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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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DARCELLE L. CHATOIAN, CYNTHIA
TASCA, and all others similarly situated,

Plaintiffs,

vs.

COUNTY OF MARIN, MARIN COUNTY
SHERIFF'S DEPARTMENT, MARIN COUNTY
SHERIFF ROBERT T. DOYLE, Individually and
in His Official Capacity, MARIN COUNTY
SHERIFF'S DEPUTIES DOES 1 THROUGH
100, and ROES 1 THROUGH 20, INCLUSIVE,

Defendants.

CASE NO:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 PLAINTIFFS ALLEGE:

2 INTRODUCTION

3 This is an action for declaratory and injunctive relief, damages, and punitive damages against
 4 the COUNTY OF MARIN, MARIN COUNTY SHERIFF'S DEPARTMENT, MARIN COUNTY
 5 SHERIFF ROBERT T. DOYLE, Individually and in His Official Capacity, MARINE COUNTY
 6 SHERIFF'S DEPUTIES sued under their fictitious names as DOES 1 THROUGH 100, and ROES 1
 7 THROUGH 20, for violations of plaintiffs' constitutional rights resulting from application of Marin
 8 County's and the Sheriff's policies, practices, and customs concerning the use of strip searches and
 9 visual body cavity searches in Marin County Jails. Plaintiffs seek an order declaring illegal
 10 defendants' policy of subjecting detainees in their custody to strip and visual body cavity searches
 11 before they are arraigned and without having any reasonable suspicion that the searches will be
 12 productive of contraband.

13 Defendants' strip search and visual body cavity search policies, practices, and customs violate
 14 plaintiffs' rights secured to them by the Fourth and Fourteenth Amendments to the United States
 15 Constitution and entitle plaintiffs to recover damages under the Federal Civil Rights Act (42 U.S.C. §
 16 1983).

17 Additionally, plaintiffs include supplemental claims under California state law against
 18 defendants: 1) for violation of California Penal Code § 4030 which prohibits pre-arraignment strip
 19 searches of most misdemeanants and provides for minimum damages of \$1,000 for each illegal search;
 20 and 2) for violation of the Bane Civil Rights Act (California Civil Code § 52 and § 52.1(b)) pursuant
 21 to which each plaintiff denied a statutory, state, federal, or constitutional right is entitled to recover a
 22 minimum of \$4,000 for each violation.

23 JURISDICTION

24 1. This action is brought pursuant to 42 USC §§ 1983 and 1988, and the Fourth and
 25 Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 USC §§
 26 1331 and 1341(3) and (4) and the aforementioned statutory and constitutional provisions.

2. The court has supplemental jurisdiction over plaintiffs' state claims under 28 USC § 1367(a).

3. The amount in controversy exceeds \$10,000, excluding interest and costs.

PARTIES

4. Plaintiff DARCELLE L. CHATOIAN, and CYNTHIA TASCA, and all those similarly situated, are, and at all material times herein, were citizens of the United States and residents of the state of California who were arrested within the period beginning three (3) years before June 23, 2003, and continuing to this date, and who were subjected to strip and/or visual body cavity searches at a Marin County Jail (hereinafter referred to as the "Marin County Jail"), prior to being arraigned and/or without the defendants first having, and recording in writing, a reasonable suspicion that the searches would be productive of contraband or weapons.

5. Some plaintiffs, including DARCELLE L. CHATOIAN and CYNTHIA TASCA, were confined by defendants, after they were strip searched, in cells nude in violation of state statutes and the state and federal statutory and constitutions.

6. Defendant MARIN COUNTY SHERIFF ROBERT T. DOLYE is, and at all material times referred to herein, was the duly elected Sheriff of the COUNTY OF MARIN, responsible for administering the Jail facilities and for making, overseeing, and implementing the policies, practices, and customs challenged herein relating to the operation of the Marin County Jail. He is sued in his individual and official capacities.

