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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARSIAL LOPEZ, SANDRA CHAVEZ, THEODORE MEDINA, each individually, and as class representatives,

Plaintiffs,

vs.

SHERIFF DONNY YOUNGBLOOD, individually and in his official capacity; FORMER SHERIFF MACK WIMBISH, in his individual capacity, COUNTY OF KERN, a governmental entity; KERN COUNTY SHERIFF'S DEPARTMENT, a California public entity; and DOES 1 through 100,

Defendants.

Case No. 1:07CV474 DLB

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND/OR SUMMARY ADJUDICATION

Date: 12/19/08
Time: 9:00 a.m.
Ctrm: 9 (Fresno)

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I. RELIEF REQUESTED.

Plaintiffs, former prisoners held at the Kern County Jail ("KCJ") and the putative classes they represent, bring this facial challenge to certain Kern County Sheriff's Department's ("KCSD") strip/visual body cavity search policies and practices. Plaintiffs contend that the KCSD's former policies of (1) routinely strip searching[1] prisoners ordered released from custody pursuant to court order without reasonable suspicion that the prisoner posses weapons or contraband, and (2) routinely searching all prisoners upon their arrival at the Lerdo jail in groups, without privacy and where the strip search was viewed by other inmates and jail personnel not necessary to the search, violated plaintiffs' rights under the federal and state constitutions. Thus, plaintiffs contend, they are entitled to this Court's ruling that defendants are liable as a matter of law for violating plaintiffs' rights.

II. STATEMENT OF FACTS.

A. The Kern County Jail.

The KCSD operates the Kern County Jail (KCJ). The KCJ consists of Central Receiving Facility (CRF) in Bakersfield, the Lerdo Detention Complex (Lerdo jail), and pre-arraignment jails at Mojave and Ridgecrest. Most new arrestees are initially housed at CRF. If not released from CRF, arrestees are then housed at the Lerdo jail. (The Mojave and Ridgecrest jails are used to hold, pre-arraignment, those arrestees who, because of geographical distance, must be held in custody while awaiting transport to CRF in Bakersfield.) *Plaintiffs' Statement of Undisputed Facts* (hereinafter "PSUF") nos. 1-3.

Arrestees may remain at CRF anywhere from a few hours to a few days. Arrestees are then either released from custody, or transported to Kern County Superior Court

[1] As used herein to refer to defendants' policies, a "strip search" means strip/visual body cavity search.

(KCSC) for their initial court appearance. If, following the arrestee's initial court appearance, the KCSC orders the arrestee's release, the arrestee is returned to CRF where he is released (assuming no other holds). If KCSC remands the arrestee to custody, the arrestee returns to CRF, then via bus transported to the Lerdo jail where he is housed until either his release or next court appearance. PSUF nos. 4-5.

Post-arraignment prisoners, including those serving sentences, are housed at the Lerdo jail. If a prisoner housed at the Lerdo jail has a court appearance, via bus KCSD transports the prisoner to CRF where he is staged for the court appearance. Following that appearance the prisoner is returned to CRF, then to his Lerdo jail housing. At Lerdo, the prisoner is held in custody or released, depending on the court's order(s). Thus, prisoners who, following a court appearance, are ordered released, are turned to the Lerdo jail so that they may be released from custody. PSUF nos. 5-6.

B. The KCSD Strip Search Policy And Practice.

1. Strip/Visual Body Cavity Search – defined

A strip/visual body cavity search requires the arrestee or prisoner to remove all clothing so as to permit a visual inspection of the breasts, buttocks, and genitalia of the person being searched. A female prisoner must expose her vagina; a male prisoner must lift his penis and scrotum for visual inspection. A prisoner must bend over and separate his/her buttocks cheeks, to squat down then stand back up, and to cough three times. From 2003 to present, the manner of strip searching prisoners has not changed. PSUF nos. 10-12.

2. Who Gets Strip/Visual Body Cavity Searched

Broadly speaking, prisoners subjected to a strip search fall into one of three types: (1) arrestees strip searched pursuant to Cal. Penal Code § 4030[2]; (2) prisoners strip

[2] Section 4030 requires that a misdemeanor or infraction arrestee not be strip searched absence reasonable suspicion that the arrestee is concealing weapons or contraband. Cal. Penal Code § 4030(f).

searched because jail officials have reasonable suspicion that the prisoner is concealing weapons or contraband; and (3) prisoners arriving at the Lerdo jail. For this last group there is no requirement of reasonable suspicion. PSUF nos. 9, 12; **Exhibit A** to Cook decl.[3] (pp. 3-4 of KCSD "Search Procedures C-500"). Moreover, this last group includes prisoners like Marsial Lopez and Theodore Medina – the Kern County Superior Court had ordered their release from custody but in the course of processing their releases, KCJ officials strip searched Mr. Lopez and Mr. Medina because jail officials returned to the Lerdo jail to process their releases. PSUF nos. 19 (Lopez), 24 (Medina).

