, including one prison brutality case presently pending in this District. Mr. Menken and Mr. Rozger have

successfully represented many victims of illegal strip searches, including several who opted out of the recent class action litigation against the City of New York.

27. Gary E. Mason is one of this country's premier class action attorneys, with offices in Washington, DC. Mr. Mason has successfully litigated class actions against Fortune 500 companies in both state and federal court in over a dozen jurisdictions, including gaining a settlement for a class of purchasers of defective polybutylene pipe of $ 950 million dollars. Mr. Mason has served as lead or co-counsel in numerous high profile class actions, including *In Re The Exxon Valdez, In Re Diet Drugs Product Liability Litigation* and *In Re Synthetic Stucco (EIFS) Product Liability Litigation*. In addition to his extensive experience as a class action and environmental lawyer, Charles Schneider of the Mason Law Firm is a former trial attorney with the U.S. Department of Justice's Civil Rights Division and has successfully litigated a series of cases involving corrections misconduct.

28. All three firms representing the Plaintiffs in this action are presently prosecuting a similar class action before this Court, for which a preliminary settlement has been approved; *Kahler v. County of Rensselaer, et. al.*, No. 02-CV-1324 (TJM/DRH).

29. In short, Plaintiffs' counsel has the resources, expertise and experience to successfully prosecute this action against Montgomery County, the Montgomery County Sheriff's Department, and the Policy Making Defendants. Counsel for Plaintiffs knows of no conflicts among members of the class, or between counsel and members of the class.

30. This action, in part, seeks declaratory and injunctive relief. As such, the Plaintiffs seek class certification under Fed. R. Civ. P. 23(b)(2), in that all class members were subject to the same policy requiring the illegal strip searches of individuals charged with misdemeanor or minor crimes and

placed into the custody of the Montgomery County Jail. In short, the County of Montgomery, the Montgomery County Sheriff's Department and the Policy Making Defendants acted on grounds generally applicable to all class members.

31. In addition to certification under Rule 23(b)(2), and in the alternative, Plaintiffs seek certification under Rule 23(b)(3).

32. Common questions of law and fact exist as to all members of the Class, and predominate over any questions that affect only individual members of the Class. These common questions of law and fact include, without limitation, the common and predominate question of whether the Defendants' written and/or *de facto* policy of strip searching all individuals charged with misdemeanors or minor crimes and committed to the Montgomery County Jail is a violation of the Fourth and Fourteenth Amendments to the United States Constitution, and whether such a written and/or *de facto* policy existed during the class period.

33. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all of the individual members of the class is impracticable given the large number of class members and the fact that they are dispersed over a large geographical area. Furthermore, the expense and burden of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them. The cost to the federal court system of adjudicating thousands of individual cases would be enormous. Individualized litigation would also magnify the delay and expense to all parties and the court system. By contrast, the conduct of this action as a class action in this District presents far fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each member of the Class.

34. Upon information and belief, there are no other actions pending to address the Defendants' flagrant violation of the civil rights of thousands of individuals, even though the Defendants have maintained their illegal strip search regimen for at least the past five years, with the practice being declared unconstitutional in this judicial circuit in 1986.

35. In the alternative to certification under Fed. R. Civ. P. 23(b)(3), Plaintiffs also seek partial certification under Fed. R. Civ. P. 23(c)(4).

36. Finally, Plaintiffs seek the certification of a limited fund class action pursuant to Fed. R. Civ. P. 23(b)(1)(B) for the purposes of assessing punitive damages against the Policy Making Defendants. The prohibition against strip searching individuals charged with misdemeanors and other minor crimes has been established in this judicial circuit for over ten years, and with good reason: Subjecting someone to the indignity of a strip search is only appropriate where there is some cause to believe that the individual possesses weapons or contraband.

37. This action is the textbook example of when punitive damages should be imposed on those in charge of a local correctional facility. The Policy Making Defendants, however, have limited personal assets; assets that would quickly be exhausted upon the imposition of punitive damages in only a few cases. As all members of the proposed class deserve to equally share in the assets of the Policy Making Defendants, the certification of a limited fund punitive damages class is appropriate, with the Court, after verdict, to establish this limited fund from the liquidated assets of the Policy Making Defendants and distribute the fund to all members of the class.

