

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO **FILED**  
UNITED STATES DISTRICT COURT

ELIZABETH LEYBA, NATASILA  
APODACA, NANCY ELLIN, MONICA  
GARCIA, LUCY M. MARQUEZ, MARK  
MILLER, COPPER PERRY, DAVID  
SANDOVAL, KRISTI SEIBOLD, RUSSELLA  
SERNA, and KIMBERLY WRIGHT,  
on their own behalf and on behalf of a class of  
similarly situated persons.

Plaintiffs.

vs.

SANTA FE COUNTY BOARD OF  
COMMISSIONERS; MANAGEMENT  
AND TRAINING CORPORATION;  
SANTA FE COUNTY SHERIFF GREG  
SOLANO, in his individual and official  
capacities; FORMER SANTA FE COUNTY  
SHERIFF RAYMOND L. SISNEROS, in his  
individual and official capacities; and KERRY  
DIXON, in his individual and official capacities.

Defendants.

**CLASS ACTION COMPLAINT FOR DAMAGES  
FOR VIOLATIONS OF CIVIL AND CONSTITUTIONAL  
RIGHTS AND FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Elizabeth Leyba, Natasha Apodaca, Nancy Ellin, Monica Garcia, Lucy M. Marquez, Mark Miller, Copper Perry, David Sandoval, Kristi Seibold, Russella Serna, and Kimberly Wright, by and through below-signed counsel, bring this Class Action Complaint for Damages for Violations of Civil and Constitutional Rights and for Declaratory and Injunctive Relief against Defendants Santa Fe County Board of Commissioners, Management and Training Corporation, Santa Fe County Sheriff Greg Solano, Former Santa Fe County Sheriff Raymond L. Sisneros, and Kerry Dixon (hereinafter "Defendants"). Plaintiffs allege against Defendants upon

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**CV-05-0036** DJS AGF

No. CIV-05-\_\_\_\_\_

**JURY TRIAL REQUESTED**

knowledge as to themselves and all matters of public record, and upon information and belief as to all other matters, as follows:

**I.**  
**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 (a)(3) and (4). The Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

**II.**  
**PARTIES**

3. Plaintiff Elizabeth Leyba (“Ms. Leyba”) is a resident of Santa Fe, New Mexico. Ms. Leyba brings this action on her own behalf and on behalf of a class of similarly situated persons.

4. Plaintiff Natasha Apodaca (“Ms. Apodaca”) is a resident of Santa Fe, New Mexico. Ms. Apodaca brings this action on her own behalf and on behalf of a class of similarly situated persons.

5. Plaintiff Nancy Ellin (“Ms. Ellin”) is a resident of Santa Fe, New Mexico. Ms. Ellin brings this action on her own behalf and on behalf of a class of similarly situated persons.

6. Plaintiff Monica Garcia (“Ms. Garcia”) is a resident of Santa Fe, New Mexico. Ms. Garcia brings this action on her own behalf and on behalf of a class of similarly situated persons.

7. Plaintiff Lucy M. Marquez (“Ms. Marquez”) is a resident of Santa Fe, New Mexico. Ms. Marquez brings this action on her own behalf and on behalf of a class of similarly

situated persons.

8. Plaintiff Mark Miller ("Mr. Miller") is a resident of Santa Fe, New Mexico. Mr. Miller brings this action on his own behalf and on behalf of a class of similarly situated persons.

9. Plaintiff Copper Perry ("Ms. Perry") is a resident of Santa Fe, New Mexico. Ms. Perry brings this action on her own behalf and on behalf of a class of similarly situated persons.

10. Plaintiff David Sandoval ("Mr. Sandoval") is a resident of Truchas, New Mexico. Mr. Sandoval brings this action on his own behalf and on behalf of a class of similarly situated persons.

11. Plaintiff Kristi Seibold ("Ms. Seibold") is a resident of Santa Fe, New Mexico. Ms. Seibold brings this action on her own behalf and on behalf of a class of similarly situated persons.

12. Plaintiff Russella Serna ("Ms. Serna") is a resident of Pojoaque, New Mexico. Ms. Serna brings this action on her own behalf and on behalf of a class of similarly situated persons.

13. Plaintiff Kimberly Wright ("Ms. Wright") is a resident of Santa Fe, New Mexico. Ms. Wright brings this action on her own behalf and on behalf of a class of similarly situated persons.

