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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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ROSALETY BARNETT, PETER
MORGANELLI, and all others similarly
situated,

Plaintiffs,

vs.

COUNTY OF CONTRA COSTA, CONTRA
COSTA COUNTY SHERIFF'S
DEPARTMENT, CONTRA COSTA
COUNTY SHERIFF WARREN E. RUPF,
Individually and in His Official Capacity,
CONTRA COSTA COUNTY SHERIFF'S
DEPUTIES DOES 1 THROUGH 100, and
ROES 1 THROUGH 20, INCLUSIVE,

Defendants.

CASE NO: C 04-04437 TEH

**FIRST AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

PLAINTIFFS ALLEGE:

INTRODUCTION

This is an action for declaratory and injunctive relief, damages, and punitive damages
against the COUNTY OF CONTRA COSTA, CONTRA COSTA COUNTY SHERIFF'S

1 DEPARTMENT, CONTRA COSTA COUNTY SHERIFF WARREN E. RUPF, Individually and
 2 in His Official Capacity, CONTRA COSTA COUNTY SHERIFF'S DEPUTIES sued under their
 3 fictitious names as DOES 1 THROUGH 100, and ROES 1 THROUGH 20, for violations of
 4 plaintiff's constitutional rights resulting from application of CONTRA COSTA County's and the
 5 Sheriff's policies, practices, and customs concerning the use of strip searches and visual body
 6 cavity searches in CONTRA COSTA County Jails. Plaintiffs seek an order declaring illegal
 7 defendants' policy of subjecting detainees in their custody to strip and visual body cavity searches
 8 before they are arraigned and without having any reasonable suspicion that the searches will be
 9 productive of contraband.

10 Defendants' strip search and visual body cavity search policies, practices, and customs
 11 violate those rights of plaintiffs, and all those they represent, that are secured by the Fourth and
 12 Fourteenth Amendments to the United States Constitution and entitle plaintiffs, and all those
 13 similarly situated, to recover damages under the Federal Civil Rights Act (42 U.S.C. § 1983).

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

21 JURISDICTION

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

25 1. Under 28 USC § 1367(a) the Court has supplemental jurisdiction over the state
 26 claims alleged herein.

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

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PARTIES

3. Plaintiffs ROSALETY BARNETT, PETER MORGANELLI, 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 two (2) years before the filing of this Complaint, and continuing to this date, and who were subjected to strip and/or visual body cavity searches at a CONTRA COSTA County Jail (hereinafter referred to as the “CONTRA COSTA 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.

4. Defendants coerced, forced, and compelled plaintiff ROSALETY BARNETT to give a urine sample without legal justification for requiring same. Moreover, defendants coerced, forced, and compelled plaintiff ROSALETY BARNETT to give a urine sample in an area of the CONTRA COSTA County Jail that was not sufficiently private so as to prevent persons not participating in the collection of the sample from observing the collection. Furthermore, defendants required plaintiff to provide the urine sample while being directly observed by defendants’ male and female officers.

5. Defendant CONTRA COSTA COUNTY SHERIFF WARREN E. RUPF is, and at all material times referred to herein, was the duly elected Sheriff of the COUNTY OF CONTRA COSTA, 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 CONTRA COSTA County Jail. He is sued in his individual and official capacities.

6. Defendants CONTRA COSTA COUNTY SHERIFF DEPUTIES sued herein by their fictitious names (Does 1 through 100) are all deputies who, as part of their duties at the CONTRA COSTA County Jail, subjected plaintiffs, and all those they represent, 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 CONTRA COSTA COUNTY SHERIFF DEPUTIES sued herein by their fictitious names (Does 1 through 5) are all deputies who, as part of their duties at the CONTRA

1 COSTA County Jail, coerced, forced, and compelled plaintiff ROSALETY BARNETT to give a
2 urine sample in a non-private setting and without proper justification.

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

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

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

19 10. Defendants CONTRA COSTA COUNTY SHERIFF'S DEPARTMENT and
20 CONTRA COSTA COUNTY SHERIFF WARREN E. RUPF, in his Individual and Official
21 Capacity, also maintained or permitted an official policy or custom of causing or permitting the
22 occurrence of the types of wrongs complained of herein, which wrongs damaged plaintiffs, and all
23 those similarly situated, as herein alleged.

24 11. Class action plaintiffs are those similarly situated who, during the period beginning
25 two (2) years before the filing of this Complaint, and continuing to this date, were subjected by
26 defendants to pre-arraignment strip and/or visual body cavity searches without defendants having,
27 and recording in writing, a reasonable suspicion that the searches would be productive of
28 contraband or weapons.

