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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA

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10 MICHAEL TODD, on behalf of himself and
11 all those similarly situated;

12 Plaintiffs,

13 v.

14 COUNTY OF SOLANO; SOLANO
15 COUNTY SHERIFF GARY R. STANTON,
IN HIS INDIVIDUAL AND OFFICIAL
16 CAPACITIES; SOLANO COUNTY
SHERIFF’S DEPUTIES DOES 1 through
17 100, and ROES 1 through 20, inclusive,

18 Defendants.

CASE NO:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

19
20 PLAINTIFF ALLEGES:

21 **INTRODUCTION**

22 This is an action for declaratory and injunctive relief, damages, and punitive damages
23 against the COUNTY OF SOLANO, SOLANO COUNTY SHERIFF GARY R. STANTON,
24 Individually and in His Official Capacity, SOLANO COUNTY SHERIFF’S DEPUTIES sued
25 under their fictitious names as DOES 1 THROUGH 100, and ROES 1 through 20, for violations
26 of plaintiff’s constitutional rights resulting from application of SOLANO COUNTY’S and the
27 SHERIFF’S policies, practices, and customs concerning the use of strip and visual body cavity
28 searches in SOLANO COUNTY Jails. Plaintiff seeks an order declaring illegal defendants’ policy

1 of subjecting detainees in their custody to strip and visual body cavity searches before they are
2 arraigned and without having any reasonable suspicion that the searches will be productive of
3 contraband. Plaintiff further seeks an order declaring illegal defendants' policy of conducting the
4 complained of searches in areas which can be and are observed by persons not participating in the
5 searches.

6 Defendants' strip search and visual body cavity search policies, practices, and customs
7 violate those rights of plaintiff, and all those he represents, that are secured by the Fourth and
8 Fourteenth Amendments to the United States Constitution and entitles plaintiff, and all those
9 similarly situated, to recover damages under the Federal Civil Rights Act (42 U.S.C. § 1983).

10 **JURISDICTION**

11 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 **PARTIES**

15 1. Plaintiff MICHAEL TODD, and all those similarly situated, are, and at all
16 material times herein, were citizens of the United States and residents of the state of California,
17 who were arrested within the period beginning two (2) years before the filing of this
18 Complaint, and continuing to this date, and who were subjected to strip and/or visual body
19 cavity searches at a SOLANO COUNTY Jail (hereinafter referred to as the "SOLANO
20 COUNTY Jail"), prior to being arraigned and without the defendants first having, and
21 recording in writing, a reasonable suspicion that the searches would be productive of
22 contraband or weapons.

23 2. Defendant SOLANO COUNTY SHERIFF GARY R. STANTON is, and at all
24 material times referred to herein, was the duly elected Sheriff of SOLANO COUNTY, responsible
25 for administering the Jail facilities and for making, overseeing, and implementing the policies,
26 practices, and customs challenged herein relating to the operation of the SOLANO COUNTY Jails.
27 He is sued in his individual and official capacities.

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1 3. Defendants SOLANO COUNTY SHERIFF'S DEPUTIES sued herein by their
2 fictitious names (Does 1 through 100) are all deputies who, as part of their duties at the SOLANO
3 COUNTY Jail, subjected plaintiff, and all those he represents, to pre-arraignment strip and/or
4 visual body cavity searches without having, and recording in writing, a reasonable suspicion that
5 the searches would be productive of contraband or weapons and/or conducted the complained of
6 searches so that they could be observed by persons not participating in the searches.

7 4. At all material times mentioned herein, each of the defendants was acting under the
8 color of law, to wit, under color of statutes, ordinances, regulations, policies, customs and usages
9 of the state of California, the COUNTY OF SOLANO, and/or the SOLANO COUNTY Sheriff's
10 Department.

11 5. Defendants whose names are not now known and who are sued by the fictitious
12 names of ROES 1 through 20, are all agents and/or employees of one or another of the above
13 named defendants who ordered, condoned, authorized, covered up, or were otherwise associated
14 with the implementation of the illegal policy and practices relating to the strip searches complained
15 of herein.