14. Defendant Santa Fe County Board of Commissioners ("Santa Fe County") is a political subdivision of the State of New Mexico. Pursuant to § 4-46-1 NMSA 1978, all suits or proceedings against a county are to be brought in the name of the board of county commissioners of that county. At all times material hereto, Santa Fe County was a governmental entity and local public body as those terms are defined in the New Mexico Tort

Claims Act, §§ 41-4-3(B) and (C) NMSA 1978, as amended. At all times material hereto, Santa Fe County was the employer and supervisor of the individually named Defendants. Pursuant to §§ 4-44-19, 33-3-3 through 8, and 33-3-13 NMSA 1978, Santa Fe County had a statutory obligation to provide for the confinement of prisoners incarcerated under the county's jurisdiction. Santa Fe County had a statutory obligation to appropriate funds and otherwise provide the necessary funding to maintain and operate a facility for the incarceration of prisoners under the jurisdiction of the county.

15. Defendant Management and Training Corporation ("MTC") is, on information and belief, a corporation organized under the laws of the State of Delaware, headquartered in Utah, and doing business in the State of New Mexico. MTC has, since October 2001, operated the Santa Fe County Detention Facility ("SFCDF") under contract with Santa Fe County. At all times material hereto, MTC and its officers, employees and agents acted under color law and within the scope of their employment.

16. Defendant Santa Fe County Sheriff Greg Solano ("Defendant Solano"), upon information and belief, is now and at all time material hereto has been a resident of Santa Fe County, New Mexico. Since January 1, 2003, Defendant Solano has been the duly-elected Santa Fe County Sheriff. In addition, at all times material hereto, Defendant Solano was a law enforcement officer and public employee as those terms are defined in the New Mexico Tort Claims Act, §§ 41-4-3(D) and (F) NMSA 1978, as amended, and was acting within the scope of his duties as well as under color of law. He is sued both personally and in his official capacity.

17. Defendant Former Santa Fe County Sheriff Raymond L. Sisneros ("Defendant Sisneros"), upon information and belief, is now and at all time material hereto has been a resident of Santa Fe County, New Mexico. From January 1, 1999 to December 31, 2003, Defendant Sisneros was the duly-elected Santa Fe County Sheriff and was a law enforcement officer and public employee as those terms are defined in the New Mexico Tort Claims Act, §§ 41-4-3(D) and (F) NMSA 1978, as amended, and was acting within the scope of his duties as well as under color of law. He is sued both personally and in his official capacity.

18. Defendant Kerry Dixon ("Defendant Dixon"), upon information and belief, is now and at all time material hereto has been a resident of Santa Fe County, New Mexico. Since March 1, 2004, Defendant Dixon has been employed by MTC as the Warden of the SFCDF. As Warden, Defendant Dixon was and is responsible for the administration of the SFCDF. At all times material hereto, Defendant Dixon was acting privately under color of law, and was acting within the scope of his duties. He is sued both personally and in his official capacity.

19. Defendants Santa Fe County, MTC, Solano, Sisneros and Dixon were responsible for the screening, hiring, training, monitoring, supervision and disciplining of subordinate employees of SFCDF, and were the authorities empowering SFCDF employees to incarcerate prisoners under the jurisdiction of Santa Fe County. Defendants Santa Fe County, MTC, Solano, Sisneros and Dixon were directly responsible for the policy-making activities and the supervision of subordinate officers of SFCDF.

20. Defendants Santa Fe County, MTC, Solano, Sisneros and Dixon, through their

officials, agents, servants, and employees, were involved in and responsible for all the acts hereinafter alleged. At all times material hereto, Defendants Santa Fe County, MTC, Solano, Sisneros and Dixon, individually and/or acting through their agents, officers and employees, acted in concert with one another and pursuant to a common plan and objective, and each of the Defendants is responsible for the acts and omissions of the other Defendants, and their agents, officers and employees, as co-conspirators, under the doctrine of *respondet superior*, and under other doctrines of vicarious liability.

### **III. CLAIMS OF THE NAMED PLAINTIFFS**

21. Paragraphs 1 through 20, above, are incorporated herein by reference as if fully set forth in this paragraph.

#### **Elizabeth Leyba**

22. Ms. Leyba is 33 years old. She was born and raised in Santa Fe, New Mexico and has a steady work history. Prior to September 2, 2004, she had never been arrested in her life.

23. Ms. Leyba works as a waitress and bartender at the Catamount Bar & Grill in Santa Fe. Her employer's policy is to have a doorman whose responsibility is to check the identifications of all customers upon entry, to verify that they are over the age of 21. Waitresses and bartenders are therefore not expected to check customer identifications and instead rely upon the doorman to do so.

