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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

OCT 31 2003

LAWRENCE K. BAERMAN, CLERK
ALBANY

①

PAUL ADAM KAHLER,
both individually and on behalf of a class of
others similarly situated,

Plaintiffs,

v.

THE COUNTY OF RENSSELAER,
DANIEL KEATING,
both individually and in his
official capacity as Sheriff of the County of
Rensselaer, LARRY WALRAED, both
individually and as Undersheriff of the
County of Rensselaer, ROBERT
LOVERIDGE, both individually and as
Colonel in the Rensselaer County Sheriff's
Department, HAROLD SMITH, both
individually and as Lieutenant in the
Rensselaer County Sheriff's Department,
and KATHLEEN JIMINO, both individually
and as County Executive of the County of
Rensselaer,

Defendants.

Index No.

03-CV-1324

TJM / DRH

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

This is a class action brought to redress the deprivation by Defendants of rights secured to the Plaintiff and proposed Class by the United States Constitution and the laws of the United States of America. For at least the past fourteen years, the Rensselaer County Sheriff's Department has had a policy of strip-searching all individuals who enter the Rensselaer County Jail and are placed in jail clothing, regardless of the crime upon which they are charged. Upon information and belief, this policy is, in part, derived from

the written procedures of the Rensselaer County Sheriff's Department, and was promulgated by senior Department officials; specifically, Defendants Sheriff Daniel Keating, Undersheriff Larry Walraed, Colonel Robert Loveridge, Lieutenant Harold Smith and Rensselaer County Executive Kathleen Jimino.

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 short, the policy of Rensselaer County and the Rensselaer County Sheriff's Department to force those charged with minor crimes to undergo the indignities of a strip search upon entry into the Rensselaer County Jail is not only clearly illegal, but is insensitive and unnecessary. It is also just the latest indication of a County Jail that is mismanaged and where the civil rights of those who enter, even for a brief stay on minor charges, are simply ignored or consciously trampled upon.

Paul Kahler brings this action on behalf of himself, 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 his civil rights and those of the class members he proposes to represent. Mr. Kahler was sent to the Rensselaer County Jail on two occasions during the class period after being charged with misdemeanor and/or violation offenses, and was subject to a strip search on both occasions, in violation of his rights against unreasonable searches under the Fourth Amendment of the United States Constitution. He seeks monetary damages for himself and each member of the proposed class, a declaration that the Sheriff's Department's policies are unconstitutional, and an injunction precluding Rensselaer County and the Rensselaer County Sheriff's

Department from continuing to violate the rights of those placed into their custody. With this as a background, Plaintiff Paul Kahler hereby complains 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 Paul Kahler ("Kahler") is 19 years old and resides in Rensselaer County. On or about April 8, 2000, Kahler (then age sixteen) was arrested on charges of criminal mischief in the fourth degree (a misdemeanor) and placed in the custody of the Rensselaer County Jail. On or about October 26, 2001, Kahler (then age seventeen) was again arrested on charges of assault in the third degree (a misdemeanor) and harassment in the second degree (a violation), and was placed in the custody of the Rensselaer County Jail.

4. Defendant County of Rensselaer (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 Rensselaer County Jail and was responsible for the appointment, training, supervision and conduct of all Sheriff’s Department personnel, including those working in the Rensselaer County Jail. In addition, at all relevant times, the County was responsible for enforcing the rules of the Rensselaer 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.

5. The Rensselaer 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 Rensselaer County Jail (“RCJ”). At all times relevant hereto, Defendant Sheriff’s Department, together with the County of Rensselaer, was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the RCJ, and was responsible for the appointment, training, supervision and conduct of all Sheriff’s Department personnel, including those working in the RCJ. In addition, at all times relevant hereto, Defendant Sheriff’s Department, together with the County of Rensselaer, was responsible for enforcing the rules of the Rensselaer County Jail, and for

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

6. Defendant Daniel V. Keating ("Sheriff Keating") is the duly elected Sheriff of Rensselaer County, and, as such, is a policy maker with respect to the treatment of pre-trial and other detainees over which the RCJ exercises custodial or other control. Sheriff Keating's principal place of business is 4000 Main Street, Troy, NY 12180. Sheriff Keating is made a Defendant in this action in both his individual and official capacities.

7. Defendant Larry Walraed ("Larry Walraed") is the duly appointed Undersheriff of Rensselaer County, and, as such, is a policy maker with respect to the treatment of pre-trial and other detainees over which the RCJ exercises custodial or other control. Larry Walraed's principal place of business is 4000 Main Street, Troy, NY 12180. Larry Walraed is made a Defendant in this action in both his individual and official capacities.

