

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

**SHARON ALLISON, on behalf of herself and the
class of similarly situated persons;**

Plaintiffs,

v.

NO. CV 05-881 WPJ/WDS

**LINCOLN COUNTY BOARD OF
COMMISSIONERS; CORNELL COMPANIES,
INC., a Delaware Corporation; CORRECTIONAL
SYSTEMS, INC., a Delaware Corporation; MIKE
HOLM, individually and in his official capacity;
ROGER JEFFERS, individually and in his official
capacity; PETER MORALES, individually and in
his official capacity; LUCY VEGA, individually
and in her official capacity; LINCOLN COUNTY
DETENTION CENTER CORRECTIONS
OFFICERS DOES 1 THROUGH 50 and ROES 1
THROUGH 20, inclusive;**

JURY TRIAL REQUESTED

Defendants.

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

INTRODUCTION

This is an action for declaratory and injunctive relief, damages, and punitive damages against the Lincoln County Board of Commissioners, Cornell Companies, Inc., Correctional Systems, Inc., Lincoln County Detention Center Wardens Mike Holm and Roger Jeffers, Lincoln County Detention Center Corrections Officers Peter Morales, Lucy Vega and other unknown Lincoln County Detention Center Corrections officers and officials sued under their

fictitious names as Does 1 through 50 and Roes 1 through 20, for violations of Plaintiff's constitutional rights resulting from the application of Lincoln County Detention Center policies, practices, and customs concerning the use of strip searches and visual body cavity searches in the Lincoln County Detention Center. Plaintiff, for herself and all those in the class of similarly situated persons, seeks an order declaring illegal Defendants' policy of subjecting detainees in their custody to strip and visual body cavity searches before they are arraigned and without having any reasonable suspicion that the searches will be productive of contraband.

Defendants' strip search and visual body cavity search policies, practices, and customs violate those rights of Plaintiff, and all those she represents, which are secured by the Fourth and Fourteenth Amendments to the United States Constitution and which entitle Plaintiff, and all those similarly situated, to recover damages under the Federal Civil Rights Act, 42 U.S.C. § 1983.

Additionally, Plaintiff includes, on behalf of herself and on behalf of all those she represents, supplemental claims under New Mexico state law against Defendants for violation of the State constitutional right to be free from unreasonable searches and seizures as defined in the New Mexico Constitution, Art. II, § 10, and pursuant to the New Mexico Tort Claims Act and New Mexico common law.

Plaintiff alleges against Defendants upon knowledge as to herself and all matters of public record, and upon information and belief as to all other matters, as follows:

I.
JURISDICTION AND VENUE

This action is brought pursuant to 42 USC §§ 1983 and 1988, and the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 USC §§ 1331 and 1343(a)(3) and (4) and the aforementioned statutory and constitutional provisions.

1. Under 28 USC § 1367(a), the Court has supplemental jurisdiction over the state claims alleged herein.

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

II.
PARTIES

3. Plaintiff Sharon Allison (hereinafter referred to as “Plaintiff”), and all those similarly situated, are, and at all material times herein, were persons who were arrested within the period beginning three years prior to the filing of the original Complaint in this case on August 22, 2005, and continuing to this date, and who were subjected to strip and/or visual body cavity searches at the Lincoln County Detention Center (hereinafter referred to as “LCDC”), prior to being arraigned and/or without Defendants first having, and recording in writing, a reasonable suspicion that the searches would be productive of contraband or weapons.

4. Defendant Lincoln County Board of Commissioners (hereinafter referred to as “Lincoln 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 material times hereto, Lincoln 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, Lincoln County was a party to written contracts with Defendant Cornell Companies, Inc. and/or Defendant Correctional Systems, Inc. which authorized those private entities to operate LCDC on behalf of Lincoln County. Despite these written contracts, Lincoln County had a non-delegable duty to assure that the policies and procedures of LCDC complied with applicable constitutional standards and accepted corrections practices as well as to assure that the constitutional rights of persons detained or confined in LCDC were not violated. Pursuant to §§ 4-44-19, 33-3-3 through 8, and 33-3-13 NMSA 1978, Lincoln County had a statutory obligation to provide for the confinement of prisoners incarcerated under the county's jurisdiction. Lincoln 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 Lincoln County.