FACTS

Facts Applicable to the Class Generally

38. The Fourth Amendment of the United States Constitution prohibits state officials, such as

the Policy Making Defendants in this action and the Corrections Officers they supervise, from performing strip searches of arrestees who have been charged with misdemeanors or other minor crimes unless the officer has reasonable suspicion to believe that the arrestee is concealing a weapon or contraband.

39. Upon information and belief, the County of Montgomery, the Montgomery County Sheriff's Department and the Policy Making Defendants have instituted a written and/or *de facto* policy, custom or practice of strip searching all individuals who enter the custody of the Montgomery County Jail, regardless of the nature of their charged crime and without the presence of reasonable suspicion to believe that the individual was concealing a weapon or contraband.

40. Upon information and belief, the County of Montgomery, the Montgomery County Sheriff's Department and the Policy Making Defendants have instituted a written and/or *de facto* policy, custom or practice of strip searching all individuals who enter the custody of the Montgomery County Jail, regardless of the individual characteristics or the nature of their charged crime.

41. The County of Montgomery, the Montgomery County Sheriff's Department, and the Policy Making Defendants know that they may not institute, enforce or permit enforcement of a policy or practice of conducting strip searches without particularized, reasonable suspicion. This judicial circuit has stated repeatedly that state officials may not strip search individuals charged with misdemeanors or violations absent particularized, reasonable suspicion, with this principle being clearly established in 1986 by *Weber v. Dell*, 804 F.2d 796 (2d Cir. 1986).

42. The Defendants' written and/or *de facto* policy, practice and custom mandating wholesale strip searches of all misdemeanor and violation arrestees has been promulgated, effectuated and/or enforced in bad faith and contrary to clearly established law.

43. Upon information and belief, not only is the policy of strip searching illegal, but the manner in which individuals are searched is also impermissible. For example, upon information and belief, individuals are strip searched in the presence of corrections officers, jail employees and arrestees of the opposite gender. The are also strip searched and forced to shower in a room with a clear window, where anyone, regardless of gender or classification, can look inside.

44. Reasonable suspicion to conduct a strip search may only emanate from the particular circumstances antecedent to the search, such as the nature of the crime charged, the particular characteristics of the arrestees, and/or the circumstances of the arrest.

45. Upon information and belief, the County of Montgomery, the Montgomery County Sheriff's Department and the Policy Making Defendants have promulgated, implemented, enforced, and/or failed to rectify a policy, practice or custom of strip searching **all** individuals placed into the custody of the Montgomery County Jail without any requirement of reasonable suspicion, or indeed suspicion of any sort. This written and/or *de facto* policy made the strip searching of pre-trial detainees routine; neither the nature of the offense charged, the characteristics of the arrestee, nor the circumstances of a particular arrest were relevant to the enforcement of the policy, practice and custom of routine strip searches.

46. Pursuant to this written and/or *de facto* policy, each member of the Class, including the named Plaintiffs, were victims of a routine strip search upon their entry into the Montgomery County Jail. These searches were conducted without inquiry into or establishment of reasonable suspicion, and in fact were not supported by reasonable suspicion.

47. The strip searches in question largely occurred in the shower area of the Montgomery County Jail booking room. Upon information and belief, individuals are made to enter this shower room,

and there are strip searched and made to take a shower while being watched by a Corrections Officer.

48. As a direct and proximate result of the unlawful strip search conducted pursuant to this written and/or *de facto* policy, the victims of the unlawful strip searches – each member of the class, including the named Plaintiffs – have suffered or will suffer psychological pain, humiliation, suffering and mental anguish.

Facts Applicable to the Named Plaintiffs

49. Mr. Marriott's experience is representative. On or about September 13, 2001, Paul Marriott was charged with Failure to Provide Proper Sustenance, a misdemeanor under New York's Agriculture and Markets Law. The allegations underlying Mr. Marriott's criminal charges were that he failed to properly feed and water five horses. The charges pending against Mr. Marriott were resolved with an adjournment in contemplation of dismissal. Mr. Marriott is presently 38 years old.