7. Defendants MARIN COUNTY SHERIFF DEPUTIES sued herein by their fictitious names (Does 1 through 100) are all deputies who, as part of their duties at the Marin County Jail, subjected plaintiffs to pre-arraignment strip and/or visual body cavity searches without having, and recording in writing, a reasonable suspicion that the searches would be productive of contraband or weapons. Furthermore, Defendants MARIN COUNTY SHERIFF DEPUTIES sued herein by their fictitious names (Does 1 through 100) are all deputies who, as part of their duties at the Marin County Jail, confined plaintiffs in cells nude following strip searching said plaintiffs.

1 8. At all material times mentioned herein, each of the defendants was acting under the
2 color of law, to wit, under color of statutes, ordinances, regulations, policies, customs and usages of
3 the state of California, the COUNTY OF MARIN and/or the MARIN COUNTY SHERIFF'S
4 DEPARTMENT.

5 9. Defendants whose names are not now known and who are sued by the fictitious names
6 of ROES 1 through 20, are all agents and/or employees of one or another of the other named
7 defendants who ordered, condoned, authorized, covered up, or were otherwise associated with the
8 implementation of the illegal policy and practices relating to strip searches and nude confinement
9 complained of herein.

10 10. Defendant COUNTY OF MARIN is, and at all material times referred to herein, was a
11 division of the state of California, that maintained or permitted an official policy or custom or practice
12 causing or permitting the occurrence of the types of wrongs complained of herein, which wrongs
13 damaged plaintiffs as herein alleged. Plaintiffs' allegations against the COUNTY are based on acts
14 and omissions of the SHERIFF and his DEPUTIES and on acts and omissions of persons who are
15 COUNTY employees, and on the COUNTY'S breach of its duty to protect plaintiffs from the
16 wrongful conduct of said persons and employees.

17 11. Defendants MARIN COUNTY SHERIFF'S DEPARTMENT and MARIN COUNTY
18 SHERIFF ROBERT T. DOYLE, in his Individual and Official Capacity, also maintained or permitted
19 an official policy or custom of causing or permitting the occurrence of the types of wrongs complained
20 of herein, which wrongs damaged plaintiffs as herein alleged.

21 12. Class action plaintiffs are those similarly situated who, during the period beginning
22 three (3) years before June 23, 2003, and continuing to this date, were subjected by defendants to pre-
23 arraignment strip and/or visual body cavity searches without defendants having, and recording in
24 writing, a reasonable suspicion that the searches would be productive of contraband or weapons.
25 Some of the similarly situated plaintiffs were confined by defendants naked in cells following their
26 having been subjected to strip and/or visual body cavity searches.

FACTS

13. On or about November 2, 2003, plaintiff DARCELLE L. CHATOIAN (hereinafter referred to as “plaintiff” or “CHATOIAN”) was arrested for allegedly driving under the influence in Mill Valley, California. Plaintiff CHATOIAN was taken to the Marin County Jail in San Rafael, California, where all of her clothing was forcibly removed by three (3) male officers and she was subjected to a visual body cavity search then placed in a cell, nude, for six (6) hours until she was removed and released from custody.

14. On or about late July or early August 2003, plaintiff CYNTHIA TASCA (hereinafter referred to as “plaintiff” or “TASCA”) was arrested allegedly for disturbing the peace, a misdemeanor, and transported to the Marin County Jail where she was directed to remove all of her clothes to be strip searched. When she refused to remove her clothes she was forcibly strip searched and confined, nude, in a cell, prior to her arraignment.

15. Within six (6) months of her arrest, plaintiff CHATOIAN filed a group Government Tort Claim for herself and for all persons similarly situated (a copy of said claim is attached hereto as Exhibit “A”, and incorporated herein to the extent relevant by this reference). Plaintiff CHATOIAN’s group claim was denied on or about March 3, 2004, allowing the filing of this complaint or state statute and constitutional violations.

16. Within six (6) months of her arrest, plaintiff TASCA filed a Government Tort Claim (a copy of said claim is attached hereto as Exhibit “B”, and incorporated herein to the extent relevant by this reference). Plaintiff TASCA’s claim was denied on or about January 13, 2004, allowing the filing of this complaint or state statute and constitutional violations.