FACTS

12. On or about March 1, 2004, plaintiff ROSALETY BARNETT (hereinafter referred to as "plaintiff") was falsely arrested for allegedly resisting arrest. Plaintiff was taken to the CONTRA COSTA County Jail in Martinez, California, where she was coerced, forced, and compelled to produce a urine sample while being directly observed by male deputies (DOES 1 and 5).

13. Plaintiff, like all those she represents, was also forced to disrobe completely in front of a deputy who directed plaintiff to bend over, squat, and cough and to spread her buttocks and labia so that her vaginal and anal cavities could be visual inspected.

14. Within six (6) months of the aforesaid visual body cavity search, plaintiff 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's group claim was denied on or about September 14, 2004, allowing the filing of this class action complaint on state statute and constitutional violations as well as for her individual claim relating to the unjustified urine collection.

15. Plaintiff PETER MORGANELLI was arrested in CONTRA COSTA COUNTY on or about December 3, 2002, on a charge not involving violence, drugs or weapons, and transported to the Contra Costa County Jail in Martinez, California, where, prior to arraignment, pursuant to defendants' blanket, indiscriminate strip search policy, practice, and custom, he was forced entirely to disrobe and to expose for inspection his buttocks and genitalia without defendants having reasonable suspicion that he was concealing contraband or weapons and without a supervisor approving the strip search in writing.

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

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1 complained of herein were performed without regard to the nature of the alleged offense for which
2 plaintiffs, and all those similarly situated, had been arrested, without regard to whether or not
3 plaintiffs, or those they represent, were eligible for cite and release under Penal Code § 853.6,
4 without regard to whether or not plaintiffs, and each of those similarly situated, were eligible for
5 and/or were released on his or her own recognizance. Furthermore, the searches complained of
6 herein were performed without defendants having a reasonable belief that the plaintiffs, or any of
7 those similarly situated, so searched possessed weapons or contraband, and those facts being
8 articulated and recorded in a supervisor-approved document.

9 22. Plaintiffs bring this action on their own behalf and on behalf of all persons similarly
10 situated pursuant to Rule 23, Federal Rules of Civil Procedure.

11 23. The class is defined to include all persons who, in the period from and including
12 two (2) years prior to the filing of this Complaint, and continuing until this matter is adjudicated
13 and the practices complained of herein cease, were arrested and subjected to a pre-arraignment
14 strip and/or visual body cavity search at the CONTRA COSTA County Jail without defendants
15 first having, and recording in writing, a reasonable suspicion that the searches would be productive
16 of contraband or weapons.

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

23 25. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiffs are
24 informed and believe, and thereupon allege, that there are many questions of fact common to the
25 class including, but not limited to: (1) whether defendants routinely subject all persons arrested to
26 visual body cavity searches prior to arraignment if they intend such persons to be housed in the
27 CONTRA COSTA County Jail; (2) whether persons are subjected to visual body cavity searches
28 prior to arraignment without there being any reasonable suspicion, based on specific or articulable

1 facts, to believe any particular arrestee has concealed drugs, weapons, and/or contraband in bodily
2 cavities which could be detected by means of a visual body cavity search; (3) whether the visual
3 body cavity searches are conducted in an area of privacy so that the searches cannot be observed
4 by persons not participating in the searches; and, (4) whether the visual body cavity searches are
5 reasonably related to defendants' penological interest to maintain the security of the jail and
6 whether or not there are less intrusive methods for protecting any such interest.

7 26. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiffs are
8 informed and believe, and thereupon allege, that there are many questions of law common to the
9 class including, but are not limited to: (1) whether defendants may perform visual body cavity
10 searches on persons prior to their arraignment without reasonable suspicion, based on specific or
11 articulable facts, to believe any particular prearrestment detainee has concealed drugs, weapons
12 and/or contraband which would likely be discovered by a visual body cavity search; (2) whether
13 defendants may perform visual body cavity searches on persons without first reasonably relating
14 the use of the visual body cavity search to defendants' penological interest to maintain the security
15 of the jail and determining if there is a less intrusive method to protect that interest; (3) whether
16 visual body cavity searches may be conducted in areas where the search can be observed by people
17 not participating in the search without violating plaintiffs' State and Federal constitutional rights
18 and plaintiffs' State statutory rights; (4) whether or not defendants' strip search policy and
19 procedure is in accordance with the State and/or Federal Constitution; (5) whether or not plaintiffs'
20 claims under Penal Code § 4030 are barred by the provisions of Government Code § 844.6; and,
21 (6) whether or not defendants have an immunity defense to plaintiffs' claims under Civil Code §§
22 52 and 52.1, and whether or not those claims are actionable in a class action.