50. At approximately 8:00 PM on September 13, 2001, Mr. Marriott was transported to the Montgomery County Jail. Soon thereafter, Mr. Marriott was moved into the shower area in the MCJ booking room. Mr. Marriott was ordered to remove his clothing and take a shower while a Corrections Officer watched.

51. The Corrections Officer then entered the shower room while Mr. Marriott was in a state of complete undress, inspected his clothing, and then administered a strip search. The Officer forced Mr. Marriott to bend over and spread the lobes of his buttocks for a visual examination. Mr. Marriott was then issued jail clothing, namely, an orange jumpsuit.

52. Mr. Marriott was bailed out of the Montgomery County Jail the following morning, and his charges were disposed of with an Adjournment in Contemplation of Dismissal.

53. On this particular occasion, there was no reasonable suspicion to believe that Mr. Marriott was concealing a weapon or other contraband. Indeed, no inquiry was made of Mr. Marriott that could have given rise to the requisite reasonable suspicion. Moreover, because Mr. Marriott had already been in the custody of Deputies from the Montgomery County Sheriff's Department, the Corrections Officers in question knew or should have known that Mr. Marriott had already been subjected to a search incident to arrest that would have revealed any weapons or contraband.

54. As a direct and proximate result of the unlawful strip search conducted pursuant to County and Sheriff's Department policy, practice and custom, Mr. Marriott has suffered and continues to suffer psychological pain, humiliation, suffering and mental anguish.

55. Ms. Davis' experience is also representative. On May 2nd, 2001, she was arrested at her home by Amsterdam Police officers after she missed a court date in Family Court.

56. Upon information and belief, she was not arrested for a criminal offense, but on a civil Family Court warrant.

57. Ms. Davis was taken to Family Court, where the judge told her that she would not be released until she paid $2000.00 of the child support that she owed.

58. Ms. Davis was taken from Family Court to the Montgomery County Jail. After arriving, and being asked questions by the desk officer, she was taken to a room with a shower.

59. A female corrections officer ordered her to remove all of her clothing, and told her to take a shower. That officer watched Ms. Davis take the shower.

60. After Ms. Davis showered, and while she was completely naked, the officer ordered her to lift up her arms, open her mouth, and to bend over in front of the officer and spread the lobes of her buttocks. Ms. Davis complied with the officer's orders.

61. Ms. Davis was released from the MCJ three days later when her brother posted the money for her.

62. On this particular occasion, there was no reasonable suspicion to believe that Ms. Davis was concealing a weapon or other contraband. Indeed, no inquiry was made of Ms. Davis that could have given rise to the requisite reasonable suspicion. Moreover, because Ms. Davis had already been in the custody of officers of the Amsterdam Police Department, the Corrections Officers in question knew or should have known that Ms. Davis had already been subjected to a search incident to arrest that would have revealed any weapons or contraband.

63. As a direct and proximate result of the unlawful strip search conducted pursuant to County and Sheriff's Department policy, practice and custom, Ms. Davis has suffered and continues to suffer psychological pain, humiliation, suffering and mental anguish.

64. Andy Rivera's experience is also representative. On June 1, 2004, Mr. Rivera was brought to the Montgomery County Jail as a pre-trial detainee, charged with aggravated harassment in the second degree, a misdemeanor.

65. After he was fingerprinted, Mr. Rivera was taken by a corrections officer to a room with a shower. The corrections officer ordered Mr. Rivera to remove all of his clothing, including his underwear. The corrections officer watched Mr. Rivera remove his underwear, examined his naked body, and told him to take a shower.

66. Mr. Rivera obeyed the orders of the corrections officer to disrobe. The corrections officer specifically ordered him to remove his underpants.

67. Following the aforementioned strip search, Mr. Rivera put on a jail uniform. He was not allowed to keep any of the clothes he had been wearing.

68. On this particular occasion, there was no reasonable suspicion to believe that Mr. Rivera was concealing a weapon or other contraband. Indeed, no inquiry was made of Mr. Rivera that could have given rise to the requisite reasonable suspicion, and the MCJ officers knew or should have known that he had been the subject of a search incident to arrest that would have revealed any contraband.