3. The Absence Of Privacy For Prisoners Strip Searched At The Lerdo Jail Upon Arrival

Before October 2007, KCSD routinely conducted strip searching in a group setting, without providing prisoners privacy. There were no partitions, booths, or curtains. Prisoners were lined up in a group as many as 25, and could observe each other's searches. For instance, plaintiff Sandra Chavez had to expose her vagina while on her menstrual cycle, in full view of other arrestees. Women were ordered to remove sanitary napkins in view of other prisoners. Prisoners were crowded together so tightly that physical contact was unavoidable. PSUF nos. 13-15, 20.

This practice of searching prisoners in groups without privacy stood in stark contrast to the jail's Cal. Penal Code § 4030 searches. For those strip searches KCJ personnel strip searched § 4030(f) arrestees individually, in a booth that prevented other prisoners and non-involved jail personnel from observing the search. PSUF no. 16.

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See Way v. County of Ventura, 445 F.3d 1157, 1160 n.2 (9th Cir. 2006) (discussing and quoting § 4030). Moreover – and significantly for purposes of this motion, see Part III(E)(3) *infra* – if subjected to a strip search a § 4030(f) arrestee *must* be provided privacy. Cal. Penal Code § 4030(m).

[3] Declaration of Donald W. Cook filed November 7, 2008.

4. The Strip Searches Were Often Conducted Under Unsanitary And Degrading Conditions

During group strip searches, prisoners were exposed to unsanitary conditions. They stood and walked barefoot on dirty floors contaminated with bodily fluids, including blood, with material tracked on shoes from outside and from within other locations of the facility. Detainees were required to throw their clothing on filthy floors and at times, had to re-dress in clothing after it had lain on the dirty floor. PSUF nos. 14, 15, 21.

Menstruating women bled on themselves and on the floor. The floor was also the repository for the prisoners' clothes. Male and female prisoners stood barefoot on the same floor that captured the prisoners' clothes and bodily fluids. Meanwhile, jail officials would also offer their comments, mocking and/or humiliating prisoners, including disabled prisoners like Mr. Medina. PSUF Nos. 14, 15, 20-23.

III. ARGUMENT.

A. Summary Judgment Standard.

Summary adjudication is mandated where "there is no genuine issue as to any material fact" and "the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). Summary adjudication or partial summary judgment is permitted by both the Federal and Local Rules. F.R.Civ.P. 56(d); Local Rule 56-260(f).

B. KCSD's Policy Of Strip Searching Persons Ordered Released From Custody, Violated The Fourth Amendment.

The Fourth Amendment is the governing standard. *Way v. County of Ventura*, 445 F.3d 1157, 1161-62 (9th Cir. 2006) (holding that a county jail's blanket strip search policy violated the Fourth Amendment); *Jordan v. Gardner*, 986 F.2d 1521, 1524 (9th Cir.1993) (*en banc*) (the "Fourth Amendment guarantees the right of the people to be secure against unreasonable searches, and its protections are not extinguished upon incarceration"); *Thompson v. Souza*, 111 F.3d 694, 699 (9th Cir. 1997) (same).

> As recently reaffirmed by the Ninth Circuit,
>
> We assess the constitutionality of a [strip] search by balancing "the need for the particular search against the invasion of personal rights that the search entails." *Bell v. Wolfish*, 441 U.S. 520, 559, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979). This requires us to weigh "the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." *Id.*

Way v. County of Ventura, 445 F.3d at 1160.

