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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

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16 ROSALETY BARNETT, VANESSA HUNT, and
17 all others similarly situated,

18 Plaintiffs,

19 vs.

20 COUNTY OF CONTRA COSTA, CONTRA
21 COSTA COUNTY SHERIFF'S DEPARTMENT,
22 CONTRA COSTA COUNTY SHERIFF
23 WARREN E. RUPF, Individually and in His
24 Official Capacity, CONTRA COSTA COUNTY
25 SHERIFF'S DEPUTIES DOES 1 THROUGH
26 100, and ROES 1 THROUGH 20, INCLUSIVE,

27 Defendants.

CASE NO: C 04-04437 TEH

**THIRD AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

28 PLAINTIFFS ALLEGE:

INTRODUCTION

This is an action for declaratory and injunctive relief, damages, and punitive damages against the COUNTY OF CONTRA COSTA, CONTRA COSTA COUNTY SHERIFF'S DEPARTMENT, CONTRA COSTA COUNTY SHERIFF WARREN E. RUPF, Individually and in His Official Capacity, CONTRA COSTA COUNTY SHERIFF'S DEPUTIES sued under their fictitious names as DOES 1 THROUGH 100, and ROES 1 THROUGH 20, for violations of plaintiff's constitutional rights resulting

1 from application of CONTRA COSTA County's and the Sheriff's policies, practices, and customs
2 concerning the use of strip searches and visual body cavity searches in CONTRA COSTA County Jails.
3 Plaintiffs seek an order declaring illegal defendants' policy of subjecting female detainees in their
4 custody who are members of the previously certified Class to a second, successive strip and visual body
5 cavity searches before they are housed and without having any rational penological purpose for such strip
6 searches. Defendants' strip search and visual body cavity search policies, practices, and customs violate
7 those rights of such plaintiffs, and all those they represent, that are secured by the Fourth and Fourteenth
8 Amendments to the United States Constitution and entitle plaintiffs, and all those similarly situated, to
9 recover damages under the Federal Civil Rights Act (42 U.S.C. § 1983).

10 JURISDICTION

11 This action is brought pursuant to 42 USC §§ 1983 and 1988, and the Fourth and Fourteenth
12 Amendments to the United States Constitution. Jurisdiction is founded upon 28 USC §§ 1331 and
13 1341(3) and (4) and the aforementioned statutory and constitutional provisions.

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

15 PARTIES

16 1. Plaintiff VANESSA HUNT and all those similarly situated, are, and at all material times
17 herein, were citizens of the United States and residents of the state of California who were arrested
18 within the period beginning two (2) years before the filing of the Complaint in this action, and continuing
19 to this date, and who were subjected to second, successive strip and/or visual body cavity searches at a
20 CONTRA COSTA County Jail (hereinafter referred to as the "CONTRA COSTA County Jail"), prior to
21 being housed without the defendants having a rational penological purpose for such second successive
22 strip searches.

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

1 3. Defendant CONTRA COSTA COUNTY SHERIFF WARREN E. RUPF is, and at all
2 material times referred to herein, was the duly elected Sheriff of the COUNTY OF CONTRA COSTA,
3 responsible for administering the Jail facilities and for making, overseeing, and implementing the
4 policies, practices, and customs challenged herein relating to the operation of the CONTRA COSTA
5 County Jail. He is sued in his individual and official capacities.

6 4. Defendants CONTRA COSTA COUNTY SHERIFF DEPUTIES sued herein by their
7 fictitious names (Does 1 through 100) are all deputies who, as part of their duties at the CONTRA
8 COSTA County Jail, subjected plaintiffs, and all those they represent, to second pre-housing strip and/or
9 visual body cavity searches without there being any rational penological purpose for such strip searches.
10 Furthermore, Defendants CONTRA COSTA COUNTY SHERIFF DEPUTIES sued herein by their
11 fictitious names (Does 1 through 5) are all deputies who, as part of their duties at the CONTRA COSTA
12 County Jail, coerced, forced, and compelled plaintiff ROSALETY BARNETT to give a urine sample in a
13 non-private setting and without proper justification.

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

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

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

1 8. Defendants CONTRA COSTA COUNTY SHERIFF'S DEPARTMENT and CONTRA
2 COSTA COUNTY SHERIFF WARREN E. RUPF, in his Individual and Official Capacity, also
3 maintained or permitted an official policy or custom of causing or permitting the occurrence of the types
4 of wrongs complained of herein, which wrongs damaged plaintiffs, and all those similarly situated, as
5 herein alleged.

6 9. Class action plaintiffs are those similarly situated to Plaintiff Vanessa Hunt who, during
7 the period beginning two (2) years before the filing of this Complaint, and continuing to this date, were
8 subjected by defendants to a second, successive pre- housing strip and/or visual body cavity searches
9 after being booked without defendants having a rational penological purpose for such strip search.