17. Plaintiffs are informed and therefore allege, that defendants routinely follow their policy, practice, and custom of subjecting pre-arraignment detainees, including plaintiffs, to strip and visual body cavity searches without having, and recording in writing, a reasonable suspicion that the search will be productive of contraband or weapons.

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1 18. Plaintiffs are further informed and believe, and thereon allege, that defendants routinely
2 follow their policy, practice and custom of confining detainees, including plaintiffs, naked in cells
3 following subjecting them to visual body cavity searches.

4 19. Plaintiffs are informed and believe, and thereon allege, that defendants have the ability
5 to identify all such similarly situated plaintiffs, specifically those who, while in defendants' custody, at
6 the Marin County Jail since June 23, 2000, were subjected to strip searches and/or visual body cavity
7 searches prior to arraignment without defendants having first, and recording, a reasonable suspicion
8 that the searches would be productive of contraband or weapons.

9 20. Defendant MARIN COUNTY SHERIFF ROBERT T. DOYLE is personally
10 responsible for the promulgation and continuation of the strip search policy, practice, and custom
11 pursuant to which some of the plaintiffs herein were subjected to the searches complained of herein.

12 21. As a result of being subjected to the searches complained of herein, plaintiff, and each
13 of the persons similarly situated, suffered physical, mental, and emotional distress, invasion of privacy,
14 and violation of due process of law and state and federal statutory and constitutional rights, and is
15 entitled to recover damages according to proof but, at a minimum, \$1,000 as specified in California
16 Penal Code § 4030(p) and \$4,000 as specified in California Civil Code § 52 and § 52.1(b).

17 22. As a result of being confined, naked, in a cell as complained of herein, following being
18 strip searched, each of the plaintiffs suffered physical, mental, and emotional distress and violation of
19 due process of law and state and federal statutory and constitutional rights, and is entitled to recover
20 damages according to proof, but a minimum of \$4,000 as specified in California Civil Code § 52 and §
21 52.1(b).

22 CLASS CLAIMS

23 23. The strip and visual body cavity searches to which plaintiffs were subjected were
24 performed pursuant to policies, practices, and customs of defendants MARIN COUNTY SHERIFF
25 ROBERT T. DOYLE, MARIN COUNTY SHERIFF'S DEPARTMENT, COUNTY OF MARIN, the
26 individual SHERIFF'S DEPUTIES sued herein by the fictitious names 1 through 100, and the

1 individuals whose names are not now known and who are sued by the fictitious names of ROES 1
2 through 20. The searches complained of herein were performed without regard to the nature of the
3 alleged offense for which plaintiffs had been arrested, without regard to whether or not plaintiffs were
4 eligible for cite and release under Penal Code § 853.6, without regard to whether or not plaintiffs were
5 eligible for and/or were released on their own recognizance. Furthermore, the searches complained of
6 herein were performed without defendants having a reasonable belief that the plaintiffs so searched
7 possessed weapons or contraband, or that there existed facts supporting a reasonable belief that the
8 searches would produce contraband, and those facts being articulated and recorded in a supervisor-
9 approved document.

10 24. Plaintiffs bring this action on their own behalf and on behalf of all persons similarly
11 situated pursuant to Rule 23, Federal Rules of Civil Procedure and California Code of Civil Procedure
12 § 382.

13 25. The class is defined to include all persons who, in the period from and including June
14 23, 2000, to the present and continuing until this matter is adjudicated and the practices complained of
15 herein cease, were arrested and subjected to a pre-arraignment strip and/or visual body cavity search at
16 the Marin County Jail without defendants having, and recording, a reasonable suspicion that the search
17 would be productive of contraband or weapons.

18 26. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the members of the
19 class are so numerous that joinder of all members is impractical. Plaintiffs do not know the exact
20 number of class members. Plaintiffs are informed and believe, and thereupon allege, that there are
21 more than 10 persons per day who are arrested by defendants and/or in the custody of defendants and
22 subjected to the searches complained of herein as a result of defendants' policy, practice, and custom
23 relating to said searches.