Unquestionably, defendants cannot justify its (former) policy of subjecting all prisoners who have been ordered released to a strip search upon their arrival at the Lerdo jail. The persons subjected to the search, e.g., Mr. Lopez and Mr. Medina, were ordered released from custody. At the point the release order issued, defendants' justification for any search of plaintiffs was necessarily minimized. And when one considers the especially intrusive nature of a strip/visual body cavity search (*Way*, 445 F.3d at 1160) the policy cannot be justified under the Fourth Amendment. *Young v. City of Little Rock*, 249 F.3d 730, 735-36 (8th Cir. 2001) (strip search of woman mistakenly arrested on a warrant and then ordered released characterized as "shocking"; no legitimate institutional interest justifying strip search based on out-processing administrative convenience); *Logan v. Shealy*, 660 F.2d 1007, 1013 (4th Cir. 1981) (law conclusively established by *Bell v. Wolfish*, and therefore no qualified immunity, that subjecting woman arrested on DUI charge to blanket strip search after magistrate ordered her released on personal recognizance violated Fourth Amendment); *Craft v. County of San Bernardino,* 468 F. Supp. 2d 1172, 1179 (C.D. Cal. 2006) ("[T]he Court finds . . . that the [strip search] policies at issue violate the Constitution when conducted on arrestees returning from court who are entitled to release as a result of their court appearance . . .").

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C. KCSD's Policy Of Strip Searching Prisoners In Groups Without Privacy Violated The Fourth Amendment.

Even though supported by reasonable suspicion of weapons and/or contraband, a strip search may still violate the Fourth Amendment for the manner in which it is conducted.

Here, defendants' former practice of conducing strip searches of prisoners *en masse* violated clearly established law. Not providing prisoners like plaintiffs privacy when they were strip searched, was impermissible absent compelling justification. *Amaechi v. West*, 237 F.3d 356, 364 (4th Cir. 2001) ("we have repeatedly emphasized the necessity of conducting a strip search in private"); *Logan v. Shealy*, 660 F.2d 1007, 1014 (4th Cir. 1981) (strip search in a detention center cell where others in the booking area could observe strip search; "no police officer in this day and time could reasonably believe that conducting a strip search in an area exposed to the general view of persons known to be in the vicinity, whether or not any actually viewed the search" is constitutional); *Iskander v. Village of Forest Park*, 690 F.2d 126, 129 (7th Cir. 1982) (contention "that routine strip searches may be conducted in a room open to the prying eyes of passing strangers" would not "be entertained") (citing *Logan, supra*); *Polk v. Montgomery County, Maryland*, 782 F.2d 1196, 1201 (4th Cir. 1986) (whether search is conducted in private is "especially relevant in determining whether a strip search is reasonable under the circumstances"); *Smith v. Montgomery County, Md.*, 547 F. Supp. 592, 599 (D. Md. 1982) (*Smith I*) (enjoining, *inter alia*, any policy that permitted conducting visual searches other than in private; "with respect to conducting a strip search in private, even if all defendants' arguments were accepted, there is no reason why the initial search of incoming detainees cannot be done in private"); *Smith v. Montgomery County, Md.*, 607 F. Supp. 1303 (D.C. Md. 1985) (*Smith II*) (new judge in the same case affirmed the injunction previously entered; "based on *Logan v. Shealy*, the Center's indiscriminate strip search policy and

failure to conduct strip searches in private is unconstitutional"; no qualified immunity); *Jones v. Murphy*, 470 F. Supp. 2d 537, 548 (D. Md. 2007) (arrestees "being strip searched in a non-private setting also violates what appears to be a clearly established right in the Fourth Circuit").

D. Defendants Cannot Justify Its Former Policies On Grounds Of Administrative Convenience.

It is anticipated that defendants will claim they had to strip search all prisoners arriving at the Lerdo jail, including those ordered released, and had to do so without providing the prisoners privacy, because of the jail's limited resources, the number of prisoners processed daily, and the like. In short, administratively it was too expensive to comply with constitutional guarantees.

If made, defendants' administrative convenience argument will be meritless. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 392 (1992) ("financial constraints may not be used to justify the creation or perpetration of Constitutional violations."); *Stone v. City and County of San Francisco*, 968 F.2d 850, 858 (9th Cir.1992) ("federal courts have repeatedly held that financial constraints do not allow states to deprive persons of their constitutional rights"); *Roberts v. Rhode Island*, 239 F.3d 107, 113 (1st Cir. 2001); ("An indiscriminate strip search policy routinely applied ... [cannot] be justified simply on the basis of administrative ease in attending to security considerations.") (ellipsis in original) (quoting *Logan v. Shealy*, 660 F.2d 1007, 1013 (4th Cir. 1981); *Hill v. Bogans*, 735 F.2d 391, 394-95 (10th Cir. 1984)); *Craft v. County of San Bernardino*, 468 F. Supp. 2d 1172, 1178-79 (C.D. Cal. 2006) (defendants' justification for strip search policies was "in essence…administrative convenience," thereby undermining defendants' justification; "lack of funds does not justify what is otherwise a constitutional violation"); *see also N.G. v. Connecticut*, 382 F.3d 225, 234 (2d Cir.2004) ("[m]ere convenience, however, cannot be a sufficient interest to justify such a serious impairment of privacy").