5. Defendant Cornell Companies, Inc. (hereinafter referred to as "Cornell"), on information and belief, is a corporation organized under the laws of the State of Delaware, headquartered in Texas, and doing business in the State of New Mexico. On April 1, 2005, Cornell completed its acquisition of Defendant Correctional Systems, Inc. (hereinafter referred to as "CSI"), which, at all times material hereto and prior to April 1, 2005, operated

LCDC under a written contract with Lincoln County. At all material times hereto, Cornell and its predecessors in interest, their officers, employees, and agents acted under color of law and within the course and scope of their employment and agency.

6. CSI, on information and belief, is now a wholly-owned subsidiary of Cornell, and prior to April 1, 2005, on information and belief, was a corporation organized under the laws of the State of Delaware, headquartered in San Diego, California, doing business in the State of New Mexico. Prior to April 1, 2005, CSI operated LCDC under a written contract with Lincoln County. At all material times hereto, CSI and its officers, employees, and agents acted under color of law and within the scope of their employment and agency.

7. Defendant Mike Holm (“hereinafter referred to as “Holm”), upon information and belief, was, at all times material hereto, a resident of Lincoln County, New Mexico. Until approximately April, 2005, Holm was employed by CSI and/or Cornell as the Warden of LCDC. In that capacity, he was responsible for assuring that LCDC’s policies and procedures complied with constitutional standards and correctional practices. In particular, he was responsible for the preparation, promulgation and implementation of LCDC policies regarding searches of detainees and inmates, including those which were in effect at the time of the strip search of Plaintiff and others similarly situated to her. During his tenure as Warden, Holm was the immediate supervisor of Defendants Peter Morales, Lucy Vega and Does 1 - 50. In addition, at all times material hereto, Holm 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 course and scope of his duties as well as under color of law. In regard to Plaintiff's §1983 claims, Holm is sued in both his individual and official capacities.

8. Defendant Roger Jeffers ("hereinafter referred to as "Jeffers"), upon information and belief, is now and at all times material hereto was a resident of Lincoln County. Commencing on or about April 1, 2005, Jeffers was employed by CSI and/or Cornell as the Warden of LCDC. In that capacity, he was responsible for assuring that LCDC's policies and procedures complied with constitutional standards and correctional practices. In particular, he was responsible for the preparation, promulgation and implementation of LCDC policies and procedures regarding searches of detainees and inmates, including those policies and procedures regarding searches which had been formulated by Holm which Jeffers continued to enforce and implement and which remained in force and effect at the time of the detention of Plaintiff and others similarly situated. During his tenure as Warden, Jeffers was the immediate supervisor of Defendants Peter Morales, Lucy Vega and Does 1 through 50. In addition, at all times material hereto, Jeffers 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 course and scope of his duties as well as under color of law. In regard to Plaintiff's § 1983 claims, Jeffers is sued in both his individual and official capacities.

9. Defendant Peter Morales (hereinafter referred to as “Morales”), upon information and belief, is now and at all times material hereto was a resident of Lincoln County. At all times material hereto, Morales was an employee of CSI and/or Cornell who, as part of his duties at LCDC, subjected Plaintiff, and others whom she represents, to pre-arraignment strip and/or visual body cavity searches without having, and recording in writing, a reasonable suspicion that such searches would be productive of contraband or weapons. In addition, at all times material hereto, Morales 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 course and scope of his duties as well as under color of law.

10. Defendant Lucy Vega (hereinafter referred to as “Vega”), upon information and belief, is now and at all times material hereto has been a resident of Lincoln County. At all times material hereto, Vegas was an employee of CSI and/or Cornell who, as part of her duties at LCDC, subjected Plaintiff, and others whom she represents, to pre-arraignment strip and/or visual body cavity searches without having, and recording in writing, a reasonable suspicion that such searches would be productive of contraband or weapons. In addition, at all times material hereto, Vega 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 course and scope of her duties as well as under color of law.