16 6. Defendant SOLANO COUNTY is, and at all material times referred to herein, was
17 a division of the state of California, that maintained or permitted an official policy or custom or
18 practice causing or permitting the occurrence of the types of wrongs complained of herein, which
19 wrongs damaged plaintiff, and all those similarly situated, as herein alleged. Plaintiff's allegations
20 against the COUNTY are based on acts and omissions of the SHERIFF and his DEPUTIES and
21 on acts and omissions of persons who are COUNTY employees, and on the COUNTY's breach
22 of its duty to protect plaintiff, and all those he represents, from the wrongful conduct of said
23 persons and employees.

24 7. Defendant SOLANO COUNTY SHERIFF GARY R. STANTON, in his Individual
25 and Official Capacity, also maintained or permitted an official policy or custom of causing or
26 permitting the occurrence of the types of wrongs complained of herein, which wrongs damaged
27 plaintiff, and all those similarly situated, as herein alleged.

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1 be productive of contraband or weapons.

2 13. Defendant SOLANO COUNTY SHERIFF GARY R. STANTON is personally
3 responsible for the promulgation and continuation of the strip search policy, practice, and custom
4 pursuant to which plaintiff, and all those he represents, were subjected to strip searches.

5 14. As a result of being subjected to the strip searches complained of herein, plaintiff,
6 and each of the persons similarly situated, suffered physical, mental, and emotional distress,
7 invasion of privacy, and violation of due process of law, and is entitled to recover damages
8 according to proof but, at a minimum, \$4,000 as specified in California Civil Code §§ 52 and §
9 52.1(b).

10 **CLASS CLAIMS**

11 15. The strip and visual body cavity searches to which plaintiff, and all those similarly
12 situated, were subjected were performed pursuant to policies, practices, and customs of defendants
13 COUNTY OF SOLANO, SOLANO COUNTY SHERIFF GARY R. STANTON, the individual
14 SHERIFF'S DEPUTIES sued herein by the fictitious names 1 through 100, and the individuals
15 whose names are not now known and who are sued by the fictitious names of ROES 1 through 20.
16 The searches complained of herein were performed without regard to the nature of the alleged
17 offenses for which plaintiff, and all those similarly situated, had been arrested, without regard to
18 whether or not plaintiff, or those he represents, was eligible for cite and release under Penal Code
19 § 853.6, without regard to whether or not plaintiff, and each of those similarly situated, was
20 eligible for and/or was released on his or her own recognizance. Furthermore, the searches
21 complained of herein were performed without defendants having a reasonable belief that the
22 plaintiff, or any of those similarly situated, so searched possessed weapons or contraband, and
23 those facts being articulated and recorded in a supervisor-approved document. Finally, the
24 searches complained of herein were performed without defendants taking reasonable precautions
25 to insure that plaintiff, and each of those similarly situated, was searched in an area affording
26 privacy and was not observed by others not participating in the search.

27 16. Plaintiff brings this action on his own behalf and on behalf of all persons similarly
28 situated pursuant to Rule 23, Federal Rules of Civil Procedure.

1 17. The class is defined to include all persons who, in the period from and including
2 two (2) years prior to the filing of this Complaint, and continuing until this matter is adjudicated
3 and the practices complained of herein cease, were arrested and subjected to a pre-arraignment
4 strip and/or visual body cavity search at SOLANO COUNTY Jails without defendants first having,
5 and recording in writing, a reasonable suspicion that the search would be productive of contraband
6 or weapons. In addition, the class also includes all those persons who were subjected to pre-
7 arraignment strip and/or visual body cavity searches in the presence of persons who were not
8 participating in said searches (Group Strip Searches).

9 18. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the members of
10 the class are so numerous that joinder of all members is impractical. Plaintiff does not know the
11 exact number of class members. Plaintiff is informed and believes, and thereupon alleges, that
12 there are more than 20 persons per day who are arrested by defendants and/or in the custody of
13 defendants and are subjected to the searches complained of herein as a result of defendants' policy,
14 practice, and custom relating to said searches.