Finally, although not necessary for granting the instant motion it is worth noting that defendants changed its policy after they were served with this lawsuit. PSUF nos. 25, 26. Furthermore, other jails have for years been doing what defendants only recently got around to doing. PSUF nos. 27, 28, 29, 30. Both factors would belie any claim by defendants that until they changed their policies, they had no choice but to deny plaintiffs and the putative class their full measure of Fourth Amendment rights.

E. The Strip Search Policies Violated Plaintiffs' State Constitutional Rights.

1. Cal. Const., Art. I § 1

The right to privacy under the California Constitution is a fundamental and inalienable right. *White v. Davis*, 13 Cal. 3d. 757, 774 (1975); *American Airlines, Inc. v. Superior Court*, 114 Cal. App. 4th 881, 893 (2003). California's right of privacy is broader than the federal right to privacy. *American Academy of Pediatrics v. Lungren*, 16 Cal. 4th 307, 326 (1997) ("with respect to the specific constitutional right at issue in this case--*the constitutional right of privacy*--there is a clear and substantial difference in the applicable language of the federal and state Constitutions. The federal Constitution contains no provision expressly setting forth or guaranteeing a constitutional right of 'privacy' ") (emphasis in the original).

In *American Academy of Pediatrics v. Lungren*, *supra*, plaintiffs challenged the constitutionality of a California statute requiring minors to acquire parental consent or judicial authorization before being able to obtain an abortion. 16 Cal. 4th at 313. Construing the state Constitutional provision to be broader than its federal counterpart, the California Supreme Court held that, although such a statutory scheme was permissible under the federal constitution, it violated minors' right of privacy under Article I, § 1. 16 Cal. 4th at 325.

The controlling case in determining the scope of Article I, § 1's right of privacy is

Hill v. NCAA, 7 Cal.4th 1, 34 (1994). In *Hill*, the court articulated a test for a state constitutional right to privacy cause of action. There must be: (1) a legally protected privacy interest involved; (2) a reasonable expectation of privacy on the plaintiff's part; and (3) a serious invasion of a privacy interest. *Id.* at 36-37. The plaintiff's privacy interest must then be balanced against the defendant's countervailing interest. *Id.* The defendant must demonstrate either a "compelling interest," *Id.* at 34, or a "legitimate interest," *Id.* at 56-57, in violating plaintiff's privacy rights. The standard applied depends upon the nature and severity of the intrusion. In cases where the defendant commits "an obvious invasion of an interest fundamental to personal autonomy," . . . a 'compelling interest' must be present to overcome the vital privacy interest. If, in contrast, the privacy interest is less central, or in bona fide dispute, general balancing tests are employed." *Id*. at 34. If the defendant articulates a countervailing interest, the plaintiff has the burden of demonstrating that equally effective alternatives that are less intrusive to plaintiff's privacy interests are available. *Id.* at 38. If such alternatives are available, the invasion of privacy is enhanced. *Id.* The "least intrusive means" is applied when there is a clear invasion of "central, autonomy-based rights," *Id.* at 49, or in cases where a state actor has violated a right of privacy.

The *Hill* court made clear that alternatives are a key factor in the privacy analysis, noting that, "if defendant's legitimate objectives can be readily accomplished by alternative means having little or no impact on privacy interests, the prospect of actionable invasion of privacy is enhanced." *Id.*, 7 Cal.4th at 38. Subsequent decisions have established that, at least in a governmental setting such as this one, the least intrusive means test is a weighty factor. *See Hansen v. California Department of Corrections*, 920 F. Supp. 1480, 1507 (N.D. Cal. 1996) ("challengers must prevail if … (1) it is the state (government), rather than a private entity or party, that is invading the challenger's privacy interest . . . (2) feasible alternative means to achieving the state's

ends are available; (3) if the state used those alternative means, it would achieve its ends as well, or nearly as well, as it does through the challenged procedures; and (4) appreciably less harm would be caused to the challenger's privacy interests if the alternative means were used"); *accord, Coalition Advocating Legal Housing Options v. City of Santa Monica*, 88 Cal. App. 4th 451, 450-60 (2001).