24. On September 2, 2004, agents of the New Mexico State Police Special Investigation Division, in conjunction with other law enforcement officers, conducted a "sting" operation of various businesses in Santa Fe in which underage individuals posed as customers

and ordered alcoholic beverages. One of the targeted businesses was the Catamount Bar & Grill. Two underage individuals entered the Catamount as part of the "sting" operation. On that night, the Catamount had a relatively new doorman. Ms. Leyba was a waitress on duty that night. Ms. Leyba reasonably assumed that all customers in the Catamount had been screened by the doorman and had produced appropriate identification. In fact, the doorman had screened the two underage individuals and checked their identification, but had failed to notice that they were under 21.

25. Ms. Leyba delivered two bottles of beers to the two customers. She was then told that she was under arrest for dispensing alcohol to persons under the age of 21. Ms. Leyba was immediately handcuffed by police officers and escorted from her workplace in front of her co-workers and customers. Ms. Leyba was then transported by the police to the SFCDF.

26. Upon arrival at the SFCDF, Ms. Leyba was transferred to the custody and control of the Defendants' officers took Ms. Leyba to a room and ordered her to disrobe. Ms. Leyba removed her clothes and stood in the middle of the room in her undergarments and socks. The officer instructed Ms. Leyba that this was insufficient, and ordered Ms. Leyba to take off all her undergarments and her socks. Ms. Leyba asked why it was necessary to remove her underwear and she was told it was a mandatory policy. Ms. Leyba had no choice but to remove all of her remaining garments until she was completely naked. The officer then ordered Ms. Leyba to rotate in a circle with her arms in the air for visual inspection. Ms. Leyba attempted to comply, but was ordered to slow down. Ms. Leyba then slowly turned her body for close visual inspection by the officer. Only after Ms. Leyba's naked body was completely examined by the officer was she permitted to cover herself with jail garments.

Nothing was found during the strip search.

**Natasha Apodaca**

27. Ms. Apodaca is 19 years old. She lives in Santa Fe, New Mexico and is employed as a sales clerk.

28. On November 26, 2004, Ms. Apodaca was arrested for a misdemeanor offense. She was taken into custody at the SFCDF and booked. She was taken into the bathroom of the booking area by one of Defendants' officers and told to strip down completely naked. She complied and was visually examined.

29. After removing all of her clothing, Ms. Apodaca was instructed to turn around, squat, and cough while the officer visually examined her genital and anal area. She did as she instructed. Nothing was found.

**Nancy Ellin**

30. Ms. Ellin is 47 years old. She has a Bachelor of Arts degree in English from Towson State University, and a Master's Degree in Human Resource Development from Webster University. She lives in Santa Fe, New Mexico and is employed as a Compensation Analyst at Los Alamos National Laboratory. Prior to the events described below, she had never been arrested in her life.

31. On December 22, 2004, Ms. Ellin was stopped as she was driving on the highway near Pojoaque. When the officer ran her name through the computer, he informed her that there was a June 2003 bench warrant from Magistrate Court for an outstanding traffic citation. Ms. Ellin had no knowledge of any such citation or warrant. Nonetheless, she was arrested and transported to the SFCDF.



32. Ms. Ellin was taken into custody at the SFCDF and booked. She was then taken into a cell by one of Defendants' officers and told to remove all her clothes. She asked whether she had to take off everything, and was told yes. Ms. Ellin complied and removed all her clothing other than her socks. She then asked whether she had to take off even her socks, and she was told yes. She took off her socks and was visually examined by the officer while she was naked. Nothing was found.

**Monica Garcia**

33. Ms. Garcia is 58 years old. She lives in Tesuque, New Mexico and is employed as an office manager. Prior to the events described below, she had never been arrested in her life.

34. On August 13, 2004, Ms. Garcia was arrested for a DUI. She was taken into custody at the SFCDF and booked. She was taken by one of Defendants' officers into a room near the booking area and instructed to take off all her clothes. She removed all her clothing other than her undergarments. She was then instructed to remove her undergarments as well. She complied.

35. Ms. Garcia was completely naked in the room. She was instructed to face the wall. She was then told to bend over, grab her ankles, and cough. She complied. As she was bent over, the officer visually examining her genital and anal area from behind laughed at her. Nothing was found.

**Lucy M. Marquez**

36. Ms. Marquez is 42 years old. She lives in Santa Fe, New Mexico and is self-employed as a construction manager. Prior to the events described below, she had never been arrested in her life.

37. At 6:00 a.m. on October 7, 2004, Ms. Marquez was awakened at her home by four uniformed New Mexico State Police officers. They told her that she was under arrest for an outstanding traffic ticket. She was taken to the FOP Hall for processing with a number of other arrestees who apparently were also subjected to mass arrests. She was then transported to the SFCDF and booked.

