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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

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14
15 MARY BULL, JONAH ZERN, LISA
GIAMPAOLI, MARCY CORNEAU, ALEXIS
16 BRONSON, MICKY MANGOSING, CHARLI
JOHNSON, LEIGH FLEMING, LAURA
17 TIMBROOK, and all others similarly situated,

18 Plaintiffs,

19 vs.

20 CITY AND COUNTY OF SAN FRANCISCO;
SAN FRANCISCO COUNTY SHERIFF'S
21 DEPARTMENT; SAN FRANCISCO COUNTY
SHERIFF MICHAEL HENNESSEY, in his
22 individual and official capacity, and SAN
FRANCISCO COUNTY SHERIFF'S DEPUTIES
23 DOES 1 THROUGH 150,

24 Defendants.

CASE NO: C 03-1840 CRB

**FIRST AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

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1 PLAINTIFFS ALLEGE:

2 **INTRODUCTION**

3 This is an action for declaratory and injunctive relief, damages, and punitive damages against
4 the CITY AND COUNTY OF SAN FRANCISCO, its SHERIFF, MICHAEL HENNESSEY,
5 SHERIFF'S DEPARTMENT, and SHERIFF DEPUTIES sued herein by their fictitious names for
6 violations of plaintiffs' constitutional rights resulting from application of the city and county of San
7 Francisco's and the Sheriff's policies, practices, and customs concerning the use of strip searches,
8 visual body cavity searches and "cold rooms" in the San Francisco County Jail. Plaintiffs seek an
9 order declaring illegal defendants' policy of subjecting detainees in their custody to strip and visual
10 body cavity searches before they are arraigned and without having any reasonable suspicion that the
11 searches will be productive of contraband.

12 Plaintiffs also seek declaratory and injunctive relief, damages, and punitive damages against
13 the defendants for the policy, practice, and custom of placing detainees, naked, in rooms referred to as
14 "cold rooms," without any legitimate purpose, but in order to compel consent to illegal strip searches,
15 to punish persons who question illegal practices, or for other illegal purposes. These cold rooms are
16 kept bone chillingly cold, lack access to natural light and are devoid of furniture and running water.
17 The cold rooms are constantly illuminated by fluorescent lighting and persons confined in them can
18 only sit or lie on the bare floor. Defendants' use of the "cold rooms" violates Sections 1055 and 1083
19 of Title 15 of the California Code of Regulations which specify that isolation or "safe rooms" which
20 may have legitimate psychological uses cannot be used for punishment and that persons confined
21 therein must be provided with adequate bedding and clothing.

22 Defendants' strip search, visual body cavity search, and cold room policies, practices, and
23 customs violate plaintiffs' rights secured to them by the Fourth and Fourteenth Amendments to the
24 U.S. Constitution and entitle plaintiffs to recover damages under the Federal Civil Rights Act (42
25 U.S.C. § 1983).

26

1 Additionally, plaintiffs include supplemental claims under California state law against
2 defendants: 1) for violation of California Penal Code § 4030 which prohibits pre-arraignment strip
3 searches of most misdemeanants and provides for minimum damages of \$1,000 for each illegal search;
4 2) for wholesale violation of Sections 1055 and 1083 of Section 15 of the California Code of
5 Regulations (promulgated under the authority of California Penal Code § 6030) which describes the
6 very narrow conditions under which a cold room can be used; and, 3) for violation of the Unruh Civil
7 Rights Act (California Civil Code §§ 52 and 52.1(b)) pursuant to which each plaintiff denied a
8 statutory or state or federal Constitutional right is entitled to recover a minimum of \$4,000 for each
9 violation.

10 JURISDICTION

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

14 2. The court has supplemental jurisdiction over plaintiffs' state claims under 28 USC §
15 1367(a).

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

17 PARTIES

18 4. Plaintiffs, including MARY BULL, JONAH ZERN, LISA GIAMPAOLI, MARCY
19 CORNEAU, ALEXIS BRONSON, MICKY MANGOSING, CHARLI JOHNSON, LEIGH
20 FLEMING, and LAURA TIMBROOK, and all those similarly situated, are, and at all material times
21 herein, were citizens of the United States and residents of the state of California who were arrested
22 within the period beginning three (3) years before February 10, 2003, and continuing to this date, and
23 who were subjected to strip and/or visual body cavity searches at a San Francisco County Jail
24 (hereinafter referred to as the "San Francisco Jail"), prior to being arraigned and/or without the
25 defendants first having, and recording in writing, a reasonable suspicion that the searches would be
26 productive of contraband or weapons.

