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5 Attorneys for Plaintiff

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7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA

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10 ELIN SPELLMAN;

11 Plaintiff,

12 v.

13 HUMBOLDT COUNTY SHERIFF'S  
14 DEPUTY ANNE GOLDSMITH;  
15 HUMBOLDT COUNTY SHERIFF'S  
16 DEPARTMENT; COUNTY OF  
HUMBOLDT;

17 Defendant.

CASE NO:

**CIVIL RIGHTS COMPLAINT**

**DEMAND FOR JURY TRIAL**

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19 PLAINTIFF ALLEGES:

20 **INTRODUCTION**

21 Plaintiff ELIN SPELLMAN brings this action against HUMBOLDT COUNTY  
22 SHERIFF'S DEPUTY ANNE GOLDSMITH (hereinafter referred to as "GOLDSMITH") who  
23 subjected her to an unreasonable search in the Humboldt County Jail in violation of plaintiff's  
24 federal and state constitutional and statutory rights. Plaintiff seeks an award of general and  
25 punitive damages to compensate her for the unreasonable search.

26 Defendant's search violated those rights of plaintiff that are secured by the Fourth and  
27 Fourteenth Amendments to the United States Constitution and entitle plaintiff to recover damages  
28 under the Federal Civil Rights Act (42 U.S.C. § 1983).

1 Additionally, plaintiff includes supplemental claims under California state law against  
 2 defendant: 1) for violation of California Penal Code § 4030 which prohibits pre-arraignment strip  
 3 searches of most misdemeanants, requires that any such searches be performed by members of the  
 4 same sex, in an area of privacy outside the view of those not participating in the search, only after  
 5 being pre-approved in writing by a supervising officer, and provides for minimum damages of  
 6 \$1,000 for each illegal search; 2) violation of the California Constitutional right to privacy (Article  
 7 I, Section 1); and, 3) for violation of the Bane Civil Rights Act (California Civil Code § 52 and §  
 8 52.1(b)) pursuant to which plaintiff is entitled to recover a minimum of \$4,000 for each violation.

**JURISDICTION**

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

- 13 1. Under 28 USC § 1367(a) the Court has supplemental jurisdiction over the state  
 14 claims alleged herein.
- 15 2. The amount in controversy exceeds \$10,000, excluding interest and costs.

**PARTIES**

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 17 3. Plaintiff ELIN SPELLMAN is, and at all material times herein, was a citizen of the  
 18 United States and a resident of the state of California who was arrested on or about September 23,  
 19 2005, taken to the Humboldt County Jail and required by defendant GOLDSMITH to remove her  
 20 clothes so as to expose her breasts in an area which was observed by male law enforcement  
 21 personnel. Plaintiff was required to expose her breasts prior to being arraigned and without the  
 22 defendant first having, and recording in writing, a reasonable suspicion that the search would be  
 23 productive of contraband or weapons.

24 4. Defendant HUMBOLDT COUNTY SHERIFF DEPUTY ANNE GOLDSMITH is,  
 25 and at all material times referred to herein, was a deputy for the Humboldt County Sheriff's  
 26 Department, who, as part of her duties at the Humboldt County Jail, subjected plaintiff to the  
 27 complained of pre-arraignment strip search in an area which was observed by male officers and

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1 without having, and recording in writing, a reasonable suspicion that the search would be  
2 productive of contraband or weapons.

3 5. Defendant HUMBOLDT COUNTY SHERIFF'S DEPARTMENT together with  
4 defendant COUNTY OF HUMBOLDT were the employers of defendant GOLDSMITH.

5 6. At all material times mentioned herein, defendant was acting under the color of law,  
6 to wit, under color of statutes, ordinances, regulations, policies, customs and usages of the state  
7 of California, Humboldt County, and/or the Humboldt County Sheriff's Department.

8 **FACTS**

9 7. On or about September 23, 2004, plaintiff ELIN SPELLMAN (hereinafter referred  
10 to as "plaintiff") was arrested for allegedly driving under the influence of alcohol. Plaintiff was  
11 taken to the Humboldt County Jail in Eureka, California, where defendant GOLDSMITH coerced,  
12 forced, and compelled her to disrobe so that she was naked from the waist up in the presence of  
13 persons who were not participating in the search and who were of the opposite sex.

14 8. Within six (6) months of the aforesaid strip search, plaintiff filed a group  
15 Government Tort Claim for herself and for all persons similarly situated (a copy of said claim is  
16 attached hereto as Exhibit "A", and incorporated herein to the extent relevant by this reference).  
17 Plaintiff's group claim was denied on or about January 10, 2005, and she thereafter filed a class  
18 action complaint against defendant's employer and various unnamed Sheriff Deputy defendants  
19 (*Spellman et al v. County of Humboldt et al.* United States District Court for the Northern District  
20 of California Case No. 05-00568-SBA). Plaintiff learned of the identity of the deputy who  
21 performed the complained of strip search in January, 2006, and sought to amend her class  
22 complaint to include said deputy (defendant GOLDSMITH) in her class action. Plaintiff's motion  
23 to amend was denied and she now brings this individual action against defendant GOLDSMITH  
24 and her employer at the relevant time the HUMBOLDT COUNTY SHERIFF'S DEPARTMENT  
25 and HUMBOLDT COUNTY.

