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Attorneys for Defendants COUNTY OF MARIN, MARIN COUNTY SHERIFF'S DEPARTMENT and SHERIFF ROBERT T. DOYLE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DARCELLE L. CHATOIAN, CYNTHIA TASCA, CORIN RASMUSSEN and KORISSA RUSSELL, 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.: C 04-2790 MJJ

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT/ADJUDICATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: February 15, 2006
Time: 1:30 p.m.
Ctrm: 11

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NOTICE OF MOTION AND MOTION

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

Notice is hereby given that on the above-noted date at the stated time and in the designated courtroom, Defendants COUNTY OF MARIN/MARIN COUNTY SHERIFFS DEPARTMENT (hereinafter collectively referred to as "COUNTY OF MARIN")[1] and SHERIFF ROBERT T. DOYLE, by and through their attorneys of record, will and hereby do move this Court for Summary Judgment/Summary Adjudication. The Motion for Summary Judgment/Adjudication is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities in support thereof and the Proposed Order filed herewith, the entire court file, and any other pleadings or evidence which may be presented at the time of the hearing.

Defendants ROBERT T. DOYLE, and COUNTY OF MARIN hereby move for Summary Judgment/Adjudication on the following grounds:

1. There is insufficient evidence of a municipal policy, custom or practice to establish Monell-type liability against Defendant COUNTY OF MARIN and Plaintiffs' claims under the Fourth and/or Fourteenth Amendments fails as a matter of law.

2. Defendant MARIN COUNTY SHERIFF'S DEPARTMENT is an improper party to this action.

3. Plaintiffs cannot establish supervisory liability because there is no causal link between the actions of SHERIFF DOYLE and the constitutional violations that Plaintiffs allege herein.

4. Defendant DOYLE is entitled to qualified immunity.

5. Plaintiffs CHATOIAN, RASMUSSEN and RUSSELL cannot establish a violation of California Civil Code section 52.1 and/or California Penal Code section 4030.[2]

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[1] "Naming a municipal department as a defendant is not an appropriate means of pleading a §1983 action against a municipality." Vance v. County of Santa Clara, 928 F.Supp. 993, 996 (ND Cal. 1996), quoting Stump v. Gates, 777 F. Supp. 808, 816 (D. Colo. 1991). Therefore, Defendants refer to the COUNTY OF MARIN and MARIN COUNTY SHERIFF'S DEPARTMENT collectively as COUNTY OF MARIN.

[2] The Court already previously granted Defendants' Motion to dismiss the state law claims of Plaintiff TASCA.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

FACTUAL BACKGROUND

This case arises out of the claims of Plaintiffs DARCELLE L. CHATOIAN (hereinafter "CHATOIAN"), CYNTHIA TASCA (hereinafter "TASCA"), CORIN RASMUSSEN (hereinafter "RASMUSSEN") and KORISSA RUSSELL (hereinafter "RUSSELL") that they were unlawfully strip searched at the Marin County Jail. Plaintiffs CHATOIAN, TASCA and RASMUSSEN claim that they were "strip searched" prior to placement in a safety cell. Plaintiff RUSSELL claims that she was strip searched prior to placement in the general jail population. Plaintiffs assert claims pursuant to 42 U.S.C. section 1983 (hereinafter "section 1983). Specifically, Plaintiffs assert claims against DOYLE under the Fourth and Fourteenth Amendments to the United States Constitution and a municipal Monell-type claim against COUNTY OF MARIN for relief under federal and state law. Plaintiffs also assert state law claims against Defendant DOYLE for violation of California Civil Code section 52.1 and California Penal section 4030.

A. Policies of the County of Marin Regarding Strip Searches and Safety Cell Placements

The COUNTY OF MARIN has a written policy that governs the conduct of strip searches at the Marin County Jail. McQueeny Decl. ¶2, Ex. A. That policy was revised and distributed to all personnel of the Marin County Jail in October 2003. Id. The policy regarding strip searches governs the "Clothing Exchange" that occurs when an inmate[3] changes from his or her street clothes into institutional clothing prior to being "placed" in the general jail population. Id. Pursuant to the policy, "[t]he inmate may not be viewed, observed, or monitored by any deputy or staff member during the exchange and/or shower, unless there is reasonable suspicion that the inmate is concealing a weapon or contraband" during the Clothing Exchange. Id. The policy also prohibits strip searching persons arrested on charges involving weapons, violence and/or narcotics unless "[t]here exists specific and articulable facts sufficient to induce an ordinary, prudent, cautious, and reasonable officer exposed to a similar set of facts to believe the individual to be searched is in possession of a weapon,

[3]Defendants reference to arrestees, detainees and inmates collectively as "inmates."

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controlled substance, or other item of contraband." Id.

The COUNTY OF MARIN also has a written policy that governs the conduct of placing individuals who are arrested into a safety cell during their confinement at the Marin County Jail. McQueeny Decl. ¶3, Ex. B. That policy requires deputies who place individuals in safety cells to allow the individual to "retain sufficient clothing, or be provided with a suitably designed 'safety garment', to provide for their personal privacy unless specific identifiably risks to the inmate's safety or to the security of the facility are documented." Id.

Deputies do not require all inmates who are placed in safety cells to remove their clothing. If an inmate is placed in a safety cell because he or she is damaging Jail property and/or is considered to be a danger to staff or another inmate, Jail staff only require the inmate to remove those items of clothing that could be used as a weapon, such as shoes. McMains Depo. 13:3-13. Only those inmates that are considered to be a danger to themselves or others are required to exchange their clothes for a "safety garment." Hernandez Depo. 62:3-9.

For an inmate who is considered a danger to themselves, staff of the same gender will enter the safety cell and request that the inmate voluntary exchange his or her clothing for a safety garment. Hernandez Depo. 64:4-14. The inmate will hand over his or her clothes to the same-gender jail staff and in exchange will be provided a safety smock. McQueeny Decl. ¶4, Garrett Depo. 61:4-15. The deputies do not perform an inspection or strip search of any kind. McQueeny Decl. ¶5; Goss Depo. 25:25-26:3 When an inmate refuses to cooperate, jail staff will place the inmate in a control hold and remove the clothing from the inmate. Barry Depo. 29:15-21. In those circumstances deputies of the same gender remove the clothing from the inmate and perform the clothing exchange. McQueeny Decl. ¶5; Barry Depo. 29:15-21; Goss Depo. 21:1-4. If emergency circumstances arise such that there are not enough deputies of the same gender as the inmate and emergency circumstances arise, deputies of the opposite gender will assist in the clothing exchange by holding down the inmate while deputies of the same gender remove the inmates clothing. Barry Depo. 29:15-21; Hernandez Depo. 70:18-71:4. If possible, deputies also cover the inmate with a safety smock or blanket during the clothing exchange. McQueeny Decl. ¶6, Shelstrate Depo. 17:10-18:16. They also leave the safety smock, blanket or both in the cell with the inmate. Id.