1 5. Some plaintiffs, including MARY BULL, LISA GIAMPAOLI, ALEXIS BRONSON,
2 MICKY MANGOSING, CHARLI JOHNSON and LEIGH FLEMING, were confined by defendants
3 in “cold rooms” at the San Francisco Jail to coerce compliance with illegal orders or for punishment in
4 violation of their state and federal statutory and constitutional rights.

5 6. Defendant CITY AND COUNTY OF SAN FRANCISCO SHERIFF MICHAEL
6 HENNESSEY is, and at all material times referred to herein, was the duly elected Sheriff of the city
7 and county of San Francisco, responsible for administering the Jail facilities and for making,
8 overseeing, and implementing the policies, practices, and customs challenged herein relating to the
9 operation of the San Francisco Jail. He is sued in his individual and official capacities.

10 7. Defendants SAN FRANCISCO COUNTY SHERIFF DEPUTIES sued herein by their
11 fictitious names (Does 1 through 150) are all deputies who, as part of their duties at the San Francisco
12 Jails, subjected plaintiffs to pre-arraignment strip and/or visual body cavity searches without first
13 having, and recording in writing, a reasonable suspicion that the searches would be productive of
14 contraband or weapons. Furthermore, Defendants SAN FRANCISCO COUNTY SHERIFF
15 DEPUTIES sued herein by their fictitious names (Does 1 through 150) are all deputies who, as part of
16 their duties at the San Francisco Jail, confined plaintiffs in “cold rooms” to gain compliance with
17 illegal order or to punish plaintiffs.

18 8. At all material times mentioned herein, each of the defendants was acting under the
19 color of law, to wit, under color of statutes, ordinances, regulations, policies, customs and usages of
20 the State of California, the CITY AND COUNTY OF SAN FRANCISCO and/or the SAN
21 FRANCISCO COUNTY SHERIFF .

22 9. Defendant CITY AND COUNTY OF SAN FRANCISCO is, and at all material times
23 referred to herein, was, a division of the state of California, that maintained or permitted an official
24 policy or custom or practice causing or permitting the occurrence of the types of wrongs complained
25 of herein, which wrongs damaged plaintiffs as herein alleged. Plaintiffs’ allegations against the
26 COUNTY are based on acts and omissions of the SHERIFF and his deputies and on acts and

1 omissions of persons who are COUNTY employees, and on the COUNTY's breach of its duty to
2 protect plaintiffs from the wrongful conduct of said persons and employees.

3 10. Defendants SAN FRANCISCO COUNTY SHERIFF'S DEPARTMENT and SAN
4 FRANCISCO COUNTY SHERIFF MICHAEL HENNESSEY, in his individual and official capacity,
5 also maintained or permitted an official policy or custom or practice causing or permitting the
6 occurrence of the types of wrongs complained of herein, which wrongs damaged plaintiffs as herein
7 alleged.

8 11. Class action plaintiffs are those similarly situated who, during the period beginning
9 three (3) years before February 10, 2003, and continuing to this date, were subjected by defendants to
10 pre-arraignment strip and/or visual body cavity searches without defendants having, and recording in
11 writing, a reasonable suspicion that the searches would be productive of contraband or weapons.
12 Some of the similarly situated plaintiffs were placed by defendants in "cold rooms," in order to
13 compel compliance with illegal orders or as punishment and without defendants meeting the
14 requirements governing the use of such rooms.

15 **FACTS**

16 A. MARY BULL

17 12. On or about November 18, 2002, plaintiff MARY BULL, along with many others, was
18 arrested at a demonstration on Market Street, in San Francisco and charged with vandalism. Ms.
19 BULL was taken to the San Francisco Jail, arriving in mid-afternoon. At approximately 6:00 p.m.,
20 Ms. BULL was taken to an area to be "dressed-in." A Sheriff's deputy (Doe 1) prepared an inventory
21 of Ms. BULL's clothing and directed Ms. BULL to sign three documents, one of which was a consent
22 to strip search which Ms. BULL refused to sign. Her "dress-in" was terminated, and she was returned
23 to a holding cell and held for a "classification" interview.

