

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

Michael Cantley and Floyd Teter, on behalf of themselves and on behalf of a Class of others similarly situated,

Plaintiffs,

v.

The West Virginia Regional Jail and Correctional Facility Authority;

and;

Terry L. Miller, both individually and in his official capacity as Executive Director of the West Virginia Regional Jail and Correctional Facility Authority;

and;

Joseph A. DeLong, both individually and in his official capacity as Acting Executive Director of the West Virginia Regional Jail and Correctional Facility Authority;

and;

Larry Parsons, both individually and in his Official capacity as Executive Director of the West Virginia Regional Jail and Correctional Facility Authority
Defendants.

No. 3:09-CV-0758

Honorable Robert C. Chambers

**THIRD AMENDED
CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

INTRODUCTION

This is a class action brought to redress the deprivation by Defendants of rights secured to the Plaintiffs and proposed Class by the United States Constitution and the laws of the United States of America. For at least the past 11 years, the West Virginia Regional Jail and Correctional Facility Authority has had a policy of strip searching all individuals who enter any of the West Virginia Regional Jails and placing them in jail clothing, regardless of the crime with which they are charged. In addition, the West Virginia Regional Jail and Correctional Facility Authority also requires that all pre-trial detainees be deloused by having corrections officers use plastic bottles to spray caustic delousing solution over the genitals of detainees. Of particular import to this action, the West Virginia Regional Jail and Correctional Facility Authority performs these blanket strip searches and delousing procedures on detainees who have yet to be arraigned before a judicial officer. These procedures are, in part, derived from the written policies of the West Virginia Regional Jail and Correctional Facility Authority, and were promulgated by senior West Virginia Regional Jail and Correctional Facility Authority officials named herein.

Plaintiffs bring this action on behalf of themselves, and on behalf of a Class of thousands of others who were deloused 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. Plaintiffs were charged with non-felony offenses, and were subjected to delousing, in violation of their rights against unreasonable searches under the Fourth Amendment of the United States Constitution. Both Plaintiffs were also subjected to strip and visual cavity searches before being arraigned by a judicial officer, which also represents a clear violation of their civil

rights. The Plaintiffs seek to represent other similarly situated individuals who were strip searched prior to being arraigned while in the custody of the West Virginia Regional Jail and Correctional Facility Authority. Plaintiffs seeks monetary damages from Defendants Terry L. Miller, Joseph DeLong and Larry Parsons for himself and each member of the Proposed Class, a declaration that Defendant West Virginia Regional Jail and Correctional Facility Authority's policies are unconstitutional, and an injunction precluding Defendant West Virginia Regional Jail and Correctional Facility Authority and the Individual Defendants from continuing to violate the rights of those placed into the custody of the Regional Jails that they administer. With this as a background, Plaintiffs 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 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. § 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 state government.

2. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' and Class claims occurred within this judicial district.

PARTIES

3. Plaintiff Michael Cantley is an adult male residing in Cabell County, West Virginia. On or about September 28, 2008, he was arrested and placed in the Western Regional

Jail on non-felony charges of violating an order of protection at the home of his ex-wife. Mr. Cantley was also admitted to custody of the Western Regional Jail on several other occasions during the proposed class period.

4. Plaintiff Teter is an adult male residing in Preston County, West Virginia. On or about February 19, 2010, he was arrested and placed in the Tygart Valley Regional Jail on non-felony charges of putting materials on a highway and obstructing an officer.

5. Defendant West Virginia Regional Jail and Correctional Facility Authority (“WVRJA”) is a state government agency organized and existing under the laws of the State of West Virginia. At all times relevant hereto, the WVRJA was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the West Virginia Regional Jail System and was responsible for the appointment, training, supervision and conduct of all Regional Jail personnel, including those working in the Central Regional Jail, Eastern Regional Jail, North Central Regional Jail, Northern Regional Jail, Potomac Highlands Regional Jail, South Central Regional Jail, Southern Regional Jail, Southwestern Regional Jail, Tygart Valley Regional Jail, and the Western Regional Jail (collectively the “West Virginia Regional Jail System” or “WVRJS”). In addition, at all relevant times, the WVRJA was responsible for enforcing the rules of the West Virginia Regional Jail System, and for ensuring that personnel employed in West Virginia Regional Jail system obey the Constitution and laws of the United States and of the State of West Virginia.