15 19. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiff is
16 informed and believes, and thereupon alleges, that there are many questions of fact common to the
17 class including, but not limited to: (1) whether defendants routinely subject all persons arrested to
18 visual body cavity searches prior to arraignment whether or not they intend such persons to be
19 housed in the SOLANO COUNTY Jails; (2) whether defendants routinely subject all persons
20 arrested to visual body cavity searches prior to arraignment if they intend such persons to be
21 housed in SOLANO COUNTY Jails; (3) whether persons are subjected to strip and/or visual body
22 cavity searches prior to arraignment without there being any reasonable suspicion, based on
23 specific or articulable facts, to believe any particular arrestee has concealed drugs, weapons, and/or
24 contraband in bodily cavities which could be detected by means of a strip and/or visual body cavity
25 search; (4) whether the strip and/or visual body cavity searches are conducted in an area of privacy
26 so that the searches cannot be observed by persons not participating in the searches; (5) whether
27 the strip and/or visual body cavity searches are conducted in groups; and, (6) whether the strip
28 and/or visual body cavity searches are reasonably related to defendants' penological interest to

1 maintain the security of the jail and whether or not there are less intrusive methods for protecting
2 any such interest.

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

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

1 suffered by each class member.

2 22. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the representative
3 plaintiff will fairly and adequately protect the class interests. Plaintiff's interests are consistent
4 with and not antagonistic to the interests of the class.

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

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

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

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

1 rather than in multiple courts.

2 27. Plaintiff does not know the identities of all of the class members. Plaintiff is
3 informed and believes, and thereupon alleges, that the identities of the class members may be
4 ascertained from records maintained by COUNTY OF SOLANO and by defendant SHERIFF
5 GARY R. STANTON and the defendants' Sheriff's Department. Plaintiff is informed and
6 believes, and thereupon alleges, that defendants' records reflect the identities, including addresses
7 and telephone numbers, of the persons who have been held in custody in the SOLANO COUNTY
8 Jails. Plaintiff is informed and believes, and thereupon alleges, that records of, and maintained by
9 defendants reflect who was subject to a strip and/or visual body cavity search, when the search
10 occurred, where the search occurred, whether any reasonable suspicion for the search existed and
11 was recorded in a supervisor-approved writing, whether the search was conducted in a group, when
12 persons searched were arraigned, and the charges on which such persons were arrested. Plaintiff
13 is informed and believes, and thereupon alleges, that all of the foregoing information is contained
14 in defendants' computer system and that the information necessary to identify the class members,
15 by last known addresses, and the dates and reasons for their arrests and/or release from custody,
16 is readily available from said computer system.

17 28. In accordance with Federal Rules of Civil Procedure, Rule 23(c)(2)(b), class
18 members must be furnished with the best notice practicable under the circumstances, including
19 individual notice to all members who can be identified through reasonable effort. Plaintiff is
20 informed and believes, and thereupon alleges, that defendants' computer records contain a last
21 known address for class members. Plaintiff contemplates that individual notice will be given to
22 class members at such last known address by first class mail. Plaintiff contemplates that the notice
23 will inform class members of the following:

- 24 i. The pendency of the class action and the issues common to the class;
- 25 ii. The nature of the action;
- 26 iii. Their right to "opt out" of the action within a given time, in which event
27 they will not be bound by a decision rendered in the class action;

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1 private area observable by persons not participating in the search;

2 2. Certification as a class action of plaintiff's complaints concerning defendants'
3 policy, practice, and customs of subjecting pre-arraignment detainees to strip and visual body
4 cavity searches without having a reasonable suspicion that such searches would be productive of
5 contraband or weapons;

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

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

10 5. Attorneys' fees and costs under 42 U.S.C. § 1988; and

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

12 DATED: April 16, 2007

Respectfully submitted,

LAW OFFICE OF MARK E. MERIN

/s/ - "Mark E. Merin"

15 BY: _____

16 Mark E. Merin
17 Attorney for Plaintiffs

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DEMAND FOR A JURY TRIAL

A JURY TRIAL IS DEMANDED on behalf of plaintiff, and all those he seeks to represent.

DATED: April 16, 2006

Respectfully submitted,

LAW OFFICE OF MARK E. MERIN

/s/ - "Mark E. Merin"

BY: _____
Mark E. Merin
Attorney for Plaintiffs

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