11. Defendants LCDC Corrections Officers Does 1 - 50 are, or were, natural persons whose identities are not known who were employed as corrections officers by CSI and/or Cornell at LCDC during the relevant time period. As part of their duties, Does 1 - 50 subjected Plaintiff, and/or those she represents, to pre-arraignment strip and/or visual body cavity searches without having, and recording in writing, a reasonable suspicion that the searches would be productive of contraband or weapons. All such persons were law enforcement officers and public employees as those terms are defined in the New Mexico Tort Claims Act §§ 41-4-3 (D) and (F) NMSA 1978, as amended, and were acting within the course and scope of their duties as well as under color of law.

12. Defendant Roes 1 - 20 are natural persons whose identities are not known and who are sued by the fictitious names of Roes 1 - 20. Such persons were agents and/or employees of Lincoln County, CSI and/or Cornell who participated in formulating, promulgating, implementing and/or condoning the policies under which the searches of Plaintiff and others whom she represents took place. In addition, Defendants include agents and/or employees of Lincoln County, CSI and/or Cornell who ordered, condoned, authorized, covered up, or were otherwise associated with the implementation of the illegal and unconstitutional policies and practices of LCDC relating to strip searches complained of herein.

13. At all material times mentioned herein, all Defendants were acting under the color of law, to wit, under color of statutes, ordinances, regulations, policies, customs and usages of the State of New Mexico and/or Lincoln County.

14. Lincoln County, Cornell, CSI, Holm and/or Jeffers were responsible for the screening, hiring, training, monitoring, supervision and disciplining of subordinate employees of LCDC, and were the authorities empowering LCDC to incarcerate persons under the jurisdiction of Lincoln County. Lincoln County, Cornell, CSI, Holm and Jeffers were responsible for administering LCDC and for formulating, overseeing, and implementing the policies, practices, and customs challenged herein relating to the operation of the LCDC.

15. Plaintiff's allegations against Lincoln County are based on acts and omissions of Cornell, CSI, Holm, Jeffers and their employees, agents and representatives, as well as on acts and omissions of persons who are Lincoln County employees, and on Lincoln County's breach of its duty to protect Plaintiff, and all those she represents, from the wrongful conduct of said persons and employees.

16. Lincoln County, Cornell, and CSI also maintained or permitted an official policy or custom of causing or permitting the occurrence of the types of wrongs complained of herein, which wrongs damaged Plaintiff, and all those similarly situated, as herein alleged.

17. Class action plaintiffs are those similarly situated who, during the period beginning three years before the filing of the original Complaint herein on August 22, 2005, and continuing to this date, were subjected by Defendants to pre-arraignment strip and/or

visual body cavity searches without Defendants having, and recording in writing, a reasonable suspicion that the searches would be productive of contraband or weapons.

III. FACTS

18. On or about May 27, 2005, Plaintiff was arrested by New Mexico State Police Officer Samuel Houston near Carrizozo, New Mexico, allegedly on an outstanding warrant for issuing a worthless \$16.36 check in Alamogordo, New Mexico. Plaintiff was transported by Officer Houston to LCDC. Upon arrival at LCDC, and prior to any appearance before a judge and without there being any reasonable suspicion that she was concealing contraband, Plaintiff, pursuant to policies, practices, and procedures of Defendants, and each of them, was subjected to a strip search and visual body cavity search in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article II, Section 10 of the Constitution of the State of New Mexico. Plaintiff was coerced, forced, and compelled to disrobe for the strip search in an area in which she was observed while naked by persons who were not participating in the search and who were of the opposite sex.

19. Within ninety days of the aforesaid strip search, Plaintiff submitted a notice under the New Mexico Tort Claims Act for herself and for all persons similarly situated (a copy of said notice is attached hereto as Exhibit "A", and incorporated herein to the extent relevant by this reference). Plaintiff's group claim was denied on or about July 8, 2005, allowing the filing of this class action complaint to include claims against public employees for which immunity has been waived under the New Mexico Tort Claims Act.