23 27. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the claims of the
24 representative plaintiffs are typical of the class. Plaintiffs were searched, prior to arraignment,
25 without reasonable suspicion that a strip or visual body cavity searches would produce drugs,
26 weapons or contraband (and without the facts supporting any such suspicion being articulated in
27 a supervisor-approved writing). Representative plaintiffs have the same interests and suffered the
28 same type of injuries as all of the class members. Plaintiffs' claims arose because of defendants'

1 policy, practice, and custom of subjecting arrestees to strip and/or visual body cavity searches
2 before arraignment without having, and recording in writing, a reasonable suspicion that the
3 searches would be productive of contraband or weapons. Each class member suffered actual
4 damages as a result of being subjected to a visual body cavity search. The actual damages suffered
5 by the representative plaintiffs are similar in type and amount to the actual damages suffered by
6 each class member.

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

10 29. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(1)(A),
11 prosecutions of separate actions by individual members of the class would create a risk that
12 inconsistent or varying adjudications with respect to individual members of the class would
13 establish incompatible standards of conduct for the parties opposing the complaint.

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

19 31. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(2), plaintiffs are
20 informed and believe, and thereupon allege, that defendants have acted on grounds generally
21 applicable to the class, thereby making appropriate the final injunctive or declaratory relief with
22 respect to the class as a whole.

23 32. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), this class action
24 is superior to other available methods for the fair and equitable adjudication of the controversy
25 between the parties. Plaintiffs are informed and believe, and thereupon allege, that the interests
26 of members of the class in individually controlling the prosecution of a separate action is low, in
27 that most class members would be unable individually to prosecute any action at all. Plaintiffs also
28 are informed and believe, and thereupon allege, that the amounts at stake for individuals are so

1 small that separate suits would be impracticable. Plaintiffs are informed and believe, and
2 thereupon allege, that most members of the class will not be able to find counsel to represent them.
3 Plaintiffs are informed and believe, and thereupon allege, that it is desirable to concentrate all
4 litigation in one forum because all of the claims arise in the same location; i.e., the CONTRA
5 COSTA County Jail. It will promote judicial efficiency to resolve the common questions of law
6 and fact in one forum, rather than in multiple courts.

7 33. Plaintiffs do not know the identities of all of the class members. Plaintiffs are
8 informed and believe, and thereupon allege, that the identities of the class members may be
9 ascertained from records maintained by the COUNTY OF CONTRA COSTA and defendant
10 SHERIFF WARREN E. RUPF and defendant CONTRA COSTA COUNTY SHERIFF'S
11 DEPARTMENT. Plaintiffs are informed and believe, and thereupon allege, that defendants'
12 records reflect the identities, including addresses and telephone numbers, of the persons who have
13 been held in custody in the CONTRA COSTA County Jails. Plaintiffs are informed and believe,
14 and thereupon allege, that records of, and maintained by defendants reflect who was subject to a
15 strip and/or visual body cavity search, when the search occurred, where the search occurred,
16 whether any reasonable suspicion for the search existed and was recorded in a supervisor-approved
17 writing, when persons searched were arraigned, and the charges on which such persons were
18 arrested. Plaintiffs are informed and believe, and thereupon allege, that all of the foregoing
19 information is contained in defendants' computer system and that the information necessary to
20 identify the class members, by last known addresses, and the dates and reasons for their arrests
21 and/or release from custody, is readily available from said computer system.

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

- i. The pendency of the class action and the issues common to the class;
- ii. The nature of the action;
- iii. Their right to “opt out” of the action within a given time, in which event they will not be bound by a decision rendered in the class action;
- iv. Their right, if they do not “opt out,” to be represented by their own counsel and to enter an appearance in the case; otherwise they will be represented by the named class plaintiff(s) and the named class plaintiff(s)’s counsel; and
- v. Their right, if they do not “opt out,” to share in any recovery in favor of the class, and conversely to be bound by any judgment on the common issues adverse to the class.