38. Ms. Marquez was taken by one of Defendants' officers into the bathroom of the booking area. She was instructed to take her clothes off. She removed her clothes but left on her underwear and socks. She was then told to take off everything. She removed her remaining undergarments.

39. While Ms. Marquez was completely naked, she instructed to turn around and bend over. She complied. She was then told to bend over even more. She did so. Then she was again told to bend over more, and she did as she was told. The officer examined her genital and anal area from behind. She was then told to turn around and face the officer. The officer then visually inspected her naked body. Nothing was found.

#### **Mark Miller**

40. Mr. Miller is 21 years old. He lives in Santa Fe, New Mexico and is employed as a sales clerk.

41. On September 21, 2004, Mr. Miller was arrested for driving on a revoked license. He was taken into custody at the SFCDF and booked. He was then taken by one of Defendants' officers into the bathroom of the booking area and instructed to take off his shirt, jeans and shoes. He was then told to take off his socks and underwear. He complied.

42. Mr. Miller was then told to lift his arms. After Mr. Miller lifted his arms and was

examined, he was told to lift his scrotum. After he lifted his scrotum, he was then told to squat and cough three times. He did so. He was then told to bend over. As he was bent over, the officer visually examined Mr. Miller's genital and anal area. The officer then pulled aside Mr. Miller's checks and searched his oral cavity. Nothing was found.

43. On November 11, 2004, Mr. Miller was stopped by Department of Public Safety Secretary John Denko for an improper driving maneuver on Cerrillos Road. He was arrested and taken to the SFCDF for booking. He was taken by one of Defendants' officers into the bathroom of the booking area and told to take off his shirt, pants and shoes. He was then told to take off his underwear, and to squat and cough three times while the officer visually examined his genital and anal area. He did as he was told. Nothing was found.

#### **Copper Perry**

44. Ms. Perry is 20 years old. She lives in Santa Fe, New Mexico and owns a small business in Santa Fe. Prior to the events described below, she had never been arrested in her life.

45. In September, 2004, Ms. Perry was arrested for a DUI by a Santa Fe City Police officer. She was transported to the SFCDF where she was booked. She was taken by one of Defendants' officers into the bathroom of the booking area and instructed to take off all her clothes, underwear, shoes and socks. She asked if this was necessary, and was told that she had to do it, and that if she refused, she would be in more trouble. She took off all her clothes and gave them to the officer.

46. The door to the room was partially open while Ms. Perry was naked in the room. The officer then instructed Ms. Perry to bend over, spread her feet shoulder width, and grab her ankles. She did as she was instructed. As she was bent over, she was instructed to spread her

buttocks. She had no choice and did as she was told. The officer visually examined her anus. After the officer completed the search, Ms. Perry requested that her underwear be given back to her but the officer refused. Nothing was found during the strip search.

**David Sandoval**

47. Mr. Sandoval is 39 years old. He lives in Truchas, New Mexico and is employed as a machinist at Los Alamos National Laboratory. Prior to the events described below, he had never been arrested in his life.

48. On October 22, 2004, Mr. Sandoval was falsely accused by a patron at the Ohkay Casino of taking a \$100 chip. He was arrested by San Juan Tribal Police officers for misdemeanor theft, even though video surveillance cameras demonstrated that the accusation was false. Mr. Sandoval was taken to San Juan Tribal Jail. On October 23, 2004, Mr. Sandoval was transported to the Espanola Jail. He was then transported to the SFCDF.

49. At the SFCDF, Mr. Sandoval was taken by one of Defendants' officers into a cell and told to take off all his clothes, including his socks and underwear. He did as he was told. The officer then visually examined his naked body. Nothing was found.

50. Mr. Sandoval was then placed in general population awaiting arraignment. The next day his wife visited him. During the visit, he was separated from his wife by a glass and concrete wall. Following the visit, the officer in charge told him and the other detainees who had received visits that someone had talked about sneaking drugs during visitation, and that was not going to happen on his watch. He required Mr. Sandoval and the others to remove all their clothing. When Mr. Sandoval and the others were naked, the officer told them to turn around, squat and cough. Mr. Sandoval did as he was instructed and the officer visually examined his

genital and anal area. Nothing was found.

**Kristi Seibold**

51. Ms. Seibold is 49 years old and is a resident of Santa Fe, New Mexico. She has a Bachelor of Science degree from the University of Minnesota and a certificate in massage therapy from the New Mexico Academy of Healing Arts. She is an instructor at the New Mexico Academy of Healing Arts and is also the owner of a small business located in Santa Fe.

