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16  
17 **UNITED STATES DISTRICT COURT**  
18 **EASTERN DISTRICT OF CALIFORNIA**

19 MARSIAL LOPEZ, individually, and as  
20 class representative,

21 Plaintiff,

22 vs.

23 **SHERIFF DONNY YOUNGBLOOD,**  
24 individually and in his official capacity;  
25 **FORMER SHERIFF MACK WIMBISH,**  
26 in his individual capacity, COUNTY OF  
27 **KERN,** a governmental entity; **KERN**  
28 **COUNTY SHERIFF'S DEPARTMENT,**  
a California public entity; and **DOES 1**  
through 100,

Defendants.

Case No.

**CLASS ACTION  
COMPLAINT FOR  
DAMAGES**

- 1. 42 U.S.C. § 1983
- 2. Equal Protection
- 3. Cal. Const. Art. I, §§ 7, 13
- 4. Cal. Civ. Code § 52.1
- 5. Statutory Duties
- 6. Mandatory Duties

**DEMAND FOR JURY TRIAL**

1 **I. INTRODUCTION**

2 1. This action concerns the manner in which prisoners are searched in Kern County's  
3 jails, alleging, *inter alia*, violations of the Fourth, Eighth and Fourteenth Amendments of  
4 the United States Constitution and their corollaries under the California Constitution.

5 2. The gravamen of this complaint concerns the privacy rights of prisoners, who are  
6 routinely subjected to strip searches in violation of the Constitutions and laws of the United  
7 States and the State of California.

8 **II. JURISDICTION AND VENUE**

9 3. Plaintiff presents federal claims for relief under 42 U.S.C. § 1983. Accordingly,  
10 federal jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343.  
11 Plaintiff's state law claims are so related to the federal law claims that they form part of the  
12 same case or controversy. Accordingly, supplemental jurisdiction over the state law claims  
13 is conferred upon this Court by 28 U.S.C. § 1367.

14 4. Plaintiff's claims arise out of acts of the Kern County Sheriff's Department in the  
15 County of Kern, State of California, in and about Bakersfield, California. Accordingly,  
16 venue is proper within the Eastern District of California.

17 **III. PARTIES**

18 *Plaintiff*

19 5. Plaintiff Marsial Lopez, a male, is and was at all times relevant hereto, a resident  
20 of the County of Kern.

21 *Defendants*

22 6. Defendant County of Kern ("County") is a public entity organized and existing  
23 under the laws of the State of California. Defendant Kern County Sheriff's Department  
24 ("KCSD") is a public entity within the meaning of California law, and is a County agency.  
25 These defendants are sued in their own right for a County and/or KCSD policy, practice  
26 or custom which caused plaintiff's injuries in violation of one or more federal constitutional  
27 guarantees, and on plaintiff's state law claims based on *respondeat superior*, under  
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1 California Government Code § 815.2 and mandatory duties under California Government  
2 Code § 815.6.

3 7. Defendant Donny Youngblood (“Youngblood”) is the Sheriff of Kern County, and  
4 is the policy maker for the KCSD. He is sued in his official and individual capacities.

5 8. Defendant Mack Wimbish (“Wimbish”) is the former sheriff for Kern County, and  
6 is Youngblood’s predecessor. Plaintiff sues Wimbish in his individual capacity only.

7 9. Plaintiff is ignorant of the true names and capacities of defendants sued herein as  
8 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious  
9 names. Plaintiff will give notice of this complaint, and of one of more DOES’ true names  
10 and capacities, when ascertained. Plaintiff is informed and believe and based thereon  
11 alleges, that defendants DOES 1 through 100 are responsible in some manner for the  
12 damages and injuries hereinafter complained of.

