IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JENNIFER REYNOLDS, ASHLEY McCORMICK, HERBERT CARTER, and DEVON SHEPARD, both individually and on behalf of a class of others similarly situated,	:	**NO. 1:07-CV-01688-CCC**
	:	**(Complaint filed 9/16/07)**
Plaintiffs	:	**Judge Christopher C. Conner**
v.	:	**CIVIL ACTION – LAW**
THE COUNTY OF DAUPHIN,	:	**JURY TRIAL DEMANDED**
Defendant	:	

DEFENDANT COUNTY OF DAUPHIN'S BRIEF IN SUPPORT OF ITS MOTION TO DISMISS

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I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiffs, Jennifer Reynolds, Ashley McCormick, Herbert Carter, and Devon Shepard, both individually and on behalf of a class of others similarly situated, initiated this class action lawsuit with the filing of a civil complaint on September 18, 2007. (Complaint, Doc. 1). Plaintiffs' complaint alleges that Plaintiffs Reynolds, Carter and Shepard were arrested on September 2, 2007 for a violation of the Harrisburg City Code. (Id. at ¶ 34). Plaintiffs' complaint further alleges that Reynolds, Carter and Shepard were transported to Dauphin County Prison (hereinafter "Prison") because they could not post bond and that they were strip searched upon their admittance to the Prison. (Id.).

Plaintiffs' complaint avers that Plaintiff Ashley McCormick was arrested on September 13, 2007 for failing to pay parking tickets issued by the City of Harrisburg. (Id. at ¶ 35). Following McCormick's arrest, Plaintiffs also aver that McCormick was transported to Dauphin County Prison where she was strip searched upon being admitted. (Id.).

Plaintiffs' complaint claims, *inter alia*, that Defendant has a written and/or *de facto* policy of strip-searching all individuals who enter the Prison regardless of the crime upon which they are charged and without the presence of reasonable suspicion to believe that the individuals are concealing a weapon or contraband. (Id. at ¶ 25).

Plaintiffs allege in Count I of their complaint that the strip searches of named Plaintiffs and unnamed members of the purported class violated the Fourth Amendment of the United States Constitution. (Id. at ¶¶ 38-43). Plaintiffs request in Count II of their complaint that this Honorable Court declare that the policy, custom, and practice of Defendant is unconstitutional because the correctional officers of the Prison are directing/conducting strip searches of all individuals placed into the Prison without any particularized suspicion that the individuals have either contraband or weapons. (Id. at ¶¶ 44-46). Plaintiffs also set forth a separate cause of action in Count III of their complaint seeking preliminary and permanent injunctive relief, enjoining Defendant from strip searching individuals placed into custody of the Prison absent any particularized suspicion that the individuals have either contraband or weapons. (Id.__ at ¶¶ 47-51). As a result of the alleged constitutional violation, Plaintiffs seek: (1) an order certifying this action as a class action; (2) a judgment against Defendant awarding compensatory damages to each named Plaintiff and each member of the purported class; (3) a declaratory judgment declaring that the Defendant's policy, practice and custom of strip searching all detainees is unconstitutional; (4) a preliminary and permanent injunction seeking to enjoin Defendant from continuing to strip search individuals without reasonable suspicion that such individuals are concealing weapons and/or contraband; (5) attorney's fees; (6) and punitive damages. (Id. at p. 14; Id. at ¶ 1).

II. STATEMENT OF ISSUES PRESENTED

A. Whether on its face and as a matter of law, Plaintiffs' complaint fails to state a claim upon which relief may be granted as to individuals comprising a substantial portion of the purported class because, as a matter of law, reasonable suspicion existed to strip search those individuals.

[suggested answer in the affirmative]

B. Whether the named Plaintiffs and purported class members lack standing to seek declaratory and injunctive relief because Plaintiffs' complaint does not allege that there is a likelihood that they will be subjected to the complained of conduct in the future.