26 9. As a result of being subjected to the search complained of herein, plaintiff suffered  
27 physical, mental, and emotional distress, invasion of privacy, and violation of due process of law  
28 and state and federal statutory and constitutional rights, and is entitled to recover damages

1 according to proof but, at a minimum, \$1,000 as specified in California Penal Code § 4030(p) and  
2 \$4,000 as specified in California Civil Code § 52 and § 52.1(b).

3 10. The search which defendant GOLDSMITH performed on plaintiff was conducted  
4 without regard to the nature of the alleged offense for which plaintiff had been arrested, without  
5 regard to whether or not plaintiff was eligible for cite and release under Penal Code § 853.6, and  
6 without regard to whether or not plaintiff was eligible for and/or was released on her own  
7 recognizance. Furthermore, the search complained of herein was performed without defendant  
8 having a reasonable belief that the plaintiff possessed weapons or contraband and without first  
9 articulating and recording in a supervisor-approved document any individualized reasonable  
10 suspicion that the search would reveal weapons or contraband. Additionally, the search  
11 complained of herein was performed without defendant taking reasonable precautions to make  
12 certain that plaintiff was not observed by others not involved in the search and/or by members of  
13 the opposite sex

14 **COUNT ONE**

15 (Violation of Fourth and Fourteenth Amendments to the U.S. Constitution )

16 11. Plaintiff incorporates into this cause of action each and every other allegation of this  
17 complaint, to the extent relevant, as if fully set forth herein.

18 12. Defendant GOLDSMITH performed the search complained of herein in violation  
19 of plaintiff's rights under the Fourth Amendment to be free from unreasonable searches and  
20 seizures and in violation of plaintiff's rights to due process and privacy under the Fourteenth  
21 Amendment.

22 13. By performing the complained of search in the manner herein described, defendant  
23 directly and proximately harmed plaintiff, as herein alleged, entitling plaintiff to recover damages  
24 for said constitutional violations pursuant to 42 U.S.C. § 1983.

25 WHEREFORE, plaintiff prays for relief as hereunder appears.

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**COUNT TWO**  
(California State Unruh Civil Rights Act, Civil Code §§ 52 and 52.1)

14. Plaintiff incorporates into this cause of action each and every other allegation of this complaint, to the extent relevant, as if fully set forth herein.

15. By conducting the complained of search in the manner described herein, defendant GOLDSMITH interfered with plaintiff’s federal and state constitutional and statutory rights by means of threats, intimidation, and/or coercion and directly and proximately damaged plaintiff, as herein alleged, entitling plaintiff to recover a minimum of \$4,000 each pursuant to California Civil Code § 52.1 and § 52, in addition to other damages.

WHEREFORE, plaintiff prays for relief as hereunder appears.

**COUNT THREE**  
(Violation of California Penal Code § 4030,  
California State Unruh Civil Rights Act, Civil Code §§ 52 and 52.1)

16. Plaintiff incorporates into this cause of action each and every other allegation of this complaint, to the extent relevant, as if fully set forth herein.

17. By conducting the complained of search in the manner described herein, defendants GOLDSMITH, the HUMBOLDT COUNTY SHERIFF’S DEPARTMENT and the COUNTY OF HUMBOLDT violated rights secured to plaintiff under California Penal Code § 4030 and directly and proximately damaged plaintiff, as herein alleged, entitling plaintiff to recover a minimum of \$1,000 each pursuant to California Penal Code § 4030(p), and to further minimum damages of \$4,000 each pursuant to California Civil Code § 52.1 and § 52, in addition to other damages.

WHEREFORE, plaintiff prays for relief as hereunder appears.

**COUNT FOUR**  
(Invasion of Privacy)

18. Plaintiff incorporates into this cause of action each and every other allegation of this complaint, to the extent relevant, as if fully set forth herein.

19. By conducting the complained of search in the manner described herein, defendants GOLDSMITH, the HUMBOLDT COUNTY SHERIFF’S DEPARTMENT, and the COUNTY OF HUMBOLDT violated the rights of plaintiff to privacy as secured by Article I, Section 1 of the

1 California Constitution and directly and proximately damaged plaintiff, as herein alleged.

2 WHEREFORE, plaintiff prays for relief as hereunder appears.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiff seeks judgment as follows:

- 5 1. For compensatory, general, and special damages;
- 6 2. Exemplary damages in an amount sufficient to deter and to make an example of
- 7 defendant;
- 8 3. In addition to compensatory and statutory damages as allowed by law, at least
- 9 \$4,000 pursuant to California Civil Code § 52.1 and § 52, for each violation thereof;
- 10 4. In addition to compensatory and statutory damages as allowed by law, at least
- 11 \$1,000 pursuant to California Penal Code § 4030;
- 12 5. Attorneys' fees and costs under 42 U.S.C. § 1988, California Civil Code § 52(b)(3),
- 13 California Civil Code § 52.1(h), California Code of Civil Procedure § 1021.5 and California Penal
- 14 Code ; and § 4030(p); and
- 15 6. The cost of this suit and such other relief as the court finds just and proper.

16 DATED: June 26, 2006

Respectfully submitted,

LAW OFFICE OF MARK E. MERIN

/s/ - "Mark E. Merin"

19 BY: \_\_\_\_\_  
Mark E. Merin  
Attorney for Plaintiffs

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A JURY TRIAL IS DEMANDED.

DATED: June 26, 2006

Respectfully submitted,

LAW OFFICE OF MARK E. MERIN

/s/ - "Mark E. Merin"

BY: \_\_\_\_\_

Mark E. Merin  
Attorney for Plaintiffs

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