



promulgated by senior Department officials; specifically, Defendants Harry Buffardi, Gordon Pollard and Robert Elwell.

It has been well established in this judicial circuit for many years that individuals charged with misdemeanors or violations cannot be strip-searched absent particularized suspicion that they possess weapons or contraband. In fact, a judge in this Judicial District has recently held that the blanket strip search policy of the Schenectady City Police Department was unconstitutional – a policy based, in large part, upon that promulgated by the Schenectady County Sheriff’s Department. In short, the policy of Schenectady County and the Schenectady County Sheriff’s Department to force those charged with minor crimes to undergo the indignities of a strip search upon entry into the Schenectady County Jail is not only clearly illegal, but is insensitive and unnecessary.

Nichole McDaniel and Lessie Davies bring this action on behalf of themselves, and on behalf of a class of thousands of others who were strip searched after being charged with petty crimes, to vindicate the clear and unnecessary violation of their civil rights and those of the class members they propose to represent. Both of these individuals were charged with misdemeanor and/or violation offenses, and both were subject to strip searches, in violation of their right against unreasonable searches under the Fourth Amendment of the United States Constitution. They seek monetary damages for themselves and each member of the proposed class, a declaration that the Sheriff’s Department’s policies are unconstitutional, and an injunction precluding Schenectady County and the Schenectady County Sheriff’s Department from continuing to violate the rights of those placed into their custody. With this as a background, Plaintiffs Nichole McDaniel and Lessie Davis complain as follows:

## **JURISDICTION**

1. This Court has jurisdiction over this action under the provisions of 28 U.S.C. §§ 1331, 1341 & 1343 because it is filed to obtain compensatory damages, punitive damages, and injunctive relief for the deprivation, under color of state law, of the rights of citizens of the United States secured by the Constitution and federal law pursuant to 42 U.S.C. §§ 1981 & 1983. This Court also has jurisdiction over this action under the provisions of 28 U.S.C. § 2201, as it is filed to obtain declaratory relief relative to the Constitutionality of the policies of a local government.

2. Venue is proper under 28 U.S.C. § 1391(e)(2) because the events giving rise to Plaintiffs' claims and those of proposed class members occurred in this judicial district.

## **PARTIES**

3. Plaintiff Nichole McDaniel ("McDaniel") is 19 years old and resides in Schenectady County, New York. On or about June 11, 2004, McDaniel was arrested and placed in the Schenectady County Jail on charges of two counts of Petty Larceny and one county of Endangering the Welfare of a Child (both class A misdemeanors).

4. Plaintiff Lessie Davies ("Davies") is 18 years old and resides in Schenectady County, New York. Davies was arrested on or about June 11, 2004 and transported to the Schenectady County Jail on charges of one count of petty larceny and one count of endangering the welfare of the child (both class A misdemeanors).

5. Defendant County of Schenectady (the “County”) is a county government organized and existing under the laws of the State of New York. At all times relevant hereto, the County, acting through its Sheriff’s Department, was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the Schenectady County Jail and was responsible for the appointment, training, supervision and conduct of all Sheriff’s Department personnel, including those working in the Schenectady County Jail. In addition, at all relevant times, the County was responsible for enforcing the rules of the Schenectady County Jail, and for ensuring that Sheriff’s Department personnel employed in the Jail obey the Constitution and laws of the United States and of the State of New York.

6. The Schenectady County Sheriff’s Department (the “Sheriff’s Department”) is a County Sheriff’s Department organized and existing under the laws of the State of New York. Although not a legal entity for the purposes of litigation, the Department is listed as a party for the purposes of identification. At all times relevant hereto, the Sheriff’s Department was responsible for operating, organizing, overseeing and administering the Schenectady County Jail (“SCJ”). At all times relevant hereto, Defendant Sheriff’s Department, together with the County of Schenectady, was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the SCJ, and was responsible for the appointment, training, supervision and conduct of all Sheriff’s Department personnel, including those working in the SCJ. In addition, at all times relevant hereto, Defendant Sheriff’s Department, together with the County of Schenectady, was responsible for enforcing the rules of the Schenectady County Jail, and

for ensuring that Sheriff's Department personnel employed in the SCJ obeyed the Constitution and laws of the United States and of the State of New York.

