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WRITER'S DIRECT DIAL:

August 17, 2004

VIA OVERNIGHT DELIVERY

Honorable Denis R. Hurley
United States District Court
Long Island Federal Courthouse
100 Federal Plaza
Central Islip, New York 11722

**Re: In re Nassau County Strip Search Cases
99-CV-2844 (DRH)**

Judge Hurley:

I am co-counsel for plaintiffs in the above-referenced action.

As you are aware, defendants in this action petitioned the Court to "clarify" their prior concession of liability for all routine strip searches conducted at the Nassau County Correctional Center (NCCC). The Court recognized that defendants' attempts to alter their previous, complete concession of liability had serious ramifications for the Court's prior denial of plaintiffs' class certification motion, and consequently granted plaintiffs an opportunity to renew their class certification motion.

Therefore, on March 29, 2004, plaintiffs filed a renewed motion for class certification, seeking certification under both Rule 23(b)(2) and (b)(3). The argument for (b)(2) certification was premised on (1) evidence strongly suggesting that defendants continued to engage in unlawful routine strip searching, including non-admission searches which they now argue for the first time are legally valid, and (2) the Second Circuit's vacatur of Judge Wexler's injunction in Shain II on standing grounds, seemingly making the need for injunctive relief in this action more compelling.

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In their opposition to our renewed motion for (b)(2) certification, defendants argued in part that plaintiffs in the instant action lacked standing to seek injunctive relief, and therefore (b)(2) certification was inappropriate. In our reply, we argued that Shain II was inapposite, because the standing issue in Shain II was based primarily on the fact that Mr. Shain was an individual plaintiff who had not shown a likelihood of future injury at the time of his initial strip search. In contrast, we cited numerous courts which had found that a putative class had standing to seek injunctive relief in similar cases in which the class sought to enjoin an official policy.

It has just come to our attention, however, that the Second Circuit recently vacated a preliminary injunction against the County of Orange in a class action on behalf of individuals subjected to a routine strip search policy at a county jail. See Dodge v. County of Orange, 2004 WL1567870 (2d Cir. July 14, 2004). In this decision, the Second Circuit held that, absent a determination that the individual named plaintiffs had standing to seek injunctive relief at the time the suit was commenced, even a class of aggrieved individuals did not have standing to seek to enjoin an official, routine strip searching policy. Id. The Second Circuit remanded the case to the District Court with instructions to conduct the necessary factual analyses to determine whether there was a sufficient likelihood that any of the named plaintiffs would suffer future injury as a result of the County of Orange's strip search policy.

We bring this decision to the Court's attention because of its relevance to the issue of plaintiffs' standing to seek injunctive relief and (b)(2) certification. Because this recent case law would require the Court to conduct individual standing inquiries and would thereby delay adjudication of the pending motions, plaintiffs have decided to withdraw their motion for (b)(2) certification at this time, without prejudice, and to seek certification solely under Rule 23(b)(3).. We continue to assert that defendants' "clarification" of their prior liability concession raises numerous legal and factual issues common to the putative class and that (b)(3) class certification is warranted on these grounds. This argument is set forth fully in our pending renewed motion for class certification.

Respectfully yours,



Spencer Freedman

cc: Nassau County Attorney's Office
Jeffrey Smith, Esq.
Matthew Brinckerhoff, Esq.