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B. Plaintiff DARCELLE CHATOIAN

Plaintiff CHATOIAN was arrested on November 2, 2003 for driving under the influence. CHATOIAN Depo. 19:20-22, 43:21-25. She was arrested by the Mill Valley Police Department. CHATOIAN Depo. 40:19-41:1. The officers who arrested her brought her to the Marin County Jail. CHATOIAN Depo. 98:9-16.

When Plaintiff CHATOIAN arrived at the Marin County Jail, officers from the Mill Valley Police Department reported that CHATOIAN was suicidal and that she said that she wasn't going to live and was going to die. Siegel Depo. 24:3-12. Then, Deputy Monge of the Marin County Sheriff's Department asked "Do you want to hurt yourself?" Siegel Depo. 23:6-13. Plaintiff CHATOIAN replied, "Yes, I'm going to die." Id.

Thereafter, female Deputies Monge and Shelstrate of the Marin County Sheriff's Department placed Plaintiff CHATOIAN into a safety cell. Shelstrate Depo. 16:11-17:7, 23:22-24:4. Deputies Shelstrate and Monge were the only two female officers on duty that night. Hernandez Depo. 94:3-11; Shelstrate Depo. 22:10-11. Deputies Shelstrate and Monge asked CHATOIAN to give them her clothes in exchange for the safety smock several times. Id. Plaintiff CHATOIAN refused and backed into the corner of the safety cell. Id. When CHATOIAN backed into the corner of the safety cell she began yelling. Shelstrate Depo. 22:3-9. Then, Deputies Monge, Shelstrate and two male officers, Deputy McMains and Sergeant Hernandez, grabbed her, placed her on the ground, covered her with the safety smock and Deputies Shelstrate and Monge removed her clothes. Shelstrate Depo. 16:11-17:7, 23:22-24:4; Hernandez Depo. 91:8-22, 92:14-17. Plaintiff CHATOIAN was struggling while Deputy McMains and Sergeant Hernandez were attempting to hold her as Deputies Shelstrate and Monge were removing her clothes. Shelstrate Depo. 23:16-20. Once her clothes were removed, the Deputies backed out of the safety cell and left Plaintiff CHATOIAN covered with the safety smock. Shelstrate Depo. 17:8-15; 24:11-13.

C. Plaintiff CYNTHIA TASCA

Plaintiff TASCA was arrested by the Deputies of the Marin County Sheriff's Department on July 1, 2003. She was initially taken into custody pursuant to Welfare and Institutions Code section 5150. Wofford Depo. 20:25-21:16. Then, she was arrested for kicking a deputy and kicking the

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window out of the patrol car that was used to transport her. Wofford Depo. 17-20. Plaintiff TASCA was transported to the Marin County Jail. There, she was initially placed in a sobering cell. Wofford Depo. 24:9-10. Deputies of the Marin County Sheriff's Department determined that Plaintiff TASCA was a danger to herself when she threatened to "slit her wrists" and began banging her head on the window of the sobering cell hard enough to cause injury. Schemmel Depo. 14:4-15:7. After deputies determined that she was a danger to herself, they placed her in the safety cell. Woffard Depo. 30:16-19, 31:12-22. Deputy Wofford and Sergeant Barry were the only female deputies on duty and available. Wofford Depo. 10:13-17, 22-25; Barry Depo. 30:2-6. First, Deputy Woffard, a female deputy, placed her in the safety cell and asked her to voluntarily exchange her clothes for a safety smock. Id. Plaintiff TASCA would not cooperate. Id. Therefore, Deputy Woffard removed her clothes and handed them to Sergeant Barry (another female officer) while Deputies Jones and Schemmel (both male) held her down. Id. The male deputies were being discreet and looking away. Id. The deputies also gave her a safety smock and left. Schemmel Depo. 22:4-7.

D. Plaintiff CORIN RASMUSSEN

Plaintiff RASMUSSEN was arrested on July 4, 2004 for driving under the influence. RASMUSSEN Depo. 16:11-13, 21:14-19. She was taken to the Marin County Jail. Id. When Plaintiff RASMUSSEN was in the booking area of the jail she told the deputies that she had been diagnosed with clinical depression. Garrett Depo. 59:21-24. RASMUSSEN Depo. 57:25-58:5. She was also intoxicated and said "just shoot me" to jail staff. Garrett Depo. 58:11-59:9, RASMUSSEN Depo. 80:19-23. Therefore, the jail staff determined that she may be suicidal. Garrett Depo. 58:6-10.

Jail staff then placed Plaintiff RASMUSSEN into a safety cell. Garrett Depo. 58:6-10. Sergeant Craig Scardina directed three female deputies to escort Plaintiff RASMUSSEN to the safety cell and place here on suicide watch. Scardina Depo. 30:4-15. When an inmate is placed on suicide watch he or she is escorted to the safety cell, jail staff conduct a clothing exchange and provide the inmate with a safety smock or safety blanket. Scardina Depo. 30:9-15.

Two female deputies, Monge and Goss, escorted Plaintiff RASMUSSEN to the safety cell. Garrett Depo. 60:11-18. Deputies Monge and Goss held up a blanket for her privacy and directed

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Plaintiff RASMUSSEN to hand over her clothing and she complied. Garrett Depo. 60:23-61:7; RASMUSSEN Depo. 71:16-24. During the clothing exchange, the deputies did not inspect or search Plaintiff RASMUSSEN's body to determine if she was concealing weapons or contraband. Goss Depo. 25:25-26:3; RASMUSSEN Depo. 77:19-78:1.

E. Plaintiff KORISSA RUSSELL

Plaintiff KORISSA RUSSELL was arrested on March 10, 2004 and transported to the Marin County Jail. RUSSELL Depo. 41:11-14. She was charged with violating Penal Code section 148. Seymour Depo. 33:3-6. Deputy Kim Seymour (female) conducted an investigation to determine whether there was reasonable suspicion to strip search Plaintiff RUSSELL. Seymour Depo. 24:8-24. During the booking process Deputy Seymour filled out a strip search authorization form. Seymour Depo. 31:25-32:4, Ex. 21. Deputy Seymour ran Plaintiff RUSSELL's criminal history. Seymour Depo. 31:25-32:4. Plaintiff RUSSELL's criminal history indicated that she had a prior of weapons charge that involved smuggling a weapon into a courtroom. Seymour Depo. 32: 8-12. Deputy Seymour also reviewed the Probable Cause Statement for the current arrest of Plaintiff RUSSELL to determine if she was arrested for a charge involving violence. Seymour Depo. 33:3-10. Deputy Seymour determined that the arrest charge of Penal Code section 148 was a charge involving violence because Plaintiff RUSSELL fought with deputies during the arrest. Seymour Depo. 15-19. Deputy Seymour presented the Strip Search Authorization Form to Sergeant Steven de la O and Sergeant de la O authorized the search. de la O Depo. 21:14-22:3.