[suggested answer in the affirmative]

C. Whether Plaintiffs' third purported cause of action, which requests an injunction, must be dismissed because such cause of action seeks only a form of relief and it cannot be maintained as an independent cause of action as a matter of law.

[suggested answer in the affirmative]

D. Whether Plaintiffs' claim for punitive damages must be dismissed because Plaintiffs cannot recover punitive damages from Defendant as a matter of law based upon the allegations contained in the complaint.

[suggested answer in the affirmative]

E. Whether Plaintiffs cannot recover on their allegations that Defendant has a blanket strip search policy when, in fact, Defendant has a written policy which sets forth distinct factors for each correctional officer to consider in his/her determination as to whether the requisite reasonable suspicion exists prior to any strip search being performed.

[suggested answer in the affirmative]

III. STANDARD OF LAW

The standard to be applied in consideration of a motion to dismiss pursuant to Rule 12(b)(6) is well established in our jurisprudence. The court is to accept as true all factual allegations in the complaint and draw all reasonable inferences in the light most favorable to the Plaintiff. Board of Trustees of Bricklayers and Allied Craftsmen Local 6 of New Jersey v. Wettlin Assoc. Inc., 237 F.3d 270, 272 (3d Cir. 2001). The question before the court on a motion to dismiss is whether the plaintiff can prove any set of facts in support of his claim that entitles the plaintiff to relief. Hartford Fire Insurance Company v. California, 509 U.S. 602; 125 L. Ed. 2d 488; 113 S. Ct. 2801 (1993), Ramadan v. Chase Manhattan Corp., 229 F.3d 194-195-96 (3d Cir. 2000). If it is clear from the pleading that a defendant cannot be held liable, then dismissal of all claims against that defendant is appropriate. Labov v. Lalley, 809 F.2d 270 (3d Cir. 1987). In adjudicating a Rule 12(b)(6) Motion, the district court is not limited to evaluating the complaint; rather, it can also consider documents attached to the complaint, matters of public record, and undisputedly authentic documents. Pension Benefit Guar. Corp. v. White Consol. Industries, 998 F.2d 1192, 1196 (3d Cir. 1993).

IV. ARGUMENT

A. Plaintiffs' purported class is overbroad and contains putative members who cannot obtain relief as a matter of law.

Plaintiffs seek class certification pursuant to Rules (23)(b)(2) and 23(b)(3), Federal Rules of Civil Procedure. (Doc. 1 at ¶¶ 18, 19). The class that Plaintiffs seek to represent is the following:

> All persons who have been or will be placed into the custody of the Dauphin County Prison after being charged with misdemeanors, summary offenses, violations of probation or parole, civil commitments, or minor crimes and were or will be strip searched upon their entry into the Dauphin County Prison pursuant to the policy, custom and practice of the County of Dauphin. The class period commences on September 16, 2005 and extends to the date on which Dauphin County is enjoined from , or otherwise ceases, enforcing their unconstitutional policy, practice and custom of conducting strip searches absent reasonable suspicion. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

(Id. at ¶ 9).

The United States Supreme Court has held that strip searches of arrestees are not per se unconstitutional. Bell v. Wolfish, 441 U.S. 520, 559; 60 L. Ed. 2d 447, 481; 99 S. Ct. 1861, 1884 (1979). The Court in Wolfish, however, recognized that arrestees have a legitimate privacy interest in not being strip searched, and explained that the government must have a reasonable justification for conducting such searches:

> The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for a particular search against the invasion of personal rights that the search entails. 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. (internal citations omitted). The Wolfish decision acknowledged that strip and body cavity searches of pretrial detainees, in order to avoid the smuggling of contraband into a detention facility, was a legitimate government interest, and held that prison administrators should be afforded discretion in how best to prevent such smuggling. Id. at 559 and n. 40. Assuming, without holding, that pretrial detainees retain some Fourth Amendment rights upon their commitment to a detention facility, the Wolfish court held that body cavity searches of pretrial detainees following contact visits with any person from outside the institution did not violate the Fourth Amendment.