6. Defendant Terry L. Miller (“Director Miller”) was the duly appointed Executive Director of the WVRJA, and, as such, was a policy maker with respect to the treatment of pre-trial and other detainees over which the WVRJA exercises custodial or other control. Director

Miller's principal place of business was the WVRJA's Office, 1325 Virginia St. East, Charleston West Virginia, 25301. Director Miller is made a Defendant in this action in both his individual and official capacities. Miller was fired as Director of the WVRJA in October 2010.

7. Defendant Joseph A. DeLong ("Acting Director DeLong") is the duly appointed Acting Executive Director of the WVRJA, and, as such, is a policy maker with respect to the treatment of pre-trial and other detainees over which the WVRJA exercises custodial and other control. Acting Director DeLong's principal place of business is the WVRJA's Office, 1325 Virginia Street East, Charleston, West Virginia 25301. Acting Director DeLong is made a Defendant in this action in both his individual and official capacities. Upon information and belief, Defendant DeLong became the Acting Executive Director of the WVRJA from October 2010 until April 2011, and then again in February 2012.

8. Defendant Larry Parsons ("Director Parsons") was the duly appointed Executive Director of the WVRJA, and, as such, was a policy maker with respect to the treatment of pre-trial and other detainees over which the WVRJA exercises custodial or other control. Director Parsons' principal place of business was the WVRJA's Office, 1325 Virginia Street East, Charleston West Virginia 25301. Director Parsons is made a Defendant in this action in both his individual and official capacities. Parsons served as the Director of the WVRJA from April 1, 2011 until February 2, 2012.

9. Collectively, Defendants Miller, Parsons and DeLong are referred to the "Individual Defendants."

CLASS ACTION ALLEGATIONS

10. Plaintiffs 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 themselves and a Class of similarly situated individuals who were charged with misdemeanors or minor crimes and were strip searched and/or deloused upon their entry into the West Virginia Regional Jail System, including the Central Regional Jail, Eastern Regional Jail, North Central Regional Jail, Northern Regional Jail, Potomac Highlands Regional Jail, South Central Regional Jail, Southern Regional Jail, Southwestern Regional Jail, Tygart Valley Regional Jail, and the Western Regional Jail.

11. The Plaintiffs propose to represent the following Classes and Subclasses::

CLASS ONE:

All persons who have been or will be placed into the custody of the West Virginia Regional Jail System, after being charged with misdemeanors, summary violations, violations of probation, traffic infractions, civil commitments or other minor crimes and were or will be deloused upon their entry into the West Virginia Regional Jail System, pursuant to the policy, custom and practice of the West Virginia Regional Jail and Correctional Facility Authority. The class period commences on June 30, 2007 and extends to the date on which the West Virginia Regional Jail and Correctional Facility Authority is enjoined from, or otherwise ceases, enforcing its policy, practice and custom of conducting the uniform delousing of pre-trial detainees. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

CLASS TWO

All persons who have been or will be placed into the custody of the West Virginia Regional Jail System after being charged with misdemeanors, summary violations, violations of probation, traffic infractions, civil commitments or other minor crimes were or will be strip searched upon their entry into the West Virginia Regional Jail System prior to their being arraigned or provided with an appropriate initial court appearance to contest their detention prior to being searched, pursuant to the policy, custom and practice of the West Virginia Regional Jail and Correctional Facility Authority.

Authority. The class period commences on June 30, 2007 and extends to the date on which the West Virginia Regional Jail and Correctional Facility Authority is enjoined from, or otherwise ceases, enforcing its policy, practice and custom of conducting the uniform strip searches of pre-trial detainees prior to their being provided with an initial appearance to contest their detention. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

SUB-CLASS A

All persons who have been or will be into the custody of the Central, Potomac Highlands or Tygart Valley Regional Jails after being charged with misdemeanors, summary violations, violations of probation traffic infractions, civil commitments or other minor crimes were or will be strip searched upon their entry into these Regional Jails prior to their being arraigned or provided with an appropriate initial court appearance to contest their detention prior to being searched, pursuant to the policy, custom and practice of the West Virginia Regional Jail and Correctional Facility Authority. The class period commences on June 30, 2007 and extends to the date on which the West Virginia Regional Jail and Correctional Facility Authority is enjoined from, or otherwise ceases, enforcing its policy, practice and custom of conducting the uniform strip searches of pre-trial detainees prior to their being provided with an initial appearance to contest their detention. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

12. 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).