24 13. Three hours later, Ms. BULL was returned to a dress-in room and again directed to
25 consent to a visual body cavity search. Upon her refusal to consent to the visual body cavity search,
26 Ms. BULL was taken from the "dress-in" area, to the center of the "bull pen" where she was

1 confronted by several officers, male and female, one of whom told her that if she did not voluntarily
2 submit to a visual body cavity search she would be thrown into a cold room, naked, for 24 hours.
3 When Ms. BULL again declined to submit to the visual body cavity search, defendants moved her into
4 the “cold room,” where she was subjected to a forcible visual body cavity search by Does 2 through 5.

5 14. During the search, a male deputy (Doe 2) entered the room and watched as Ms.
6 BULL’s clothes were pulled off, three deputies (Does 3 through 5) forced her to lie on her back,
7 naked, bent her legs towards her chest, and visually inspected her genital and rectal areas. Ms. BULL
8 was then left naked in the “cold room” and the metal door shut.

9 15. While Ms. BULL was in the “cold room,” she was shocked every few minutes by a
10 sheriff’s deputies (Does 6 through 10) smashing a baton repeatedly against the door. The smashing of
11 the baton on the unfurnished “cold room’s” metal door caused an unbearably loud, nerve-shattering
12 noise, that prevented Ms. BULL from sleeping or resting and caused her to suffer extreme anxiety and
13 emotional distress.

14 16. During her time in the “cold room,” Ms. BULL was provided with neither clothing for
15 her personal privacy nor with blankets or bedding as for a modicum of comfort. Ms. BULL is
16 informed and believes, and thereon alleges, that Defendants have a policy, practice, and custom of
17 utilizing confinement in the “cold room” as punishment for non-violent, non-suicidal, and non-
18 destructive detainees who are dubbed “non-compliant” and that such a policy, practice, and custom
19 violates the Constitution and laws of the State of California and the United States of America.

20 17. At approximately 9:00 a.m. on November 19, 2002, Ms. BULL was removed from the
21 “cold room,” issued some prison clothing, and placed in a holding cell with other detainees. She was
22 interviewed for release on her own recognizance and taken upstairs where she was again directed to
23 consent to a visual body cavity search by Doe 11. Again, Ms. BULL is informed and believes, and
24 thereon alleges, that defendants had no reasonable suspicion that a visual body cavity search would
25 result in the discovery of contraband or weapons.
26

1 18. Ms. BULL explained to Doe 11 that the California and United States' Constitutions
2 and the state penal code preclude such strip searches and declined to cooperate. Ms. BULL was taken
3 into another "cold room," and again subjected to a forcible visual body cavity search by Does 11
4 through 15. Ms. BULL was left naked in the "cold room" and later assigned to a cell with
5 approximately eight bunkbeds. At about 10:00 p.m., more than 30 hours after she was arrested, Ms.
6 BULL was released on her own recognizance having never been arraigned. Defendants had no
7 reasonable suspicion that a visual body cavity search would result in the discovery of contraband or
8 weapons.

9 B. JONAH ZERN

10 19. On or about January 18, 2003, plaintiff JONAH ZERN was arrested along with others
11 at a peace rally in San Francisco. Mr. ZERN was taken to the San Francisco Jail where he held for
12 two days before being released on his own recognizance without being arraigned. Shortly after his
13 arrival at the San Francisco Jail, Mr. ZERN was taken to a curtained off area where a Sheriff's deputy,
14 Doe 16, directed him to remove all his clothes. The Sheriff's deputy, Doe 16, then conducted a visual
15 body cavity search of Mr. ZERN wherein Mr. ZERN had to bend over, spread his buttocks, and cough.
16 Mr. ZERN is informed and believes, and thereon alleges, that defendants had no reasonable suspicion
17 that a visual body cavity search would result in the discovery of contraband or weapons. On or about
18 January 23, 2003, the charges filed against Mr. ZERN were dismissed. Defendants had no reasonable
19 suspicion that a visual body cavity search would result in the discovery of contraband or weapons.

20 C. LISA GIAMPAOLI

21 20. On or about July 19, 2002, plaintiff LISA GIAMPAOLI was arrested because her dog
22 allegedly bit one of the young males harassing her outside of a computer/video cafe. Ms.
23 GIAMPAOLI was taken to the San Francisco County Jail where she was booked, placed in a holding
24 cell and directed to disrobe in front of a male officer. When Ms. GIAMPAOLI stated she believed she
25 had the right to have some privacy and should not be required to remove her clothes in front of a male
26 officer, she was grabbed and dragged into the cold room where male and female officers, Does 17, 18

1 & 19, pinned her to the ground and forcibly removed her pants, shirt and underwear. Her bra was cut
2 off of her body and she was left naked in the cold room for approximately 12 hours.