8. Defendant Robert Loveridge ("Colonel Loveridge") is the duly appointed Colonel of the Rensselaer County Sheriff's Department and is the officer in charge of the operation of the Rensselaer County Jail. As such, Colonel Loveridge is a policy maker with respect to the treatment of pre-trial and other detainees over which the RCJ exercises custodial or other control. Colonel Loveridge's principal place of business is 4000 Main Street, Troy, NY 12180. Colonel Loveridge is made a Defendant in this action in both his individual and official capacities.

9. Defendant Harold Smith ("Lieutenant Smith") is a duly appointed Lieutenant in the Rensselaer County Sheriff's Department and is the administrative officer for the Rensselaer County Jail. Lieutenant Smith is second in command to Colonel Loveridge in

responsibility for jail operations. As such, Lieutenant Smith is a policy maker with respect to the treatment of pre-trial and other detainees over which the RCJ exercises custodial or other control. Lieutenant Smith's principal place of business is 4000 Main Street, Troy, NY 12180. Lieutenant Smith is made a Defendant in this action in both his individual and official capacities.

10. Defendant Kathleen Jimino ("County Executive Jimino") is the duly elected County Executive of Rensselaer County and, as such, is a policy maker with respect to the treatment of pre-trial and other detainees over which the RCJ exercises custodial or other control. County Executive Jimino's principal place of business is the Rensselaer County Office Building, Seventh Avenue, Troy, NY 12180. County Executive Jimino is made a Defendant in this action in both her individual and official capacities.

11. Collectively, Sheriff Keating, Larry Walraed, Colonel Loveridge, Lieutenant Smith and County Executive Jimino will be referred to as the "Policy Making Defendants."

CLASS ACTION ALLEGATIONS

12. Plaintiff brings 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 himself and a class of similarly situated individuals who were charged with misdemeanors or minor crimes and were strip searched upon their entry into the Rensselaer County Jail.

13. The class that Plaintiff seeks to represent is defined as follows:

All persons in the United States who have been or will be placed into the custody of the Rensselaer County Jail after being charged with misdemeanors, violations or other minor crimes and were or will be strip searched upon their entry into the Rensselaer County Jail pursuant to the policy, custom and practice of the Rensselaer County Sheriff's Department and the County of Rensselaer. The class period commences on June 26, 1999, and extends to the date on which the Rensselaer County Sheriff's Department and/or the County of Rensselaer are enjoined from, or otherwise cease, enforcing their unconstitutional policy, practice and custom of conducting strip searches absent reasonable suspicion.

Specifically excluded from the proposed class are Defendants, and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

14. This action has been subject to a prior complaint to this Court, filed on June 26, 2002, where the Court, for scheduling reasons, declined to entertain a motion for class certification. *See, Bruce v. County of Rensselaer*, No. 02-CV-0847 (TJM/DRH). To date, no motion to dismiss the class action allegations has been raised, and the class allegations themselves have not been stricken from the complaint. Consequently, the class is defined from June 26, 1999 to present, as the statute of limitations has been tolled by the filing of a prior complaint.

15. 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).

16. 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 Rensselaer 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.

17. 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 Rensselaer 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.

18. 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 Rensselaer County Jail, and all were illegally strip searched in violation of the clearly established law in this judicial circuit.

19. Plaintiff's claim is typical of the claims of the members of the Class. Plaintiff and all members of the class sustained damages arising out of Defendants' course of conduct. The harms suffered by the Plaintiff are typical of the harms suffered by the class members.

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

21. Plaintiff has retained counsel who has substantial experience and success in the prosecution of class action and civil rights litigation. The named Plaintiff is being represented by Elmer Robert Keach, III; Bruce Menken and Jason Rozger of Berenbaum Menken & Ben-Asher, LLP; and Gary E. Mason and Charles Schneider of The Mason Law Firm, PLLC. 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 has previously litigated two other cases against the Rensselaer County Sheriff's Department, including one on behalf of a sixteen year old girl raped by a Corrections Officer.

22. 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.

23. 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.

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

25. This action, in part, seeks declaratory and injunctive relief. As such, the Plaintiff seeks 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 Rensselaer County Jail. In short, the County of Rensselaer, the Rensselaer County Sheriff's Department, the Policy Making Defendants and Rensselaer County Corrections Officers acted on grounds generally applicable to all class members.