13. 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 West Virginia Regional Jail System every month -- all of whom are members of the Proposed Class. Upon information and belief, the size

of the Proposed Class totals at least thousands of individuals, some of whom have had their civil rights violated on multiple occasions.

14. 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 West Virginia 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.

15. 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 and involuntary delousing violated by Defendants' conducting strip searches absent particularized suspicion. All members of the Class were charged with misdemeanors or summary violations when placed into the custody of the West Virginia Regional Jail System, and all were illegally deloused in violation of the established law in this judicial circuit. Many Class Members were also subjected to a strip and visual cavity search prior to being arraigned, in violation of the established law in this judicial circuit.

16. 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.

17. 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.

18. Plaintiffs have retained counsel with substantial experience in the prosecution of Class action and civil rights litigation, including successful litigation of strip search cases. Plaintiffs' counsel have the resources, expertise and experience to successfully prosecute this action against the WVRJA and the Individual Defendants.. Counsel for the Plaintiffs know of no conflicts among members of the Class or between counsel and members of the Class.

19. 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 and delousing of individuals charged with misdemeanor or minor crimes and placed in to the custody of the West Virginia Regional Jail System. In short, the WVRJA, the Individual Defendants and the Regional Jail personnel acted on grounds generally applicable to all Class Members.

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

21. 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 delousing all individuals charged with misdemeanors or minor crimes and committed to the 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. Common questions also arise regarding the WVRJA's policy, practice and/or procedure of strip searching detainees prior to

their being arraigned or provided with other appropriate judicial process to contest their detention.

22. 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.

23. 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 and delousing regimen for at least the past twelve years.

24. 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

25. The Fourth Amendment of the United States Constitution prohibits state officials, such as the Individual 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, and who have not been arraigned or provided with appropriate process to contest their detention, unless the officer has reasonable suspicion to believe that the arrestee is concealing a weapon or contraband.

26. The WVRJA and Director Miller have instituted a written and/or *de facto* policy, custom or practice of strip searching and delousing all individuals who enter the custody of the West Virginia Regional Jail System, 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.

27. In a recent filing with the Court, the WVRJA and Director Miller admitted, through counsel, as follows: “WVRJA maintains a policy by which all incoming detainees go through a visual strip search and delousing procedureDefendants acknowledge that Plaintiff was strip searched and deloused upon his admission to Western Regional Jail pursuant to WVRJA.” (Docket Number 8, pp. 1, 4).

28. The written policy of the WVRJA also confirms this procedure. A copy of the WVRJA’s written “Inmate Admission Procedures” policy is attached to this Amended Complaint as Exhibit A.

29. The WVRJA and Director Miller 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 West Virginia Regional Jail System, 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". These strip and visual cavity searches include a visual inspection of a detainee's genitals and anus, and require detainees to manipulate body parts to allow for an inspection of these private areas.

30. Upon information and belief, some members of the Proposed Class (not including the Plaintiffs) are also required to undergo physical cavity searches upon entry to the custody of the WVRJA, where a Corrections Officer inserts a gloved finger into the rectum of a detainee to search for contraband.

31. Many of the pre-trial detainees in this action, e.g., members of Class Two, were subjected to a strip search, a visual cavity search and compulsory delousing prior to being arraigned before a Judge or provided with any judicial process to contest their detentions.

32. Many of the pre-trial detainees in this action, e.g., members of Class Two, are taken into the custody of the WVRJA immediately after their arrest before appearing in Court to be arraigned. This often occurs during the evening and on weekends, or for individuals arrested in rural areas. Generally, these individuals are arraigned by videoconference several hours and/or days after being taken into the custody of the WVRJA.

33. Specifically, the WVRJA and the Individual Defendants' written policies do not specifically require that individuals who are to be strip searched and deloused should be arraigned first prior to being strip searched and deloused. This procedure, however, is conducted contemporaneously with receiving the jail uniform. According to deposition testimony from employees of the WVRJA, detainees are usually photographed prior to being arraigned, and are always photographed prior to arraignment when they committed directly to the WVRJA after arrest.

34. In deposition testimony, the Rule 30(b)(6) deponent of the WVRJA admitted that three facilities, the Tygart Valley Regional Jail, the Potomac Highlands Regional Jail and the Central Regional Jail universally photographed pre-trial detainees in the WVRJA jail uniform.