Under a proper right-of-privacy analysis, then, since strip searches directly implicate an interest "fundamental to personal autonomy," not only must defendants proffer a "compelling interest" for the searches, they must do so using the "least intrusive means." Those less intrusive alternatives include (1) releasing the inmates directly from court rather than bringing them back to the jail (2) segregating court-ordered releasees from inmates going back to general population, such as putting them in a separate holding cell, so that releasees would not have to be strip searched, and (3) conducting searches for outstanding wants and holds on inmates before court appearances.

Since numerous jails have been faced with similar issues and have successfully modified their behavior to respect the constitutional rights of court returns not to be strip searched after becoming entitled to release (PSUF nos. 27, 28, 30) defendants cannot carry their burden in this case. Given the extreme intrusion on privacy, defendants cannot begin to justify the practice by arguments that it is more convenient for them, and they cannot contend that it could not be done, particularly since defendants have discontinued the challenged policies. As the policies cannot be justified under the Fourth Amendment, neither can they be justified under the more restrictive standard of Article I, § 1.

2. Cal. Const. Art. I § 13

Article I, section 13 is the state constitutional equivalent to the Fourth Amendment. Although nearly word-for-word identical to the Fourth Amendment,[4] in civil cases § 13

[4] Fourth Amendment, United States Constitution:

The right of the people to be secure in their persons, houses, papers, and

is construed to provide broader protections than its federal counterpart. *People v. McKay*, 27 Cal. 4th 601 618-19 (2002).[5]

Plaintiffs incorporate their previous discussion of the Fourth Amendment in support of this claim. Moreover, since the challenged strip searches directly implicate an interest "fundamental to personal autonomy," not only must the KCSD proffer a "compelling interest" for the searches, it must do so using the "least intrusive means." Less intrusive alternatives include (1) strip searching only those arrestees for whom probable cause or reasonable suspicion exists, and (2) conducting strip searches in private.

3. The Group Strip Searches Violated California's Equal Protection Guarantees

In relevant part Art. I § 7 of the California Constitution states: "A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws . . ." "Broadly stated, equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws [that] is enjoyed by other persons or other classes in like circumstances in their lives, liberty and property

effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Art. I, § 13 of the California Constitution:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

[5] Should defendants argue that the passage, in 1982, of Proposition 8 (Victims Rights Initiative) limits state constitutional protections to those afforded under the Federal Constitution, the argument is meritless. By its terms Proposition 8 applies only to *criminal* proceedings; it has no application to civil actions. *Robbins v. Wong*, 27 Cal. App. 4th 261, 273 (1994) (holding that "section 28(f) [the state constitutional amendment that limits Art. I § 13 protections to those provided by the Fourth Amendment] 'is, by its express terms, applicable only to criminal proceedings,' and has 'no application to civil actions.' ").

and in their pursuit of happiness.' " *People v. Guzman*, 35 Cal. 4th 577, 591 (2005) (bracket in original).

"In resolving equal protection issues, the United States Supreme Court has used three levels of analysis. Distinctions in statutes that involve suspect classifications or touch upon fundamental interests are subject to strict scrutiny, and can be sustained only if they are necessary to achieve a compelling state interest. " *People v. Hofsheier*, 37 Cal.4th 1185, 1200 (2006) (mandatory lifetime registration requirement violated defendant's equal protection right inasmuch as one convicted of unlawful sexual intercourse with 16-year-old was not subject to mandatory requirement). Where a statute touches on a fundamental interest, "it must be narrowly drawn to use the least intrusive means to achieve a compelling state purpose." *Del Monte v. Wilson*, 1 Cal.4th 1009, 1118 (1992) (distribution of veterans' benefits conditioned on California residency at a fixed point in the past violates the federal constitutional right to equal protection of the laws).

It is clear that the strip searches to which defendants subjected plaintiffs impinged upon "fundamental interests." Requiring a person to bend over and expose his or her anus and/or vagina for examination, especially in the presence of strangers, obviously implicates traditional expectations of privacy. The conclusion that these highly demeaning and embarrassing searches implicate fundamental interests is considerably strengthened in California by Article I, Section 1 of the California Constitution because of its explicit elevation of privacy protections to constitutional dimensions. See Part III(E)(1), *supra*.