13 10. DOES 1-50 (hereinafter collectively referred to as “KCSD Supervisory  
14 defendants”) were and are now responsible for the KCSD jails and, among other things, are  
15 responsible for the training, supervision, control, assignment and discipline of the sworn  
16 and civilian personnel of the KCSD and County who work in, operate, administer and  
17 manage the jails, and for the formulation, promulgation, adoption, application,  
18 administration and enforcement of the policies, rules, regulations and practices of the  
19 KCSD jails.  
20

21 11. Upon information and belief, plaintiff further alleges that, at all times relevant  
22 herein, the KCSD Supervisory defendants participated in, approved, and/or ratified the  
23 unconstitutional or illegal acts complained of herein that occurred within KCSD jails.

24 12. Plaintiff is informed and believes, and thereupon alleges that, at all times relevant  
25 herein, the individual defendants, and each of them, were the agents, servants and  
26 employees of their respective employers (defendants KCSD, County) and were acting at  
27 all times within the scope of their agency and employment, and with the knowledge and  
28 consent of their principals and employers. At all times herein, defendants, and each of them,

1 were acting under the color of state law.

2 **IV. CLAIMS OF CLASS REPRESENTATIVE**

3 13. On or about late June 2005, plaintiff surrendered himself to out-of-state law  
4 enforcement officers upon learning that there was a Kern County felony warrant for his  
5 arrest, for charges filed in the Kern County Superior Court. Thereafter, plaintiff was  
6 incarcerated in the Kern County jails, commencing late June 2005 and continuing until the  
7 first week of November, 2007.

8 14. During his incarceration in the Kern County jails, KCSD deputies transported  
9 plaintiff to and from the Kern County Superior Court for appearances on plaintiff's then  
10 pending criminal case. Whenever plaintiff was transported between jail facilities, and when  
11 he was returned to jail from superior court, plaintiff was subjected to intrusive visual body  
12 cavity/strip searches. That is, in the presence of others not necessary for the searches and  
13 without any privacy, plaintiff was forced to remove all his clothing, expose his body  
14 cavities in the presence of other persons, in unsanitary conditions.

15 15. On or about November 6, 2007, plaintiff, still incarcerated in the Kern County  
16 jail and awaiting a retrial (in his first trial the jury deadlocked 11-1, in favor of acquittal)  
17 was taken before the Kern County Superior Court. At that time the prosecuting authority  
18 dismissed all criminal charges against plaintiff. The prosecutor dismissed the charges  
19 because the prosecutor's office finally decided to test DNA found on clothing recovered  
20 from the crime scene. The DNA test results excluded plaintiff as the perpetrator of the  
21 charged crimes.

22 16. After the charges were dismissed, the superior court ordered plaintiff's release.  
23 At that point KCSD deputies returned plaintiff to the Kern County jail for the sole purpose  
24 of processing his release from custody. Upon arrival at the jail, plaintiff was subjected to  
25 an illegal and intrusive visual body cavity/strip search, in unsanitary conditions, without  
26 privacy, and without reasonable suspicion that plaintiff possessed contraband or weapon(s).  
27 The search took place in the presence of persons not necessary for the search, forcing  
28

1 plaintiff to expose his body cavities in the presence of other persons, without privacy, and  
2 in unsanitary conditions.

3 17. Plaintiff has timely filed a claim under Government Code § 910 with the County  
4 of Kern, both on behalf of himself and other persons similarly situated.

5 **V. CLASS ACTION ALLEGATIONS**

6 18. Plaintiff brings this action on his own behalf, and on behalf of a class of all other  
7 persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The  
8 class is defined as those persons who, in the two years preceding the filing of this action,  
9 and up until the date of class certification, or such other date as the Court may set, were  
10 forced to undergo unlawful strip and/or visual body cavity searches in Kern County's jails  
11 which are operated, maintained and under the control of the County, the KCSD and the  
12 Supervisory defendants.