7. Defendant Harry Buffardi ("Sheriff Buffardi") is the duly elected Sheriff of Schenectady County, and, as such, is a policy maker with respect to the treatment of pre-trial and other detainees over which the SCJ exercises custodial or other control. Sheriff Buffardi's principal place of business is 320 Veeder Avenue, Schenectady, NY 12305. Sheriff Buffardi is made a Defendant in this action in both his individual and official capacities.

8. Defendant Gordon Pollard ("Undersheriff Pollard") is the duly appointed Undersheriff of Schenectady County, and, as such, is a policy maker with respect to the treatment of pre-trial and other detainees over which the SCJ exercises custodial or other control. Undersheriff Pollard's principal place of business is 320 Veeder Avenue, Schenectady, NY 12305. Undersheriff Pollard is made a Defendant in this action in both his individual and official capacities.

9. Defendant Robert Elwell ("Major Elwell") is the duly appointed Major of the Schenectady County Sheriff's Department and is the officer in charge of the operation of the Schenectady County Jail. As such, Major Elwell is a policy maker with respect to the treatment of pre-trial and other detainees over which the SCJ exercises custodial or other control. Major Elwell's principal place of business is 320 Veeder Avenue, Schenectady, NY 12035. Major Elwell is made a Defendant in this action in both his individual and official capacities.

10. Collectively, Sheriff Buffardi, Undersheriff Pollard, and Major Elwell will be referred to as the "Policy Making Defendants."

## CLASS ACTION ALLEGATIONS

11. Plaintiffs bring this action pursuant to Rules 23(b)(1), 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and a class of similarly situated individuals who were charged with misdemeanors or minor crimes and were strip searched upon their entry into the Schenectady County Jail.

12. The class that Plaintiffs seek to represent is defined as follows:

All persons who have been or will be placed into the custody of the Schenectady County Jail after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions, civil commitments or other minor crimes and were or will be strip searched upon their entry into the Schenectady County Jail pursuant to the policy, custom and practice of the Schenectady County Sheriff's Department and the County of Schenectady. The class period commences on June 29, 2001 and extends to the date on which the Schenectady County Sheriff's Department and/or the County of Schenectady are enjoined from, or otherwise cease, enforcing their unconstitutional policy, practice and custom of conducting strip searches absent reasonable suspicion. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

13. This action has been brought and may properly be maintained as a class action under Federal law and satisfies the numerosity, commonality, typicality and adequacy requirements for maintaining a class action under Fed. R. Civ. P. 23(a).

14. The members of the class are so numerous as to render joinder impracticable. Upon information and belief, there are hundreds of people arrested for misdemeanors and violations who are placed into the custody of the Schenectady County Jail every month – all of whom are members of the proposed class. Upon information and belief, the size of the proposed class totals at least 5,000 individuals, some of whom have had their civil rights violated on multiple occasions.

15. Upon information and belief, joinder of all of these individuals is impracticable because of the large number of class members and the fact that class members are likely dispersed over a large geographical area, with some members presently residing outside of Schenectady County and this Judicial District. Furthermore, upon information and belief, many members of the class are low-income persons, may not speak English, and likely would have great difficulty in pursuing their rights individually.

16. Common questions of law and fact exist as to all members of the Class, in that they all had their right to be free from unreasonable searches violated by Defendants' conducting strip searches absent particularized suspicion. All members of the class were charged with misdemeanors or violations when placed into the custody of the Schenectady County Jail, and all were illegally strip searched in violation of the clearly established law in this judicial circuit.

17. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the class sustained damages arising out of Defendants' course of conduct. The harms suffered by the Plaintiffs are typical of the harms suffered by the class members.