24 27. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiffs are informed
25 and believe, and thereupon allege, that there are many questions of fact common to the class including,
26 but not limited to: (1) whether defendants routinely subject all persons arrested to visual body cavity

1 searches prior to arraignment if they intend such persons to be housed in the Marin County Jail; (2)
2 whether persons are subjected to visual body cavity searches prior to arraignment without there being
3 any reasonable suspicion, based on specific or articulable facts, to believe any particular arrestee has
4 concealed drugs, weapons, and/or contraband in bodily cavities which could be detected by means of a
5 visual body cavity search; (3) whether the visual body cavity searches are conducted in an area of
6 privacy so that the searches cannot be observed by persons not participating in the searches, or whether
7 the visual body cavity searches are conducted in groups and/or in open areas where they may be
8 observed by persons not participating in the searches; and, (4) whether the visual body cavity searches
9 are reasonably related to defendants' penological interest to maintain the security of the jail and
10 whether or not there are less intrusive methods for protecting any such interest.

11 28. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiffs are informed
12 and believe, and thereupon allege, that there are many questions of law common to the class including,
13 but are not limited to: (1) whether defendants may perform visual body cavity searches on persons
14 prior to their arraignment without reasonable suspicion, based on specific or articulable facts, to
15 believe any particular inmate has concealed drugs, weapons and/or contraband which would likely be
16 discovered by a visual body cavity search; (2) whether defendants may perform visual body cavity
17 searches on persons without first reasonably relating the use of the visual body cavity search to
18 defendants' penological interest to maintain the security of the jail and determining if there is a less
19 intrusive method to protect that interest; (3) whether visual body cavity searches may be conducted in
20 areas where the search can be observed by people not participating in the search without violating
21 plaintiffs' State and Federal constitutional rights and the protections afforded to plaintiffs under
22 California Penal Code section 4030; and, (4) whether or not defendants' strip search policy and
23 procedure is in accordance with the State and/or Federal Constitution.

24 29. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the claims of the
25 representative plaintiffs are typical of the class. Plaintiffs were searched, prior to arraignment, without
26 reasonable suspicion that a strip or visual body cavity search would produce drugs, weapons or

1 contraband (and without the facts supporting any such suspicion being articulated in a supervisor-
2 approved writing), and named plaintiffs were placed in cells, nude, for extended periods of time (in
3 excess of one hour). Representative plaintiffs have the same interests and suffered the same type of
4 injuries as all of the class members. Plaintiffs' claims arose because of defendants' policy, practice,
5 and custom of subjecting arrestees to strip and/or visual body cavity searches before arraignment
6 without having, and recording in writing, a reasonable suspicion that the search would be productive of
7 contraband or weapons. Additionally, plaintiffs, in accordance with defendants' policy, practice, and
8 custom, were improperly and unjustifiably confined, nude, in cells for extended periods of time.
9 Plaintiffs' claims are based upon the same legal theories as the claims of the class members. Each
10 class member suffered actual damages either as a result of being subjected to a visual body cavity
11 search and/or as a result of being improperly and unjustifiably placed and confined in a cell nude. The
12 actual damages suffered by representative plaintiffs are similar in type and amount to the actual
13 damages suffered by each class member.

14 30. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the representative
15 plaintiffs will fairly and adequately protect the class interests. Plaintiffs' interests are consistent with
16 and not antagonistic to the interests of the class.

17 31. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(1)(A), prosecutions of
18 separate actions by individual members of the class would create a risk that inconsistent or varying
19 adjudications with respect to individual members of the class would establish incompatible standards
20 of conduct for the parties opposing the class.

21 32. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(1)(B), prosecutions of
22 separate actions by individual members of the class would create a risk of inconsistent adjudications
23 with respect to individual members of the class which would, as a practical matter, substantially impair
24 or impede the interests of the other members of the class to protect their interests.

25 33. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(2), plaintiffs are
26 informed and believe, and thereupon allege, that defendants have acted on grounds generally

1 applicable to the class, thereby making appropriate the final injunctive or declaratory relief with
2 respect to the class as a whole.

