

2006 WL 2827603

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United States District Court,  
D. Maine.

Laurie TARDIFF, individually and on behalf of  
others similarly situated, Plaintiffs

v.

KNOX COUNTY, Daniel Davey, in his individual  
capacity and in his official capacity as Knox  
County Sheriff, Defendants.

Civil No. 02-251-P-C. | Sept. 18, 2006.

#### Attorneys and Law Firms

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ME, for Defendants.

#### Opinion

#### ***ORDER DENYING PLAINTIFFS' MOTION FOR JUDICIAL DETERMINATION OF THE NUMBER OF PEOPLE IN THE CLASS***

GENE CARTER, Senior District Judge.

\*1 Before the Court for determination is Plaintiff's Motion for Judicial Determination of the Number of People in the Class (Docket Item No. 298). Defendants have responded thereto (Docket Item No. 310). After full review of the written submissions of the parties and consideration of the issues properly generated by the Motion, the said Motion is hereby **DENIED**, the Court **FINDING** that:

1) There is no colorable legal basis for the Court to act favorably on the Motion on the basis of Plaintiffs' assertion, which is disputed by the Defendants, that Defendants failed to keep sufficient records to allow the determination of the identity of the members of the Class, and Plaintiffs do not cite any precedent or authorities for that proposition;

2) There is a genuine dispute of material fact as to whether Defendants did, in fact, keep the records they were required to keep;

3) There is a genuine dispute of material fact as to the accuracy and reliability of such records as it may be shown Defendants did, in fact, keep, if any; and

4) There is no legal basis to shift the burden of proof to establish class membership from Plaintiff to Defendant (as the burden to establish exclusion from the class). The cases relied upon by Plaintiffs in seeking that relief are clearly distinguishable on the facts, unpersuasive, or fail to decide the precise issue here presented.