52. On January 24, 2004, Ms. Seibold was arrested for not surrendering her dog to Animal Control. She was taken to the SFCDF for booking. At the SFCDF, she was taken by one of Defendants' officers into a holding cell and told to "strip down." She asked if she could leave on her underwear, and was told to remove everything. When she asked why it was necessary to remove her underwear when she was only being booked for a dog offense, she was told it was "procedure."

53. After Ms. Seibold removed all her clothing, she was told to stand and lift her arms. She was then physically patted down on her bare flesh, including her arms, under her breasts, up and down her legs, and inside her legs to her genital area.

54. Ms. Seibold was then instructed to turn around and bend over. She complied, and her genital and anal area were visually scrutinized from behind by the officer. Ms. Seibold again asked why this was necessary and was told it was "procedure." Nothing was found.

55. During the time that Ms. Seibold was subjected to this strip search and body cavity search, the door to the holding cell was open and Ms. Seibold was exposed to the view of any person who walked by.

56. On December 3, 2004, Ms. Seibold was stopped by a Santa Fe Police Officer.

The officer gave her a verbal warning for an alleged traffic offense, then ran a routine computer check on her license. The check indicated that there was a bench warrant for her arrest for an outstanding \$39.00 fine from 2003. This bench warrant was erroneous as Ms. Seibold had already paid that fine.

57. Ms. Seibold was again taken to the SFCDF and booked. She was again taken by one of Defendants' officers into the holding cell and again told to take off all her clothes. Ms. Seibold protested and explained that she was there on a fine she had already paid, and that the police officer had told her that she would not have to change clothing at the detention center. However, she was again instructed to take off all her clothes for a search. Ms. Seibold took off her clothing except her undergarments. She was then instructed to remove her underwear. Ms. Seibold again protested, but complied.

58. After Ms. Seibold had removed all her clothing and was naked, the officer visually inspected her body and physically patted down her arms, her back, her buttocks, and her legs. Nothing was found.

59. During the time that Ms. Seibold was subjected to this strip search, the door to the holding cell was ajar and she was visible to a person passing by.

#### **Russella Serna**

60. Ms. Serna is 37 years old. She has a Bachelor of Arts degree in Psychology from Brown University, and a Master's Degree in Social Work from Arizona State University. She lives in Pojoaque, New Mexico and is self-employed as a Licensed Independent Social Worker. Prior to the events described below, she had never been arrested in her life.

61. On September 7, 2004, Ms. Serna was arrested for having left her child in her

vehicle while shopping. She was taken into custody at the SFCDF and booked. She was taken by one of Defendants' officers into the bathroom of the booking areas and instructed to take off all her clothes. She removed all her clothing other than her undergarments. She was then instructed to remove her undergarments as well. She complied.

62. After removing all her remaining clothing, Ms. Serna was then instructed to turn around and spread her legs. She attempted to comply, but was told to spread her legs even more. She was then instructed to "squat and cough," which she did. The officer visually examined her genital and anal areas. Nothing was found.

#### **Kimberly Wright**

63. Ms. Wright is 45 years old. She has a Bachelors of Fine Arts degree from the Massachusetts College of Art. She lives in Santa Fe, New Mexico and is self-employed as a writer and film producer. Prior to the events described below, she had never been arrested in her life.

64. On November 17, 2004, Ms. Wright was arrested on an outstanding bench warrant issued for failure to appear at a court hearing date. This bench warrant was erroneously issued as Ms. Wright had called the court in advance and informed the court that she was ill and could not appear.

65. Ms. Wright was taken into custody at the SFCDF and booked. She was then taken by one of Defendants' officers into a bathroom in the booking area and told to take off her clothes one item at a time. She removed all of her clothes other than her undergarments. She was then instructed to remove all remaining items of clothing.

66. After she removed all her clothes, Ms. Wright was told to put her arms overhead

and turn to the left and then the right for visual inspection. She complied. Ms. Wright was then instructed to lift each of her breasts for visual inspection. She complied. Ms. Wright was then instructed to turn around, bend over, and cough. She complied. The officer visually examined her genital and anal areas.

67. While Ms. Wright was bent over at the waist, completely naked, the correctional officer then placed her hands on Ms. Wright's legs and genital area and conducted a physical examination. Nothing was found.