13 19. On information and belief, plaintiff alleges the strip and/or visual body cavity  
14 searches to which he and class members were subjected, were done pursuant to defendants'  
15 policy and practice to indiscriminately search all or a large number of persons being  
16 processed into the jail without regard to: a) The nature of their offense or criminal history;  
17 b) Whether they are under an order of release or not; c) Whether they have had contact  
18 with any persons from outside the County jail system who could reasonably be believed to  
19 be a potential source of contraband or weapons; d) Whether there is cause of any kind to  
20 believe they are a potential source of contraband or weapons; e) Whether there is any other  
21 articulable justification for defendants' indiscriminate strip and body search policy; or f)  
22 Whether they are "prearrest detainees," as that term is used in California Penal Code  
23 § 4030(b).

24 20. On information and belief, plaintiff alleges that defendants have a policy of not  
25 limiting the persons who can see or hear or observe all or part of the strip and body cavity  
26 searches to those who are necessary to the procedure. Thus, other inmates, members of the  
27 opposite sex, dispensable jail personnel and possibly others are able to see or hear some or  
28

1 all of the searches described below. Specifically, class members are required to submit to  
2 strip searches during which other people, who are not participating in the search and  
3 possibly are of the opposite sex, including jail staff and other inmates, are able to observe  
4 the search and the class members' naked bodies. In many instances, class members are  
5 forced to touch each other's bodies during the searches.

6 **VI. RULE 23 PREREQUISITES**

7 *A. Numerosity*

8 21. In accordance with F.R.Civ. P. Rule 23(a), the members of the class are so  
9 numerous that joinder of all members is impracticable. Plaintiff does not know the exact  
10 number of class members. Plaintiff is informed and believes and thereon alleges that there  
11 are more than 50 prisoners per day who are subjected to strip and/or body cavity searches  
12 as a result of defendants' policy and practice of indiscriminately subjecting prisoners to  
13 strip and body cavity searches. Plaintiff is informed and believes and thereon alleges that  
14 the number of persons in the proposed class is in the thousands.

15 *B. Common Issues of Fact or Law*

16 22. In accordance with F.R. Civ. P. Rule 23(a), there are questions of fact common  
17 to the class. Plaintiff is informed and believes and thereon alleges that the common  
18 questions of fact include, but are not limited to the following: (1) Whether the KCSD  
19 routinely subjects all prisoners to strip and/or body cavity searches without there being any  
20 reasonable suspicion, based on specific or articulable facts, to believe any particular inmate  
21 has concealed drug(s), weapon(s) and/or any contraband on their persons or in their body  
22 cavities; (2) Whether the strip and/or body cavity searches are conducted in an area of  
23 privacy so that the search cannot be observed by persons not participating in the search, or  
24 whether the strip and body cavity searches are conducted in areas where they may be  
25 observed by persons not participating in the searches; and (3) Whether the strip and/or  
26 body cavity searches are conducted in an unsanitary area, infested with bacteria such as  
27 MRSA and other communicable diseases.  
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1           23. In accordance with F.R. Civ. P. Rule 23(a), there are questions of law common  
2 to the class. Plaintiff is informed and believes and thereon alleges that the common  
3 questions of law include but are not limited to the following: (1) Whether the KCSD may  
4 indiscriminately conduct strip and/or body cavity searches of inmates without there being  
5 any reasonable suspicion, based on specific or articulable facts, to believe any particular  
6 inmate has concealed drug(s), weapon(s) and/or any contraband on their persons or in their  
7 body cavities; (2) Whether the KCSD may conduct strip and/or body cavity searches of  
8 inmates in open areas where they may be observed by persons not participating in the  
9 searches; (3) Whether KCSD's policy of subjecting persons to strip and/or body cavity  
10 searches violates California Penal Code § 4030; (4) Whether KCSD's policy of subjecting  
11 persons to strip and/or body cavity searches in an area which is not an "area of privacy"  
12 violates California Penal Code § 4030(m); (5) Whether the conduct described above  
13 violates the Fourth and/or Fourteenth Amendments, and/or California Constitution Article  
14 I, sections 1, 7, and/or 13; (6) Whether the conduct described above constitutes a policy  
15 or custom of the defendants; (7) Whether any individual defendant is entitled to qualified  
16 immunity on the federal claims, or state law immunity on the state law claims, for the  
17 practices complained of herein; and (8) Whether determination of damages suffered by a  
18 statistically representative sample of the class provides the basis for determination of all  
19 class members' damages except those who opt out.  
20