18. The representative Plaintiffs have the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the Class. Plaintiffs have no interests that are adverse to the interests of the members of the Class.

19. Plaintiffs have retained counsel who has substantial experience and success in the prosecution of class action and civil rights litigation. The named Plaintiffs are being represented by Elmer Robert Keach, III; Bruce Menken and Jason Rozger of Berenbaum

Menken & Ben-Asher, LLP; Gary E. Mason and Charles Schneider of The Mason Law Firm, PLLC; and Jonathan Cuneo and Charles LaDuca of Cuneo, Waldman and Gilbert, LLP. Mr. Keach is an experienced civil rights and class action attorney who has litigated a wide variety of civil rights actions before this Court, and has litigated class action lawsuits in state and federal courts in five states. Mr. Keach has successfully litigated strip search cases against the Troy City Police Department and the Schenectady City School District, and was lead counsel in the Rensselaer County Jail strip search class action that recently settled before this Court.

20. Bruce Menken and Jason Rozger are both experienced civil rights attorneys from New York City, having litigated scores of civil rights cases against a number of Defendants, including one prison brutality case presently pending in this District. Mr. Menken and Mr. Rozger have successfully represented many victims of illegal strip searches, including several who opted out of the recent class action litigation against the City of New York. Mr. Menken and Mr. Rozger were also co-counsel in the Rensselaer County Jail class action.

21. Gary E. Mason is one of this country's premier class action attorneys, with offices in Washington, DC. Mr. Mason has successfully litigated class actions against Fortune 500 companies in both state and federal court in over a dozen jurisdictions, including gaining a settlement for a class of purchasers of defective polybutylene pipe of \$ 950 million dollars. Mr. Mason has served as lead or co-counsel in numerous high profile class actions, including In Re The Exxon Valdez, In Re Diet Drugs Product Liability Litigation and In Re Synthetic Stucco (EIFS) Product Liability Litigation. In addition to his extensive experience as a class action and environmental lawyer, Charles



Schneider is a former trial attorney with the U.S. Department of Justice's Civil Rights Division and has successfully litigated a series of cases involving corrections misconduct. Mr. Mason and Mr. Schneider were also co-counsel in the Rensselaer County Jail class action.

22. Jonathan Cuneo and Charles LaDuca of Cuneo Waldman & Gilbert, have extensive experience in state and federal trial and appellate courts, before law enforcement authorities and in proceedings before the United States Congress. Cuneo and LaDuca have successfully prosecuted several complex class actions, including cases involving securities fraud, antitrust violations, consumer protection and products liability in state and federal courts throughout the United States.

23. In short, Plaintiffs' counsel has the resources, expertise and experience to successfully prosecute this action against Schenectady County, the Schenectady County Sheriff's Department and the Policy Making Defendants. Counsel for Plaintiffs knows of no conflicts among members of the class, or between counsel and members of the class.

24. This action, in part, seeks declaratory and injunctive relief. As such, the Plaintiffs' seek class certification under Fed. R. Civ. P. 23(b)(2), in that all class members were subject to the same policy requiring the illegal strip searches of individuals charged with misdemeanor or minor crimes and placed into the custody of the Schenectady County Jail. In short, the County of Schenectady, the Schenectady County Sheriff's Department, the Policy Making Defendants and Schenectady County Corrections Officers acted on grounds generally applicable to all class members.

25. In addition to certification under Rule 23(b)(2), and in the alternative, Plaintiffs seek certification under Rule 23(b)(3).

26. Common questions of law and fact exist as to all members of the Class, and predominate over any questions that affect only individual members of the Class. These common questions of law and fact include, without limitation, the common and predominate question of whether the Defendants' written and/or *de facto* policy of strip searching all individuals charged with misdemeanors or minor crimes and committed to the Schenectady County Jail is a violation of the Fourth and Fourteenth Amendments to the United States Constitution, and whether such a written and/or *de facto* policy existed during the class period.

27. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all of the individual members of the class is impracticable given the large number of class members and the fact that they are dispersed over a large geographical area. Furthermore, the expense and burden of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them. The cost to the federal court system of adjudicating thousands of individual cases would be enormous. Individualized litigation would also magnify the delay and expense to all parties and the court system. By contrast, the conduct of this action as a class action in this District presents far fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each member of the Class.

28. Upon information and belief, there are no other actions pending to address the Defendants' flagrant violation of the civil rights of thousands of individuals, even though the Defendants have maintained their illegal strip search regimen for at least the past

twelve years, with the practice being declared unconstitutional in this judicial circuit in 1986.

29. In the alternative to certification under Fed. R. Civ. P. 23(b)(3), Plaintiffs also seek partial certification under Fed. R. Civ. P. 23(c)(4).

## FACTS

### **Facts Applicable to the Class Generally**

30. The Fourth Amendment of the United States Constitution prohibits state officials, such as the Policy Making Defendants in this action and the Corrections Officers they supervise, from performing strip searches of arrestees who have been charged with misdemeanors or other minor crimes unless the officer has reasonable suspicion to believe that the arrestee is concealing a weapon or contraband.

31. Upon information and belief, the County of Schenectady, the Schenectady County Sheriff's Department and the Policy Making Defendants have instituted a written and/or *de facto* policy, custom or practice of strip searching all individuals who enter the custody of the Schenectady County Jail and are placed into jail clothing, regardless of the nature of their charged crime and without the presence of reasonable suspicion to believe that the individual was concealing a weapon or contraband.

32. Upon information and belief, the County of Schenectady, the Schenectady County Sheriff's Department and the Policy Making Defendants have instituted a written and/or *de facto* policy, custom or practice of conducting visual body cavity searches (visual inspection of the vaginal and rectal cavities) on all individuals who enter the custody of the Schenectady County Jail, regardless of the individual characteristics or the nature of their charged crime. For purposes of this Complaint, strip and visual cavity searches are collectively referred to as "strip searches."

33. The County of Schenectady, the Schenectady County Sheriff's Department, and the Policy Making Defendants know that they may not institute, enforce or permit enforcement of a policy or practice of conducting strip searches without particularized,

reasonable suspicion. This judicial circuit has stated repeatedly that state officials may not strip search individuals charged with misdemeanors or violations absent particularized, reasonable suspicion, with this principle being clearly established in 1986 by *Weber v. Dell*, 804 F.2d 796 (2d Cir. 1986) and recently affirmed by *Shain v. Ellison*, 273 F.3d 56 (2d Cir. 2001), *cert. denied sub. nom, Nassau Co. v. Shain*, 537 U.S. 1083 (2002). This Court has also recently held that the blanket strip search policy of the Schenectady City Police Department was unconstitutional. *See, Gonzalez v. City of Schenectady*, 141 F. Supp.2d 304 (N.D.N.Y. 2001). Upon information and belief, the Schenectady Police's written policy was based on the policy promulgated by the Schenectady County Sheriff's Department.

34. The Defendants' written and/or *de facto* policy, practice and custom mandating wholesale strip searches of all misdemeanor and violation arrestees has been promulgated, effectuated and/or enforced in bad faith and contrary to clearly established law.

35. Reasonable suspicion to conduct a strip search may only emanate from the particular circumstances antecedent to the search, such as the nature of the crime charged, the particular characteristics of the arrestees, and/or the circumstances of the arrest.

36. Upon information and belief, the County of Schenectady, the Schenectady County Sheriff's Department and Policy Making Defendants have promulgated, implemented, enforced, and/or failed to rectify a written and/or *de facto* policy, practice or custom of strip searching **all** individuals placed into the custody of the Schenectady County Jail and placed into jail clothing without any requirement of reasonable suspicion, or indeed suspicion of any sort. This written and/or *de facto* policy made the strip

searching of pre-trial detainees routine; neither the nature of the offense charged, the characteristics of the arrestee, nor the circumstances of a particular arrest were relevant to the enforcement of the policy, practice and custom of routine strip searches.