20. Plaintiff is informed and believes, and thereupon alleges, that Defendants routinely followed their policy, practice, and custom of subjecting pre-arraignment detainees, including Plaintiff and all those she represents, to strip and visual body cavity searches without first having, and recording in writing, a reasonable suspicion that the search would be productive of contraband or weapons.

21. Plaintiff is informed and believes, and thereupon alleges, that Defendants have the ability to identify all such similarly situated plaintiffs, specifically those who, while in Defendants' custody, at LCDC within three years prior to the filing of the original Complaint herein on August 22, 2005, were subjected to strip searches and/or visual body cavity searches prior to arraignment without Defendants first having, and recording, a reasonable suspicion that the searches would be productive of contraband or weapons.

22. Lincoln County, Cornell, CSI, Holm and/or Jeffers are personally responsible for the promulgation and continuation of the strip search policy, practice, and custom pursuant to which Plaintiff, and those she represents, were subjected to strip searches.

23. As a result of being subjected to the strip searches complained of herein, Plaintiff, and each of the persons similarly situated, suffered physical, mental, and emotional distress, invasion of privacy, and violation of due process of law and state and federal statutory and constitutional rights, and are entitled to recover damages according to proof.

IV.
CLASS CLAIMS

24. The strip and visual body cavity searches to which Plaintiff, and all those similarly situated, were subjected were performed pursuant to policies, practices, and customs of Defendants. The searches complained of herein were performed without regard to the nature of the alleged offenses for which Plaintiff, and all those similarly situated, had been arrested, without regard to whether or not Plaintiff, and those she represents, were eligible for being cited and released, without regard to whether or not Plaintiff, and those similarly situated, were eligible for and/or were released on their own recognizance, or on bail. Furthermore, the searches complained of herein were performed without Defendants having a reasonable belief that Plaintiff, or any of those similarly situated, possessed weapons or contraband, and those facts being articulated and recorded in a supervisor-approved document. The searches complained of herein were performed without Defendants taking reasonable precautions to make certain that Plaintiff, and each of those similarly situated, was not observed by others not involved in the search.

25. Plaintiff brings this action on her own behalf and on behalf of all persons similarly situated pursuant to Rule 23, Federal Rules of Civil Procedure.

26. The class of plaintiffs is defined to include all persons arrested on charges not involving violence, drugs or weapons who, in the period from and including three years for federal and New Mexico common law claims and two years for New Mexico Tort Claims Act claims prior to the filing of the original Complaint herein on August 22, 2005, and

continuing until this matter is adjudicated and the practices complained of herein cease, were arrested and subjected to pre-arraignment strip and/or visual body cavity searches at LCDC without Defendants first having, and recording in writing, a reasonable suspicion that the searches would be productive of contraband or weapons.

27. In accordance with Rule 23(a), Federal Rules of Civil Procedure, the members of the class are so numerous that joinder of all members is impractical. Plaintiff does not know the exact number of class members. Plaintiff is informed and believes, and thereupon alleges, that there are three to ten persons per day who were taken into the custody of Defendants and who were subjected to the searches complained of herein as a result of Defendants' policy, practice, and custom relating to said searches.

28. In accordance with Rule 23(a), Federal Rules of Civil Procedure, Plaintiff is informed and believes, and thereupon alleges, that there are many questions of fact common to the class including, but not limited to: (1) whether Defendants routinely subjected all persons arrested to strip searches and/or visual body cavity searches prior to arraignment if they intended such persons to be housed in LCDC; (2) whether persons were subjected to strip searches and/or visual body cavity searches prior to arraignment without there being any reasonable suspicion, based on specific or articulable facts, to believe any particular arrestee had concealed drugs, weapons, and/or contraband in bodily cavities which could be detected by means of a strip and/or visual body cavity search; (3) whether the strip and/or visual body cavity searches were conducted in an area of privacy so that the searches would not be

observed by persons not participating in the searches; and, (4) whether the strip and/or visual body cavity searches were reasonably related to Defendants' penological interest in maintaining the security of the jail and whether or not there were less intrusive methods for protecting any such interest.