Interpreting Wolfish, most federal circuit courts have held that a "blanket" strip search policy, calling for the search of all arrestees without any individualized justification, violates the Fourth Amendment of the United States Constitution. See Jones v. Edwards, 770 F.2d 739 (8th Cir. 1985); Stewart v. County of Lubbock, 767 F.2d 153 (5th Cir. 1985); Giles v. Ackerman, 746 F.2d 614 (9th Cir. 1984); Hill v. Bogans, 735 F.2d 391 (10th Cir. 1984); Mary Beth G. v. City of Chicago, 723 F.2d 1263 (7th Cir. 1982). The prevailing interpretation of Wolfish is that an arrestee to

be detained in the general jail population has a constitutional right under the Fourth Amendment to be free from strip searches conducted without reasonable suspicion that the detainee is concealing weapons, drugs, or other contraband, and, therefore, blanket strip searches of all arrestees, without individualized reasonable suspicion, are unconstitutional. See, e.g., Powell v. Barrett, 496 F.3d 1288, 1310 (11th Cir. 2007). In order to justify a strip search of a nonviolent arrestee, the government must have reasonable individualized suspicion that the detainee is carrying or concealing contraband. Newkirk v. Sheers, 834 F. Supp. 772, 788 (E.D.Pa. 1993). Individualized suspicion sufficient to warrant such a strip search may be based on such factors as the nature of the offense, the arrestee's appearance and conduct, and any prior arrest record. Id.

This interpretation of Wolfish, however, has not been adopted by the United States Supreme Court or the United States Court of Appeals for the Third Circuit, and has been questioned by other courts. See, e.g., Hicks v. Moore, 422 F.3d 1246, n. 5 (11th Cir. 2005); Evans v. Stephens, 407 F.3d 1272, 1278-79 (11th Cir. 2005) (en banc) ("Most of us are uncertain that jailers are required to have a reasonable suspicion of weapons or contraband before strip searching – for security and safety purposes – arrestees bound for the general jail population . . . Never has the Supreme Court imposed such a requirement."); Johnson v. Phelan, 69 F.3d 144, 152-153 (7th Cir. 1995) (Posner, J., concurring and dissenting) ("[The Fourth] Amendment has

been held inapplicable to searches and seiz ures within prisons, and if applicable to jails housing pretrial detain ees as distinct from convicted defendants – an unsettled question – is onl y tenuously so . . ."); Brothers v. Klevenhagen , 28 F.3d 452, 457 and n. 6 (5th Cir. 1994) ("The Court [in Wolfish] refused to concede that the Fourth Amendment applies to [pretr ial detainees] and conclude d that no protection woul d be afforded even if it did apply."); Valencia v. Wiggins , 981 F.2d 1440, 1444-45 (5th Cir. 1993); U.S. v. Willoughby, 860 F.2d 15, 21 (2d Cir. 1988).

Even under the expansive preva iling interpretation of Wolfish , which Dauphin County does not concede is correct, Plaintiffs fail to state a claim with regard to a substantial portion of their propos ed class. Those courts that have hel d that individualized reasonable suspicion is required before the government may strip search an arrestee have c onceded that such reasonable suspicion may be established by the circu mstances of an arrest or the nature of the charges brought against the arrestee. See Powell v. Barrett , 496 F.3d 1288, 1310 (11th Cir. 2007); Tardiff v. Knox County, 365 F.3d 1, 5 n.6 (1st Cir. 2004) (noting that categories such as current charge or crim inal history are a perm issible way to establish reasonable suspicion).

In Powell, the court held that the circu mstances of a person's arrest may support reasonable suspicion to justi fy a strip search upon booking into jail, including, for example, the possession of a weapon by a detainee at the time of

arrest. Id. The Powell court also held that the nature of an arrest charge itself, independent of the facts surrounding the arrest, can give rise to reasonable suspicion; therefore, it is objectively reasonable to conduct a strip search of a person arrested for an offense involving weapons, drugs, or violence before placing the arrestee into the general jail population. Id. at 1311. This is true of all crimes involving weapons, drugs, or violence, regardless of the level of the offense. Id.