Then, Deputy Seymour directed Plaintiff RUSSELL to the back room and conducted a strip search in a shower stall. Seymour Depo. 29:8-30:5. The back room has a hallway, door with a small window and three stalls. RUSSELL Depo. 59:23-60:1; Garrett Depo. 32:10-21. Deputy Seymour did not touch Plaintiff RUSSELL during the strip search. RUSSELL Depo. 71:17-18. The shower stall is a private one and there were no other deputies present during the search. RUSSELL Depo. 71:23-25

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II.

LEGAL STANDARD FOR MOTION FOR SUMMARY JUDGMENT

Summary judgment is appropriate when the record reveals that there are no issues as to any material fact in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The standard for determining whether summary judgment is appropriate is whether "the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52, 106 S.Ct. 2505 (1986). Once the movant makes an initial showing on motion for summary judgment, the burden shifts to the opponent to come forward with specific facts beyond pleadings showing the existence of genuine disputes of material fact. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-87, 106 S.Ct. 1348, 1355-56 (1986); Orozco v. County of Yolo, 814 F.Supp. 885, 890 (E.D.Cal. 1993). The court must consider all pleadings, depositions, affidavits, and admissions on file, and draw all justifiable inferences in favor of the party opposing the motion. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348 (1986).

III.

THERE IS INSUFFICIENT EVIDENCE OF A MUNICIPAL POLICY, CUSTOM OR PRACTICE TO ESTABLISH MONELL-TYPE LIABILITY AGAINST THE COUNTY OF MARIN

The COUNTY OF MARIN is not liable for actions of its agents which result in violations of constitutional rights, unless the conduct is pursuant to an official government policy or custom. Monell v. Department of Social Services of New York, 436 U.S. 658, 985 S.Ct. 2018 (1978); *see* Pembaur v. City of Cincinnati, 475 U.S. 469, 106 S. Ct. 1292 (1986). Municipal liability under 42 U.S.C. section 1983 can only be established where plaintiff shows that (1) he was deprived of his constitutional rights; (2) the municipality has a policy; (3) the policy amounts to deliberate indifference to plaintiff's constitutional rights; and (4) the policy is the moving force behind the constitutional violation. Canton v. Harris, 489 U.S. 378, 389-91, 109 S.Ct. 1197, 1025 (1989); *see* Oviatt v. Pearce, 954 F.2d 1470, 1474 (9th Cir. 1992) (*quoting* Canton and analyzing Monell liability).

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A. Regarding Strip Searches

1. The Fourteenth Amendment Claims of Plaintiff RUSSELL Regarding the Alleged Strip Search Fail as a Matter of Law.

Plaintiff RUSSELL asserts claims arising under the Fourteenth Amendment for the conduct arising out of her alleged strip search. Claims arising from the "reasonableness" of a search, however, are analyzed under the Fourth Amendment's "objective reasonableness" standard rather than under a substantive due process standard. Grahm v. Connor, 490 U.S. 386, 388; 109 S.Ct. 1865 (1989). Therefore, the claims of Plaintiff RUSSELL for violation of Fourteenth Amendment in Count One and Count Two of the Complaint fail as a matter of a law and should be dismissed.

2. The Policies of the County of Marin Regarding the Conduct of Strip Searches at the Marin County Jail Do Not Violate the Fourth Amendment.

Plaintiff RUSSELL contends that she was strip searched in violation of the Fourth and/or Fourteenth Amendments prior to placement in the general jail population of the Marin County Jail. Initially, Defendants submit that Plaintiff RUSSELL cannot establish an underlying violation of the Fourth and/or Fourteenth Amendments. Assuming *arguendo* Plaintiff RUSSELL can establish and underlying violation, there is no evidence that a policy, practice and/or custom of the COUNTY OF MARIN was the "moving force" behind such a violation.

In Bell v. Wolfish, 441 U.S. 520, 558-60 (1979), the Supreme Court considered whether visual body cavity and strip searches violated the Fourth Amendment rights of pre-trial inmates. The Court stated that whether such searches were reasonable under the Fourth Amendment, and thus constitutional, depended on "a balancing of the need for the particular search against the invasion of personal rights that the search entails." Id. at 559. In determining whether a search is reasonable, the courts must "consider 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. The Bell Court then held that a policy of conducting blanket strip searches of inmates after contact visits and without reasonable suspicion that the particular inmate was concealing weapons or contraband does not violate the Fourth Amendment. Id.

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In Giles v. Ackerman, 746 F.2d 614 (1984), the Ninth Circuit created a limited exception to the rule that blanket strip searches of pretrial inmates, after visiting and without individualized suspicion that the inmate was secreting contraband, do not violate the Fourth Amendment. The Court held that arrestees charged with only minor offenses, who were freshly arrested and brought into a jail, may be subject to a strip search only if jail officials possess a reasonable suspicion that the individual arrestee is carrying contraband. Giles, 746 F.2d 617. The Court reasoned that

> Visitors to the detention facility in Bell could plan their visits and organize their smuggling activities. In contrast, arrest and confinement in the Bonneville County Jail are unplanned events, so the policy could not possibly deter arrestees from carrying contraband.

Id. Thus, Giles creates a limited exception to the rule enumerated in Bell for those persons who are freshly arrested on minor charges and have not yet had the opportunity to plan smuggling activity.

Subsequently, The Ninth Circuit established a two-step analysis for determining the reasonableness of a strip search of persons freshly arrested on minor charges. First, the Court must consider the policy of the jail to determine whether it permits searches without reasonable suspicion that the inmate is a weapon or concealing contraband. Even if a plaintiff demonstrates an unconstitutional policy, the "search, although not supportable under an institutional policy, is not *per se* unconstitutional." Kennedy v. Los Angeles Police Dept., 901 F.2d 702, 715 (9th Cir. 1989). If the policy permits unlawful searches, then the Court proceeds to the second step. The Court "must examine the particular circumstances surrounding [plaintiff's] arrest to determine whether there was reasonable suspicion [that an inmate may be concealing a weapon or contraband] to conduct a visual body-cavity search." Id. See also Fuller v. M.G. Jewelry, 950 F.2d 1437 (9th Cir. 1990).

In contrast to minor crimes not involving violence, drugs and weapons, the Ninth Circuit has held that sometimes the charge itself is sufficiently associated with violence to establish reasonable suspicion for a strip search. See Thompson v. City of Los Angeles, 885 F.2d 1439, 1447 (9th Cir. 1989) (Felony charge of grand theft auto sufficiently associated with violence to justify a strip search). This rule is in accord with the Eleventh Circuit. See Hicks v. Moore, 422 F.3d 1246, 1252 (11th Cir. 2005) (Strip search after arrest for family violence battery justified based on the charge alone).

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Thus, strip searching a inmate in a county jail prior to arraignment violates the Fourth Amendment only if the plaintiff can establish two elements. First, the plaintiff must establish that search is conducted on a inmate who is freshly arrested on a minor crime not involving violence, drugs or weapon. Second, the plaintiff must also establish that the officer conducting the search did not have reasonable suspicion that the inmate is concealing weapons or contraband.