26. In addition to certification under Rule 23(b)(2), and in the alternative, Plaintiff seeks certification under Rule 23(b)(3).

27. 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' *de facto* policy of strip searching all individuals charged with misdemeanors or minor crimes and committed to the Rensselaer County Jail is a violation of the Fourth and Fourteenth Amendments to the United States Constitution, and whether such a *de facto* policy existed during the class period.

28. 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.

29. Upon information and belief, there are no other actions (other than Bruce) 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.

30. 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

31. 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.

32. Upon information and belief, the County of Rensselaer, the Rensselaer County Sheriff's Department and the Policy Making Defendants have instituted a *de facto* policy, custom or practice of strip searching all individuals who enter the custody of the Rensselaer 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.

33. Upon information and belief, the County of Rensselaer, the Rensselaer County Sheriff's Department and the Policy Making Defendants have instituted a *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 Rensselaer 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."

34. The County of Rensselaer, the Rensselaer 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). In fact, this decision was recently cited by the U.S. Court of Appeals for the Second Circuit in one of many civil rights cases to be successfully prosecuted against the Rensselaer County Sheriff's Department. *See, Sagendorf-Teal v. County of Rensselaer*, 100 F.3d 270, 276 (2d Cir. 1996) (citing *Weber*).

35. The Defendants' *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.

36. Upon information and belief, not only is the policy of strip searching illegal, but the manner in which individuals are searched is also impermissible. For example, upon information and belief, individuals are strip searched in the presence of corrections officers, jail employees and/or arrestees of the opposite gender.

37. 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.

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

sort. This *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.

39. Pursuant to this *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 Rensselaer 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.

40. The strip searches in question largely occurred in an open area of the Rensselaer County Jail booking room, behind a “half wall” near the booking computers utilized by RCJ employees. This open area is in clear view of all six prisoner holding cells in the booking room, and can also be seen by Corrections Officers on an elevated platform, from windows in the booking room and from larger holding cells utilized to prepare inmates for transport.

41. As a direct and proximate result of the unlawful strip search conducted pursuant to this *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.

42. Additionally, Defendant Daniel Keating, in his capacity as Sheriff and chief policy maker for the Rensselaer County Jail, together with the Policy Making Defendants, have promulgated a written policy purporting to govern the strip searches of

individuals detained in the Rensselaer County Jail. This written policy, attached to this Amended Complaint as Exhibit A, does not provide that all individuals placed into the custody of the Rensselaer County Jail are subject to being strip-searched.

43. This written policy, however, is not followed in the Rensselaer County Jail, as admitted by Colonel Loveridge and Lieutenant James Karam during their deposition testimony. While some (but not all) correctional employees maintain that strip searches were based on reasonable suspicion, proof taken in this action demonstrates that the Rensselaer County Jail employs a *de facto* policy, as set forth above, that provides that all individuals placed into the custody of the Rensselaer County Jail and placed into jail clothing are subject to a strip-search.

44. Additionally, the Defendants claim that they provided training to their subordinates about various policies relative to strip-searching, including the need for a supervisor to approve of a strip-search and make a written report, the use of an unwritten “clothing change” policy, and the requirement that reasonable suspicion be present when conducting a strip search. Discovery in this action has shown, however, that there has been absolutely no substantive training about booking procedures or strip searches during the class period, or even since the commencement of this action. COs received no training whatsoever relative to the circumstances under which they could conduct a strip search, and instead learned procedures by observing other officers in the booking room.

45. Nevertheless, the written policy promulgated by Defendant Keating and the Policy Making Defendants is, on its face, unconstitutional.

46. The written policy provides that strip-searches may be conducted on individuals arrested for misdemeanors and violations without requiring particularized, reasonable suspicion that those individuals are concealing contraband or a weapon.

47. The written policy provides that *anyone* charged with a crime involving violence or drugs is subject to a strip search, even in the absence of particularized reasonable suspicion.

48. The written policy also states that *anyone* who appears in the Rensselaer County Jail that is under the influence of alcohol or drugs (in the subjective opinion of the search officer) is subject to a strip search regardless of the nature of their criminal charges and in the absence of particularized reasonable suspicion.