21           *C. Typicality*

22           24. In accordance with F.R. Civ. P. Rule 23(a), the claims of the representative  
23 Plaintiff are typical of the class. Plaintiff was in KCSD custody when he was subjected to  
24 at least one strip and/or visual body cavity searches without there being any reasonable  
25 suspicion, based on specific or articulable facts, to believe that plaintiff and class members  
26 had concealed drug(s), weapon(s) and/or any contraband in their body cavities; plaintiff  
27 was subjected to searches in open areas where they were observed by other prisoners and  
28 persons not involved in the search, possibly including sometimes members of the opposite



1 sex; plaintiff was searched and forced to stand naked in unsanitary and bacteria infested  
2 areas.

3 25. Thus, plaintiff has the same interests and have suffered the same type of damages  
4 as the class members. Plaintiff's claims are based upon the same or similar legal theories  
5 as the claims of the class members. Each class member suffered actual damages as a result  
6 of being subjected to a strip and/or body cavity search. The actual damages suffered by  
7 plaintiff are similar in type and amount to the actual damages suffered by each class  
8 member.

9 26. In accordance with F.R. Civ. P. Rule 23(a), the representative plaintiff will fairly  
10 and adequately protect the interests of the class. The interests of the representative plaintiff  
11 are consistent with and not antagonistic to the interests of the class.

12 *D. Maintenance and Superiority*

13 27. In accordance with Fed.R.Civ.P. Rule 23(b)(1)(A), prosecutions of separate  
14 actions by individual members of the class would create a risk that inconsistent or varying  
15 adjudications with respect to individual members of the class would establish incompatible  
16 standards of conduct for the parties opposing the class.

17 28. In accordance with Fed.R.Civ.P. Rule 23(b)(1)(B), prosecutions of separate  
18 actions by individual members of the class would create a risk of adjudications with respect  
19 to individual members of the class which would, as a practical matter, substantially impair  
20 or impede the interests of the other members of the class to protect their interests.

21 29. In accordance with Fed.R.Civ.P. Rule 23(b)(2), plaintiff is informed and believes  
22 and thereon alleges that the defendants have acted on grounds generally applicable to the  
23 class.  
24

25 30. In accordance with Fed.R.Civ.P. Rule 23(b)(3), the questions of law or fact  
26 common to the members of the class predominate over any questions affecting only  
27 individual members, and this class action is superior to other available methods for the fair  
28 and efficient adjudication of the controversy between the parties. Plaintiff is informed and



1 believes and thereon alleges that the interest of class members in individually controlling  
2 the prosecution of a separate action is low, in that most class members would be unable to  
3 individually prosecute any action at all. Plaintiff is informed and believes and thereon  
4 alleges that the amounts at stake for individuals are such that separate suits would be  
5 impracticable in that most members of the class will not be able to find counsel to represent  
6 them. Plaintiff is informed and believes and thereon alleges that it is desirable to  
7 concentrate all litigation in one forum because all of the claims arise in the same location,  
8 *i.e.*, the County of Kern, and it will promote judicial efficiency to resolve the common  
9 questions of law and fact in one forum, rather than in multiple courts.

10 31. Plaintiff does not know the identities of the class members. Plaintiff is informed  
11 and believe and thereon allege that the identities of the class members are ascertainable  
12 from KCSO records, in particular the KCSO computer system used to track and identify  
13 KCSO inmates. Plaintiff is informed and believes and thereon alleges that the computer  
14 system reflects the identities, including addresses and telephone numbers, of the persons  
15 who have been held in custody by KCSO; when inmates were arrested and booked, taken  
16 to court, returned from court; why inmates were released; and when inmates were released.