29. In accordance with Rule 23(a), Federal Rules of Civil Procedure, Plaintiff is informed and believes, and thereupon alleges, that there are many questions of law common to the class including, but not limited to: (1) whether Defendants may perform strip and/or visual body cavity searches on persons prior to their arraignment without reasonable suspicion based on specific or articulable facts to believe any particular prearrest detainee has concealed drugs, weapons and/or contraband which would likely be discovered by a strip and/or visual body cavity search; (2) whether Defendants may perform strip and/or visual body cavity searches on persons without first reasonably relating the strip search of the subject to Defendants' penological interest in maintaining the security of the jail and determining if there is a less intrusive method to protect that interest; (3) whether strip and/or visual body cavity searches may be conducted in areas where the search can be observed by people not participating in the search without violating plaintiffs' state and federal constitutional rights and plaintiffs' state statutory or common law rights; (4) whether or not Defendants' strip search policies and procedures are in accordance with the state and/or federal constitutions; (5) whether or not plaintiffs' state claims are actionable under the provisions of the New Mexico Tort Claims Act; and, (6) whether or not New Mexico has

waived any immunity defense for claims of this type when brought pursuant to the provisions of the New Mexico Tort Claims Act.

30. In accordance with Rule 23(a), Federal Rules of Civil Procedure, the claims of Plaintiff are typical of the class. Plaintiff was arrested on a minor offense not involving violence, drugs or weapons and was searched, prior to arraignment, without Defendants having a reasonable suspicion that a strip or visual body cavity search would produce drugs, weapons or contraband (and without the facts supporting any such suspicion being articulated in a supervisor-approved writing). Plaintiff has the same interests and suffered the same type of injuries as all of the class members. Plaintiff's claims arose because of Defendants' policy, practice, and custom of subjecting arrestees to strip and/or visual body cavity searches before arraignment without having, and recording in writing, a reasonable suspicion that the search would be productive of contraband or weapons. Each class member suffered actual damages as a result of being subjected to a strip and/or visual body cavity search. The actual damages suffered by Plaintiff is similar in type and amount to the actual damages suffered by each class member.

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

32. In accordance with Rule 23(b)(1)(A), Federal Rules of Civil Procedure, prosecution of separate actions by individual members of the class would create a risk that

inconsistent or varying adjudications with respect to individual members of the class would establish incompatible standards of conduct for the parties opposing the complaint.

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

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

35. In accordance with Rule 23(b)(3), Federal Rules of Civil Procedure, this class action is superior to other available methods for the fair and equitable adjudication of the controversy between the parties. Plaintiff is informed and believes, and thereupon alleges, that the interests of members of the class in individually controlling the prosecution of a separate action is low, in that most class members would be unable individually to prosecute any action at all. Plaintiff also is informed and believes, and thereupon alleges, that the amounts at stake for individuals are so small that separate suits would be impracticable. Plaintiff is informed and believes, and thereupon alleges, that most members of the class will not be able to find counsel to represent them. Plaintiff is informed and believes, and

thereupon alleges, that it is desirable to concentrate all litigation in one forum because all of the claims arose in Lincoln County. It will promote judicial efficiency to resolve the common questions of law and fact in one forum, rather than in multiple courts.

36. Plaintiff does not know the identities of all of the class members. Plaintiff is informed and believes, and thereupon alleges, that the identities of the class members may be ascertained from records maintained by Defendants. Plaintiff is informed and believes, and thereupon alleges, that Defendants' records reflect the identities, including addresses and telephone numbers, of the persons who have been held in custody in LCDC. Plaintiff is informed and believes, and thereupon alleges, that records maintained by Defendants reflect who was subject to a strip and/or visual body cavity search, when the search occurred, where the search occurred, whether any reasonable suspicion for the search existed and was recorded in a supervisor-approved writing, whether the search was videotaped, when persons searched were arraigned, and the charges on which such persons were arrested. Plaintiff is informed and believes, and thereupon alleges, that all of the foregoing information is contained in Defendants' computer system and/or in paper files maintained by Defendants and that the information necessary to identify the class members, by last known addresses, and the dates and reasons for their arrests and/or release from custody, is readily available from said computer system and/or documents.