3 21. During the time Ms. GIAMPAOLI was kept in the cold room, approximately every 20
4 minutes someone pounded on the door and a male officer would look in and see her naked. She had
5 only a hole in the ground to use as a toilet.

6 22. Ms. GIAMPAOLI was released the following day and no charges were ever filed
7 against her. Defendants had no reasonable suspicion that a visual body cavity search would result in
8 the discovery of contraband or weapons.

9 D. MARCY CORNEAU

10 23. On or about September 5, 2003, plaintiff MARCY CORNEAU was arrested for
11 allegedly fighting with her boyfriend. At the San Francisco County Jail where she was taken, she was
12 stripped and subjected to a visual body cavity search by Sheriff's Deputy, Doe 20, who required her to
13 bend over and spread her buttocks for visual examination of her anus and vaginal canal. Ms.
14 CORNEAU was released two days later and all charges against her were dismissed. Defendants had
15 no reasonable suspicion that a visual body cavity search would result in the discovery of contraband or
16 weapons.

17 E. ALEXIS BRONSON

18 24. On or about August 5, 2002, plaintiff ALEXIS BRONSON was arrested in San
19 Francisco for allegedly being drunk in public and transported to San Francisco County Jail where he
20 complied with Sheriff Deputy, Doe 21's directions to strip and submit to a visual body cavity search.
21 Because he was allegedly not coughing loudly enough during the cavity search, five deputies, Does 22
22 through 26, physically dragged him to a cold room where he was placed and kept naked for 12 hours
23 with no food or water offered. Defendants had no reasonable suspicion that a visual body cavity
24 search would result in the discovery of contraband or weapons. No charges were ever filed against
25 plaintiff BRONSON.
26

1 F. MICKY MANGOSING

2 25. On or about December 12, 2002, plaintiff MICKY MANGOSING was arrested for
3 allegedly being drunk in public and transported to the San Francisco County Jail and placed in a
4 holding cell. Because she attempted to communicate with her friend who was also arrested about the
5 whereabouts of her car keys, she was told to “shut up” by deputy Doe 27 and then forcibly removed
6 from the holding cell, thrown down onto the ground and dragged to a cold room by three deputies,
7 Does 28, 29 & 30, one of whom, defendant Doe 28, told her “take your clothes off bitch.” Her
8 clothes, including her bra and panties, were then torn off by defendants Does 28, 29 & 30 and she was
9 left in the cold room for 12 hours, naked, without food, water or toilet paper, and regularly observed
10 by a male deputy who kept looking in at her during her confinement. Defendants had no reasonable
11 suspicion that a visual body cavity search would result in the discovery of contraband or weapons.

12 26. Ms. MANGOSING was released the following day and no charges were ever filed
13 against her.

14 G. CHARLI JOHNSON

15 27. On or about August 30, 2001, plaintiff CHARLI JOHNSON was arrested allegedly for
16 public intoxication and transported to the San Francisco County Jail where she was stripped and
17 subjected to a visual body cavity search by two male deputies, Does 31 and 32. A full cavity search
18 was conducted and her tampon was removed by defendant Deputies Does 31 and 32. Ms. JOHNSON
19 was confined in a cold room, naked, for approximately 12 hours and regularly viewed by male officers
20 who looked in on her repeatedly. She was released the next day at approximately noon and no charges
21 were ever filed against her. Defendants had no reasonable suspicion that a visual body cavity search
22 would result in the discovery of contraband or weapons.

23 H. LEIGH FLEMING

24 28. On or about April 11, 2003, plaintiff LEIGH FLEMING was arrested in San Francisco
25 for allegedly disturbing the peace. She was transported to the San Francisco County Jail, subjected to
26 a visual body cavity search by deputy, defendant Doe 33, and then confined in a cold room for over

1 five hours, naked, during which time she was rattled by loud banging on the cell door every 20
2 minutes. No charges were ever filed against Ms. FLEMING. Defendants had no reasonable suspicion
3 that a visual body cavity search would result in the discovery of contraband or weapons.

4 I. LAURA TIMBROOK

5 29. On or about January 6, 2003, plaintiff LAURA TIMBROOK was arrested in San
6 Francisco on an old warrant for writing checks with insufficient funds, and transported to the San
7 Francisco County Jail where she was subjected to visual body cavity searches, twice, by deputies Does
8 34 and 35, without reasonable suspicion that such searches would be productive of contraband or
9 weapons. Defendants had no reasonable suspicion that a visual body cavity search would result in the
10 discovery of contraband or weapons.