49. The written policy further provides that anyone arrested for the following offenses, even in the absence of particularized, reasonable suspicion that they are possessing contraband or a weapon, is subject to a strip search: Sexual Misconduct (A Misdemeanor); Unlawful Imprisonment (A Misdemeanor); Resisting Arrest (A Misdemeanor); Criminal Possession of a Controlled Substance in the Seventh Degree (A Misdemeanor); Criminally Using Drug Paraphernalia in the Second Degree (A Misdemeanor); Unlawful Possession of Marijuana (Violation); Disorderly Conduct (Violation); Harassment in the First Degree (B Misdemeanor); Public Drunkenness (Violation); Unlawfully Dealing with Fireworks and Dangerous Fireworks (B Misdemeanor); Unlawful Possession of Weapons by Persons Under Sixteen (Juvenile Offense); Criminal Possession of a Weapon in the Fourth Degree (A Misdemeanor); Inciting a Riot (A Misdemeanor); Riot in the Second Degree (A Misdemeanor); Killing or Injuring a Police Animal (A Misdemeanor); and Self Abortion (A Misdemeanor).

50. This written policy also provides that someone who has ever been charged with a “strip-searchable” offense may, if later arrested for a non “strip searchable” charge, be strip searched without the necessity of particularized, reasonable suspicion. These individuals are termed “permanently strip searchable” in the policy.

51. The written policy does not state that strip searches will only be performed by members of the same gender as the accused, and does not state that individuals of the opposite gender should not be present during the search.

52. The written policy is, for these reasons, unconstitutional on its face.

Facts Applicable to the Named Plaintiff

Paul Kahler

53. Mr. Kahler’s experience is representative. On or about April 8, 2000, Mr. Kahler was charged with Criminal Mischief in the Fourth Degree, a misdemeanor, for allegedly punching a wall. Mr. Kahler subsequently resolved these charges by pleading guilty and receiving probation. Mr. Kahler is presently 19 years old. He was taken into custody by the East Greenbush Police Department. Mr. Kahler’s transporting officer informed the booking staff at RCJ that Mr. Kahler was “real [sic] cooperative.”

54. Subsequent to his arrest, Mr. Kahler was transported to the Rensselaer County Jail. Soon thereafter, Mr. Kahler was moved into the shower area (behind the half wall) of the RCJ booking room and ordered to remove his clothing. This area is visible from every holding cell, as well as from much of the booking room. As Corrections Officers watched, Mr. Kahler was ordered to, and did, remove his clothing. Mr. Kahler objected to having to remove his clothing, and was told to “just do it.”

55. A Corrections Officer then instructed Mr. Kahler to “face the wall,” and told him to “squat.” The officer instructed Mr. Kahler to “lift your sack” to allow for an examination underneath his scrotum. After the completion of the examination, the Corrections Officer made disparaging comments to Mr. Kahler about the color of his underpants.

56. On this particular occasion, there was no reasonable suspicion to believe that Mr. Kahler was concealing a weapon or other contraband. Indeed, no inquiry was made of Mr. Kahler that could have given rise to the requisite reasonable suspicion. Moreover, because Mr. Kahler had already been in custody of police officers from the Town of East Greenbush, the Corrections Officer in question knew or should have known that Mr. Kahler had already been subjected to a search incident to arrest that would have revealed any weapons or contraband.

57. On or about October 26, 2001, Mr. Kahler was charged with Assault in the Third Degree, a misdemeanor, and Harassment in the Second Degree, a violation, for allegedly getting in a fist fight with his brother. These charges were later dismissed. Mr. Kahler was taken into custody by the East Greenbush Police Department.

58. Subsequent to his arrest, Mr. Kahler was transported to the Rensselaer County Jail. Soon thereafter, Mr. Kahler was moved into the shower area (behind the half wall) of the RCJ booking room and ordered to remove his clothing. As Corrections Officers watched, Mr. Kahler was ordered to, and did, remove his clothing. Mr. Kahler was then told to turn around and “squat.”

59. On this particular occasion, there was no reasonable suspicion to believe that Mr. Kahler was concealing a weapon or other contraband. Indeed, no inquiry was made of Mr. Kahler that could have given rise to the requisite reasonable suspicion. Moreover, because Mr. Kahler had already been in custody of police officers from the Town of East Greenbush, the Corrections Officer in question knew or should have known that Mr. Kahler had already been subjected to a search incident to arrest that would have revealed any weapons or contraband.

60. As a direct and proximate result of the unlawful strip searches conducted pursuant to County and Sheriff's Department policy, practice and custom, Mr. Kahler 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 --**

61. Plaintiff incorporates by reference and realleges each and every allegation stated in paragraphs 1 through 60.

62. 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.

63. The actions of Defendants detailed above violated Plaintiff's rights under the United States Constitution. Simply put, it was not objectively reasonable for Rensselaer County Corrections Officers to strip search Plaintiff 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 Rensselaer County Corrections Officers to conduct such searches.