17 32. Plaintiff knows of no difficulty that will be encountered in the management of  
18 this litigation that would preclude its maintenance as a class action. The class action is  
19 superior to any other available means to resolve the issues raised on behalf of the class.  
20 The class action will be manageable because so many different records systems exist from  
21 which to ascertain the members of the class. Liability can be determined on a class-wide  
22 basis. Damages can be determined on a class-wide basis using a damages matrix set by a  
23 jury, or by trying the damages of a statistically valid sample of the class to a jury and  
24 extrapolating those damages to the class as a whole.

25 33. In accordance with Fed.R.Civ.P. Rule 23(b)(3), class members must be furnished  
26 with the best notice practicable under the circumstances, including individual notice to all  
27 members who can be identified through reasonable effort. Plaintiff is informed and believes  
28

1 that KCSD computer records contain a last known address for class members. Plaintiff  
2 contemplates that individual notice be given to class members at such last known address  
3 by first class mail. Plaintiff contemplates that the notice inform class members of the  
4 following:

5 A. The pendency of the class action, and the issues common to the class;

6 B. The nature of the action;

7 C. Their right to 'opt out' of the action within a given time, in which event  
8 they will not be bound by a decision rendered in the class action;

9 D. Their right, if they do not 'opt out,' to be represented by their own counsel  
10 and enter an appearance in the case; otherwise, they will be represented by the  
11 named plaintiff and his counsel; and

12 E. Their right, if they do not 'opt out,' to share in any recovery in favor of the  
13 class, and conversely to be bound by any judgment on the common issues, adverse  
14 to the class.

15 34. Plaintiff restates and incorporates by reference each of the forgoing paragraphs  
16 in each of the following causes of action as if each paragraph was fully set forth therein.

17 **COUNT ONE - 42 U.S.C. § 1983**

18 **(All Defendants)**

19  
20 35. In subjecting plaintiff and class members to the unnecessary, demeaning, and  
21 outrageous intrusive strip and body cavity search, defendants, and each of them, violated  
22 plaintiff's and class members' rights to be secure in their persons against unreasonable  
23 searches and seizures as guaranteed by the Fourth and Fourteenth Amendments to the  
24 United States Constitution. Therefore, plaintiff and class members are entitled to bring suit  
25 and recover damages pursuant to 42 U.S.C. § 1983.

26 **COUNT TWO - EQUAL PROTECTION**

27 **(All Defendants)**

28 36. The unnecessary, demeaning, and outrageous intrusive strip and body cavity

1 search deprived plaintiff and class members of the protections afforded by provisions of the  
2 14<sup>th</sup> Amendment Equal Protection guarantees. Therefore, plaintiff and class members are  
3 entitled to bring suit and recover damages pursuant to 42 U.S.C. § 1983.

4 **COUNT THREE - Cal. Const., Art. I §§ 7, 13**

5 **(All Defendants)**

6 37. The unnecessary, demeaning, outrageous, and intrusive strip and body cavity  
7 search to which plaintiff and class members were subjected violated plaintiff's rights not  
8 to be denied equal protection of the law, as guaranteed by Article I, § 7 of the California  
9 Constitution; and to be secure in their persons against unreasonable searches and seizures,  
10 as guaranteed by Article I, § 13 of the California Constitution.

11 **COUNT FOUR - Cal. Civ. Code § 52.1**

12 **(All Defendants)**

13 38. The unnecessary, demeaning, and outrageous intrusive strip and/or visual body  
14 cavities were accomplished via coercion and/or threats of coercion.

15 39. The unnecessary, demeaning, and outrageous intrusive strip and visual body  
16 cavity searches deprived plaintiff and the class he represent of the protections afforded by  
17 provisions of federal constitutional and state constitutional and statutory law, including but  
18 not limited to rights protected under the Fourth, Eighth and Fourteenth Amendments to the  
19 United States Constitution; Article I, §§ 1, 7, 13, and 17, of the California state  
20 constitution, and California Penal Code § 4030. Therefore, plaintiff and the class are  
21 entitled to bring suit and recover damages pursuant to Cal. Civ. Code § 52.1(b).

