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10 SHANNON GALLAGHER

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 SHANNON GALLAGHER, ROBERTA
BAUCCIO, GRACE CARLAND, and all
16 others similarly situated,

17 Plaintiffs,

18 vs.

19 COUNTY OF SAN MATEO; SAN MATEO
COUNTY SHERIFF'S DEPARTMENT;
20 SAN MATEO COUNTY SHERIFF DON
HORSLEY, in his individual and official
21 capacity; SAN MATEO COUNTY
SHERIFF'S DEPUTIES DOES 1
22 THROUGH 100; and DOES 1 THROUGH,
150 INCLUSIVE, et al.,

23 Defendants.
24

Case No. **04-0448 SBA**

**AMENDED CLASS ACTION
COMPLAINT**

42 U.S.C. § 1983
Supplemental State Claims

DEMAND FOR JURY TRIAL

25 PLAINTIFFS ALLEGE:

26 **INTRODUCTION**

27 This is an action for declaratory and injunctive relief, damages, and punitive
28 damages against the COUNTY OF SAN MATEO, its SHERIFF, DON HORSLEY,

1 SHERIFF'S DEPARTMENT, and SHERIFF DEPUTIES sued herein by their fictitious
2 names for violations of plaintiffs' constitutional rights resulting from application of the
3 County of San Mateo's and the Sheriff's policies, practices, and customs concerning
4 the use of strip searches and visual body cavity searches in the San Mateo County
5 Jails. Plaintiffs seek an order declaring illegal defendants' policy of subjecting
6 detainees in their custody to strip and visual body cavity searches before they are
7 arraigned and without having any reasonable suspicion that the searches will be
8 productive of contraband.

9 Defendants' strip search and visual body cavity search policies, practices, and
10 customs violate plaintiffs' rights secured to them by the Fourth and Fourteenth
11 Amendments to the U.S. Constitution and entitle plaintiffs to recover damages under
12 the Federal Civil Rights Act (42 U.S.C. sec 1983).

13 Additionally, plaintiffs include supplemental claims under California state law
14 against defendants: 1) for violation of California Penal Code sec 4030 which prohibits
15 pre-arraignment strip searches of most misdemeanors and provides for minimum
16 damages of \$1,000 for each illegal search; and 2) for violation of the Unruh Civil Rights
17 Act (California Civil Code sec 52 and 52.1(b)) pursuant to which each plaintiff denied a
18 statutory or state or federal Constitutional right is entitled to recover a minimum of
19 \$4,000 for each violation.

20 **JURISDICTION**

21 1. This action is brought pursuant to 42 USC sec 1983 and 1988, and the
22 Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is
23 founded upon 28 USC sec 1331 and 1341(3) and (4) and the aforementioned statutory
24 and constitutional provisions.

25 2. The court has supplemental jurisdiction over plaintiffs' state claims under
26 28 USC sec 1367(a).

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

PARTIES

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2 4. Plaintiffs SHANNON GALLAGHER, ROBERTA BAUCCIO, GRACE
3 CARLAND, and all those similarly situated, are, and at all material times herein, were
4 citizens of the United States and residents of the state of California who were arrested
5 within the period beginning three (3) years before July 10, 2003, and continuing to this
6 date, and who were subjected to strip and/or visual body cavity searches at any and all
7 San Mateo County Jails (hereinafter referred to as the "San Mateo Jail"), prior to being
8 arraigned and/or without the defendants first having, and recording in writing, a
9 reasonable suspicion that the searches would be productive of contraband or
10 weapons.

11 5. Defendant COUNTY OF SAN MATEO SHERIFF DON HORSLEY is, and
12 at all material times referred to herein, was the duly elected Sheriff of the county of
13 San Mateo, responsible for administering the Jail facilities and for making, overseeing,
14 and implementing the policies, practices, and customs challenged herein relating to
15 the operation of the San Mateo Jail. He is sued in his individual and official capacities.

16 6. Defendants SAN MATEO COUNTY SHERIFF DEPUTIES sued herein
17 by their fictitious names (Does 1 through 150) are all deputies who, as part of their
18 duties at the San Mateo Jails, subjected plaintiff to pre-arraignment strip and/or visual
19 body cavity searches without first having, and recording in writing, a reasonable
20 suspicion that the searches would be productive of contraband or weapons.