COUNT ONE

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

35. Defendants’ policies, practices, and customs regarding the strip and visual body cavity searches complained of herein violated plaintiffs’, and all those similarly situated’s, rights under the Fourth Amendment to be free from unreasonable searches and seizures, violated plaintiffs’, and all those similarly situated’s, rights to due process and privacy under the Fourteenth Amendment, and directly and proximately damaged plaintiffs, and all those similarly situated, as herein alleged, entitling plaintiffs, and all class members, to recover damages for said constitutional violations pursuant to 42 U.S.C. § 1983.

WHEREFORE, plaintiffs pray for relief, for themselves and for all persons similarly situated, as hereunder appears.

COUNT TWO

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

36. Defendants’ policies, practices, and customs regarding the strip and visual body cavity searches complained of herein violated the rights of plaintiffs, and all those similarly situated, to privacy as secured by Article I, Section 1 of the California Constitution and directly and proximately damaged plaintiffs, and each of those similarly situated, as herein alleged,

1 entitling said plaintiffs, and each of those they represent, to recover a minimum of \$4,000 each
2 pursuant to California Civil Code § 52.1 and § 52, in addition to other damages.

3 WHEREFORE, plaintiffs pray for relief, for themselves and for all persons similarly
4 situated, as hereunder appears.

5 **COUNT THREE**

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

8 37. Defendants' policies, practices, and customs regarding the strip and visual body
9 cavity searches complained of herein violated rights secured to plaintiffs, and all those similarly
10 situated, under California Penal Code § 4030 and directly and proximately damaged plaintiffs, and
11 each of those similarly situated, as herein alleged, entitling plaintiffs, and each of those similarly
12 situated, to recover a minimum of \$1,000 each pursuant to California Penal Code § 4030(p), and
13 to further minimum damages of \$4,000 each pursuant to California Civil Code § 52.1 and § 52,
14 in addition to other damages.

15 WHEREFORE, plaintiffs pray for relief, for themselves and for all persons similarly
16 situated, as hereunder appears.

17 **COUNT FOUR**

18 (California State Bane Act, Civil Code §§ 52 and 52.1,
19 on behalf of BARNETT only)

19 38. By unjustifiably coercing, forcing, and compelling plaintiff to provide a urine
20 sample while being observed by male deputies defendants, and each of them, violated plaintiff
21 BARNETT'S right to privacy as secured by the California Sate Constitution, Article I, Section 1,
22 and directly and proximately damaged plaintiff as herein alleged, entitling said plaintiff to recover
23 a minimum of \$4,000 pursuant to California Civil Code § 52.1 and § 52, in addition to other
24 damages.

25 WHEREFORE, plaintiff prays for relief for herself as hereunder appears.

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COUNT FIVE
(Invasion of Privacy, on behalf of BARNETT only)

39. By unjustifiably coercing, forcing, and compelling plaintiff BARNETT to provide a urine sample while being observed by male deputies defendants, and each of them, violated plaintiff's right to privacy as secured by the California State Constitution, Article I, Section 1, and directly and proximately damaged plaintiff by causing her emotional distress, humiliation, and embarrassment.

WHEREFORE, plaintiff prays for relief for herself as hereunder appears.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on behalf of themselves and all those similarly situated, seek judgment as follows:

1. For declaratory and injunctive relief declaring illegal and enjoining, preliminarily and permanently, defendants' policies, practices, and customs of subjecting pre-arraignment detainees to strip and visual body cavity searches without having a reasonable suspicion that such searches would be productive of contraband or weapons;

2. Certification as a class action of plaintiffs' complaints concerning defendants' policies, practice, and customs of subjecting pre-arraignment detainees to strip and visual body cavity searches without having a reasonable suspicion that such searches would be productive of contraband or weapons;

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

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

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

6. In addition to compensatory and statutory damages as allowed by law, at least \$1,000 for each plaintiff pursuant to California Penal Code § 4030;

1 7. Attorneys' fees and costs under 42 U.S.C. § 1988, California Civil Code § 52(b)(3),
2 California Civil Code § 52.1(h), California Code of Civil Procedure § 1021.5 and California Penal
3 Code ; and § 4030(p); and

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

5 DATED: July 19, 2005

Respectfully submitted,

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

8 /s/
9 BY: _____
Mark E. Merin
Attorney for Plaintiffs

10 A JURY TRIAL IS DEMANDED.

11 Respectfully submitted,

12 LAW OFFICE OF MARK E. MERIN and
13 CASPER, MEADOWS, SCHWARTZ & COOK

14 /s/
15 BY: _____
16 Mark E. Merin
Attorney for Plaintiffs

17 S:\WpWork\Strip Search Cases\Barnett\Contra Costa\Pleadings\Complaint.First Amended.wpd