37. Pursuant to this written and/or *de facto* policy, each member of the Class, including every named Plaintiff, was the victim of a routine strip search upon their entry into the Schenectady County Jail. These searches were conducted without inquiry into or establishment of reasonable suspicion, and in fact were not supported by reasonable suspicion. Strip searches are conducted for individuals arrested for, among other innocuous offenses, Driving While Intoxicated, Harassment and Trespassing.

38. As a direct and proximate result of the unlawful strip search conducted pursuant to this written and/or *de facto* policy, the victims of the unlawful strip searches – each member of the class, including every named Plaintiff – has suffered or will suffer psychological pain, humiliation, suffering and mental anguish.

### **Facts Applicable to the Named Plaintiffs**

#### *A. Nichole McDaniel*

39. Ms. McDaniel's experience is representative. On or about June 11, 2004, Ms. McDaniel was arrested and charged with two counts of petty larceny and one count of endangering the welfare of a child (both Class A misdemeanors). Ms. McDaniel subsequently spent 7 days in the Schenectady County Jail, and was released to probation and discharged from the Jail on June 18, 2004. Ms. McDaniel is presently 19 years old. She was taken into custody by the Town of Rotterdam Police Department. The circumstances of her criminal charges are that she is alleged to have shoplifted clothing at

the Rotterdam Square Mall, and that the act of shoplifting “endangered” her two year old daughter.

40. At approximately 9:00 PM on or about June 11, 2004, Ms. McDaniel was transported to the Schenectady County Jail on \$1,000.00 bail. Approximately thirty minutes later, Ms. McDaniel was moved into a room in the booking area of the Schenectady County Jail and ordered to remove her clothing one item at a time. As a Corrections Officer watched, Ms. McDaniel removed all of her clothing except her underpants and brassiere. When she hesitated to remove her underclothes, she was told that she could pick the item of underclothing she wanted to take off first. Ms. McDaniel complied, and removed both her underpants and brassiere.

41. A Corrections Officer then instructed Ms. McDaniel to squat and cough. Ms. McDaniel initially performed this maneuver while facing the Corrections Officer, and was instructed to turn around to do it again because she had performed this action improperly. Ms. McDaniel complied, with the Corrections Officer conducting a visual inspection of Ms. McDaniel’s vaginal and rectal area. Ms. McDaniel was also required to submit to a search of her mouth as part of this procedure. McDaniel was then provided with a jail uniform.

42. On this particular occasion, there was no reasonable suspicion to believe that Ms. McDaniel was concealing a weapon or other contraband. Indeed, no inquiry was made of Mr. McDaniel that could have given rise to the requisite reasonable suspicion.

43. Without stating or implying that Ms. McDaniel is a habitual criminal, Ms. McDaniel has been arrested on a number of occasions in the past. Consequently, there is

a possibility beyond mere speculation that she will be rearrested in the future, making it likely that she will again be subjected to the same illegal search procedure.

44. As a direct and proximate result of the unlawful strip search conducted pursuant to County and Sheriff's Department policy, practice and custom, Ms. McDaniel has suffered and continues to suffer psychological pain, humiliation, suffering and mental anguish.

*B. Lessie Davies*

45. Ms. Davies' experience is representative as well. On or about June 11, 2004, Ms. Davis was arrested on charges of petty larceny and endangering the welfare of a child (both Class A Misdemeanors). Ms. Davies subsequently spent 6 days in the Schenectady County Jail, and was released to probation and discharged from the Jail on June 17, 2004. Ms. Davies is presently 18 years old. Ms. Davies was taken into custody by the Town of Rotterdam Police Department. The circumstances of her criminal charges are that she is alleged to have shoplifted clothing at the Rotterdam Square Mall, and, upon information and belief, that the act of shoplifting "endangered" her two month old daughter who was with her at the time.