The policy of the Marin County Jail with regard to strip searches does not violate the Fourth Amendment. Specifically, the policy of the Marin County Jail precludes strip searches that would violate the Fourth Amendment. First, the policy precludes strip searches of persons who are charged with crimes not involving weapons, violence and/or narcotics. "CLOTHING EXCHANGE: The inmate may not be viewed, observed, or monitored during the clothing exchange and/or shower, unless there is reasonable suspicion that the inmate is concealing a weapon or contraband." McQueeny Decl. Ex. A., p.2. Additionally, "once any post-arrest through pre-arraignment prisoner has been subjected to the appropriate level of search ...strip searching will only occur based upon reasonable suspicion that the prisoner is in possession of a weapon, narcotics and/or possession of any contraband which might aid escape." Id. (emphasis added). The policy also allows strip searches where "[t]here exists specific and articulable facts sufficient to induce an ordinarily prudent, cautious, and reasonable officer exposed to a similar set of facts to believe the individual to be searches is in possession of a weapon, controlled substance, or other item of contraband." Id..[4] Finally, although not mandated by the Fourth Amendment, the policy requires written authorization by the Booking Sergeant before a staff member can perform a strip search. Id. Thus, this policy conforms with the restrictions on strip searches imposed by the Fourth Amendment. In fact, due to the requirement of supervisory review/approval and additional preclusion of strip searches after arraignment, the policy precludes strip searches that are not prohibited by the Fourth Amendment. For each of those reasons, , Plaintiff RUSSELL cannot demonstrate that the written municipal policy of the Marin County Jail was the "moving force" behind a constitutional violation.

[4] The policy also allows strip searches in three "other situations" that are not applicable to the facts of this case because the named plaintiffs do not fit into these three categories. See McQueeny Decl. Ex. A, p. 2-14(C)(1), (3), (4).

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3. Plaintiffs Cannot Demonstrate That a Widespread Custom and Practice Was the "Moving Force" Behind a Constitutional Violation of Plaintiff KORISSA RUSSELL.

In order to establish Monell-type liability on a "failure to train" or "failure to supervise" theory Plaintiffs must prove that the policymaker of the County enacted policies that amount to a "conscious disregard" and/or "deliberate indifference" to prevention of violations of the Constitution. Swain v. Spinney, 117 F.3d 1, 11 (1st Cir. 1997), *citing* Board of the County Comm'rs v. Brown 117 S.Ct. 1382, 1390, 489 US 378 (1997). In that regard, the existence of a constitutionally valid policy that is properly updated and distributed to every officer of a police department, and absent any previous claims that would place the chief of police on notice of violations, there is no basis for Monell liability. See Swain, 117 F.3d at 11.

In this case, it is undisputed that the COUNTY OF MARIN has a written policy regarding, the conduct of strip searches at the Marin County Jail. Additionally, it is undisputed that the written policy was properly updated and distributed to every deputy who worked at the Marin County Jail. Furthermore, as demonstrated above, that policy on its face is constitutionally valid. Finally, there is no evidence of a widespread custom or strip searching and/or placing pre-trial inmates in safety cells in violation of the polices of the Marin County Jail. Therefore, Defendants respectfully submit that Plaintiffs cannot present evidence to establish a triable issue of material fact regarding a widespread custom or practice that would support Monell-type liability.

Here, only Plaintiff RUSSELL claims that she was strip searched pursuant to the policy of the COUNTY OF MARIN regarding strip searches. It is also undisputed that Deputy Seymour conducted an investigation to determine whether or not there was reasonable suspicion that would support strip searching Plaintiff RUSSELL. Seymour Depo. 24:8-24, 31:25-32:4. That investigation revealed a prior criminal history that included a conviction for charges of smuggling a weapon into a courthouse and current charges of violence. Seymour Depo. 32:8-12, 33:3-10. Thus, personnel of the Marin County Jail had a reasonable suspicion that Plaintiff RUSSELL may by concealing a weapon or contraband based on the prior charge of smuggling a weapon into a courthouse and her current charges involving violence. Due to the fact that Deputy Seymour had reasonable suspicion to strip search Plaintiff RUSSELL, cannot establish an underlying violation of a constitutional right

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that is a prerequisite to Monell-type liability. Moreover, there is no evidence of, nor does an isolated single incident involving the lawful strip search of Plaintiff RUSSELL, a widespread custom or practice of unlawful strip searches in violation of the Fourth Amendment. Assuming *arguendo* Plaintiff RUSSELL claims that Deputy Seymour violated the policy by strip searching her without reasonable suspicion, the COUNTY OF MARIN is not liable for the action of its officers who allegedly violated department policy. That is, if Plaintiffs seek to impose liability on the COUNTY OF MARIN for violations of its policy regarding safety cell placements and/or strip searches then the COUNTY OF MARIN is an improper Defendant. See Monell, 436 U.S. at 694; See also Bull v. City and County of San Francisco, ND Cal., Case No. C 03-01840 CRB. Req. Jud. Not. Ex. B, p. 19-20. Therefore, Plaintiff RUSSELL cannot establish a widespread custom and/or practice that was the "moving force" behind a violation.

For all of the foregoing reasons, the COUNTY OF MARIN is entitled to summary judgment for the claims of Plaintiff RUSSELL arising from Monell-type liability in Count One and Count Two of the First Amended Complaint.

B. Safety Cells

1. The Policies of the County of Marin Regarding the Conduct of Safety Cell Placements at the Marin County Jail Do Not Violate the Fourth or Fourteenth Amendments.

Plaintiffs CHATOIAN, TASCA and RASMUSSEN claim that they were "strip searched" in violation of the Fourth and/or Fourteenth Amendments when they were placed in a safety cell at the Marin County Jail. Initially, Defendants submit that these three plaintiffs cannot establish that they were "strip searched" in violation of the Fourth and/or Fourteenth Amendments. Assuming *arguendo* these three Plaintiffs can establish a strip search that violates the Fourth and/or Fourteenth Amendments there is no evidence that a policy, practice and/or custom of the COUNTY OF MARIN was the "moving force" behind the violation.