21 7. At all material times mentioned herein, each of the defendants was
22 acting under the color of law, to wit, under color of statutes, ordinances, regulations,
23 policies, customs and usages of the State of California, the COUNTY OF SAN MATEO
24 and/or the SAN MATEO COUNTY SHERIFF.

25 8. Defendant COUNTY OF SAN MATEO is, and at all material times
26 referred to herein, was, a division of the state of California, that maintained or
27 permitted an official policy or custom or practice causing or permitting the occurrence
28 of the types of wrongs complained of herein, which wrongs damaged plaintiffs as

1 herein alleged. Plaintiffs' allegations against the COUNTY are based on acts and
2 omissions of the SHERIFF and his deputies and on acts and omissions of persons
3 who are COUNTY employees, and on the COUNTY's breach of its duty to protect
4 plaintiffs from the wrongful conduct of said persons and employees.

5 9. Defendants SAN MATEO COUNTY SHERIFF'S DEPARTMENT and
6 SAN MATEO COUNTY SHERIFF DON HORSLEY, in his individual and official
7 capacity, also maintained or permitted an official policy or custom or practice causing
8 or permitting the occurrence of the types of wrongs complained of herein, which
9 wrongs damaged plaintiffs as herein alleged.

10 10. Class action plaintiffs are those similarly situated who, during the period
11 beginning three (3) years before July 10, 2003, and continuing to this date, were
12 subjected by defendants to pre-arraignment strip and/or visual body cavity searches
13 without defendants having, and recording in writing, a reasonable suspicion that the
14 searches would be productive of contraband or weapons.

15 **FACTS**

16 11. On July 10, 2003 at approximately 1:00 p.m., in the City of Pacifica,
17 plaintiff, SHANNON GALLAGHER was arrested by a member of the Pacifica Police
18 Department on a three year old San Francisco County traffic warrant for driving on a
19 suspended license.

20 12. Despite the fact that Shannon Gallagher had a valid driver's license in
21 her possession that had been issued nine months earlier, she was arrested and taken
22 to Pacifica Police Department and placed in a holding cell.

23 13. Shannon Gallagher remained at Pacifica Police Department for a short
24 period of time, and was then taken to the San Mateo County Jail at Redwood City
25 where she remained for three hours and was subjected to a strip search and a visual
26 body cavity search.

27 14. Shannon Gallagher remained at the San Mateo County Jail in Redwood
28 City for approximately three hours when she was then handcuffed and placed in a van

1 and transported to the San Mateo County Women's Correctional Center.

2 15. Upon entry to the correctional facility, Shannon Gallagher was strip
3 searched for a second time and once again subjected to a visual body cavity search.

4 16. During both of these visual body cavity searches, Shannon Gallagher
5 was compelled to expose her genitalia and other private parts and was left standing
6 naked for a significant period of time. She remained in San Mateo County Women's
7 Correctional Center for several more hours prior to bailing out.

8 17. Plaintiff was given a court date of August 18, 2003 in San Francisco
9 County when the charges against her were dropped.

10 18. Within six months of her arrest, plaintiff SHANNON GALLAGHER filed a
11 group government tort claim for herself and for all persons similarly situated (a copy of
12 said claim is attached hereto as Exhibit A, and incorporated herein to the extent
13 relevant by this reference). Plaintiff GALLAGHER's group claim was denied on or
14 about January 15, 2004 allowing the filing of this Complaint.

15 19. ROBERTA BAUCCIO is a 74 year old retired secretary, who, on August
16 13, 2002, was arrested for driving while under the influence and taken to the San
17 Mateo County Jail where, prior to her arraignment, she was subjected to a visual body
18 cavity search where she was compelled to expose her genitalia and other private
19 parts.

20 20. On September 3, 2002, she was arrested again for driving on a
21 suspended license in violation of California Vehicle Code Section 14601, and was
22 once again subjected to an identical visual body cavity search.