> In the end, balancing this serious intrusion against the government's compelling interest in jail security is unsusceptible of precise evidentiary resolution, undiscernible in the language of the Constitution or the intent of its framers. But the Court has the duty to draw the line somewhere. The Court holds that reasonable suspicion exists to strip search all felony arrestees, and all temporary detainees arrested for misdemeanor offenses that involve weapons or contraband. Reasonable suspicion also exists to strip search all temporary detainees with prior records of convictions or unresolved arrests for felony offenses, or for misdemeanors involving weapons or contraband. Other federal courts appear to have uniformly drawn the line in the same place.

Smith v. Montgomery County, Maryland, 643 F.Supp. 435, 439 (D.Md. 1986) (examining cases).

In light of this precedent, it is clear that Plaintiffs fail to state a cause of action as to a substantial portion of their proposed class. Plaintiffs' proposed class includes persons as to whom reasonable suspicion existed, arising by the very nature of the crime the person was charged or their past criminal history, i.e. those detainees whose charges upon intake implicated either weapons or drugs, or who had a past

conviction for a fel ony, drug or weapons charge. Those persons are included in Plaintiffs' broad class definition unde r "misdemeanors, summary offenses, violations of probation or parole, civil commitments, or minor crimes."

The following is a small sample of misdemeanors covered under Plai ntiffs' proposed class definition wh ere there exists reasonable suspicion to search: (1) manufacture, sale or delivery of a contro lled substance, 35 P. S. § 780-113(a)(30); (2) knowingly or int entionally possessing a controlled or counterfeit substance, 35 P.S. § 780-113(a)(16); (3) possession of a small am ount of marijuana only for personal use, 35 P.S. § 780-113(a)(31); (4) the use of, or possession wi th intent to use, drug paraphernalia 35 P.S. § 780-113(a)(32); (5) to make, repair, sell or otherwise deal in, use, or possess any o ffensive weapons, with the definition of offensive weapons including metal knuckl es, dagger, knife, razor or cut ting instrument, 18 Pa.C.S. § 908.

As to persons who were charged with such crimes, r easonable suspicion justifying a strip search existed. Im portantly, "it is immaterial whether the specific arresting officer or jailer *actually and subjectively* had reasonable suspicion, or whether anyone at the tim e *actually* conducted a reasonable suspicion analysis. Powell, 496 F.3d at 1310. Inste ad, the question for the Court i s "whether, given the circumstances, reasonable suspicion *objectively* existed to justify the search." Id. Therefore, as a matt er of law, the strip searches o f persons charged with crimes

involving weapons, violence, or drugs, and those persons with past convictions or unresolved arrests for felonies or crimes involving violence, weapons, or drugs, were objectively justified by reasonable suspicion and did not violate the Fourth Amendment. Such persons fail to state a claim for a constitutional violation, cannot be included in any class definition, and cannot obtain relief based upon the claims as alleged.

At most, Plaintiffs' class could be comprised of the following:

> All persons who have been or will be placed into the custody of the Dauphin County Prison after being charged with misdemeanors, summary offenses, violations of probation or parole, civil commitments, or minor crimes and were or will be strip searched upon their entry into the Dauphin County Prison, pursuant to the policy, custom and practice of the County of Dauphin, where such intake crimes did or do not implicate either weapons, violence or drugs, and where such persons did or will not, at the time of admission to Dauphin County Prison, have a past conviction or unresolved arrest for a felony or charge involving drug, weapons, or violence. The class period commences on September 16, 2005 and extends to the date on which Dauphin County is enjoined from, or otherwise ceases, enforcing their unconstitutional policy, practice and custom of conducting strip searches absent reasonable suspicion. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees. (emphasis added)

It is anticipated that Plaintiffs will argue that Defendant's contention that Plaintiffs' class is overbroad is premature and can only be addressed at the class certification stage of this matter. This, however, is not a question of whether the

proposed class meets the procedural requirements to justify class certification; rather, this is simply a question of whether some members of the proposed class are incapable of stating a claim upon which relief may be granted.