Here, plaintiffs contend they were denied equal protection because KCJ provided privacy to prisoners strip searched pursuant to Cal. Penal Code § 4030, but did not provide similar privacy to prisoners like plaintiffs and their putative class. That is, pursuant to § 4030(m) KCJ strip searched misdemeanor and infraction arrestees (for whom a strip search was authorized, see § 4030(f)) in privacy booths, whereas plaintiffs

were strip searched in a group setting, with no privacy. PSUF nos. 13, 16. This unequal treatment of similarly situated prisoners (both groups subjected to strip searches), places the burden on *defendants* to justify this disparate treatment. In *Long Beach City Employees Assn*, 41 Cal.3d 937 (1986), the issue was whether a statutory scheme which forbad private employers from requiring employees to take a polygraph examination as a condition of employment, while permitting some public employers to use polygraph examinations, violated the equal protection rights of the employees who could be subjected to polygraph examinations. The California Supreme Court, in ruling that the lie detector tests implicated privacy interests protected by Article I, § 1, held that the "*the burden is on the City* to demonstrate that the classifications drawn by Labor Code section 432.2 and Government Code section 3307 are justified by a compelling governmental interest and that the distinctions drawn are necessary to further that purpose." 41 Cal.3d at 948 (emphasis added). The "state must establish the unavailability of less offensive alternatives and demonstrate that the statutory intrusion on the cherished right of privacy is drawn with narrow specificity." 41 Cal.3d at 953.

Defendants cannot offer any compelling justification for providing privacy to one group of prisoners strip searched (§ 4030(f) arrestees), but not to prisoners strip searched upon their arrival at the Lerdo jail. An argument of administrative convenience, *i.e.*, it was easier and/or less costly to provide privacy to the § 4030(f) prisoners than those like plaintiffs, fails. "It is now well settled that administrative burden does not constitute a compelling state interest which would justify the infringement of a fundamental right." *Central Valley Chap. 7th Step Foundation v. Younger*, 95 Cal. App. 3d 212, 238 (1979) (defendants' procedure of sending arrest records to public employers without editing out any arrest which did not result in a conviction is prima facie violation of the state constitutional right of privacy, and administrative burden of screening and editing before complying with the requests for records insufficient justification). An administrative

convenience "justification" is also impeached by the experience of other jails, PSUF nos. 27-30, and defendants' October 2007 policy change – defendants now provide privacy to Lerdo jail arrivals. PSUF no. 26.

F. The Entity Defendants Are Liable For The Constitutional Violations.

1. Federal Liability

When a plaintiff shows that her rights were violated by a municipal policy that caused the constitutional violation, or an established pattern or practice or custom, the entity is liable. *Monell v. New York Dept. of Soc. Servs.*, 436 U.S. 658, 690-91 (1978); *Chew v. Gates*, 27 F.3d 1432, 1444 (9th Cir. 1994). The policies challenged here – strip searches of inmates ordered released by a court and routine strip searches of Lerdo jail arrivals in groups – are all policies for which the County of Kern and the Kern County Sheriff's Department are responsible under *Monell*. *Craft v. County of San Bernardino*, 468 F. Supp. 2d 1172, 1176 (C.D. Cal. 2006) (County held liable based on its pre-arraignment and post-release strip search policies); *Davis v. City of Camden*, 657 F. Supp. 396, 402-404 (D. N.J. 1987) (same); *Ford v. City of Boston*, 154 F. Supp.2d 131 (D. Mass. 2001) (same).

2. State Liability

Because the strip searches were performed by County employees acting within the course and scope of their employment, the entity defendants are liable, pursuant to Cal. Gov't Code § 815.2(a). *Robinson v. Solano County*, 278 F.3d 1007, 1016 (9th Cir. 2002) (*en banc*) (California "has rejected the *Monell* rule and imposes liability on counties under the doctrine of *respondeat superior* for acts of county employees."); *Perez v. City of Huntington Park*, 7 Cal. App. 4th 817, 821 (1992) (A public entity is liable under the doctrine of *respondeat superior* for the acts of its agents, even if the plaintiff is "unable to identify which employee committed the wrongful act.").

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IV. CONCLUSION.

For the reasons stated above, Plaintiffs request that the Court grant partial summary judgment or summary adjudication, finding that defendants' policies of (1) strip searching inmates in groups without individual privacy, (2) strip searching court-ordered releasees upon return from court, violated plaintiffs' state and federal constitutional rights.

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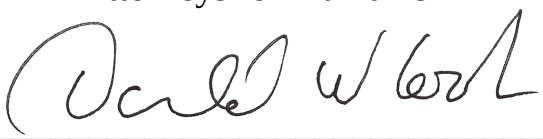
By 
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