10 **FACTS**

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

15 11. On or about May 16, 2003, Plaintiff Vanessa Hunt was taken into custody following a
16 arrest in CONTRA COSTA COUNTY for an unknown violation of law (reportedly misdemeanor
17 vandalism) after she was removed from her mother's house by the Kensington Police. She was strip
18 searched at the Martinez Detention Facility after she could not post bail and was scheduled to be housed.
19 She was then transferred to the West County Detention Facility and strip searched again before being
20 placed in housing. She was handcuffed at the Martinez Detention Facility after being strip searched,
21 handcuffed and chained during transport, and remained in handcuffs upon arrival at West County
22 Detention Facility until she was subjected to the second strip search. She was segregated in a small group
23 of female inmates who were also transported from the Martinez Detention Facility to the West County
24 Detention Facility, and never intermingled with other inmates who had not also been strip searched and
25 handcuffed. She was released after about a week and was never arraigned on any charges or required to
26 appear in court.

27 12. In each of the two instances when plaintiff Hunt was strip searched by defendants at
28 Contra Costa County jails, she was stripped naked and required to lift her arms then her feet so the

1 bottom of her soles could be examined, and then required to bend over to expose her rectal and genital
2 areas for inspection.

3 13. Plaintiffs are informed and believe, and thereupon allege, that defendants routinely
4 followed their policy, practice, and custom of subjecting female detainees, including plaintiff Hunt, and
5 all those she represents, to second, successive strip and visual body cavity searches without having, a
6 rational penological purpose for such second strip search.

7 14. Plaintiffs are informed and believe, and thereupon allege, that defendants have the ability
8 to identify all such similarly situated female plaintiffs, specifically those who, while in defendants'
9 custody, at the CONTRA COSTA County Jail within two (2) years prior to the filing of the Complaint in
10 this action, were subjected to such second strip searches and/or visual body cavity searches prior to
11 housing without defendants having a rational penological purpose for such second, successive strip
12 search.

13 15. Defendant CONTRA COSTA COUNTY SHERIFF WARREN E. RUPF is personally
14 responsible for the promulgation and continuation of the strip search policy, practice, and custom
15 pursuant to which plaintiffs, and those they represent, were subjected.

16 16. As a result of being subjected to the second strip search complained of herein, plaintiff
17 Hunt, and each of the persons similarly situated, suffered physical, mental, and emotional distress,
18 invasion of privacy, and violation of due process of law and state and federal statutory and constitutional
19 rights, and are entitled to recover damages according to proof but, at a minimum, \$4,000 each as
20 specified in California Civil Code § 52 and § 52.1(b).

21 17. As a result of being unjustifiably coerced, forced, and compelled to provide a urine
22 sample and to do so while being directly observed by male deputies of the CONTRA COSTA County
23 Jail as complained of herein, plaintiff BARNETT suffered physical, mental, and emotional distress and
24 violation of due process of law and state and federal statutory and constitutional rights, and is entitled to
25 recover damages according to proof, but a minimum of \$4,000 as specified in California Civil Code § 52
26 and § 52.1(b).

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CLASS CLAIMS

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2 18. The second, successive strip and visual body cavity search to which plaintiff Hunt, and all
3 those similarly situated, were subjected were performed pursuant to policies, practices, and customs of
4 defendants CONTRA COSTA COUNTY SHERIFF WARREN E. RUPF, CONTRA COSTA COUNTY
5 SHERIFF'S DEPARTMENT, COUNTY OF CONTRA COSTA, the individual SHERIFF'S DEPUTIES
6 sued herein by the fictitious names 1 through 100, and the individuals whose names are not now known
7 and who are sued by the fictitious names of ROES 1 through 20. The searches complained of herein
8 were performed without regard to the nature of the alleged offense for which plaintiffs, and all those
9 similarly situated, had been arrested, without regard to whether or not plaintiffs, or those they represent,
10 were eligible for cite and release under Penal Code § 853.6, without regard to whether or not plaintiffs,
11 and each of those similarly situated, were eligible for and/or were released on his or her own
12 recognizance. Furthermore, the second strip searches complained of herein were performed without
13 defendants having a rational penological purpose.

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

16 20. The class is defined to include all female arrestees who were members of the class
17 previously certified in this action, and who, in the period from and including two (2) years prior to the
18 filing of the original Complaint on October 20, 2002, and continuing until June 1, 2003, were arrested
19 and subjected to a second, successive strip and/or visual body cavity search prior to being housed at the
20 CONTRA COSTA County Jail without defendants having a valid penological purpose for such second
21 strip search.

22 21. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the members of the class
23 are so numerous that joinder of all members is impractical. Plaintiffs do not know the exact number of
24 class members, but are informed and believe there are at least forty seven females who were subjected to
25 a second strip search as a matter of routine policy.

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

1 searches for a second time prior to housing in the CONTRA COSTA County Jail; (2) whether the visual
2 body cavity searches are conducted in an area of privacy so that the searches cannot be observed by
3 persons not participating in the searches; and, (3) whether the visual body cavity searches are reasonably
4 related to defendants' penological interest to maintain the security of the jail and whether or not there are
5 less intrusive methods for protecting any such interest.