23 21. Grace Carland is 64 years old and was arrested in San Mateo County on
24 April 16, 2002 for violations of California Penal Code Sections 487 and 459. She was
25 taken to the Maguire detention facility at 7:30 in the morning and was subjected to a
26 visual body cavity search where she was compelled to expose her genitalia and other
27 private parts prior to her arraignment later that day. She was never taken to the San
28 Mateo County Women's Correctional Center and bailed out later that afternoon.

1 22. Plaintiffs are informed and believe, and thereon allege, that defendants
2 routinely follow their policy, practice, and custom of subjection pre-arraignment
3 detainees, including, plaintiffs, to strip and visual body cavity searches without having,
4 and recording in writing, a reasonable suspicion that the search will be productive of
5 contraband or weapons.

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

12 24. Defendant SHERIFF DON HORSLEY is personally responsible for the
13 promulgation and continuation of the strip search policy, practice, and custom
14 pursuant to which some of the plaintiffs herein were subjected to searches complained
15 of herein.

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

22 **CLASS CLAIMS**

23 26. The strip and visual body cavity searches to which plaintiffs were
24 subjected were performed pursuant to policies, practices, and customs of defendants
25 SHERIFF HORSLEY, COUNTY OF SAN MATEO SHERIFF'S DEPARTMENT,
26 COUNTY OF SAN MATEO, and the individual deputies sued herein by the fictitious
27 names 1 through 150. The searches complained of herein were performed without
28 regard to the nature of the alleged offenses for which plaintiffs had been arrested,

1 without regard to whether or not plaintiffs were eligible for cite and release under Penal
2 Code sec 853.6, without regard to whether or not plaintiffs were eligible for and/or
3 were released on their own recognizance. Furthermore, the searches complained of
4 herein were performed without defendants having a reasonable belief that the plaintiffs
5 so searched possessed weapons or contraband, or that there existed facts supporting
6 a reasonable belief that the searches would produce contraband, and those facts
7 being articulated and recorded in a supervisor-approved document.

8 27. Plaintiffs bring this action on her own behalf and on behalf of all persons
9 similarly situated pursuant to Rule 23, Federal Rules of Civil Procedure and California
10 Code of Civil Procedure sec 382.

11 28. The class is defined to include all persons who, in the period from and
12 including July 10, 2003, to the present and continuing until this matter is adjudicated
13 and the practices complained of herein cease, were arrested and subjected to a pre-
14 arraignment strip and/or visual body cavity search at the San Mateo Jail without
15 defendants having, and recording, a reasonable suspicion that the search would be
16 productive of contraband or weapons.

17 29. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the
18 members of the class are so numerous that joinder of all members is impractical.
19 Plaintiffs do not know the exact number of class members. Plaintiffs are informed and
20 believe, and thereupon allege, that there are more than 100 persons per day who are
21 arrested by defendants and/or in the custody of defendants and subjected to the
22 searches complained of herein as a result of defendants' policy, practice, and custom
23 relating to said searches. Plaintiffs are informed and believe, and therefore allege,
24 that there are tens of thousands of persons in the proposed class.

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

1 to arraignment if they intend such persons to be housed in a San Mateo County Jail;
2 (2) whether persons are subjected to visual body cavity searches prior to arraignment
3 without there being any reasonable suspicion, based on specific or articulable facts, to
4 believe any particular arrestee has concealed drugs, weapons, and/or contraband in
5 bodily cavities which could be detected by means of a visual body cavity search; (3)
6 whether the visual body cavity searches are conducted in an area of privacy so that
7 the searches cannot be observed by persons not participating in the searches, or
8 whether the visual body cavity searches are conducted in groups and/or in open areas
9 where they may be observed by persons not participating in the searches; and, (4)
10 whether the visual body cavity searches are reasonably related to defendants'
11 penological interest to maintain the security of the jail and whether or not there are
12 less intrusive methods for protecting any such interest.