"[T]he placement of pretrial detainees in safety cells is 'punishment' in violation of the Fourteenth Amendment only if prison officials act with deliberate indifference to the inmates' needs." Anderson v. County of Kern, 45 F.3d 1310, 1313 (9th Cir 1996) (emphasis added), cert. denied, 516 U.S. 916. In Anderson the Ninth Circuit analyzed the placement of three separate

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Plaintiffs into safety cells at the Kern County Jail. Id. at 1314-1315. In addition to the placement, two of the plaintiffs were shackled to the "toilet grate." Id. One Plaintiff also complained that "he was shackled all night to the toilet grate with leather restraints and was given only a paper shirt that prison officials placed over his lap." Id. (emphasis added). Based on those facts, the court held that Plaintiffs failed to established the elements of a Fourteenth Amendment violation because although "the safety cell is admittedly a very severe environment, but it is employed in response to very severe safety concerns." Id. at 1314.[5]

It is also not a violation of the Fourth Amendment "for a male guard to require a loud and violent female prisoner [who was freshly arrested on charges of public intoxication] to disrobe in his presence before placing her in a padded cell for her own safety." Hill v. McKinley, 311 F.3d 899, 903 (8th Cir. 2001). Additionally, "use of male guards in an otherwise justified transfer of an unruly and naked female prisoner is not a violation of the Fourth Amendment." Id. The Hill court analyzed the circumstances of placing an inmate in a safety cell under the Fourth Amendment. Id. However, the court did not impose the same "reasonable suspicion" requirement that other courts (including the Ninth Circuit) have imposed on "strip searches." Rather, the court recognized that "prisoners have no general right not to be seen by members of the opposite sex" and that "prisoners are entitled to very narrow zones of privacy, and circumstances may warrant the most invasive of intrusions into bodily privacy." Id. At 905-906. Furthermore, the court cited Timm v. Gunter, 917 F.2d 1093,1102 (8th Cir. 1990) which held that opposite-sex surveillance performed on the same basis as same-sex surveillance is not unreasonable where it is justified by safety and equal opportunity staffing concerns. Id., citing Timm v. Gunter, 917 F.2d 1093,1102 (8th Cir. 1990). Thus, in order to prevail on a Fourth and/or Fourteenth amendment claim arising out of the placement, removal of clothing and other actions associated with the use of safety cells, a plaintiff must demonstrate by substantial evidence that the invasion of privacy was an exaggerated response to the security needs of the facility. Id. at 903, citing Franklin v. Lockhart 883 F.2d 654, 656-57 (8th Cir. 1989). Moreover,

[5] The plaintiffs in Anderson challenged the use of a safety cell generally. Anderson, 45 F.3d at 1312. In this case Plaintiffs CHATOIAN, TASCA and RASMUSSEN do not challenge their placement in the cell but rather only challenge the conduct of taking their clothes, allegedly strip searching them and allegedly leaving them nude in the cell. Plfs' First Amend. Compl. ¶¶ 14, 15, 20, Req. Jud. Not. Ex. C.

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staffing and security concerns of a jail weigh in favor of allowing opposite-sex staff to perform monitoring and security functions associated with nude or semi-nude inmates (including pre-trial detainees).

Here, the written policy regarding placements of pre-trial inmates into a safety cell does not violate the Fourth or Fourteenth Amendment. That policy only authorizes the use of a safety cell for inmates who fit into the following categories: (1) Display behavior which results in the damage/destruction of county jail property; (2) Presents an immediate danger to themselves or others; (3) Makes verbal threats to harm themselves, and; (4) Makes overt attempts to assault staff or other inmates. McQueeny Decl. Ex. B. The policy also mandates that "[i]nmates will be allowed to retain sufficient clothing, or be provided with a suitably designed 'safety garment', to provide for their personal privacy unless specific identifiable risks to the inmate's safety or to the security of the facility are documented." Id. Furthermore, the policy does not provide that inmates placed in a safety cell are to be strip searched. Thus, the policy is not "deliberately indifferent" to the needs of arrestees at the Marin County Jail because it precludes placement in a safety cell unless the inmate presents a security risk to him or herself and/or the security of the facility. Additionally, the policy does not present an "exaggerated response" to the security needs of the facility because it does not infringe on one of the "very narrow zones of privacy" that are afforded to prisoners. Rather, the policy addresses those "narrow zones of privacy" by permitting inmates to retain their clothing and/or be given a "safety garment." Furthermore, the policy does not provide that inmates placed in a safety cell are to be strip searched. Thus, the policy does not violate the Fourth and/or Fourteenth Amendments. Therefore, there is no evidence of a policy, that would establish Monell-type liability against the COUNTY OF MARIN for the claims of Plaintiffs CHATOIAN, TASCA and RASMUSSEN arising out of their placement in a safety cell at the Marin County Jail.

2. Plaintiffs Cannot Demonstrate That a Widespread Custom and Practice Was the "Moving Force" Behind a Constitutional Violation of Plaintiffs DARCELLE CHATOIAN, CYNTHIA TASCA and CORIN RASMUSSEN Regarding Their Placement in Safety Cells at the Marin County Jail.

It is also undisputed that the Marin County Jail had a written policy regarding the placement of inmates in safety cells. Additionally, that policy conforms with Ninth Circuit and other case law

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regarding the placement of inmates in safety cells. See Anderson, 45 F.3d 1310; Hill, 311 F.3d 899, discussed *supra.* Assuming *arguendo* that Plaintiffs CHATOIAN, TASCA and RASMUSSEN can demonstrate an underlying constitutional violation, they cannot demonstrate that the violation was the result of a widespread custom or practice.

First, there is no evidence of a widespread custom or practice of conducting strip searches of inmates during the "clothing exchange" prior to placement in the safety cell. Plaintiffs claims regarding safety cell placements are that they were strip searched . Plfs' Compl. ¶¶4,5,14, 20. Therefore, Plaintiffs cannot demonstrate a violation of the Fourth or Fourteenth Amendments because there is no evidence of a widespread custom or practice of strip searching inmates prior to placement in the safety cell.

Deputies of the Marin County Jail determined that Plaintiff CHATOIAN was a danger to herself and therefore placed her into a safety cell. First, the officers who arrested CHATOIAN reported that she was suicidal and had said she wasn't going to live and was going to die. Siegel Depo. 24:3-12. Plaintiff CHATOIAN also said. "Yes, I'm going to die" when Deputy Monge asked "Do you want to hurt yourself?" Siegel Depo. 23:6-13. Therefore, deputies had reason to believe that CHATOIAN was a danger to herself based on the reports of the arresting officers and her comments to the jail staff about hurting herself.

Deputies also did not violate the rights of Plaintiff CHATOIAN when they removed her clothes during the clothing exchange. Initially, two female deputies, Shelstrate and Monge, placed CHATOIAN into a safety cell and requested that she voluntarily exchange her clothes for the safety smock. Shelstrate Depo. 16:11-17:7, 22:10-11. Male deputies only intervened after CHATOIAN refused to cooperate in the clothing exchange and exchange her clothing for a safety smock, backed into a corner and began yelling and the jail did not have available other female staff to assist. Schelstraete Depo. 16:11-17:7, 23:22-24:4; Hernandez Depo. 91:8-22, 92:14-17. The male deputies also only held her down while female deputies removed her clothes and provided here with the safety smock. Id. The Deputies also covered CHATOIAN with the smock while her clothes were removed and left it on her when they left the safety cell. Shelstrate Depo. 17:8-15, 24:11-13. Moreover, there is no evidence that Plaintiff CHATOIAN was the subject of an form of stip search. The conduct of

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the Deputies is consistent with Anderson, where the Ninth Circuit held that it was not a violation for jail staff to shackle a potentially suicidal inmate to a toilet grate and given a paper shirt that jail staff placed over his lap. Anderson, 45 F.3d at 1313. The use of male deputies also is consistent with Hill where the Eighth Circuit held that it was not a violation for male staff to require a loud and violent female prisoner to disrobe and also to participate in transferring her while she is completely naked. Hill, 311 F.3d at 903.