6 23. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiffs are informed
7 and believe, and thereupon allege, that there are many questions of law common to the class including,
8 but are not limited to: (1) whether defendants may perform second, successive visual body cavity
9 searches on persons prior to housing under the conditions of this case, where female inmates are kept
10 handcuffed after the first strip search and not mingled with the general population; (2) whether
11 defendants may perform visual body cavity searches on persons without first reasonably relating the use
12 of the visual body cavity search to defendants' penological interest to maintain the security of the jail and
13 determining if there is a less intrusive method to protect that interest; (3) whether visual body cavity
14 searches may be conducted in areas where the search can be observed by people not participating in the
15 search without violating plaintiffs' State and Federal constitutional rights (4) whether or not defendants'
16 strip search policy and procedure is in accordance with the Federal Constitution.

17 24. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the claims of the
18 representative plaintiff Hunt are typical of the class. Plaintiffs were searched, prior to housing, for a
19 second time without a rational penological purpose. Representative plaintiff Hunt has the same interests
20 and suffered the same type of injuries as all of the class members. Plaintiff's' claims arose because of
21 defendants' policy, practice, and custom of subjecting arrestees to successive pre-housing strip and/or
22 visual body cavity searches without having a rational penological purpose for such searches. Each class
23 member suffered actual damages as a result of being subjected to a second pre-housing strip and/or visual
24 body cavity search. The actual damages suffered by the representative plaintiffs are similar in type and
25 amount to the actual damages suffered by each class member.

26 25. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the representative
27 plaintiff will fairly and adequately protect the class interests. Plaintiff's' interests are consistent with and
28 not antagonistic to the interests of the class.

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

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

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

13 29. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), this class action is
14 superior to other available methods for the fair and equitable adjudication of the controversy between the
15 parties. Plaintiffs are informed and believe, and thereupon allege, that the interests of members of the
16 class in individually controlling the prosecution of a separate action is low, in that most class members
17 would be unable individually to prosecute any action at all. Plaintiffs also are informed and believe, and
18 thereupon allege, that the amounts at stake for individuals are so small that separate suits would be
19 impracticable. Plaintiffs are informed and believe, and thereupon allege, that most members of the class
20 will not be able to find counsel to represent them. Plaintiffs are informed and believe, and thereupon
21 allege, that it is desirable to concentrate all litigation in one forum because all of the claims arise in the
22 same location; i.e., the CONTRA COSTA County Jail. It will promote judicial efficiency to resolve the
23 common questions of law and fact in one forum, rather than in multiple courts.

24 30. Plaintiffs do not know the identities of all of the class members, although, through
25 discovery, Plaintiffs have determined that at least 47 females were subject to the second pre-housing strip
26 search during the applicable period. Plaintiffs are informed and believe, and thereupon allege, that the
27 identities of the class members may be ascertained from records maintained by the COUNTY OF
28 CONTRA COSTA and defendant SHERIFF WARREN E. RUPF and defendant CONTRA COSTA

COUNTY SHERIFF'S DEPARTMENT. Plaintiffs are informed and believe, and thereupon allege, that defendants' records reflect the identities, including addresses and telephone numbers, of the persons who have been held in custody in the CONTRA COSTA County Jails. Plaintiffs are informed and believe, and thereupon allege, that records of, and maintained by defendants reflect who was subject to a second pre-housing strip and/or visual body cavity search, when the search occurred, where the search occurred, and the charges on which such persons were arrested. Plaintiffs are informed and believe, and thereupon allege, that all of the foregoing information is contained in defendants' computer system and that the information necessary to identify the class members, by last known addresses, and the dates and reasons for their arrests and/or release from custody, is readily available from said computer system.

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

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

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COUNT ONE

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

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

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

COUNT TWO

(Invasion of Privacy, on behalf of BARNETT only)

33. By unjustifiably coercing, forcing, and compelling plaintiff BARNETT to provide a urine sample while being observed by male deputies defendants, and each of them, violated plaintiff's right to privacy as secured by the Federal Constitution under the Fourteenth Amendment, and directly and proximately damaged plaintiff by causing her emotional distress, humiliation, and embarrassment.

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

PRAYER FOR RELIEF

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

- 1. For declaratory and injunctive relief declaring illegal and enjoining, preliminarily and permanently, defendants' policies, practices, and customs of subjecting detainees to strip and visual body cavity searches without having a rational penological purpose for such second pre-housing searches;
- 2. Certification as a class action of plaintiffs' complaints concerning defendants' policies, practice, and customs of subjecting detainees to a second pre-housing strip and visual body cavity searches without having a rational penological purpose for such searches;

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

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

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

7 6. Attorneys' fees and costs under 42 U.S.C. § 1988, California Civil Code § 52(b)(3),
8 California Civil Code § 52.1(h);

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

10 DATED: June 21, 2010

Respectfully submitted,

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

/s/ - "Mark E. Merin"

BY: _____
Mark E. Merin
Attorney for Plaintiffs

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A JURY TRIAL IS DEMANDED.

DATED: June 21, 2010

Respectfully submitted,

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

/s/ - "Mark E. Merin"
BY: _____
Mark E. Merin
Attorney for Plaintiffs