> The determination whether there is a proper class does not depend on the existence of a cause of action. A suit may be a proper class action, conforming to Rule 23, and still be dismissed for failure to state a cause of action.

Miller v. Mackey Int'l, Inc., 452 F.2d 424, 427 (5th Cir. 1971).

Defendant's contention that a substantial portion of the proposed class members fail to state a claim cannot be reserved for the class certification stage, because the Court is forbidden from inquiring into the merits of Plaintiffs' claims at that stage. The class certification stage is reserved for an inquiry into whether the proposed class meets the procedural requirements of Rule 23.

> Rule 23 delineates the scope of inquiry to be exercised by a district judge in passing on a class action motion. Nothing in that Rule indicates the necessity or the propriety of an inquiry into the merits. Indeed, there is absolutely no support in the history of Rule 23 or legal precedent for turning a motion under Rule 23 into a Rule 12 motion to dismiss or a Rule 56 motion for summary judgment by allowing the district judge to evaluate the possible merit of the plaintiff's claims at this stage of the proceedings. Failure to state a cause of action is entirely distinct from failure to state a class action.

Id. (emphasis added). See also Lau v. Arrow Financial Services, --- F.R.D. ---, 2007 WL 2840390, *4 (N.D.Ill. Sept. 28, 2007) (merits of each potential class members' claims could not be addressed at class certification stage); Pruitt v. Allied Chemical

Corp., 85 F.R.D. 100, 104 (E.D.Va. 1980) (court could not consider motion to dismiss, which offered potential to reduce the class to more manageable numbers, at the class certification stage, because propriety of class certification under Rule 23 was separate from consideration of merits under Rule 12).

Defendant recognizes that claims, including class claims, should not be dismissed on the pleadings "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 84, 78 S. Ct. 99, 102 (1957). Here, however, it can be determined from the face of the Plaintiffs' complaint that the law cannot provide recovery based upon the claims alleged, which is the appropriate consideration when determining a Motion to Dismiss. Defendant believes that a facial review of Plaintiffs' complaint by the Court will reveal that Plaintiffs' complaint cannot provide recovery for certain putative members of its class based upon any possible set of facts even if proven to be true. Therefore, for the reasons discussed supra, Defendant respectfully requests that this Court conclude that Plaintiffs' complaint fails to state a claim as to a substantial portion of the proposed class, and dismiss it as such.

B. Named Plaintiffs and purported class members lack standing to seek declaratory and injunctive relief because Plaintiffs' complaint does not allege that there is a likelihood that they will be subjected to the complained of conduct in the future.

Plaintiffs request in Count II of their complaint that this Honorable Court declare that the policy, custom, and practice of Defendant is unconstitutional in that the correctional officers of the Prison are directing/conducting strip searches of all individuals placed into the Prison without any particularized suspicion that the individuals have either contraband or weapons. (Doc. 1 at ¶¶ 44-46). Plaintiffs also set forth a separate cause of action in Count III of their complaint seeking preliminary and permanent injunctive relief, enjoining Defendant from strip searching individuals placed into custody of the Prison absent any particularized suspicion that the individuals have either contraband or weapons.

A review of standing is a threshold inquiry; and the proper disposition of a case challenging standing is a motion to dismiss. Hassine v. Jeffes, 846 F.2d 169, 176 (3d Cir. 1988). Each member of a putative class must individually possess a right to make a claim in a matter. Strzakowlski v. GMC, No. 04-4740, 2005 U.S. Dist. LEXIS 18111, *26 (D.N.J. Aug. 16, 2005). Thus, a class cannot be so broad as to include members who have no standing to bring suit on their on accord. Id.; See Conte-Bros. Auto. Inc. v. Quaker State-Slick 50, Inc. 165 F.3d 221 (3d. Cir. 1998) (affirming district court's decision to grant defendant's motion to dismiss because putative class members lacked standing based upon the claims alleged in

complaint). Furtherm ore, a court m ay strike class action allegations pri or to discovery when presented with a Rule 12(b)(6) motion. See Clark v. McDonald' s Corp., 213 F.R.D. 198, 205 n.3 (D.N.J. 2003).