37. In accordance with Rule 23(c)(2)(b), Federal Rules of Civil Procedure, class members must be furnished with the best notice practicable under the circumstances,

including individual notice to all members who can be identified through reasonable effort. Plaintiff is informed and believes, and thereupon alleges, that Defendants' records contain a last known address for class members. Plaintiff contemplates that individual notice will be given to class members at such last known address by First Class U.S. mail. Plaintiff contemplates that the notice will inform class members of the following:

- i. The pendency of the class action and the issues common to the class;
- ii. The nature of the action;
- iii. Their right to "opt out" of the action within a given time, in which event they will not be bound by a decision rendered in the class action;
- iv. Their right, if they do not "opt out," to be represented by their own counsel and to enter an appearance in the case; otherwise they will be represented by the named class Plaintiff and the named class Plaintiff's counsel; and
- v. Their right, if they do not "opt out," to share in any recovery in favor of the class, and conversely to be bound by any judgment on the common issues adverse to the class.

V.

FIRST CAUSE OF ACTION

(Civil Rights Violations Under 42 USC § 1983)

38. Plaintiff incorporates by reference into this cause of action the allegations in each of the preceding paragraphs, as fully as if realleged and set forth herein.

39. Defendants' policies, practices, and customs regarding the strip and visual body cavity searches complained of herein violated Plaintiff's, and all those similarly situated's, clearly established rights under the Fourth Amendment to be free from unreasonable searches and seizures, violated Plaintiff's, and all those similarly situated's, clearly established rights to due process and privacy under the Fourteenth Amendment, and directly and proximately damaged Plaintiff, and all those similarly situated, as herein alleged, entitling Plaintiff, and all class members, to recover damages for said constitutional violations pursuant to 42 U.S.C. § 1983.

WHEREFORE, Plaintiff prays for relief, for herself and for all persons similarly situated, as hereunder appears.

VI.
SECOND CAUSE OF ACTION
(Claims Arising Under the New Mexico Tort Claims Act
on behalf of Plaintiff and all persons similarly situated)

40. Plaintiff incorporates by reference into this cause of action each of the allegations in the preceding paragraphs, as fully as if realleged and set forth herein.

41. The conduct, policies, practices, and customs of Defendants, described above, resulted in personal and bodily injury to Plaintiff, and those she seeks to represent, in that the strip and visual body cavity searches complained of herein violated the rights of Plaintiff, and all those similarly situated, to be free from unreasonable searches and seizures as secured by Article II, Section 10 of the New Mexico Constitution and directly and proximately damaged

Plaintiff, and each of those similarly situated, as herein alleged, entitling said Plaintiff, and each of those she represents, to recover damages.

42. Holm and Jeffers, as Wardens of LCDC, had the duty in any activity actually undertaken by each of them to exercise for the safety of others that care ordinarily exercised by a reasonable, prudent, and qualified corrections supervisor in light of the nature of what was being done. In addition, Holm and Jeffers had a duty to properly screen, hire, train, monitor, supervise, and/or discipline those working at LCDC, including Morales and Vega. Holm and Jeffers knew or reasonably should have known of the information described herein.

43. Holm and Jeffers breached the foregoing duties by failing to properly screen, hire, train, monitor, supervise, and/or discipline personnel employed at LCDC, 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 Plaintiff, and all those similarly situated, as a result of the acts and omissions of Defendants complained of herein.