69. Without stating or implying that Mr. Rivera is a habitual criminal, Mr. Rivera has been arrested on a number of occasions in the past, both in Amsterdam, New York and in New York City. Additionally, there is an order of protection in place between Mr. Rivera and the alleged victim of his crime that will be in place until 2007. Consequently, there is a possibility beyond mere speculation that Mr. Rivera will be rearrested in the future, making it likely that he will again be subjected to the same illegal strip search procedure.

70. As a direct and proximate result of the unlawful strip search conducted pursuant to County and Sheriff's Department policy, practice and custom, Mr. Rivera has suffered and continues to suffer psychological pain, humiliation, suffering and mental anguish.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

Violation of Constitutional Rights Under Color of State Law

-- Unreasonable Search and Failure to Implement Municipal Policies to Avoid Constitutional Deprivations Under of Color of State Law --

71. Plaintiffs incorporate by reference and reallege each and every allegation stated in paragraphs 1 through 69.

72. The Fourth Amendment of the United States Constitution protects citizens from

unreasonable searches by law enforcement officers, and prohibits officers from conducting strip searches of individuals arrested for misdemeanors or violations absent some particularized suspicion that the individual in question has either contraband or weapons.

73. The actions of Defendants detailed above violated Plaintiffs' rights under the United States Constitution. Simply put, it was not objectively reasonable for Montgomery County Corrections Officers to strip search Plaintiff and class members based on their arrests for misdemeanor/violation charges. It was also not objectively reasonable for the Policy Making Defendants to order/direct Montgomery County Corrections Officers to conduct such searches.

74. These strip searches were conducted pursuant to the policy, custom or practice of the County of Montgomery and the Montgomery County Sheriff's Department. As such, the County of Montgomery and the Montgomery County Sheriff's Department are directly liable for the damages of the named Plaintiff and members of the Class.

75. Upon information and belief, Sheriff Amato, Undersheriff Smith, Kevin Snell, Jail Administrator Pecora and Lieutenant Buddles are responsible for establishing the policies and procedures to be utilized in the operation of the Montgomery County Jail, and are responsible for the implementation of the strip search policy questioned in this lawsuit. As such, Amato, Smith, Snell, Pecora and Buddles are each individually responsible for the damages of the named Plaintiff and members of the Class.

76. Sheriff Amato, Undersheriff Smith, Kevin Snell, Jail Administrator Pecora and Lieutenant Buddles knew that the MCJ's strip search policy was illegal, and acted willfully, knowingly, and with specific intent to deprive Plaintiff and members of the Class of their Constitutional rights.

77. This conduct on the part of all Defendants represents a violation of 42 U.S.C. § 1983, given

that their actions were undertaken under color of state law.

78. As a direct and proximate result of the unconstitutional acts described above, Plaintiffs have been irreparably injured.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

-- Demand for Declaratory Judgment --

79. Plaintiffs incorporate by reference and reallege each and every allegation stated in paragraphs 1 through 78.

80. The policy, custom and practice of the Montgomery County Sheriff's Department, the County of Montgomery and the Policy Making Defendants is clearly unconstitutional, in that these entities and individuals are directing/conducting the strip searches of all individuals placed into the Montgomery County Jail without any particularized suspicion that the individuals in question have either contraband or weapons.

81. Plaintiffs and members of the Class request that this Court issue a declaratory judgment, and that it declare the strip search policy of the County of Montgomery and the Montgomery County Sheriff's Department to be unconstitutional.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

-- Demand for Preliminary and Permanent Injunction –

82. Plaintiffs incorporate by reference and reallege each and every allegation stated in paragraphs 1 through 81.

83. The policy, custom and practice of the Montgomery County Sheriff's Department, the County of Montgomery and the Policy Making Defendants is clearly unconstitutional, in that these entities and individuals are directing/conducting the strip searches of all individuals placed into the

Montgomery County Jail without any particularized suspicion that the individuals in question have either contraband or weapons.

84. Upon information and belief, this policy is currently in place at the Montgomery County Jail, with new and/or prospective members of the Class being subjected to the harms that have already been inflicted upon the named Plaintiffs.

