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10 Attorneys for Plaintiff  
SHANNON GALLAGHER  
11

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14

15 SHANNON GALLAGHER, and all others  
similarly situated,

16 Plaintiffs,

17 vs.

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

23 Defendants.  
24

Case No.

**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 plaintiff's 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. Plaintiff seeks 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 plaintiff's rights secured to them by the Fourth and Fourteenth  
11 Amendments to the U.S. Constitution and entitle plaintiff to recover damages under  
12 the Federal Civil Rights Act (42 U.S.C. sec 1983).

13 Additionally, plaintiff includes 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 plaintiff's 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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4. Plaintiff SHANNON GALLAGHER, and all those similarly situated, are, and at all material times herein, were citizens of the United States and residents of the state of California who were arrested within the period beginning three (3) years before July 10, 2000, and continuing to this date, and who were subjected to strip and/or visual body cavity searches at any and all San Mateo County Jails (hereinafter referred to as the "San Mateo Jail"), prior to being arraigned and/or without the defendants first having, and recording in writing, a reasonable suspicion that the searches would be productive of contraband or weapons.

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

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

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

8. Defendant COUNTY OF SAN MATEO is, and at all material times referred to herein, was, a division of the state of California, that maintained or permitted an official policy or custom or practice causing or permitting the occurrence of the types of wrongs complained of herein, which wrongs damaged plaintiff as herein alleged. Plaintiff's allegations against the COUNTY are based on acts and omissions

1 of the SHERIFF and his deputies and on acts and omissions of persons who are  
2 COUNTY employees, and on the COUNTY's breach of its duty to protect plaintiff from  
3 the wrongful conduct of said persons and employees.

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

9 10. Class action plaintiffs are those similarly situated who, during the period  
10 beginning three (3) years before July 10, 2000, and continuing to this date, were  
11 subjected by defendants to pre-arraignment strip and/or visual body cavity searches  
12 without defendants having, and recording in writing, a reasonable suspicion that the  
13 searches would be productive of contraband or weapons.

14 **FACTS**

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

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

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

26 14. Plaintiff remained at the San Mateo County Jail in Redwood City for  
27 approximately three hours when she was then handcuffed and placed in a van and  
28 transported to the San Mateo County Women's Correctional Center.

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

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

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

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

14 19. Plaintiff is informed and believes, and thereon alleges, that defendants  
15 routinely follow their policy, practice, and custom of subjection pre-arraignment  
16 detainees, including, plaintiffs, to strip and visual body cavity searches without having,  
17 and recording in writing, a reasonable suspicion that the search will be productive of  
18 contraband or weapons.

19 20. Plaintiff is informed and believes, and thereon alleges, that defendants  
20 have the ability to identify all such similarly situated plaintiffs, specifically those who,  
21 while in defendants' custody, at the San Mateo Jail since July 10, 2000, were  
22 subjected to strip searches and/or visual body cavity searches prior to arraignment  
23 without defendants first having, and recording, a reasonable suspicion that the  
24 searches would be productive of contraband or weapons.

25 21. Defendant SHERIFF DON HORSLEY is personally responsible for the  
26 promulgation and continuation of the strip search policy, practice, and custom  
27 pursuant to which some of the plaintiffs herein were subjected to searches complained  
28 of herein.

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

7 **CLASS CLAIMS**

8 23. The strip and visual body cavity searches to which plaintiff were  
9 subjected were performed pursuant to policies, practices, and customs of defendants  
10 SHERIFF HORSLEY, COUNTY OF SAN MATEO SHERIFF'S DEPARTMENT,  
11 COUNTY OF SAN MATEO, and the individual deputies sued herein by the fictitious  
12 names 1 through 150. The searches complained of herein were performed without  
13 regard to the nature of the alleged offense for which plaintiff had been arrested,  
14 without regard to whether or not plaintiff were eligible for cite and release under Penal  
15 Code sec 853.6, without regard to whether or not plaintiff was eligible for and/or were  
16 released on their own recognizance. Furthermore, the searches complained of herein  
17 were performed without defendants having a reasonable belief that the plaintiff so  
18 searched possessed weapons or contraband, or that there existed facts supporting a  
19 reasonable belief that the searches would produce contraband, and those facts being  
20 articulated and recorded in a supervisor-approved document.

21 24. Plaintiff brings this action on her own behalf and on behalf of all persons  
22 similarly situated pursuant to Rule 23, Federal Rules of Civil Procedure and California  
23 Code of Civil Procedure sec 382.

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

1 productive of contraband or weapons.

2 26. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the  
3 members of the class are so numerous that joinder of all members is impractical.  
4 Plaintiff does not know the exact number of class members. Plaintiff is informed and  
5 believe, and thereupon allege, that there are more than 100 persons per day who are  
6 arrested by defendants and/or in the custody of defendants and subjected to the  
7 searches complained of herein as a result of defendants' policy, practice, and custom  
8 relating to said searches. Plaintiff is informed and believe, and therefore allege, that  
9 there are tens of thousands of persons in the proposed class.

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

26 28. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiff  
27 is informed and believes, and thereupon alleges, that there are many questions of law  
28 common to the class including, but are not limited to: (1) whether defendants may



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

13 29. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the  
14 claims of the representative plaintiff are typical of the class. Plaintiff was searched,  
15 prior to arraignment, without reasonable suspicion that a strip or visual body cavity  
16 search would produce drugs, weapons or contraband (and without the facts supporting  
17 any such suspicion being articulated in a supervisor-approved writing). Representative  
18 plaintiff has the same interests and suffered the same type of injuries as all of the  
19 class members. Plaintiff's claims arose because of defendants' policy, practice, and  
20 custom of subjecting arrestees to strip and/or visual body cavity searches before  
21 arraignment without having, and recording in writing, a reasonable suspicion that the  
22 search would be productive of contraband or weapons. Plaintiff's claims are based  
23 upon the same legal theories as the claims of the class members. Each class member  
24 suffered actual damages as a result of being subjected to a visual body cavity search.  
25 The actual damages suffered by representative plaintiff are similar in type and amount  
26 to the actual damages suffered by each class member.