3 34. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), this class action is
4 superior to other available methods for the fair and equitable adjudication of the controversy between
5 the parties. Plaintiffs are informed and believe, and thereupon allege, that the interests of members of
6 the class in individually controlling the prosecution of a separate action is low, in that most class
7 members would be unable individually to prosecute any action at all. Plaintiffs are informed and
8 believe, and thereupon allege, that the amounts at stake for individuals are so small that separate suits
9 would be impracticable. Plaintiffs are informed and believe, and thereupon allege, that most members
10 of the class will not be able to find counsel to represent them. Plaintiffs are informed and believe, and
11 thereupon allege, that it is desirable to concentrate all litigation in one forum because all of the claims
12 arise in the same location; i.e., the MARIN COUNTY JAIL. It will promote judicial efficiency to
13 resolve the common questions of law and fact in one forum, rather than in multiple courts.

14 35. Plaintiffs do not know the identities of all of the class members. Plaintiffs are informed
15 and believe, and thereupon allege, that the identities of the class members may be ascertained from
16 records maintained by the COUNTY OF MARIN and defendant SHERIFF ROBERT T. DOYLE and
17 defendant MARIN COUNTY SHERIFF'S DEPARTMENT. Plaintiffs are informed and believe, and
18 thereupon allege, that defendants' records reflect the identities, including addresses and telephone
19 numbers, of the persons who have been held in custody in the Marin County Jails. Plaintiffs are
20 informed and believe, and thereupon allege, that records of, and maintained by defendants reflect who
21 was subject to a strip and/or visual body cavity search, when the search occurred, where the search
22 occurred, whether any reasonable suspicion for the search existed and was recorded in a supervisor-
23 approved writing, when persons searched were arraigned, the charges on which such persons were
24 arrested, whether persons were confined in cells nude, the justification recorded for placing individuals
25 in cells nude, how long individuals remained in cells nude, and what treatment they received while so
26 confined. Plaintiffs are informed and believe, and thereupon allege, that all of the foregoing

1 information is contained in defendants' computer system and that the information necessary to identify
 2 the class members, by last known addresses, and the dates and reasons for their arrests and/or release
 3 from custody, is readily available from said computer system.

4 36. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), class members
 5 must be furnished with the best notice practicable under the circumstances, including individual notice
 6 to all members who can be identified through reasonable effort. Plaintiffs are informed and believe,
 7 and thereupon allege, that defendants' computer records contain a last known address for class
 8 members. Plaintiffs contemplate that individual notice will be given to class members at such last
 9 known address by first class mail. Plaintiffs contemplate that the notice will inform class members of
 10 the following:

- 11 i. The pendency of the class action and the issues common to the class;
- 12 ii. The nature of the action;
- 13 iii. Their right to "opt out" of the action within a given time, in which event they
 14 will not be bound by a decision rendered in the class action;
- 15 iv. Their right, if they do not "opt out," to be represented by their own counsel and
 16 to enter an appearance in the case; otherwise they will be represented by the
 17 named class plaintiffs and their counsel; and
- 18 v. Their right, if they do not "opt out," to share in any recovery in favor of the
 19 class, and conversely to be bound by any judgment on the common issues
 20 adverse to the class.

21 **COUNT ONE**

22 (Violation of Fourth and Fourteenth Amendments to the U.S. Constitution
 on behalf of Plaintiffs and all persons similarly situated)

23 37. Defendants' policies, practices, and customs regarding the strip and visual body cavity
 24 searches complained of herein violated plaintiffs' rights under the Fourth Amendment to be free from
 25 unreasonable searches and seizures, violated said plaintiffs' rights to due process and privacy under the
 26

Fourteenth Amendment, and directly and proximately damaged plaintiffs as herein alleged, entitling plaintiffs to recover damages for said constitutional violations pursuant to 42 U.S.C. § 1983.

WHEREFORE, plaintiffs pray for relief as hereunder appears.