Similarly, Plaintiff TASCA cannot establish that the policy of the COUNTY OF MARIN was the "moving force" behind an underlying violation of a constitutional right. First, Plaintiff TASCA was initially taken into custody pursuant to Welfare and Institutions Code section 5150 ("section 5150"). Section 5150 allows a peace officer to take a person into custody if he or she "as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled." Cal.Welf. & Inst. Code §5150. Then, Plaintiff TASCA threatened to "slit her wrists" and began banging her head against the wall. Schemmel Depo. 14:4-15:7. Thus, jail staff had reason to believe that Plaintiff TASCA was a danger to herself or others. Additionally, Plaintiff TASCA refused to voluntarily exchange her clothes for a safety garment and began chanting and yelling at the Deputies. Furthermore, TASCA was not subjected to a strip search. Thus, similar to Plaintiff CHATOIAN, it was not a violation of the Fourth and Fourteenth Amendments to have male Deputies hold her down while female deputies removed her clothes and provided her with a safety smock.

Deputes also had reason to believe that Plaintiff RASMUSSEN was a danger to herself. First, she told jail staff that she was diagnosed with clinical depression. Garret Depo. 59:21-24. She was also intoxicated and told the Deputies, "just shoot me." Garrett Depo. 58:11-59:9. Based on her behavior, jail staff determined that she may be suicidal. Garrett Depo. 58:6-10. Furthermore, unlike Plaintiffs CHATOIAN and TASCA, Plaintiff RASMUSSEN voluntarily exchanged her clothes for a safety garment. Garrett Depo. 60:23-61:7. Finally, during the clothing exchange the deputies did not inspect or search Plaintiff RASMUSSEN's body to determine if she was concealing weapons or contraband. Goss Depo. 25:25-26:3. Plaintiff RASMUSSEN was not subjected to strip and/or body cavity search but instead was merely placed in a safety cell and required to exchange her clothing for a safety garment.

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The conduct of the Deputies of the Marin County Jail does not demonstrate a widespread custom or practice of violating the Fourth and or Fourteenth Amendment rights of inmates who are placed in safety cells. To the contrary, the conduct of the Deputies who placed Plaintiffs CHATOIAN, TASCA and/or RASMUSSEN in a safety cell demonstrates that they followed the policy of the Marin County Jail. Moreover, as demonstrated in Anderson and Hill, that policy and the conduct of the Deputies conforms with the Fourth and Fourteenth Amendments. Therefore, there is no evidence of a widespread custom and/or practice of violating the constitutional rights of persons placed in safety cells at the Marin County Jail.

Based on all of the foregoing, the COUNTY OF MARIN is entitled to summary judgment for the claims of Plaintiff RASMUSSEN arising from Monell-type liability in Count One and Count Two of the First Amended Complaint.

IV.

DEFENDANT MARIN COUNTY SHERIFF'S DEPARTMENT IS AN IMPROPER PARTY

It is well settled that for the purposes of a section 1983 action, the term "persons" does not encompass municipal departments. Vance v. County of Santa Clara, 928 F.Supp. 993, 996 (ND Cal. 1996). In that regard, "[n]aming a municipal department as a defendant is not an appropriate means of pleading a §1983 action against a municipality." Id. quoting Stump v. Gates, 777 F. Supp. 808, 816 (D. Colo. 1991). Therefore, Defendant MARIN COUNTY SHERIFF'S DEPARTMENT is an improper party and should be dismissed from this action on that basis as well.

V.

THERE IS INSUFFICIENT EVIDENCE TO ESTABLISH SUPERVISORY LIABILITY AGAINST SHERIFF DOYLE

Liability may be imposed on a supervisor under §1983 only if (1) the supervisor personally participated in the deprivation of constitutional rights or (2) the supervisor knew of the violations and failed to act to prevent them or (3) the supervisor implemented a policy "so deficient that the policy itself is a repudiation of constitutional rights and is the moving force of the constitutional violation." Redman v. County of San Diego, 942 F. 2d 1435, 1446 (9th Cir. 1991), cert denied, 502

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U.S. 1074 (1992); Hansen v. Black, 885 F. 2d 642, 646 (9th Cir. 1989) (quoting Thompson v. Belt, 828 F. 2d 298, 304 (5th Cir. 1987); Taylor v. List, 880 F. 2d 1040, 1045 (9th Cir. 1989). With respect to the latter, an unconstitutional policy cannot be proved by proof of a single incident "unless proof of the incident includes proof that it was caused by an existing, unconstitutional policy." City of Oklahoma City v. Tuttle, 471 U.S. 808, 823-24; 105 S.Ct. 2427 (1985).

Here, there is no evidence that Defendant SHERIFF DOYLE personally participated in the alleged wrongdoing and/or knew of the alleged violations and failed to prevent them. Additionally, as demonstrated above, there is no evidence that SHERIFF DOYLE implemented a policy that was "so deficient that the policy itself is a repudiation of constitutional rights..." Furthermore, assuming *arguendo* that Plaintiffs can establish a violation of their underlying constitutional rights, there is no evidence that a policy implemented by SHERIFF DOYLE was the "moving force" behind the violation. Defendants incorporate by reference the arguments set forth in sections III(A)(2) and III(B)(1) above. Rather, the policies regarding strip searches and safety cells are constitutional on their face. There also is no evidence of a widespread custom or practice of deputies at the Marin County Jail engaging in conduct that violates the constitutional rights of the inmates. Defendants incorporate by reference the arguments set forth in sections III(A)(3) and III(B)(2) above Thus Plaintiffs cannot demonstrate supervisory liability against SHERIFF DOYLE. Therefore, Defendant SHERIFF DOYLE respectfully requests that the Court grant Defendants' Motion for Summary Judgment.

VI.

SHERIFF DOYLE IS ENTITLED TO QUALIFIED IMMUNITY

Qualified immunity serves to shield public officials "from undue interference with their duties and from potentially disabling threats of liability." Harlow v. Fitzgerald, 457 U.S. 800, 806, 102 S.Ct. 2727 (1982). The defense provides immunity from suit, not merely from liability. Mitchell v. Forsyth, 472 U.S. 511, 526, 105 S.Ct. 2806 (1985). A plaintiff has the burden of proving the rights he claims are clearly established. Davis v. Scherer, 468 U.S. 183, 197, 104 S.Ct. 3012 (1984). Qualified immunity is a far-reaching protection for government officers which safeguards all but the plainly incompetent or those who knowingly violate the law. Malley v. Briggs, 475 U.S.