35. The WVRJA and the Individual Defendants instituted a written and/or *de facto* policy, custom or practice of strip searching all pre-trial detainees at the WVRJA without regard to whether or not they had been arraigned, and consequently strip searched and deloused thousands of individuals prior to their seeing a judicial officer to contest their detention. Many of these individuals, such as Plaintiff Floyd Teter, were released on their own recognizance after arraignment. Others made bail in short order after being arraigned.

36. The WVRJA and the Individual Defendants have instituted a written and/or *de facto* policy, custom or practice of delousing all individuals who enter the custody of the West Virginia Regional Jail System, regardless of the individual characteristics or the nature of their charged crime. The delousing procedure first entails a detainee completely disrobing in front of a correction officer. The correction officer then sprays delousing solution upon a detainee's naked body. Finally, the detainee is ordered to shower within full view of the corrections officer. The delousing procedure is conducted upon all detainees without inquiry into or establishment of reasonable suspicion, or inquiry or establishment into whether the detainee actually harbors lice. This delousing is compulsory, in that a correction officer stands before a detainee and sprays them with a plastic spray bottle, and then observes them rubbing the solution into their hair, including their pubic hair. This delousing occurs in the absence of any medical evaluation to determine the presence, or absence, of lice.

37. Upon information and belief, the presence of lice in the WVRJA facilities is limited, and the on-site application of “liceall,” in the absence of any further medical treatment, is not an effective cure for lice.

38. Upon information and belief, the “liceall” solution used by the WVRJA is caustic, in that can, and often does, cause chemical burns to those upon whom it is applied, especially African-Americans.

39. Upon information and belief, Corrections Officers of the WVRJA do not receive any medical training prior to applying “liceall” to the faces, genitals, and rectums of pre-trial detainees.

40. The WVRJA and the Individual Defendants know that they may not institute, enforce or permit enforcement of a policy or practice of conducting delousing without particularized, reasonable suspicion that the detainee was harboring lice.

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

42. The WVRJA and Director Miller have promulgated, implemented, enforced, and/or failed to rectify a written and/or *de facto* policy, practice or custom of delousing all individuals placed into the custody of the West Virginia Regional Jail System without any requirement of reasonable suspicion, or indeed suspicion of any sort. This written and/or *de facto* policy made the delousing of pre-trial detainees routine; whether or not a detainee was actually harboring lice, or was suspected to harbor lice, was not relevant to the WVRJA’s policy, practice and custom of compulsory delousing.

43. .

44. 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 and delousing -- each member of the proposed classes, including the named Plaintiffs -- has suffered or will suffer psychological pain, humiliation, suffering and mental anguish.

Facts Applicable to the Named Plaintiff Michael Cantley

45. Plaintiff Cantley is an adult male residing in Cabell County, West Virginia. On or about September 28, 2008 he was arrested on non-felony charges of violating an order of protection at the home of his ex-wife. Specifically, Mr. Cantley was required to stay away from his former wife's home, and failed to do so on the date in question. The allegations against Mr. Cantley did not involve a claim that he had harmed his wife, or anyone else, but rather that he was present in a location at which he was forbidden to be present. Plaintiff Cantley's arrest was void of any reasonable suspicion that he harbored any weapons, contraband, or lice.

46. Mr. Cantley was first taken in custody by the West Virginia State Police, and later that evening taken to the Western Regional Jail. Plaintiff Cantley was initially housed in a holding cell.

47. After being housed in a holding cell for several hours, Plaintiff Cantley was required to undergo a strip search.

48. Plaintiff Cantley was brought into a shower room and advised by a correctional officer that he would be strip searched. In connection with the strip search, Plaintiff Cantley was required to completely disrobe, lift his arms and legs, spread his butt cheeks, lift up his testicles and bend over, so that he could be inspected by a correctional officer. Plaintiff Cantley was then

sprayed with de-lousing solution and ordered to shower while the corrections officer had a complete view of him showering. He was then issued prison clothing.

49. Plaintiff Cantley was released from the Western Regional Jail on or about November 6, 2008, and all charges were dismissed.

50. Plaintiff Cantley was admitted to the Western Regional Jail on other occasions during the class period, and was strip searched and deloused prior to being arraigned before a judicial officer.

51. Mr. Cantley has also been admitted the Western Regional Jail on several other occasions during the class period for misdemeanor or other minor charges, and underwent procedures similar, in all material ways, to those detailed in this Amended Class Action Complaint. Upon information and belief, these arrests were also void of any reasonable suspicion to believe that he possessed weapons or contraband in his private areas, or lice.