11 30. Within six months of her arrest, plaintiff MARY BULL filed a group government tort
12 claim for herself and for all persons similarly situated (a copy of said claim is attached hereto as
13 Exhibit A, and incorporated herein to the extent relevant by this reference). Plaintiff BULL's group
14 claim was denied on or about April 7, 2003, allowing the filing of this Complaint.

15 31. Plaintiffs are informed and believe, and thereon allege, that defendants routinely follow
16 their policy, practice, and custom of subjecting pre-arraignment detainees, including plaintiffs, to strip
17 and visual body cavity searches without having, and recording in writing, a reasonable suspicion that
18 the search will be productive of contraband or weapons.

19 32. Plaintiffs are further informed and believe, and thereon allege, that defendants routinely
20 follow their policy, practice and custom of confining detainees, including plaintiffs, in "cold rooms" in
21 order to compel compliance with illegal orders or as punishment.

22 33. Plaintiffs are informed and believe, and thereon allege, that defendants have the ability
23 to identify all such similarly situated plaintiffs, specifically those who, while in defendants' custody, at
24 the San Francisco Jail since February 10, 2000, were subjected to strip searches and/or visual body
25 cavity searches prior to arraignment without defendants first having, and recording, a reasonable
26 suspicion that the searches would be productive of contraband or weapons.

1 34. Plaintiffs are further informed and believe, and thereon allege, that defendants have the
2 ability to identify all such similarly situated plaintiffs whom defendants confined in “cold rooms”
3 since February 10, 2000, as means to compel compliance with directives or as a punishment.

4 35. Defendant SHERIFF MICHAEL HENNESSEY is personally responsible for the
5 promulgation and continuation of the strip search policy, practice, and custom pursuant to which some
6 of the plaintiffs herein were subjected to the searches complained of herein.

7 36. Defendant SHERIFF MICHAEL HENNESSEY is also personally responsible for the
8 promulgation and continuation of the cold room policy, practice, and custom pursuant to which some
9 of the plaintiffs herein were confined in “cold rooms” as complained of herein.

10 37. As a result of being subjected to the searches complained of herein, each of the
11 plaintiffs suffered physical, mental, and emotional distress, invasion of privacy, and violation of due
12 process of law and state and federal statutory and constitutional rights, and is entitled to recover
13 damages according to proof, but, at a minimum, \$1,000 as specified in California Penal Code §
14 4030(p) and \$4,000 as specified in California Civil Code § 52 and § 52.1(b).

15 38. As a result of being placed in a “cold room” as complained of herein, each of the
16 plaintiffs suffered physical, mental, and emotional distress and violation of due process of law and
17 state and federal statutory and constitutional rights, and is entitled to recover damages according to
18 proof, but, a minimum, \$4,000 as specified in California Civil Code § 52 and § 52.1(b).

19 **CLASS CLAIMS**

20 39. The strip and visual body cavity searches to which plaintiffs were subjected were
21 performed pursuant to policies, practices, and customs of defendants SHERIFF HENNESSEY, CITY
22 AND COUNTY OF SAN FRANCISCO SHERIFF’S DEPARTMENT, CITY AND COUNTY OF
23 SAN FRANCISCO, and the individual deputies sued herein by the fictitious names 1 through 150
24 The searches complained of herein were performed without regard to the nature of the alleged offense
25 for which plaintiffs had been arrested, without regard to whether or not plaintiffs were eligible for cite
26 and release under Penal Code § 853.6, without regard to whether or not plaintiffs were eligible for

1 and/or were released on their own recognizance. Furthermore, the searches complained of herein were
2 performed without defendants having a reasonable belief that the plaintiffs so searched possessed
3 weapons or contraband, or that there existed facts supporting a reasonable belief that the searches
4 would produce contraband, and those facts being articulated and recorded in a supervisor-approved
5 document.

6 40. Defendants' use of the "cold room" to compel compliance from, and/or to punish
7 plaintiffs is in violation of Sections 1055 and 1083 of Title 15 of the California Code of Regulations
8 (promulgated under the authority of California Penal Code section 6030) and the State and Federal
9 Constitutions, in that defendants confine people to "cold rooms" to punish them and/or to compel
10 compliance with directives. Furthermore, defendants' practice of placing people in the cold room
11 naked is a violation of Section 1055, supra, and of plaintiffs' rights to due process of law.