In addition to meeting the basic require ments for standing, a plaintiff m ust also meet the preconditions for asserting an injunctive claim in a federal forum. See City of Los Angeles v. Lyons , 461 U.S. 95, 75 L. Ed. 2d 675, 103 S. Ct. 1660 (1983). To establish standing in an acti on for de claratory or inj unctive relief, a plaintiff must show that he or she is likely to suffer future injury from the defendant's illegal conduct. Roe v. Operation Rescue , 919 F.2d 857, 864 (3d Cir. 1990). Past illegal conduct is insufficient to warrant injunctive or declaratory relief unless it is acco mpanied by "continuing, pr esent adverse effects." City of Los Angeles, 461 U.S. at 102, 75 L. Ed. 2d at 684, 103 S. Ct. at 1665. Declaratory relief is unavailable to a plaintiff who has al leged nothing more than exposure to past unconstitutional state action. Brown v. Fauver, 819 F.2d 395 (3d Cir. 1987).

Several courts in cases challenging the constitutionality of strip search policies have held that the plaintiffs l acked standing to pursue injunctive relief because they cannot show any likelihood th at they will be arrested agai n. See John Does 1-100 v. Boyd , 613 F. Supp. 1514 (D.Minn. 1985); Smith v. Montgomery County, 573 F. Supp. 604 (D. Md. 1983). The plaintiffs in John Does 1-100, similar to the Plaintiffs in this action, challenge d the constitutionality of strip search es at a

county detention facility. The district court, relying primarily on the Supreme Court's decision in Lyons, held that the plaintiff lacked standing to seek injunctive relief against the detention center's strip search policy. John Does 1-100, 613 F. Supp. at 1529. The court noted that the "named plaintiffs cannot establish a 'credible threat' that they will be arrested again." Id. The court thus concluded that the plaintiffs lacked standing with respect to injunctive relief.

In O'Shea v. Littleton, 414 U.S. 488, 38 L. Ed. 2d 674, 94 S. Ct. 669 (1974), a challenge to discriminatory conduct in the administration of a county criminal justice system, the Supreme Court looked to this same factor in holding that the plaintiffs lacked standing to seek an injunction:

> [H]ere the prospect of future injury rests on the likelihood that respondents will again be arrested for and charged with violations of the criminal law and will again be subjected to bond proceedings, trial, or sentencing before petitioners. . . . [w]e assume that respondents will conduct their activities within the law and so avoid prosecution and conviction as well as exposure to the challenged course of conduct said to be followed by petitioners.

O'Shea, 414 U.S. at 496-97, 38 L. Ed. 2d at 683, 94 S. Ct. at 676.

While plaintiffs in the instant case may be able to allege that *if* they are arrested and detained again they will be strip searched, they cannot show any likelihood that they will in fact be arrested again. Plaintiffs have not alleged that they will not conduct their future activities within the parameters of the law. Plaintiffs essentially allege that they have been exposed to past unconstitutional

action, i.e. that they were subject to an unconstitutional strip search at the Prison. Therefore, Plaintiffs, named and putative class members, do not have standing to seek injunctive and declaratory relief based upon the allegations set forth in their Complaint. Thus, Counts II and III of Plaintiffs' complaint should be dismissed.

C. Plaintiffs' third purported cause of action, which seeks an injunction, must be dismissed because such cause of action is a form of relief and it cannot be maintained as an independent cause of action as a matter of law.