46. At approximately 9:00 PM on or about June 11, 2004, Ms. Davies was transported to the Schenectady County Jail on \$1,000.00 bail. Approximately five minutes later, Ms. Davies was moved into a room (upon information and belief, where jail uniforms are stored) in the booking area of the Schenectady County Jail and ordered to remove her clothing one item at a time. As a Corrections Officer watched, Ms. Davies removed all of her clothing except her underpants and brassiere. When she hesitated to



remove her underclothes, she was told that “those have to come off too.” Ms. Davies complied, and removed both her underpants and brassiere.

47. A Corrections Officer then instructed Ms. Davies to face the wall, squat and cough. Ms. Davies complied, with the Corrections Officer conducting a visual inspection of Ms. Davies’ vaginal and rectal area. Ms. Davies was also required to submit to a search of her hair as part of this procedure. Davies was then provided with a jail uniform.

48. On this particular occasion, there was no reasonable suspicion to believe that Ms. Davies was concealing a weapon or other contraband. Indeed, no inquiry was made of Ms. Davies that could have given rise to the requisite reasonable suspicion. In fact, this was the first time that Ms. Davies was arrested for anything.

49. As a direct and proximate result of the unlawful strip search conducted pursuant to County and Sheriff’s Department policy, practice and custom, Ms. Davies has suffered and continues to suffer psychological pain, humiliation, suffering and mental anguish.

**CAUSES OF ACTION**

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**

**Violation of Constitutional Rights Under Color of State Law**

**-- Unreasonable Search and Failure to Implement Municipal Policies to Avoid  
Constitutional Deprivations Under of Color of State Law --**

50. Plaintiffs incorporate by reference and reallege each and every allegation stated in paragraphs 1 through 49.

51. The Fourth Amendment of the United States Constitution protects citizens from unreasonable searches by law enforcement officers, and prohibits officers from conducting strip searches of individuals arrested for misdemeanors or violations absent some particularized suspicion that the individual in question has either contraband or weapons.

52. The actions of Defendants detailed above violated Plaintiffs' rights under the United States Constitution. Simply put, it was not objectively reasonable for Schenectady County Corrections Officers to strip search Plaintiffs and class members based on their arrests for misdemeanor/violation charges. It was also not objectively reasonable for the Policy Making Defendants to order/direct Schenectady County Corrections Officers to conduct such searches.

53. These strip searches were conducted pursuant to the policy, custom or practice of the County of Schenectady and the Schenectady County Sheriff's Department. As such, the County of Schenectady is directly liable for the damages of the named Plaintiffs and members of the Class.

54. Upon information and belief, Sheriff Buffardi, Undersheriff Pollard and Major Elwell are responsible for establishing the policies and procedures to be utilized in the

operation of the Schenectady County Jail, and are responsible for the implementation of the strip search policy questioned in this lawsuit. As such, Buffardi, Pollard and Elwell are each individually responsible for the damages of the named Plaintiffs and members of the Class.

55. Sheriff Buffardi, Undersheriff Pollard and Major Elwell knew that the SCJ's strip search policy was illegal, and acted willfully, knowingly, and with specific intent to deprive Plaintiffs and members of the Class of their Constitutional rights.

56. This conduct on the part of all Defendants represents a violation of 42 U.S.C. § 1983, given that their actions were undertaken under color of state law.

57. As a direct and proximate result of the unconstitutional acts described above, Plaintiffs have been irreparably injured.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**

**-- Demand for Declaratory Judgment --**

58. Plaintiffs incorporate by reference and reallege each and every allegation stated in paragraphs 1 through 57.

59. The policy, custom and practice of the Schenectady County Sheriff's Department, the County of Schenectady and the Policy Making Defendants is clearly unconstitutional, in that these entities and individuals are directing/conducting the strip searches of all individuals placed into the Schenectady County Jail without any particularized suspicion that the individuals in question have either contraband or weapons.