52. As a direct and proximate result of these unlawful strip searches, Plaintiff Cantley has suffered and continues to suffer psychological pain, humiliation, suffering and mental anguish.

Facts Applicable to the Named Plaintiff Floyd Teter

53. Plaintiff Teter is an adult male residing in Preston County, West Virginia. On or about February 19, 2010, he was arrested by an officer of the Terra Alta Police Department on non-felony charges of putting materials on a highway and obstructing an officer.

54. Specifically, Mr. Teter was on a tractor moving snow in the vicinity of a road, and was arrested in a Church parking lot after driving his tractor there. Plaintiff Teter's arrest was void of any reasonable suspicion that he harbored any weapons, contraband, or lice.

55. Mr. Teter was first taken into custody by the Terra Alta Police Department to the Preston Memorial Hospital to treat injuries to his back. After being released from the hospital, he was transported to the Preston County Sheriff's Department, and later transported by the Preston County Sheriff's Department Transport Office to the Tygart Valley Regional Jail. Plaintiff Teter was initially housed in a holding cell.

56. After being housed in a holding cell for several hours, and prior to arraignment, Plaintiff Teter was required to undergo a strip search.

57. Plaintiff Teter was brought into a shower room and advised by a correctional officer that he would be strip searched. In connection with the strip search, Plaintiff Teter was required to completely disrobe, lift his arms and legs, spread his butt cheeks, lift up his testicles and bend over, so that he could be inspected by a correctional officer. Plaintiff Teter was then sprayed with de-lousing solution and ordered to shower while the corrections officer had a complete view of him showering. He was then issued prison clothing.

58. Plaintiff Teter was released from the Western Regional Jail on or about February 20, 2011 shortly after being arraigned.

59. As a direct and proximate result of this unlawful strip search, Plaintiff Teter has suffered and continues to suffer psychological pain, humiliation, suffering and mental anguish.

CAUSES OF ACTION

**FIRST CAUSE OF ACTION AGAINST THE INDIVIDUAL DEFENDANTS IN
THEIR INDIVIDUAL CAPACITIES**

**-- Violation of Constitutional Rights Under Color of State Law --
-- Illegal Strip and Visual Cavity Searches --**

60. Plaintiffs incorporate by reference and realleges each and every allegation stated in the foregoing paragraphs.

61. The Fourth Amendment of the United States Constitution protects citizens from unreasonable searches by law enforcement officers, and prohibits officers from conducting strip searches and delousing of individuals arrested for misdemeanors or violations absent some particularized suspicion that the individual in question has either contraband or weapons when those detainees have not been provided with an appropriate judicial process to contest their detention.

62. The Fourth Amendment of the United States Constitution also protects citizens from unreasonable searches and seizures by law enforcement officers, and prohibits officers from conducting uniform delousing of individuals arrested for misdemeanors or violations absent some particularized suspicion that the individual in question is harboring lice on their bodies. This is especially so when the delousing regimen in question will not actually cure someone who is infested with lice.

63. The actions of the Individual Defendants detailed above violated Plaintiffs' rights under the United States Constitution. It was not objectively reasonable for West Virginia Regional Jail personnel to strip search and delouse the Plaintiffs and Class Members based on their arrests for misdemeanor/ summary violation charges when they were not provided with

judicial process to contest their detention and seek bail. Additionally, it was not objectively reasonable for West Virginia Regional Jail personnel to delouse all pre-trial detainees charged with misdemeanors/summary violation charges in the absence of any medical inspection or suspicion that the detainee's body was harboring lice. It was also not objectively reasonable for the Individual Defendants to order/direct West Virginia Regional Jail System personnel to conduct such searches.

64. These strip searches and delousing were conducted pursuant to the policy, custom or practice of the Individual Defendants. As such, the Individual Defendants are directly liable for the damages of Plaintiffs and members of the Class.

65. Upon information and belief, the Individual Defendants are responsible for establishing the policies and procedures to be utilized in the operation of the West Virginia Regional Jail system, and are responsible for the implementation of the strip search and delousing policies questioned in this lawsuit. As such, the Individual Defendants are individually responsible for the damages of the Plaintiffs and Members of the Class.

66. The Policy Making Defendants knew that the Jail's strip search and delousing policies were illegal, and acted willfully, knowingly, and with specific intent to deprive Plaintiffs and Members of the Class of their Constitutional rights.