22 40. As a direct and proximate cause of the aforementioned acts, plaintiff and class  
23 members were damaged in an amount to be proven at trial but in any event not less than  
24 \$4,000 per violation pursuant to the provisions of Civil Code § 52(b).

25 41. The aforementioned acts of defendants directly and proximately caused plaintiff  
26 to be deprived of her California constitutional rights as stated above, thereby entitling  
27 plaintiff and class members to recover damages proximately caused by defendants'  
28

1 wrongful acts.

2 **COUNT FIVE Violation of Statutory Duties**

3 **(Penal Code § 4030)**

4 **(Against Defendants County and KCSD Only)**

5 42. The unnecessary, demeaning, outrageous, and intrusive strip and body cavity  
6 searches, to which plaintiff and the claim members were subjected by defendants, violated  
7 plaintiff's and the class members' state-law protections guaranteed by California Penal  
8 Code § 4030.

9 43. Any violation of a California statute is mandatory and prohibitory.

10 44. The aforementioned acts of defendants directly and proximately caused the  
11 plaintiff and the class members to be deprived of their rights as stated above, thereby  
12 entitling plaintiff and class members to recover damages proximately caused by defendants'  
13 wrongful acts, including statutory damages under Penal Code § 4030.

14 **COUNT SIX- Violation of Mandatory Duties**

15 **(Against Defendants County and KCSD)**

16 45. The Fourth, Eighth and Fourteenth Amendments to the United States  
17 Constitution; Article I, §§ 1, 7, 13, and 17, of the California state constitution; California  
18 Penal Code § 4030; and California Civil Code §52.1 are enactments. Enactments form the  
19 basis of a mandatory duty under California Government Code §815.6.

20 46. These constitutional provisions and statutes apply to all members of the general  
21 public, including Plaintiff, and were all designed to prevent the kind of injuries alleged  
22 herein.

23 47. Defendants did not exercise reasonable diligence in discharging their duty to  
24 refrain from violating the constitutional rights of plaintiff and class members.

25 48. As a direct and proximate cause of the aforementioned acts of defendants,  
26 plaintiff and class members were damaged in amounts to be determined at trial.

27 ///  
28

1 **VII. PRAYER**

2 WHEREFORE, plaintiff, on behalf of himself and class members he represents,  
3 request damages against each defendant as follows:

4 49. General and special damages according to proof;

5 50. As against the individual defendants only, punitive damages according to proof;

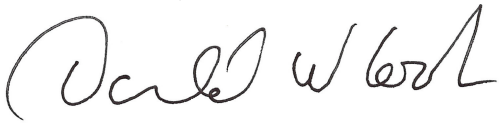
6 51. In addition to actual damages, statutory damages as allowed by law, including  
7 Penal Code § 4030 and treble damages under California Civil Code §§ 52 and 52.1;

8 52. Attorneys' fees and costs under 42 U.S.C. § 1988; California Civil Code §§  
9 52(b)(3), 52.1(h); California Code of Civil Procedure § 1021.5, and whatever other statute  
10 or law may be applicable;

11 53. The costs of this suit and such other relief as is just and proper.

12 DATED: March 27, 2007

13 **ROBERT MANN**  
14 **DONALD W. COOK**  
Attorneys for Plaintiff

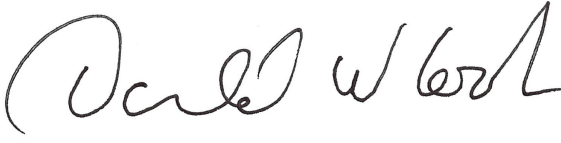
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16 By   
17 \_\_\_\_\_  
Donald W. Cook

**DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of himself individually and on behalf of the class he represents,  
demands a jury trial.

DATED: March 27, 2007

**ROBERT MANN**  
**DONALD W. COOK**  
Attorneys for Plaintiff

By   
Donald W. Cook

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