12 41. Plaintiffs bring this action on their own behalf and on behalf of all persons similarly
13 situated pursuant to Rule 23, Federal Rules of Civil Procedure and California Code of Civil Procedure
14 § 382.

15 42. The class is defined to include all persons who, in the period from and including
16 February 10, 2000, to the present and continuing until this matter is adjudicated and the practices
17 complained of herein cease, were arrested and subjected to a pre-arraignment strip and/or visual body
18 cavity search at the San Francisco Jail without defendants having, and recording, a reasonable
19 suspicion that the search would be productive of contraband or weapons.

20 43. The class also includes all persons during the period from and including February 10,
21 2000, to the present and continuing until this matter is adjudicated and/or the practices complained of
22 herein cease, whom defendants improperly and unjustifiably confined in a cold room at the San
23 Francisco Jail as a punishment and/or to compel compliance with a directive.

24 44. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the members of the
25 class are so numerous that joinder of all members is impractical. Plaintiffs do not know the exact
26 number of class members. Plaintiffs are informed and believe, and thereupon allege, that there are

1 more than 100 persons per day who are arrested by defendants and/or in the custody of defendants and
2 subjected to the searches complained of herein as a result of defendants' policy, practice, and custom
3 relating to said searches. Plaintiffs are informed and believe, and thereupon allege, that defendants
4 improperly and unjustifiably confine more than 10 persons per day in cold rooms as punishment or to
5 compel compliance with directives. Plaintiffs are informed and believe, and therefore allege, that
6 there are tens of thousands of persons in the proposed class.

7 45. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiffs are
8 informed and believe, and thereupon allege, that there are many questions of fact common to the class
9 including, but not limited to: (1) whether defendants routinely subject all persons arrested to visual
10 body cavity searches prior to arraignment if they intend such persons to be housed in a San Francisco
11 County Jail; (2) whether persons are subjected to visual body cavity searches prior to arraignment
12 without there being any reasonable suspicion, based on specific or articulable facts, to believe any
13 particular arrestee has concealed drugs, weapons, and/or contraband in bodily cavities which could be
14 detected by means of a visual body cavity search; (3) whether the visual body cavity searches are
15 conducted in an area of privacy so that the searches cannot be observed by persons not participating in
16 the searches, or whether the visual body cavity searches are conducted in groups and/or in open areas
17 where they may be observed by persons not participating in the searches; and, (4) whether the visual
18 body cavity searches are reasonably related to defendants' penological interest to maintain the security
19 of the jail and whether or not there are less intrusive methods for protecting any such interest.

20 46. Plaintiffs are also informed and believe, and thereupon allege, that other common
21 questions of fact concern the design, temperature, upkeep, and use of the "cold rooms," including, but
22 not limited to: (1) whether the "cold rooms" are used to punish persons in defendants' custody; (2)
23 whether defendants properly monitor people placed in the "cold rooms"; (3) whether defendants
24 routinely fail to provide people placed in the "cold rooms" with sufficient clothing to protect those
25 persons' privacy; and, (4) whether defendants routinely fail to provide people confined in the "cold
26 rooms" with bedding.

1 47. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiffs are
2 informed and believe, and thereupon allege, that there are many questions of law common to the class
3 including, but are not limited to: (1) whether defendants may perform visual body cavity searches on
4 persons prior to their arraignment without reasonable suspicion, based on specific or articulable facts,
5 to believe any particular inmate has concealed drugs, weapons and/or contraband which would likely
6 be discovered by a visual body cavity search; (2) whether defendants may perform visual body cavity
7 searches on persons without first reasonably relating the use of the visual body cavity search to
8 defendants' penological interest to maintain the security of the jail and determining if there is a less
9 intrusive method to protect that interest; (3) whether visual body cavity searches may be conducted in
10 areas where the search can be observed by people not participating in the search without violating
11 plaintiffs' State and Federal constitutional rights and the protections afforded to plaintiffs under
12 California Penal Code section 4030; and, (4) whether or not defendants' strip search policy and
13 procedure is in accordance with the State and/or Federal Constitution.