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

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

**SECOND CAUSE OF ACTION AGAINST THE INDIVIDUAL DEFENDANTS IN
THEIR INDIVIDUAL CAPACITIES**

**-- Violation of Constitutional Rights Under Color of State Law --
-- The Right to Privacy --**

69. Plaintiffs incorporate by reference and realleges each and every allegation stated in the foregoing paragraphs.

70. The right to privacy is protected by the Fourth Amendment and is also an independent right with other constitutional underpinnings.

71. The right to privacy prohibits officers from conducting delousing of individuals arrested for misdemeanors or violations absent some particularized suspicion that the individual in question has lice.

72. The actions of the Individual Defendants detailed above violated and improperly invaded Plaintiffs' right to privacy. It was not objectively reasonable for West Virginia Regional Jail personnel to delouse the Plaintiffs and Class Members based on their arrests for misdemeanor/summary violation charges. It was also not objectively reasonable for the Individual Defendant to order/direct West Virginia Regional Jail System personnel to conduct such a procedure.

73. This delousing was conducted pursuant to the policy, custom or practice of the Individual Defendants. As such, the Individual Defendants are directly liable for the damages of Plaintiffs and members of the Class.

74. Upon information and belief, the Individual Defendants are responsible for establishing the policies and procedures to be utilized in the operation of the West Virginia Regional Jail system, and are responsible for the implementation of the delousing policies

questioned in this lawsuit. As such, the Individual Defendants are individually responsible for the damages of the Plaintiffs and Members of the Class.

75. The Policy Making Defendants knew that the Jail's delousing policies were illegal, and acted willfully, knowingly, and with specific intent to deprive Plaintiffs and Members of the Class of their Constitutional rights.

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

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

THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

-- Demand for Declaratory Judgment --

78. Plaintiffs incorporate by reference and realleges each and every allegation stated in the foregoing paragraphs.

79. The policy, custom and practice of the WVRJA and the Individual Defendants are clearly unconstitutional and violates the right to privacy, in that these entities and individuals are directing/conducting the strip searches and delousing of all individuals placed into the West Virginia Regional Jail System without any particularized suspicion that the individuals in question have either contraband or weapons.

80. Plaintiffs and Members of the Class request that this Court issue a declaratory judgment, and that it declare the strip search and delousing policies of the WVRJA and the Individual Defendants to be unconstitutional and violative of the right to privacy.

FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

-- Demand for Preliminary and Permanent Injunction --

81. Plaintiffs incorporate by reference and realleges each and every allegation stated in the foregoing paragraphs.

82. The policy, custom and practice of the WVRJA and the Individual Defendants is clearly unconstitutional and violative of the right to privacy, in that these entities and individuals are directing/conducting the strip searches and delousing of all individuals placed into the West Virginia Regional Jail system without any particularized suspicion that the individuals in question have either contraband, weapons, or lice.

83. Upon information and belief, this policy is currently in place in the West Virginia Regional Jail System, with new and/or prospective Members of the Class being subjected to the harms that have already been inflicted upon the Plaintiffs.

84. The continuing pattern of strip searching and delousing 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.

85. Plaintiffs demand that the WVRJA, Director Miller, and the West Virginia Regional Jail System personnel immediately desist from strip searching and delousing individuals placed into the custody of the West Virginia Regional Jail System absent any

particularized suspicion that the individuals in question have either contraband, weapons, or lice, and seeks both a preliminary and permanent injunction from this Court ordering as much.

DEMAND FOR TRIAL BY JURY

86. The Plaintiffs hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of the mselves and on behalf of a Class of others similarly situated, requests that this Honorable Court grant them the following relief:

1. An order certifying this action as a Class Action pursuant to Fed. R. Civ. P. 23.
2. A judgment against Director Miller in his individual capacity, on Plaintiffs' First and Second Causes of Action deta iled herein, awarding compensatory damages to Plaintiffs 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.
3. A declaratory judgment against all Defendants declaring the WVRJA and the Individual Defendants' policy, practice and custom of strip and visual cavity searching, and delousing, of all detainees entering the West Virginia Regional Jail System, regardless of the crime charged or suspicion of contraband or lice, to be unconstitutional, violative of the right to privacy and otherwise improper.

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

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

Respectfully submitted by:

/s D. Aaron Rihn

Dated: September 14, 2012

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