#### **Allegations Common to All Named Plaintiffs**

68. Defendants had no valid reason for conducting strip searches of the named Plaintiffs. Nothing in the named Plaintiffs' histories, nor the circumstances of their arrests, gave Defendants reasonable suspicion that a strip search of the named Plaintiffs would result in the discovery of contraband or weapons. Rather, Defendants' strip searches of the named Plaintiffs were undertaken pursuant to a blanket and indiscriminate policy of strip searching each and every detainee processed at the SFCDF, in violation of well-settled constitutional law and standards of correctional practice.

69. Plaintiff's Elizabeth Leyba, Natasha Apodaca, Nancy Ellin, Monica Garcia, Lucy M. Marquez, Mark Miller, Copper Perry, David Sandoval, Kristi Seibold, Russella Serna, and Kimberly Wright were shocked, repulsed, humiliated, ashamed and distraught at being subjected to these degrading and dehumanizing invasions of their privacy.

#### **IV. CLASS ACTION ALLEGATIONS**

70. Paragraphs 1 through 69, above, are incorporated herein by reference as if fully set



forth in this paragraph.

71. The strip searches to which Plaintiffs were subjected were performed pursuant to the policies, practices and customs of Defendants of conducting strip searches of all incoming detainees. The searches complained of herein were performed without regard to the nature of the alleged offenses for which Plaintiffs had been arrested, and without Defendants having a reasonable belief that the Plaintiffs so searched possessed weapons or contraband, or that there existed facts supporting a reasonable belief that the searches would produce contraband or weapons.

72. This civil action is brought by Plaintiffs on their own behalf and on behalf of a class of similarly situated persons, pursuant to Fed. R. Civ. P. 23. The class for which Plaintiffs seeks certification is defined as follows: all persons who, in the period from January 12, 2002, to the present and continuing until this matter is adjudicated and the practices complained of herein cease, were arrested and subjected to a strip search and/or body cavity search at the Santa Fe County Detention Facility pursuant to a policy or practice of conducting strip searches on pre-arraignment arrestees without individualized reasonable suspicion that the search would lead to the discovery of contraband or weapons.

73. Plaintiffs are members of the class they seek to represent, and have standing to bring this action because they were arrested and subjected to a strip search and/or visual body search at the SFCDF without Defendants having a reasonable suspicion that the search would be productive of contraband or weapons, as set forth in more detail above.

74. Pursuant to Fed. R. Civ. P. 23, Plaintiffs, individually and on behalf of the members of the class, seek such relief as is just and equitable, including but not limited to:

(i) Complete disclosure of all information within the possession, custody or control of Defendants concerning, relating to or involving the searches complained of herein;

(ii) Judicial declaration that the searches complained of herein are unlawful;

(iii) Issuance of a permanent injunction prohibiting Defendants from engaging in the searches complained of herein; and

(iv) Judgment for compensatory and punitive damages to the fullest extent allowable by law from Defendants in favor of Plaintiffs and the members of the class for personal and economic injury, and deprivation of statutory and/or common law rights resulting from Defendants' practices.

75. Plaintiffs are unable to state precisely the size of the class. On information and belief, Plaintiffs allege that there often are more than ten persons per day who are arrested and taken into custody by Defendants and subjected to the searches complained of herein as a result of Defendants' policies, practices, and customs related to said searches. Thus, the class is sufficiently numerous that joinder of all members herein is impracticable. The exact number of class members will be ascertained through appropriate discovery, from records maintained by Defendants and their agents.

76. Questions of law and fact are common to the claims of Plaintiffs and the members of the class, including but not limited to (1) whether Defendants routinely subject all persons arrested to strip searches and/or body cavity searches; (2) whether persons are subjected to strip searches and/or body cavity searches without there being any reasonable suspicion, based on specific and articulable facts, to believe any particular detainee has concealed drugs, weapons, and or contraband; (3) whether the strip searches are conducted in an area of privacy so that the

searches cannot be observed by persons not participating in the searches: (4) whether Defendants may lawfully perform strip searches and/or body cavity searches without reasonable suspicion, based on specific and articulable facts, to believe any particular detainee has concealed drugs, weapons or contraband: (5) whether strip searches and/or body cavity searches may lawfully be conducted in areas where the search can be observed by people not participating in the search: and (6) whether or not Defendants' strip search policy and procedure is in accordance with the State and Federal Constitutions.

77. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

78. There is a well-defined community of interest amongst members of the class. The claims of the named Plaintiffs are typical of the claims of the members of the class. The factual bases of Defendants' misconduct are common to all class members and represent a common policy and practice of blanket strip searches of all detainees without reasonable suspicion. Moreover, Plaintiffs' claims are based on the same legal theories as those of the class members.