14 48. Plaintiffs are also informed and believe, and thereupon allege, that other common
15 questions of law concern the nature, conditions, and temperature of the "cold rooms," including, but
16 not limited to: (1) whether defendants may use the cold rooms in the San Francisco County Jails for
17 any reasons other than those stated in the Section 1055 of Title 15 of the California Code of
18 Regulations without violating plaintiffs' State and Federal constitutional rights protected by the Fourth
19 and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983; (2) whether or
20 not defendants' "cold room" policies, practices, and customs are in accordance with the Constitution
21 and laws of the State of California and/or the United States of America; and (3) whether or not
22 defendants have established and implemented written plans as directed by Section 1050 of Title 15 of
23 the California Code of Regulations (promulgated in under the authority of California Penal Code
24 section 6030).

25 49. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the claims of the
26 representative plaintiffs are typical of the class. Plaintiffs were searched, prior to arraignment, without

1 reasonable suspicion that a strip or visual body cavity search would produce drugs, weapons or
2 contraband (and without the facts supporting any such suspicion being articulated in a supervisor-
3 approved writing), and plaintiff BULL was placed in a “cold room,” without sufficient clothing to
4 protect her privacy, as punishment for her refusal to consent to a visual body cavity search.
5 Representative plaintiffs have the same interests and suffered the same type of injuries as all of the
6 class members. Plaintiffs’ claims arose because of defendants’ policy, practice, and custom of
7 subjecting arrestees to strip and/or visual body cavity searches before arraignment without having, and
8 recording in writing, a reasonable suspicion that the search would be productive of contraband or
9 weapons. Additionally, plaintiff BULL, in accordance with defendants’ policy, practice, and custom
10 was improperly and unjustifiably confined in a “cold room” as punishment after defendants used the
11 threat of such confinement unsuccessfully to coerce plaintiff to comply with their directives.
12 Plaintiffs’ claims are based upon the same legal theories as the claims of the class members. Each
13 class member suffered actual damages either as a result of being subjected to a visual body cavity
14 search and/or as a result of being improperly and unjustifiably placed and confined in a “cold room.”
15 The actual damages suffered by representative plaintiffs are similar in type and amount to the actual
16 damages suffered by each class member.

17 50. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the representative
18 plaintiffs will fairly and adequately protect the class interests. Plaintiffs’ interests are consistent with
19 and not antagonistic to the interests of the class.

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

24 52. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(1)(B), prosecutions of
25 separate actions by individual members of the class would create a risk of inconsistent adjudications
26

1 with respect to individual members of the class which would, as a practical matter, substantially
2 impair or impede the interests of the other members of the class to protect their interests.

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

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

19 55. Plaintiffs do not know the identities of all of the class members. Plaintiffs are informed
20 and believe, and thereupon allege, that the identities of the class members may be ascertained from
21 records maintained by the CITY AND COUNTY OF SAN FRANCISCO and defendant SHERIFF
22 MICHAEL HENNESSEY and defendant CITY AND COUNTY OF SAN FRANCISCO SHERIFF'S
23 DEPARTMENT. Plaintiffs are informed and believe, and thereupon allege, that defendants' records
24 reflect the identities, including addresses and telephone numbers, of the persons who have been held in
25 custody in the San Francisco Jails. Plaintiffs are informed and believe, and thereupon allege, that
26 records of, and maintained by defendants reflect who was subject to a strip and/or visual body cavity

1 search, when the search occurred, where the search occurred, whether any reasonable suspicion for the
2 search existed and was recorded in a supervisor-approved writing, when persons searched were
3 arraigned, the charges on which such persons were arrested, whether persons were confined in a “cold
4 room,” the justification recorded for placing individuals in a “cold room,” what articles of clothing
5 and/or bedding, if any, were provided to people placed in “cold rooms,” how long individuals
6 remained in a “cold room,” and what treatment they received while so confined. Plaintiffs are
7 informed and believe, and thereupon allege, that all of the foregoing information is contained in
8 defendants’ computer system and that the information necessary to identify the class members, by last
9 known addresses, and the dates and reasons for their arrests and/or release from custody, is readily
10 available from said computer system.

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

- 18 i. The pendency of the class action and the issues common to the class;
- 19 ii. The nature of the action;
- 20 iii. Their right to “opt out” of the action within a given time, in which event they
21 will not be bound by a decision rendered in the class action;
- 22 iv. Their right, if they do not “opt out,” to be represented by their own counsel and
23 to enter an appearance in the case; otherwise they will be represented by the
24 named class plaintiffs and their counsel; and

1 v. Their right, if they do not “opt out,” to share in any recovery in favor of the
2 class, and conversely to be bound by any judgment on the common issues
3 adverse to the class.