60. Plaintiffs and members of the Class request that this Court issue a declaratory judgment, and that it declare the strip search policy of the County of Schenectady and the Schenectady County Sheriff's Department to be unconstitutional.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**

**-- Demand for Preliminary and Permanent Injunction --**

61. Plaintiffs incorporate by reference and reallege each and every allegation stated in paragraphs 1 through 60.

62. The policy, custom and practice of the Schenectady County Sheriff's Department, the County of Schenectady and the Policy Making Defendants is clearly unconstitutional, in that these entities and individuals are directing/conducting the strip searches of all individuals placed into the Schenectady County Jail without any

particularized suspicion that the individuals in question have either contraband or weapons.

63. Upon information and belief, this policy is currently in place at the Schenectady County Jail, with new and/or prospective members of the Class being subjected to the harms that have already been inflicted upon the named Plaintiffs.

64. The continuing pattern of strip searching individuals charged with minor crimes will cause irreparable harm to the new and/or prospective members of the Class, an adequate remedy for which does not exist at law.

65. Plaintiffs demand that the County of Schenectady, the Schenectady County Sheriff's Department, the Policy Making Defendants and Schenectady County Corrections Officers immediately desist from strip searching individuals placed into the custody of the Schenectady County Jail absent any particularized suspicion that the individuals in question have either contraband or weapons, and seek both a preliminary and permanent injunction from this Court ordering as much.

### **DEMAND FOR PUNITIVE DAMAGES**

66. The actions of the Individual Defendants detailed herein are outrageous, in that they continue to propagate an illegal strip search policy even though they know for a fact that their actions are unconstitutional.

67. It is clear that the Policy Making Defendants, the County of Schenectady and the Schenectady County Sheriff's Department have no respect for the civil rights of individual citizens or for the rule of law. Consequently, an award of punitive damages is necessary to punish the Policy Making Defendants, and to send a message to them that the requirements of the United States Constitution also apply to government officials in Schenectady County.

### **DEMAND FOR TRIAL BY JURY**

68. The Plaintiffs hereby demand a trial by jury.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Nichole McDaniel and Lessie Davies, on behalf of themselves and on behalf of a class of others similarly situated, request that this Honorable Court grant them the following relief:

- A. An order certifying this action as a class action pursuant to Fed. R. Civ. P. 23.
- B. A judgment against all Defendants, jointly and severally on Plaintiffs' First Cause of Action detailed herein, awarding Compensatory Damages to each named Plaintiff and each member of the proposed class in an amount to be determined by a Jury and/or the Court on both an individual and a class wide basis.

C. A judgment against Defendant Harry Buffardi on Plaintiffs' First Cause of Action for \$1,000,000.00 in punitive damages.

D. A judgment against Defendant Gordon Pollard on Plaintiffs' First Cause of Action for \$1,000,000.00 in punitive damages.

E. A judgment against Defendant Robert Elwell on Plaintiffs' First Cause of Action for \$1,000,000.00 in punitive damages.

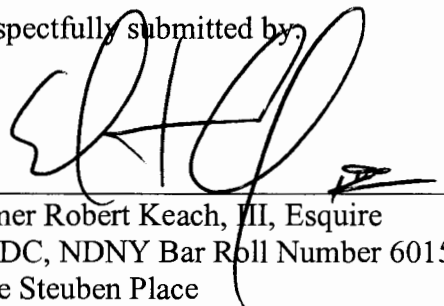
F. A declaratory judgment against all Defendants declaring the County of Schenectady and the Schenectady County Sheriff's Department's policy, practice and custom of strip and visual cavity searching all detainees entering the Schenectady County Jail, regardless of the crime charged or suspicion of contraband, to be unconstitutional and improper.

G. A preliminary and permanent injunction enjoining Defendants from continuing to strip and visual cavity search individuals charged with misdemeanors or minor crimes absent particularized, reasonable suspicion that the arrestee subjected to the search is concealing weapons or other contraband.

H. A monetary award for attorney's fees and the costs of this action, pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 23;

Dated: June 29, 2004  
Albany, NY

Respectfully submitted by,



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