UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

ADAM PRITCHARD and EDWARD ROBINSON, both individually and on behalf of a certified class of similarly situated individuals,

Plaintiffs,

v. : No. 04-CV-0534 (RJA/HBS)

THE COUNTY OF ERIE, et. al.,

Defendants.

PLAINTIFF'S SUBMISSION REGARDING PROCEDURAL POSTURE OF PRESENT ACTION

The Court instructed the parties to provide a joint submission regarding the procedural posture of this action, and to try and reach agreement regarding what motions should be filed. The Plaintiffs have been unable to reach an agreement in this regard, their best efforts notwithstanding. In their letter to Plaintiffs' counsel representing their effort to "confer," attached hereto as Exhibit A, and in their submission to the Court, the Defendants maintain that it is they, rather than the Plaintiffs, that should be able to dictate the terms by which the Court considers their conduct in this action. The Defendants also, by claiming that the Plaintiffs are engaging "in a blatant attempt to avoid the implications of the *Florence* decision," ignore the differences in their admissions procedures compared to the limited factual scenario addressed by the United States Supreme Court. *Florence* does not provide corrections officials with *carte blanche* to do as they please, and other Federal courts have ruled that group strip searches violate the constitutional rights of pre-trial detainees. The Defendants essentially propose that the Court

should not consider the totality of their conduct, including their admitted procedure of conducting group strip searches, but should instead give the Plaintiffs no ability to raise this issue.

The Plaintiffs have acknowledged the impact of the *Florence* decision on the strip search claims raised in this litigation, and do not plan to burden the Court's time contesting that the bulk of the allegations raised by the Class have been disposed of by this binding precedent. Instead, the Plaintiffs will present the Court with one concise legal issue: Can corrections officials, in the absence of any justification, conduct humiliating group strip and visual cavity searches of pretrial detainees. The Plaintiffs propose that the easiest way to raise this issue would be for them to be provided with leave to file an amended complaint, which would include revised class definitions, detailing their claims of group strip searches at both the Erie County Holding Center and the Erie County Correctional Facility. (See, Exhibit B, Email from Keach to Domagalski). The Defendants could then file a Rule 12(b)(6) or Rule 12(c) motion regarding this amended complaint, which would squarely address the legal issue detailed above. Should the Court grant the Defendants' motion, that would obviate the need for decertification of the class or a factually complicated motion for summary judgment. Should the Court deny the Defendants' motion, than this litigation can proceed accordingly.

This is exactly the procedure to which class counsel has agreed in other strip search litigation, including a state wide class action against the State of West Virginia. This procedure will efficiently address the central issue remaining in this litigation absent the need for a voluminous, and contested, summary judgment motion addressing thousands of pages of deposition transcripts and other documents, or feuding over potentially tangential issues such as decertification or continuing discovery. The Plaintiffs request that the Court enter a schedule

allowing for the Plaintiffs to file an amended complaint, and then detailing a briefing schedule for the Defendants to file a motion against that complaint.

Respectfully Submitted By:

/s Elmer Robert Keach, III

Dated: May 23, 2012 Elmer Robert Keach, III, Esquire

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