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335, 341, 106 S.Ct. 1092 (1986). If a reasonable public officer in the position of the defendant could have believed that his conduct was lawful in light of clearly established case law and the information he possessed at the time of incident at issue, he is protected from liability by qualified immunity. Hunter v. Bryant, 502 U.S. 224, 227, 112 S.Ct. 534 (1991); Brosseau v. Haugen, 543 U.S. 194, 125 S.Ct. 596, 599-600 (2004); Headwaters Forest Defense v. County of Humboldt, 276 F.3d 1125, 1129 (9th Cir. 2002) (citations and quotations omitted).

In ruling on the issue of qualified immunity, a Court must first consider the threshold question: "Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" Saucier v. Katz, 533 U.S. 194, 201, 121 S. Ct. 2151 (2001). Then, the Court's next step is to "ask whether the right was clearly established." Id. At this point, the qualified immunity inquiry has two parts: (1) Was the law governing the state officials' conduct clearly established? (2) Under that law, could a reasonable state official have believed his conduct was lawful? Marquez v. Gutierrez, 322 F.3d. 689, 692 (9th Cir. 2003); Brosseau, 125 U.S. at 201.

"Because the focus is on whether the officer had fair notice that her conduct was unlawful, reasonableness is judged against the backdrop of the law at the time of the conduct." Brosseau, 125 U.S. at 599. Additionally, "[i]f the law at the time did not clearly establish that officer's conduct would violate the Constitution, the officer should not be subject to liability, or, indeed, even the burdens of litigation." Id. (emphasis added). Specifically, in Brosseau, the United States Supreme Court determined that plaintiff failed to cite to "particularized" or specific case law because none of the three cases cited by the plaintiff "squarely governs the case here; they do not suggest that Brosseau's actions fell in the 'hazy border' between excessive and acceptable force." Id.

In this case, SHERIFF DOYLE is entitled to qualified immunity. First, there is no evidence that he personally participated in the alleged violations. Second, Plaintiffs cannot establish an underlying constitutional violation. Therefore, Defendant SHERIFF DOYLE is entitled to qualified immunity based on the first prong..

Additionally, assuming *arguendo* Plaintiffs can demonstrate an underlying violation, there was no clearly established case law that would place a reasonable officer on notice that the actions

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of SHERIFF DOYLE were unlawful. First, regarding the strip-search policy and practices of the Marin County Jail, the United States Supreme court addressed and upheld the practice of strip searching all pre-trial inmates of a jail after contact visits without reasonable suspicion that the particular detainee was concealing contraband in Bell v. Wolfish, 441 U.S. 520, 558-60 (1979), discussed *supra*. Thereafter, the Ninth Circuit enumerated a limited exception to the rule enumerated in Bell that prohibited strip searches of persons who were freshly arrested for minor crimes unless there was reasonable suspicion that a particular person was concealing weapons or contraband. See Giles, 746 F.2d 614; Kennedy, 901 F.2d 702; Fuller, 950 F.2d 1437, discussed *supra*.

None of the case law regarding strip searches would place a reasonable officer on notice that the policy or practice of the Marin County Jail regarding strip searches violates the Fourth and/or Fourteenth Amendments. First, the policy and practice regarding strip searches follows the exception to Bell that was set forth in Giles, Kenney and Fuller that prohibits strip searches of a person arrested for minor crimes not including violence, drugs or weapons prior to his or her arraignment, discussed *supra*. Additionally, the policy and practice includes additional protections for these persons in the form of a requirement for documented supervisory approval, prohibits viewing an arrestee during the "clothing exchange," and prohibits conducting strip searches of individuals arrested on crimes not involving violence, drugs or weapons even after they are placed in general jail population. If anything, the policy and practices implemented by the Marin County Jail includes the protections set forth in the case law and additionally protections that are not mandated by that same, or any other, case law. Thus, the clearly established case law would not place a reasonable officer on notice that the actions of SHERIFF DOYLE were unconstitutional; if anything, it would instruct a reasonable officer that the policy of the Marin County Jail not only complies with existing law, but also includes additional protections that are not mandated by any existing law. Therefore, SHERIFF DOYLE is entitled to qualified immunity on the issue of strip searches.

There also is no clearly established case law that would place a reasonable officer on notice that the policy or practice regarding placement of arrestees in safety cells was unconstitutional. First,

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the case law regarding placement of inmates in safety cells gives wide deference to the officers making such a placement. See Anderson, 45 F.3d 1310; Hill, 311 F.3d 899, discussed *supra*. In this case, the policy of the Marin Count Jail states "[i]nmates will be allowed to retain sufficient clothing, or be provided with a suitably designed 'safety garment', to provide for their personal privacy unless specific identifiable risks to the inmate's safety or to the security of the facility are documented." This is consistent with the case-law regarding safety cell placements. Specifically, the case law permits correctional officers to remove the clothing of an inmate when he or she is placed in a safety cell. Anderson 45 F.3d at 1313. The case law also permits male officers to be present where a female is uncooperative and unruly. See Hill 311 F.3d 903. Thus, the practice of the Marin County Jail to require clothing exchange for a safety smock with suicidal inmates, with male officers present in emergent circumstances, does not violate clearly established case law. Lastly, there is no evidence that inmates are strip searched in connection with placement in safety cells. There was no case law that would place a reasonable officer on notice that the policy of the Marin County Jail was so deficient that it violates the constitutional rights of Plaintiffs CHATOIAN, TASCA and/or RASMUSSEN.

Defendants respectfully submit that there is no evidence that demonstrates that the policies or practices of the Marin County Jail are unconstitutional. Assuming *arguendo* that the policies or practices are unconstitutional, there is no clearly established case law that would place a reasonable officer on notice that those policies are unconstitutional. Therefore, SHERIFF DOYLE is entitled to qualified immunity for the claims asserted in Count One and Count Two of Plaintiffs' First Amended Complaint.

VII.

PLAINTIFFS CHATOIAN, RASMUSSEN AND RUSSELL CANNOT ESTABLISH A VIOLATION OF STATE LAW

Penal Code section 4030 prohibits strip searches of certain individuals who are brought into a jail facility. In this case, Plaintiffs CHATOIAN, RASMUSSEN and RUSSELL assert claims against SHERIFF DOYLE "for enacting and implementing policies that violate Penal Codes section 4030 and Civil Code section 52.1." December 14, 2004 Order p. 19:16-20, Req. Jud. Not. Ex. A.

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Plaintiffs have already conceded that they "do not seek to hold Sheriff Doyle vicariously liable for the actions of his subordinates (e.g. carrying out the strip searches and holding Plaintiffs in cells naked.)" Id. Therefore, the only conduct relevant to the state law claims of Plaintiffs is that of SHERIFF DOYLE in revising and implementing the policy regarding the conduct of strip searches.