4 **COUNT ONE**

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

7 57. Defendants’ policies, practices, and customs regarding the strip and visual body cavity
8 searches complained of herein violated plaintiffs’ rights under the Fourth Amendment to be free from
9 unreasonable searches and seizures, violated said plaintiffs’ rights to due process and privacy under
10 the Fourteenth Amendment, and directly and proximately damaged plaintiffs as herein alleged,
11 entitling plaintiffs to recover damages for said constitutional violations pursuant to 42 U.S.C. § 1983.

12 WHEREFORE, plaintiffs pray for relief as hereunder appears.

13 **COUNT TWO**

14 (Violation of the Fourth and Fourteenth Amendments to U.S. Constitution, 42 U.S.C. § 1983,
15 on behalf of Plaintiffs and all persons similarly situated)

16 58. Defendants’ policies, practices, and customs regarding their use of “cold rooms” as
17 complained of herein violated plaintiffs’ Fourth Amendment right to be free from unreasonable
18 searches and seizures and plaintiffs’ rights to due process under the Fourteenth Amendment, and
19 directly and proximately damaged plaintiffs as herein alleged, entitling plaintiffs to recover damages
20 for said constitutional violations pursuant to 42 U.S.C. § 1983, in addition to other damages.

21 WHEREFORE, plaintiffs pray for relief as hereunder appears.

22 **COUNT THREE**

23 (California State Unruh Civil Rights Act, Civil Code §§ 52 and 52.1,
24 on behalf of Plaintiffs and all persons similarly situated)

25 59. Defendants’ policies, practices, and customs regarding the strip and visual body cavity
26 searches complained of herein violated plaintiffs’ rights to privacy as secured by Article I, Section 1 of
the California Constitution and directly and proximately damaged plaintiffs as herein alleged, entitling
said plaintiffs to recover a minimum of \$4,000 each pursuant to California Civil Code § 52.1 and § 52,
in addition to other damages.

1 WHEREFORE, plaintiffs pray for relief as hereunder appears.

2 **COUNT FOUR**

3 (Violation of California Penal Code § 4030,
4 California State Unruh Civil Rights Act, Civil Code §§ 52 and 52.1,
5 on behalf of Plaintiffs and all persons similarly situated)

6 60. Defendants’ policies, practices, and customs regarding the strip and visual body cavity
7 searches complained of herein violated rights secured to plaintiffs under California Penal Code § 4030
8 and directly and proximately damaged plaintiffs as herein alleged, entitling said plaintiffs to recover a
9 minimum of \$1,000 each pursuant to California Penal Code § 4030(p), and to further minimum
10 damages of \$4,000 each pursuant to California Civil Code § 52.1 and § 52, in addition to other
11 damages.

12 WHEREFORE, plaintiffs pray for relief as hereunder appears.

13 **COUNT FIVE**

14 (California State Unruh Civil Rights Act, Civil Code §§ 52 and 52.1,
15 on behalf of all plaintiffs similarly situated)

16 61. Defendants’ policies, practices, and customs regarding their use of “cold rooms” as
17 complained of herein has violated plaintiffs’ rights to due process of law and freedom from
18 unreasonable searches and seizures as secured by the California Sate Constitution, Article I, Section
19 24, and directly and proximately damaged plaintiffs as herein alleged, entitling each said plaintiff to
20 recover a minimum of \$4,000 each pursuant to California Civil Code § 52.1 and § 52, in addition to
21 other damages.

22 WHEREFORE, plaintiffs pray relief as hereunder appears.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, plaintiffs seek judgment as follows:

- 25 1. For declaratory and injunctive relief declaring illegal and enjoining, preliminarily and
26 permanently, defendants’ policies, practices, and customs of subjecting pre-arraignment detainees to
strip and visual body cavity searches without having a reasonable suspicion that such searches would

1 be productive of contraband or weapons and of using the "cold rooms" to compel compliance or to
2 punish detainees.

3 2. Certification of the action as a class action;

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

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

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

10 6. Attorneys' fees and costs under 42 U.S.C. § 1988, California Civil Code § 52(b)(3),
11 California Civil Code § 52.1(h), and California Code of Civil Procedure § 1021.5; and

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

13 A JURY TRIAL IS HEREBY DEMANDED.

14 DATED: January 12, 2004

Respectfully submitted,

LAW OFFICE OF MARK E. MERIN
CASPER MEADOWS & SCHWARTZ

17
18 BY: _____
Mark E. Merin
Attorney for Plaintiffs

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