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

1 32. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the
2 claims of the representative plaintiffs are typical of the class. Plaintiffs were searched,
3 prior to arraignment, without reasonable suspicion that a strip or visual body cavity
4 search would produce drugs, weapons or contraband (and without the facts supporting
5 any such suspicion being articulated in a supervisor-approved writing). Representative
6 plaintiffs have the same interests and suffered the same type of injuries as all of the
7 class members. Plaintiffs' claims arose because of defendants' policy, practice, and
8 custom of subjecting arrestees to strip and/or visual body cavity searches before
9 arraignment without having, and recording in writing, a reasonable suspicion that the
10 search would be productive of contraband or weapons. Plaintiffs' claims are based
11 upon the same legal theories as the claims of the class members. Each class member
12 suffered actual damages as a result of being subjected to a visual body cavity search.
13 The actual damages suffered by the representative plaintiffs are similar in type and
14 amount to the actual damages suffered by each class member.

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

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

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

28 36. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(2),

1 plaintiffs are informed and believe, and thereupon allege, that defendants have acted
2 on grounds generally applicable to the class, thereby making appropriate the final
3 injunctive or declaratory relief with respect to the class as a whole.

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

18 38. Plaintiffs do not know the identities of all of the class members. Plaintiffs
19 are informed and believe, and thereupon allege, that the identities of the class
20 members may be ascertained from records maintained by the COUNTY OF SAN
21 MATEO and defendant SHERIFF DON HORSLEY and defendant COUNTY OF SAN
22 MATEO SHERIFF'S DEPARTMENT. Plaintiffs are informed and believe, and
23 thereupon allege, that defendants' records reflect the identities, including addresses
24 and telephone numbers, of the persons who have been held in custody in the San
25 Mateo Jails. Plaintiffs are informed and believe, and thereupon allege, that records of,
26 and maintained by defendants reflect who was subject to a strip and/or visual body
27 cavity search, when the search occurred, where the search occurred, whether any
28 reasonable suspicion for the search existed and was recorded in a supervisor-

1 approved writing, when persons searched were arraigned, the charges on which such
2 persons were arrested, and what treatment they received while so confined. Plaintiffs
3 are informed and believe, and thereupon allege, that all of the foregoing information is
4 contained in defendants' computer system and that the information necessary to
5 identify the class members, by last known addresses, and the dates and reasons for
6 their arrests and/or release from custody, is readily available from said computer
7 system.

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

- 16 1. The pendency of the class action and the issues common to the
17 class;
- 18 2. The nature of the action;
- 19 3. Their right to "opt out" of the action within a given time, in which
20 event they will not be bound by a decision rendered in the class
21 action;
- 22 4. Their right, if they do not "opt out," to be represented by their own
23 counsel and to enter an appearance in the case; otherwise they
24 will be represented by the named class plaintiff and their counsel;
25 and
- 26 5. Their right, if they do not "opt out," to share in any recovery in
27 favor of the class, and conversely to be bound by any judgment
28 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 Plaintiff and all persons similarly situated)

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

WHEREFORE, plaintiffs pray for relief as hereunder appears.

COUNT TWO

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

41. Defendants' policies, practices, and customs regarding the strip and visual body cavity 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 sec 52.1 and sec 52, in addition to other damages.

WHEREFORE, plaintiffs pray for relief as hereunder appears.

COUNT THREE

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

42. Defendants' policies, practices, and customs regarding the strip and visual body cavity searches complained of herein violated rights secured to plaintiffs under California Penal Code sec 4030 and directly and proximately damaged plaintiffs as herein alleged, entitling said plaintiffs to recover a minimum of \$1,000 each pursuant to California Penal Code sec 4030(p), and to further minimum damages of

1 \$4,000 each pursuant to California Civil Code sec 52.1 and sec 52, in addition to other
2 damages.

3 WHEREFORE, plaintiffs pray for relief as hereunder appears.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, plaintiffs seek judgment as follows:

6 1. For declaratory and injunctive relief declaring illegal and enjoining,
7 preliminarily and permanently, defendants' policies, practices, and customs of
8 subjecting pre-arraignment detainees to strip and visual body cavity searches without
9 having a reasonable suspicion that such searches would be productive of contraband
10 or weapons.

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

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

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

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

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

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

24 A JURY TRIAL IS HEREBY DEMANDED.

25
26 Dated: July 17, 2006

/s/
Andrew C. Schwartz
CASPER, MEADOWS, SCHWARTZ & COOK
Attorneys for Plaintiffs