85. The continuing pattern of strip searching individuals charged with minor crimes (or no crime at all) will cause irreparable harm to the new and/or prospective members of the Class, an adequate remedy for which does not exist at law.

86. Plaintiffs demand that the County of Montgomery, the Montgomery County Sheriff's Department, the Policy Making Defendants and Montgomery County Corrections Officers immediately desist from strip searching individuals placed into the custody of the Montgomery County Jail absent any particularized suspicion that the individuals in question have either contraband or weapons, and seek both a preliminary and permanent injunction from this Court ordering as much.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS COUNTY OF MONTGOMERY, THE MONTGOMERY COUNTY SHERIFF'S DEPARTMENT, MICHAEL AMATO, JEFFREY SMITH, KEVIN SNELL, JOHN PECORA AND SUE BUDDLES

-- Deliberate Indifference to Training and Supervision --

87. Plaintiff incorporates by reference and realleges each and every allegation stated in paragraphs 1 through 86.

88. The above-named Defendants were deliberately indifferent in the training and supervision of the individual corrections officers employed at the Montgomery County Jail, in that Defendants were deliberately indifferent in discharging their duty to make sure that any strip searches conducted

at the Montgomery County Jail were performed only in circumstances permitted by the United States Constitution.

89. The above-named Defendants knew, or should have known, that unconstitutional strip searches were, or were likely to be, taking place in the Montgomery County Jail.

90. Despite this knowledge, the above-named Defendants did not act to stop these unconstitutional practices from occurring.

91. This conduct on the part of the above-named Defendants represents a violation of 42 U.S.C. § 1983, given that their actions were undertaken under color of state law.

92. As a direct and proximate result of the unconstitutional acts described above, Plaintiffs have been irreparably injured.

DEMAND FOR PUNITIVE DAMAGES

93. The actions of the Individual Defendants detailed herein are outrageous, in that they continue to propagate an illegal strip search policy even though they know for a fact that their actions are unconstitutional. Consequently, an award of punitive damages is necessary to punish the Policy Making Defendants.

DEMAND FOR TRIAL BY JURY

94. The Plaintiffs hereby demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of a class of others similarly situated, request that this Honorable Court grant them the following relief:

1) An order certifying this action as a class action pursuant to Fed. R. Civ. P. 23.

2) A judgment against all Defendants, jointly and severally on Plaintiff's First Cause of Action detailed herein, awarding Compensatory Damages to the named Plaintiff and each member of the proposed class. Plaintiffs request, at a minimum, that they and the members of the class be awarded $200,000 for each time they were illegally strip searched by Defendants. With the size of the Class estimated to be 2,000 individuals, the Plaintiffs request that the total judgment awarded to the Class be no less than $ 400,000,000.00.

3) A judgment against Defendant Michael Amato on Plaintiffs' First Cause of Action for $1,000,000.00 in punitive damages.

3) A judgment against Defendant Jeffrey Smith on Plaintiffs' First Cause of Action for $1,000,000.00 in punitive damages.

4) A judgment against Defendant Kevin Snell on Plaintiffs' First Cause of Action for $1,000,000.00 in punitive damages.

5) A judgment against Defendant John Pecora on Plaintiffs' First Cause of Action for $1,000,000.00 in punitive damages.

6) A judgment against Defendant Sue Buddles on Plaintiffs' First Cause of Action for $1,000,000.00 in punitive damages.

7) A declaratory judgment against all Defendants declaring the County of Montgomery and the Montgomery County Sheriff's Department's policy, practice and custom of strip and visual cavity searching all detainees entering the Montgomery County Jail, regardless of the crime charged or suspicion of contraband, to be unconstitutional and improper.

8) A preliminary and permanent injunction enjoining Defendants from continuing to strip and visual cavity search individuals charged with misdemeanors, violations, violations of probation or parole,

traffic infractions or other minor crimes, or held on civil matters absent particularized, reasonable suspicion that the arrestee subjected to the search is concealing weapons or other contraband.

9) A monetary award for attorney's fees and the costs of this action, pursuant to 42 U.S.C. § 1988;

Respectfully submitted by:

Dated: September 10, 2004
Albany, NY

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