COUNT TWO

(Violation of the Fourth and Fourteenth Amendments to U.S. Constitution, 42 U.S.C. § 1983, on behalf of Plaintiffs and all persons similarly situated)

38. Defendants' policies, practices, and customs regarding confining persons in cells nude as complained of herein violated plaintiffs' Fourth Amendment right to be free from unreasonable searches and seizures and plaintiffs' rights to due process under the Fourteenth Amendment, and directly and proximately damaged plaintiffs as herein alleged, entitling plaintiffs to recover damages for said constitutional violations pursuant to 42 U.S.C. § 1983, in addition to other damages.

WHEREFORE, plaintiffs pray for relief as hereunder appears.

COUNT THREE

(California State Unruh Civil Rights Act, Civil Code §§ 52 and 52.1, on behalf of Plaintiffs and all persons similarly situated)

39. Defendants' policies, practices, and customs regarding the strip and visual body cavity searches complained of herein violated plaintiffs' rights to privacy as secured by Article I, Section 1 of the California Constitution and directly and proximately damaged plaintiffs as herein alleged, entitling said plaintiffs to recover a minimum of \$4,000 each pursuant to California Civil Code § 52.1 and § 52, in addition to other damages.

WHEREFORE, plaintiffs pray for relief as hereunder appears.

COUNT FOUR

(Violation of California Penal Code § 4030, California State Unruh Civil Rights Act, Civil Code §§ 52 and 52.1, on behalf of Plaintiffs and all persons similarly situated)

40. Defendants' policies, practices, and customs regarding the strip and visual body cavity searches complained of herein violated rights secured to plaintiffs under California Penal Code § 4030 and directly and proximately damaged plaintiffs as herein alleged, entitling said plaintiffs to recover a minimum of \$1,000 each pursuant to California Penal Code § 4030(p), and to further minimum

1 damages of \$4,000 each pursuant to California Civil Code § 52.1 and § 52, in addition to other
2 damages.

3 WHEREFORE, plaintiffs pray for relief as hereunder appears.

4 **COUNT FIVE**

(California State Bane Act, Civil Code §§ 52 and 52.1,
5 on behalf of all plaintiffs similarly situated)

6 41. Defendants' policies, practices, and customs regarding their confining persons in cells
7 nude as complained of herein has violated plaintiffs' rights to due process of law and freedom from
8 unreasonable searches and seizures as secured by the California Sate Constitution, Article I, Section
9 24, and directly and proximately damaged plaintiffs as herein alleged, entitling each said plaintiff to
10 recover a minimum of \$4,000 each pursuant to California Civil Code § 52.1 and § 52, in addition to
11 other damages.

12 WHEREFORE, plaintiffs pray relief as hereunder appears.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, plaintiffs seek judgment as follows:

15 1. For declaratory and injunctive relief declaring illegal and enjoining, preliminarily and
16 permanently, defendants' policies, practices, and customs of subjecting pre-arraignment detainees to
17 strip and visual body cavity searches without having a reasonable suspicion that such searches would
18 be productive of contraband or weapons and of using the "cold rooms" to compel compliance or to
19 punish detainees.

20 2. Certification of the action as a class action;

21 3. For compensatory, general, and special damages for each representative and for each
22 member of the class of plaintiffs, as against all defendants;

23 4. Exemplary damages as against each of the individual defendants in an amount sufficient
24 to deter and to make an example of those defendants;

25 5. In addition to compensatory and statutory damages as allowed by law, at least \$4,000
26 for each plaintiff pursuant to California Civil Code § 52.1 and § 52;

1 6. Attorneys' fees and costs under 42 U.S.C. § 1988, California Civil Code § 52(b)(3),
2 California Civil Code § 52.1(h), and California Code of Civil Procedure § 1021.5; and

3 7. The cost of this suit and such other relief as the court finds just and proper.

4 A JURY TRIAL IS HEREBY DEMANDED.

5 DATED: July 13, 2004

Respectfully submitted,

6 LAW OFFICE OF MARK E. MERIN and
7 CASPER, MEADOWS & SCHWARTZ

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9 BY: _____
10 Mark E. Merin
 Attorney for Plaintiffs

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