Plaintiffs' third cause of action is a demand for a preliminary and permanent injunction. Plaintiffs aver that the "continuing pattern of strip searching individuals charged with minor crimes will cause irreparable harm to the new and/or prospective members of the Class, an adequate remedy for which does not exist at law." (Doc. 1 at ¶ 50). Although Plaintiffs do not have standing to seek injunctive relief as discussed supra, the third cause of action may also be dismissed on the grounds that an injunction is a form of relief and not an independent cause of action. An injunction is a form of equitable relief. City of Los Angeles, 461 U.S. at 133, 75 L. Ed. at 704, 103 S. Ct at 1682. Thus, Plaintiffs' third cause of action must be dismissed on these grounds as well.

D. Plaintiffs cannot recover punitive damages from Defendant as a matter of law based upon the allegations contained in their complaint.

Plaintiffs seek punitive damages in paragraph 1 of their Complaint. In City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 69 L. Ed. 2d 616, 101 S. Ct. 2748 (1981), the Supreme Court held that, in general, a municipality is immune from liability for punitive damages in a section 1983 case. Punitive damages are only allowed against municipalities when expressly provided by statute. Potence v. Hazleton Area Sch. Dist., 357 F.3d 366, 372 (3d Cir. 2004). There is no statutory provision which expressly provides for punitive damages based upon the allegations contained in Plaintiffs' complaint. Thus, Dauphin County is immune from liability for punitive damages and the same must be stricken from Plaintiffs' complaint.

E. Plaintiffs cannot recover on their allegations that Defendant has a blanket strip search policy when, in fact, Defendant has a written policy which sets forth distinct factors for each correctional officer to consider in his/her determination as to whether reasonable suspicion exists prior to any strip search being performed.

Defendant has attached a copy of the Dauphin County Prison's strip search policy to its Motion Dismiss at Exhibit "A." The general rule is that a district court ruling on a motion to dismiss may not consider matters extraneous to the pleadings. In re Burlington Coat Factory Sec. Litig., 114 F. 3d 1410, 1426 (3d Cir. 1997). However, exceptions to the general rule include documents integral to or explicitly relied upon in the complaint, which may be considered without converting the

motion to dismiss into one for summary judgment. Id. Here, the strip search policy attached to Defendant's Motion and attested to by Dauphin County Prison Warden Dominick DeRose, may be considered by the Court because it is undoubtedly integral and relied upon by Plaintiffs throughout the complaint and serves as the basis for the entire case.

Plaintiffs repeatedly allege that Defendant does not have a written strip search policy or, in the alternative, Defendant has a *de facto* strip search policy because it strip searches every person entering the prison despite the existence of a written strip search policy stating otherwise. Defendant has had a written strip search policy at all times relevant to the allegations contained in Plaintiffs' complaint. Defendant's strip search policy requires each intake correctional officer to determine whether the requisite particularized reasonable suspicion existed, i.e. whether the intake crime implicated either weapons, violence or drugs, and/or whether the detainee had a past conviction or unresolved arrest for a felony or charge involving drug, weapons, or violence. Therefore, Plaintiffs cannot maintain any cause of action set forth in their complaint on the grounds that Defendant did not have a written strip search policy and any potential recovery cannot be predicated upon the same. Thus, Plaintiffs' averments that Defendant does not have a written strip search policy and has a blanket strip search policy of searching every individual

admitted to the Prison must be stricken and Plaintiffs' recovery must be limited to their *de facto* policy claim.

WHEREFORE, for the reasons set forth hereinabove, Defendant, County of Dauphin, hereby requests that this Honorable grant its Motion to Dismiss and enter the accompanying order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Megan L. Renno, an employee with the law firm of Lavery, Faherty, Young & Patterson, P.C., do hereby certify that on this 25th day of October, 2007, I served a true and correct copy of the foregoing **Brief in Support of its Motion to Dism iss** via U.S. Middle District Court's Electr onic Case Filing Syst em, addressed as follows:

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This document has also been electronically filed and is available for vi ewing and downloading from the ECF system.