44. Lincoln County is the governmental entity which had immediate supervisory responsibility over the actions of employees and agents of Lincoln County, including, but not limited to, Holm, Jeffers, Morales and Vega. Therefore, Lincoln County is jointly and

severally liable for all injuries and damages caused by the negligence of any of its municipal officials, employees, or agents under the doctrine of vicarious liability.

45. The conduct of Defendants, and each of them, was a direct and proximate cause of the injuries and damages to Plaintiff, and those she seeks to represent.

46. All of the acts and/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.

47. To the extent required, Plaintiff has given written notice of the claims contained herein in compliance with the New Mexico Tort Claims Act, § 41-4-16 NMSA 1978, as amended.

WHEREFORE, Plaintiff prays for relief for herself and for all persons similarly situated, as hereunder appears.

VII.
THIRD CAUSE OF ACTION
(Claims Arising Under New Mexico Common Law
on behalf of Plaintiff and all those similarly situated)

48. Plaintiff incorporates by reference into this cause of action the allegations in each of the preceding paragraphs, to the extent relevant, as fully as if realleged and set forth herein.

49. The acts and omissions of Holm, Jeffers, Morales and Vega, as set forth above, give rise to liability based on assault, invasion of privacy, and intentional infliction of emotional distress.

50. The acts and omissions of Holm, Jeffers, Morales and Vega, as set forth above, occurred within the course and scope of their employment. Therefore, Cornell and CSI are vicariously liable for all such acts and omissions as well as the resultant injuries and damages.

51. As a direct and proximate cause of Defendants' conduct, Plaintiff, and all those similarly situated, were damaged as set forth herein.

WHEREFORE, Plaintiff prays for relief for herself and for all persons similarly situated, as hereunder appears.

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

52. Plaintiff incorporates by reference into this cause of action the allegations in each of the preceding paragraphs, to the extent relevant, as fully as if realleged and set forth herein.

53. Plaintiff, on behalf of herself and the members of the class, seeks a judgment declaring that Defendants' strip search policies and procedures violate constitutional rights under the federal and New Mexico constitutions, declaring that Defendants must cease the activities described herein and enjoining Defendants from any further strip searches of pre-arraignment detainees without individualized reasonable suspicion.

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

55. Plaintiff and members of the class do not have a plain, adequate, speedy, or complete remedy at law to address the wrongs alleged herein, and they will suffer irreparable injury as a result of Defendants' misconduct unless injunctive and declaratory relief is granted. Plaintiff 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.

56. 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 permanently cease their illegal policies and practices as alleged herein.

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

IX. **DAMAGES**

58. The above paragraphs are incorporated herein by reference as if fully set forth in this paragraph.

59. As a direct and proximate result of the wrongful and unlawful actions of Defendants, described above, Plaintiff and the members of the class were injured and have suffered and continue to suffer damages, including but not limited to emotional distress, anguish, suffering, humiliation, deprivation of constitutional rights, and other incidental, consequential, and special damages.

60. Defendants' acts and omissions, as set forth herein, were malicious, reckless, wanton, oppressive, and/or fraudulent, justifying an award of punitive damages under the First Cause of Action herein against Holm, Jeffers, Morales and Vega, in their individual capacities, and against Cornell and CSI for the purpose of punishment and to deter these Defendants and others from the commission of like offenses. In addition, for the same reasons and purposes, said acts and omissions justify an award against Holm, Jeffers, Morales, Vega, Cornell and CSI under the Third Cause of Action herein.

X.
PRAYER

WHEREFORE, Plaintiff, on behalf of herself and on behalf of the members of the class represented herein, respectfully prays for and demands judgment against 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 pursuant to 42 U.S.C. § 1988;
- (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

COMES NOW Plaintiff Sharon Allison, by and through her counsel, below-listed, on her own behalf and on behalf of a class of similarly situated persons, and hereby demands trial by jury pursuant to the terms and conditions of Rule 38, Federal Rules of Civil Procedure, in regard to all issues in the above-referenced cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served upon the following counsel by first-class U.S. mail, postage prepaid, on the 28th day of June, 2006.

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Signed Electronically 6/28/06
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