27 30. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the  
28 representative plaintiff will fairly and adequately protect the class interests. Plaintiff's



1 interests are consistent with and not antagonistic to the interests of the class.

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

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

12 33. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(2),  
13 plaintiff is informed and believes, and thereupon alleges, that defendants have acted  
14 on grounds generally applicable to the class, thereby making appropriate the final  
15 injunctive or declaratory relief with respect to the class as a whole.

16 34. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), this  
17 class action is superior to other available methods for the fair and equitable  
18 adjudication of the controversy between the parties. Plaintiff is informed and believes,  
19 and thereupon alleges, that the interests of members of the class in individually  
20 controlling the prosecution of a separate action is low, in that most class members  
21 would be unable individually to prosecute any action at all. Plaintiff is informed and  
22 believes, and thereupon alleges, that the amounts at stake for individuals are so small  
23 that separate suits would be impracticable. Plaintiff is informed and believes, and  
24 thereupon alleges, that most members of the class will not be able to find counsel to  
25 represent them. Plaintiff is informed and believes, and thereupon alleges, that it is  
26 desirable to concentrate all litigation in one forum because all of the claims arise in the  
27 same location; i.e., the COUNTY OF SAN MATEO. It will promote judicial efficiency to  
28 resolve the common questions of law and fact in one forum, rather than in multiple

1 courts.

2 35. Plaintiff does not know the identities of all of the class members. Plaintiff  
3 is informed and believes, and thereupon alleges, that the identities of the class  
4 members may be ascertained from records maintained by the COUNTY OF SAN  
5 MATEO and defendant SHERIFF DON HORSLEY and defendant COUNTY OF SAN  
6 MATEO SHERIFF'S DEPARTMENT. Plaintiff is informed and believes, and thereupon  
7 alleges, that defendants' records reflect the identities, including addresses and  
8 telephone numbers, of the persons who have been held in custody in the San Mateo  
9 Jails. Plaintiff is informed and believes, and thereupon alleges, that records of, and  
10 maintained by defendants reflect who was subject to a strip and/or visual body cavity  
11 search, when the search occurred, where the search occurred, whether any  
12 reasonable suspicion for the search existed and was recorded in a supervisor-  
13 approved writing, when persons searched were arraigned, the charges on which such  
14 persons were arrested, and what treatment they received while so confined. Plaintiff is  
15 informed and believes, and thereupon alleges, that all of the foregoing information is  
16 contained in defendants' computer system and that the information necessary to  
17 identify the class members, by last known addresses, and the dates and reasons for  
18 their arrests and/or release from custody, is readily available from said computer  
19 system.

20 36. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), class  
21 members must be furnished with the best notice practicable under the circumstances,  
22 including individual notice to all members who can be identified through reasonable  
23 effort. Plaintiff is informed and believes, and thereupon alleges, that defendants'  
24 computer records contain a last known address for class members. Plaintiff  
25 contemplates that individual notice will be given to class members at such last known  
26 address by first class mail. Plaintiff contemplates that the notice will inform class  
27 members of the following:

28 1. The pendency of the class action and the issues common to the

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class;

- 2. The nature of the action;
- 3. Their right to “opt out” of the action within a given time, in which event they will not be bound by a decision rendered in the class action;
- 4. Their right, if they do not “opt out,” to be represented by their own counsel and to enter an appearance in the case; otherwise they will be represented by the named class plaintiff and their counsel; and
- 5. Their right, if they do not “opt out,” to share in any recovery in favor of the class, and conversely to be bound by any judgment on the common issues adverse to the class.

**COUNT ONE**

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

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

WHEREFORE, plaintiff prays for relief as hereunder appears.

**COUNT TWO**

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

38. Defendants’ policies, practices, and customs regarding the strip and visual body cavity searches complained of herein violated plaintiff’s rights to privacy as secured by Article I, Section 1 of the California Constitution and directly and

1 proximately damaged plaintiff as herein alleged, entitling said plaintiff to recover a  
2 minimum of \$4,000 each pursuant to California Civil Code sec 52.1 and sec 52, in  
3 addition to other damages.

4 WHEREFORE, plaintiff pray for relief as hereunder appears.

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**COUNT THREE**

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

9 39. Defendants' policies, practices, and customs regarding the strip and  
10 visual body cavity searches complained of herein violated rights secured to plaintiff  
11 under California Penal Code sec 4030 and directly and proximately damaged plaintiff  
12 as herein alleged, entitling said plaintiff to recover a minimum of \$1,000 each pursuant  
13 to California Penal Code sec 4030(p), and to further minimum damages of \$4,000  
14 each pursuant to California Civil Code sec 52.1 and sec 52, in addition to other  
15 damages.

16 WHEREFORE, plaintiff prays for relief as hereunder appears.

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**PRAYER FOR RELIEF**

18 WHEREFORE, plaintiff seeks judgment as follows:

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

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

25 3. For compensatory, general, and special damages for each  
26 representative and for each member of the class of plaintiff, as against all defendants;

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

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

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

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

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9 A JURY TRIAL IS HEREBY DEMANDED.

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11 Dated: \_\_\_\_\_

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Andrew C. Schwartz  
**CASPER, MEADOWS & SCHWARTZ**  
Attorneys for Plaintiff

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