A. There Is No Evidence That Sheriff Doyle Enacted a Policy That Violates Penal Code Section 4030 Because the Policy Prohibits Strip Searches of Arrestees Who Are Charged with Crimes Not Involving Weapons, Controlled Substances or Violence

Penal Code section 4030 was enacted to regulate booking searches – i.e., the searches to which all arrestees are subjected regardless of whether they will be released after booking. Specifically, Penal Code section 4030(f) prohibits strip searching an individual arrested on a misdemeanor offense not involving weapons, controlled substances or violence "prior to placement in the general jail population" unless a peace officer has determined that there is reasonable suspicion that the individual is concealing contraband. Cal.Penal.Code §4030(f). Additionally, Penal Code section 4030(g) prohibits placement of certain individuals in the general jail population unless three specific provisions have been met.[6] See Cal.Penal.Code § 4030 (g).

Here, the written policy of the Marin County Jail does not violate Penal Code section 4030. First, the policy prohibits strip searches of inmates who are arrested for offenses not involving weapons, violence and/or narcotics. McQueeny Decl. Ex. A, p. §(a)(1). Additionally, when jail staff conduct the "clothing exchange" that occurs when an inmate is "placed" in general jail population, the inmate "may not be viewed, observed or monitored by any deputy or staff member during the exchange and/or shower, unless there is reasonable suspicion that the inmate is concealing a weapon or contraband." Id. at p. 2. Thus, there is nothing in the policy which is inconsistent with the provision of Penal Code section 4030 that prohibits strip searching an inmate arrested on a misdemeanor offense not involving weapons, controlled substances or violence "prior to placement in the general jail population." Therefore, none of the actions of SHERIFF DOYLE, in his role in

[6] Other cases involving strip searches at county jails dispute whether "prior to placement in the general jail population" includes only physical placement in general population versus some point after the inmate is "classified" for general population but before actual physical delivery. See e.g. Bull v. City and County of San Francisco, Case No. 3:03-CV-01840 (N.D.Cal. September 22, 2005); Req. Jud. Not. Ex. B. In this case, however, it does not matter which reading the Court adopts because the policy prohibits strip searches in either case.

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revising and/or implementing the policy regarding the conduct of strip searches violates Penal Code section 4030.

Additionally, Defendants submit that there is no evidence that the written policy of the Marin County Sheriff's Department violate any other provisions of Penal Code section 4030 regarding the conduct of strip searches at the Marin County Jail. Therefore, SHERIFF DOYLE is entitled to judgment as a matter of law for the claims of Plaintiff KORISSA RUSSELL arising out of her alleged strip search at the Marin County Jail.

B. There Is No Evidence That Sheriff Doyle Enacted a Policy That Violates Penal Code Section 4030 for the Claims of Plaintiffs CHATOIAN and RASMUSSEN That They Were Placed in a Safety Cell Because They Were Not "Strip Searched" as Contemplated by Penal Code Section 4030

Plaintiffs CHATOIAN and RASMUSSEN do not claim that they were strip searched prior to placement in the general jail population. Rather, these two Plaintiffs claim that they were "strip searched" when members of the Sheriff's Department conducted a clothing exchange upon placement into a safety cell.

Penal Code section 4030 does not prohibit deputies from conducting a "clothing exchange" during the placement of an inmate into a safety cell. First, Penal Code section 4030 defines a "strip search" as "a search which requires a person to remove or arrange some or all of his or her clothing so as to permit visual inspection of the underclothing, breasts, buttocks, or genitalia of such person." Cal.Penal.Code §4030(c).

There is nothing in the policies of the Marin County Jail that violate this provision of Penal Code section 4030. First, as demonstrated above, the strip search policy conforms with Penal Code section 4030. Additionally, the policy regarding safety cell placements does not authorize the conduct of a "strip search" outside the scope of the policy regarding strip searches. Specifically, the only reference to removal of clothing is "[i]nmates will be allowed to retain sufficient clothing, or be provided with a suitably designed 'safety garment', to provide for their personal privacy unless specific identifiable risks to the inmates safety or security are documented." McQueeny Decl. Ex. B, p. 2. Furthermore, the policy is in accord with the regulation promulgated by the California Board of Corrections that states "[i]nmates shall be allowed to retain sufficient clothing, or be provided

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with a suitably designed 'safety garment,' to provide for their persona privacy unless specific identifiably risks to the inmate's safety or to the security of the facility are documented." Cal. Code Regs. Tit. 15, §1055. Thus, the policy regarding strip searches only authorizes removal of clothing where there are documented safety or security risks. Therefore, nothing in that policy falls within the ambit of protected "strip searches" that are contemplated by Penal Code section 4030 because the removal of clothing is not conducted "so as to permit visual inspection", but rather is to address specific documented safety and/or security concerns as set forth in title 15, section 1055 of the California Code of Regulations.

Based on the foregoing, Defendants submit that there is no evidence that SHERIFF DOYLE revised and/or implemented policies that violate Penal Code section 4030. Therefore, Defendants respectfully submit that SHERIFF DOYLE is entitled to judgment as a matter of law on Count 4 of Plaintiffs' First Amended Complaint.

C. There Is No Evidence That Sheriff Doyle Enacted Violated California Civil Code Section 52.1

Plaintiffs must demonstrate an underlying violation of state or federal law in order to prevail on their claims for violation of California Civil Code section 52.1. See Cal.Civ.Code §52.1. As set forth in sections III(A)-(B) and VIII(A)-(B) above, Plaintiffs have failed to establish an underlying violation of a constitutional right and/or Penal Code section 4030. Therefore, Defendants respectfully submit that there is no evidence to establish a violation of California Civil Code section 52.1 and, therefore, respectfully request that the court enter judgment as a matter of law on the claims arising out of California Civil Code section 52.1 in Count 3 and Count 5 of Plaintiffs' First Amended Complaint.

D. There Is No Evidence That the County of Marin Violated State Law

Plaintiffs also assert claims for declaratory and injunctive relief against the COUNTY OF MARIN for violations of state law.[7] Defendants respectfully submit that there is no evidence and Plaintiffs cannot establish that the COUNTY OF MARIN violated any provisions of state law.

[7] The Court previously ruled that Defendant COUNTY OF MARIN is immune from liability for damages arising out of claims asserted under state law. December 14, 2004 Order. Req. Jud. Not., Ex. A.

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Therefore, Defendants are entitled to judgment as a matter of law for the claims asserted in Count Three, Count Four and Count Five of the First Amended Class Action Complaint.

VIII.

CONCLUSION

It is undisputed that Defendants' policies, customs and/or practices regarding strip searches and/or placement of inmates in safety cells do not violate the Fourth and/or Fourteenth Amendments. In fact, as demonstrated above, the policies implemented by Defendants contain all of the protections enumerated in the Ninth Circuit case law and additional protections that are not mandated by any case law. It also is undisputed that Defendants have not violated any provisions of state law. Therefore, Defendants DOYLE and COUNTY OF MARIN and are entitled to judgment as a matter of law.

Dated: January 11, 2006

Respectfully submitted,

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By /s/ Terence J. Cassidy
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