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

65. Upon information and belief, Sheriff Keating, Larry Walraed, Colonel Loveridge, Lieutenant Smith and County Executive Jimino are responsible for

establishing the policies and procedures to be utilized in the operation of the Rensselaer County Jail, and are responsible for the implementation of the strip search policy questioned in this lawsuit. As such, Keating, Walraed, Loveridge, Smith and Jimino are each individually responsible for the damages of the named Plaintiffs and members of the Class.

66. Sheriff Keating, Larry Walraed, Colonel Loveridge, Lieutenant Smith and County Executive Jimino knew that the RCJ's strip search policy was illegal, and acted willfully, knowingly, and with specific intent to deprive Plaintiff and members of the Class of their Constitutional rights.

67. 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.

68. 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 --

69. Plaintiffs incorporate by reference and reallege each and every allegation stated in paragraphs 1 through 68.

70. The policy, custom and practice of the Rensselaer County Sheriff's Department, the County of Rensselaer 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 Rensselaer County Jail without any particularized suspicion that the individuals in question have either contraband or weapons.

71. Plaintiff 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 Rensselaer and the Rensselaer County Sheriff's Department to be unconstitutional.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

-- Demand for Preliminary and Permanent Injunction --

72. Plaintiffs incorporate by reference and reallege each and every allegation stated in paragraphs 1 through 71.

73. The policy, custom and practice of the Rensselaer County Sheriff's Department, the County of Rensselaer 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 Rensselaer County Jail without any

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

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

75. 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.

76. Plaintiff demands that the County of Rensselaer, the Rensselaer County Sheriff's Department, the Policy Making Defendants and Rensselaer County Corrections Officers immediately desist from strip searching individuals placed into the custody of the Rensselaer 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

77. 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.

78. The conduct of the Individual Defendants herein represents just the latest example of a County Jail and Sheriff's Department that is completely mismanaged. In recent years, the Jail has come under scrutiny for a series of incidents involving the excessive use of force against inmates (where the County and the Sheriff's Department inevitably blames the inmates for "injuring" themselves), the rape of a juvenile inmate by a Corrections Officer, deliberate indifference to those with psychological problems, and the illegal termination of a Corrections Officer who detailed the application of excessive force in an administrative report. The Sheriff's Department has also recently been sued for firing, and prosecuting on felony charges, one of its own deputies for supposedly misusing a sick day.

79. It is clear that the Individual Defendants, the County of Rensselaer and the Rensselaer 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 Individual Defendants, and to send a message to them that the requirements of the United States Constitution also apply to government officials in Rensselaer County.

DEMAND FOR TRIAL BY JURY

80. The Plaintiffs hereby demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Paul Kahler, on behalf of himself and on behalf of a class of others similarly situated, request that this Honorable Court grant him the following relief:

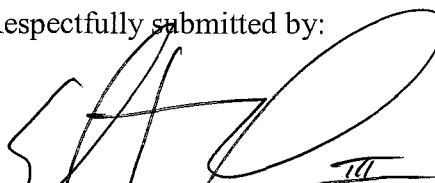
- A. An order certifying this action as a class action pursuant to Fed. R. Civ. P. 23.
- B. A judgment against all Defendants, jointly and severally on Plaintiff's First and Fourth Causes of Action detailed herein, awarding Compensatory Damages to each named Plaintiff and each member of the proposed 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 Daniel Keating on Plaintiff's First and Fourth Causes of Action for \$1,000,000.00 in punitive damages.
- D. A judgment against Defendant Larry Walraed on Plaintiff's First and Fourth Causes of Action for \$1,000,000.00 in punitive damages.
- E. A judgment against Defendant Robert Loveridge on Plaintiff's First and Fourth Causes of Action for \$1,000,000.00 in punitive damages.
- F. A judgment against Defendant Hal Smith on Plaintiff's First and Fourth Causes of Action for \$1,000,000.00 in punitive damages.
- G. A judgment against Defendant Kathleen Jimino on Plaintiff's First and Fourth Causes of Action for \$1,000,000.00 in punitive damages.
- H. A declaratory judgment against all Defendants declaring the County of Rensselaer and the Rensselaer County Sheriff's Department's policy, practice and custom of strip and visual cavity searching all detainees entering the Rensselaer County Jail,

regardless of the crime charged or suspicion of contraband, to be unconstitutional and improper.

I. 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.

J. 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;

Respectfully submitted by:



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Dated: October 23, 2003
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