79. The named Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs are committed to prosecuting this action, and they have retained competent counsel experienced in civil litigation of this nature. Moreover, the interests of Plaintiffs are coincident with, and not antagonistic to, those of the other members of the class.

80. The common questions of law and fact herein predominate over questions affecting any individual class member, and class action treatment provides a superior method for the fair and efficient adjudication of the controversy.

81. At all times relevant to the acts alleged herein, and as to every cause of action asserted, Defendants acted fraudulently, oppressively, maliciously, and in knowing and conscious disregard of Plaintiffs' rights and the rights of class members, as outlined herein.

**V.**  
**FIRST CAUSE OF ACTION**  
**(Civil Rights Violations Under 42 U.S.C. § 1983)**

82. Plaintiffs incorporate by reference into their first cause of action the allegations of paragraphs 1 through 81 above, as fully as if realleged and set forth herein.

83. The above-described acts and omissions of Defendants were unreasonable, shocking to the conscience, and were committed intentionally, maliciously, willfully and/or with reckless or deliberate indifference, and in violation of the following clearly established constitutional rights of which a reasonable person would have been aware:

- (a) Plaintiffs' and class members' Fourth Amendment rights to be free from unreasonable searches and seizures; and
- (b) Plaintiffs' and class members' Eighth Amendment rights to be free from cruel and unusual punishment and/or Fourteenth Amendment rights to substantive and procedural due process, and to privacy.

84. The above-described acts and omissions of Defendants were motivated by evil motive and intent, and involved recklessness and callous indifference to Plaintiffs' and class members' federally protected rights, justifying an award of punitive damages.

85. Prior to the acts and omissions alleged herein, Defendants failed to properly create, adopt and inculcate appropriate policies and procedures for corrections officers and supervisory personnel employed by them; failed to properly train, monitor, supervise and

discipline corrections officers and supervisory personnel employed by them, and failed to otherwise institute adequate procedures and policies that would protect the rights of Plaintiffs and class members. These acts and omissions were direct and proximate causes of the injuries complained of by Plaintiffs herein, as set forth below.

86. Defendants Santa Fe County, MIC, Solano, Sisneros, and/or Dixon maintained a custom or policy which permitted or condoned the foregoing violations of Plaintiffs' and class members' constitutional rights.

87. The acts and omissions of the Defendants as set forth above were undertaken under color of state law and operated to deprive Plaintiffs and the members of the class of their federal rights. Defendants Solano, Sisneros and Dixon are liable in their individual and official capacities for damages proximately caused by these acts and omissions. Plaintiffs are also entitled to injunctive relief against the Defendants, including a permanent injunction prohibiting Defendants from engaging in the unlawful practices and procedures complained of herein.

88. As a direct and proximate cause of Defendants' violations of their constitutional rights, Plaintiffs and members of the class suffered damages as set forth below.

**VI.**  
**SECOND CAUSE OF ACTION**  
**(Claims Arising Under the New Mexico Tort Claims Act)**

89. Plaintiffs incorporate by reference into their second cause of action the allegations of paragraphs 1 through 88 above, as fully as if realleged and set forth herein.

90. The conduct of Defendants, described above, resulted in personal injury and bodily injury to Plaintiffs and members of the class resulting from assault, battery, false imprisonment, and/or deprivation of rights, privileges or immunity secured by the Constitution

and laws of the United States and New Mexico.

91. Defendants Solano and Sisneros, as supervisory law enforcement officers, had the duty in any activity actually undertaken by them to exercise for the safety of others that care ordinarily exercised by a reasonable, prudent and qualified law enforcement supervisor in light of the nature of what was being done. In addition, Defendants Solano and Sisneros had a duty to properly screen, hire, train, monitor, supervise and/or discipline employees of SFCDF. Defendants Solano and Sisneros knew or reasonably should have known of the information described above.

92. Defendants Solano and Sisneros breached the foregoing duties by failing to properly screen, hire, train, monitor, supervise and/or discipline employees of SFCDF, and by failing to adopt appropriate policies, procedures and protocols, by failing to implement appropriate supplemental training, by failing to appropriately discipline subordinate officers, and by failing to take other appropriate and usual supervisory actions to correct the problems and to prevent the harm which resulted to Plaintiffs and members of the class as a result of the misconduct of Defendants, described above.

93. Santa Fe County is the governmental entity which had immediate supervisory responsibility over the actions of employees of Santa Fe County, including but not limited to Defendants Solano, Sisneros and Dixon. Therefore, Santa Fe County is jointly and severally liable for all injuries and damages caused by the negligence of any of its municipal officials or employees under the doctrine of vicarious liability.

