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RECEIVED January 3, 2005

BY FEDERAL EXPRESS

The Honorable Denis R. Hurley
United States District Judge
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

HON. DENIS R. HURLEY
★ JAN 4 2005 ★

Re: Nassau County Strip Search Cases 99-CV-2844 (DRH)

Dear Judge Hurley:

We are counsel for plaintiffs and the putative class in the above-referenced matter. We are writing regarding the conference scheduled before Your Honor on January 5, 2005.

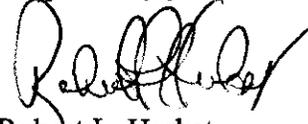
We look forward to this opportunity to appear before you in an effort to settle this case prior to commencement of the trial on January 18, 2005. Prior to the Christmas holiday, we engaged in some intensive and productive settlement conversations with defendants. It appears that the primary obstacle to settlement at this juncture is the County's reticence to stipulate to the individual named plaintiffs' right to appeal Your Honor's denial of class certification after judgment is entered pursuant to a settlement agreement. This is a significant issue, as we, of course, have a continuing obligation to represent the interests of putative class members as well as the individual plaintiffs.

Defendants, on the other hand, gain nothing in refusing to stipulate on this issue. Since the individual plaintiffs would have the right to appeal denial of class certification after trial, stipulating to this right as part of settlement would leave defendants in the exact same posture as going to trial. And significantly, stipulating on this matter would save significant judicial resources by avoiding a three week trial and would preclude the County's liability for significant attorneys fees that would accrue over the course of preparing for and litigating this lengthy trial. We hope that Your Honor will be able to help the parties have a meeting of the minds on this issue.

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To the extent defendants seek to delay the trial and amend the pretrial order to include numerous additional witnesses, plaintiffs strenuously oppose this effort. As Your Honor may recall, by letter dated November 3, 2004, defendants sought a lengthy adjournment of trial and permission to reopen discovery. Your Honor did grant a short adjournment of the trial, but denied defendants' request to reopen discovery, and nothing in this case has changed since that ruling to warrant consideration of defendants' apparent renewed effort to seek discovery. Moreover, at the time the prior Joint Pretrial Order was prepared, all of the issues raised by plaintiffs' claims were clear. Defendants have had several years to prepare this case; there is no reason that, on the eve of trial, defendants should be permitted to delay this matter and seek to add witnesses they never had previously identified.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Robert L. Herbst", written in a cursive style.

Robert L. Herbst

cc: Matt Brinckerhoff, Esq.
Jeffrey G. Smith, Esq.
Bernadette Ford, Esq.
Liora Ben-Sorek, Esq.