94. The conduct of Defendants was a direct and proximate cause of the injuries and damages to Plaintiffs and members of the class as set forth below.

95. All of the acts or omissions which constitute the basis for liability herein come within the scope of the waivers of immunity contained within the New Mexico Tort Claims Act.

96. To the extent required, Plaintiffs have given written notice of the claims contained herein in compliance with the New Mexico Tort Claims Act, §41-4-16(A)-(C) NMSA 1978, as amended.

97. As a direct and proximate cause of Defendants' conduct, Plaintiffs and members of the class suffered damages as set forth below.

**VII.**  
**THIRD CAUSE OF ACTION**  
**(Claims Arising Under New Mexico Common Law)**

98. Plaintiffs incorporate by reference into their third cause of action the allegations of paragraphs 1 through 97 above, as fully as if realleged and set forth herein.

99. The acts and omissions of Defendants MTC and Dixon, as set forth above, give rise to liability based on assault, battery, invasion of privacy, and intentional infliction of emotional distress.

100. As a direct and proximate cause of Defendants' conduct, Plaintiffs and members of the class suffered damages as set forth below.

**VIII.**  
**FOURTH CAUSE OF ACTION**  
**(Declaratory and Injunctive Relief)**

101. Plaintiffs incorporate by reference into their fourth cause of action the allegations of paragraphs 1 through 100 above, as fully as if realleged and set forth herein.

102. Plaintiffs, on behalf of themselves and the members of the class, seek a judgment declaring that Defendants must cease the activities described herein and enjoining Defendants

from any further strip searches without individualized reasonable suspicion.

103. The constitutional violations alleged herein arise from official policies and practices sanctioned by Defendants. The harm which the Plaintiffs and the members of the class have sustained are directly traceable to these officially sanctioned policies and procedures.

104. Plaintiffs and members of the class do not have a plain, adequate, speedy, or complete remedy at law to address the wrongs alleged in this Complaint, and they will suffer irreparable injury as a result of Defendants' misconduct unless injunctive and declaratory relief is granted. Plaintiffs and members of the class are in real and immediate danger of sustaining future, direct injury as a result of Defendants' official policies and practices that are ongoing at the time of this suit.

105. No cognizable burden will be placed on Defendants by requiring that no strip searches be undertaken without individualized reasonable suspicion. The public interest would be greatly enhanced by enforcement of policies and practices which adhere to the requirements of the state and federal Constitutions. Absent injunctive relief, there is no guarantee that the Defendants will cease their illegal policies and practices as alleged herein.

106. By reason of the foregoing, Plaintiffs and members of the class are entitled to declaratory and injunctive relief as set forth above.

## **IX.** **DAMAGES**

107. Paragraphs 1 through 106, above, are incorporated herein by reference as if fully set forth in this paragraph.

108. As a direct and proximate result of the wrongful and unlawful actions of



Defendants, described above, Plaintiffs and the members of the class were injured and have suffered and continue to suffer damages, including but not limited to distress, anguish, suffering, humiliation, deprivation of constitutional rights, and other incidental, consequential, and special damages.

109. Defendants' acts and omissions, as set forth herein, were malicious, reckless, wanton, oppressive, and/or fraudulent, justifying an award of punitive damages against the individually named Defendants in their personal capacities, and against Defendants MTC and Dixon, for the purpose of punishment and to deter others from the commission of like offenses.

WHEREFORE, Plaintiffs, on behalf of themselves, and on behalf of the members of the class represented herein, respectfully pray for and demand judgment against the Defendants as follows:

(a) For judgment against Defendants for compensatory damages, special damages, consequential damages and incidental damages under any or all of the causes of action, in an amount to be determined at the trial of this cause;

(b) For judgment declaring the rights of the parties;

(c) For injunctive relief;

(d) For reasonable attorneys' fees and costs incurred herein;

(e) For pre-judgment and post-judgment interest in amounts to be determined according to law;

(f) For an award of punitive and exemplary damages, in an amount to be determined at the trial of this cause; and

(g) For such other and further relief as the Court deems just and proper.

**JURY TRIAL REQUEST**

COME NOW Plaintiffs Elizabeth Leyba, Natasha Apodaca, Nancy Ellin, Monica Garcia, Luey M. Marquez, Mark Miller, Copper Perry, David Sandoval, Kristi Seibold, Russella Serna, and Kimberly Wright, by and through their counsel, below-listed, on their own behalf and on behalf of a class of similarly situated persons, and hereby demand trial by jury pursuant to the terms and conditions of Fed.R.Civ.P. 38 in regard to all issues in the above-referenced cause.

Respectfully submitted.

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