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26 **UNITED STATES DISTRICT COURT**
27 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**
28

29 STEVEN TRUJILLO, JEFF QUON,
30 CRAIG ANSMAN, WILL RIVERA,
31 SCOTT ANDERSON, ROBERT
32 BERNHARD, and CRAIG PEFFERLE ,
33 on behalf of themselves and all others
34 similarly situated,

35 Plaintiffs,

36 v.

37 CITY OF ONTARIO, A Municipal
38 Corporation; CITY OF ONTARIO
POLICE DEPARTMENT, A Department
Thereof; LLOYD SCHARF, Individually
and as Chief of Ontario Police
Department; TONY DEL RIO,

ED CV 04-01015 VAP (SGLx)

**FIRST AMENDED COMPLAINT
FOR DAMAGES**

JURY TRIAL DEMANDED

CLASS ACTION

[42 U.S.C. § 1983; UNITED
STATES CONSTITUTION,
AMEND. IV; CALIFORNIA
CONSTITUTION ART. I, § 1;
INVASION OF PRIVACY]

1 Individually and as a Captain for the
2 Ontario Police Department; BRAD
3 SCHNEIDER, Individually and as a
4 Sergeant for the Ontario Police
5 Department; JOE SIFUENTES, and
6 DOES 1 THROUGH 10, inclusive,
7
8 Defendants.

9 JURISDICTION AND VENUE

10 1. This case concerns defendants' surreptitious installation of a video
11 camera in the men's locker room in the Ontario Police Department. Defendants
12 captured plaintiffs on videotape in various states of undress. Defendants' actions
13 constitute a grievous violation of the right to privacy guaranteed by the United
14 States Constitution, the California Constitution, and state common law for which
15 plaintiffs are entitled to general, exemplary and punitive damages. This court has
16 subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal
17 question), 28 U.S.C. §1343 (civil rights) and 28 U.S.C. § 1367 (supplemental
18 jurisdiction). Venue is proper in the Central District of California under 28 U.S.C.
19 § 1391(b)(2) in that the wrongs alleged herein occurred within the City of Ontario,
20 County of San Bernardino, within the Central District.

21 PARTIES

22 2. PLAINTIFFS were, and are at all times relevant, residents of San
23 Bernardino, Orange, and Riverside Counties. At all times relevant PLAINTIFFS
24 were members of the City of Ontario Police Department.

25 3. PLAINTIFF STEVEN TRUJILLO is a Sergeant with the Ontario
26 Police Department, where he has served for nineteen years. During his tenure, he
27 has been awarded a Medal of Valor, two Unit Excellence Awards, an Individual
28 Excellence Award, and a SWAT ribbon for seventeen years of service. Sergeant

1 Trujillo appears a number of times on the videotapes surreptitiously recorded by
2 defendants in the men's locker room of the Ontario Police Department.

3 4. PLAINTIFF JEFF QUON, is a Sergeant with the Ontario Police
4 Department, where he has served for twenty-three years. He appears on the
5 videotape numerous times, including in his underwear

6 5. PLAINTIFF CRAIG ANSMAN is an Officer with the Ontario Police
7 Department where he has served for almost fifteen years. He previously worked
8 for three years as a policeman in Monterrey Park. While with the Ontario Police
9 Department, Officer Ansmann has earned numerous awards including the
10 Meritorious Award, and the Unit Excellence Award. The California Firefighters
11 Association also awarded him a Medal of Honor for pulling a woman out of a
12 burning building. Mr. Ansmann appears on the videotape numerous times.

13 6. PLAINTIFF WILL RIVERA is a Corporal with the Ontario Police
14 Department, where he has worked for approximately fifteen years. Corporal
15 Rivera has received a Lifesaving Award, a Bravery Award, a Heroism Award, and
16 was Officer of the Year in the early 1990s. Mr. Rivera appears on the videotape
17 several times.

18 7. PLAINTIFF SCOTT ANDERSON is a Detective with the Ontario
19 Police Department, where he has served for more than fifteen years. Detective
20 Anderson has received an award of excellence, has twice been named Officer of
21 the Year, has once been named Corporal of the Year, and is a member of the
22 Airport Narcotics Unit of the Year. Mr. Anderson appears on the videotape
23 several times.

24 8. PLAINTIFF ROBERT BERNHARD is a Sergeant with the Ontario
25 Police Department, where he has served since 1977. During his time with the
26 Department, Sgt. Bernhard has earned two Life-Saving Ribbons and a Meritorious
27 Award. He is a member of the Airport Narcotics Unit of the Year. Mr. Bernhard
28 appears on the videotape numerous times.

1 9. PLAINTIFF CRAIG PEFFERLE is a Corporal with the Ontario
2 Police Department. He has worked for the Department for nine years. During that
3 time he has been received a Mothers Against Drunk Driving (MADD) Award and
4 several letters of appreciation from other agencies. Mr. Pefferle appears on the
5 videotape numerous times.

6 10. DEFENDANT CITY OF ONTARIO (“City”) is a duly constituted
7 municipal corporation operating under the laws of the State of California. At all
8 times relevant herein for all purposes connected with management of the Ontario
9 Police Department, defendant City of Ontario acted directly through its Chief of
10 Police, Lloyd Scharff Captain Tony Del Rio, Sergeant Brad Schneider, and Does 1
11 through 20 inclusive. Then-Police Chief Lloyd Scharff, who was delegated the
12 policy-making authority with respect to the City of Ontario Police Department,
13 adopted and ratified each of the decisions of the defendants as named herein as its
14 own policies, customs, practices or decisions, as if the same had been promulgated
15 directly by the City, except as expressly appears herein to the contrary.

16 11. DEFENDANT ONTARIO POLICE DEPARTMENT (“Police
17 Department”) is a subdivision and agency of the City of Ontario. The Police
18 Department is an operating department of the City and charged with the
19 responsibility of providing public safety for the City of Ontario.

20 12. DEFENDANT LLOYD SCHARFF was at all times relevant the Chief
21 of Police for the City of Ontario. Scharff is sued individually and in his capacity
22 as the Chief of Police for the City of Ontario. In doing the things alleged herein,
23 Scharff acted under the color of state law, within the course and scope of his
24 employment, and as an official policy-maker of the City of Ontario. Scharff was at
25 all times relevant, an official of defendant City of Ontario, vested with
26 policy-making authority over personnel actions such as the ones at issue in this
27 complaint.

28 13. DEFENDANT TONY DEL RIO was at all times relevant a

1 Lieutenant or Captain for the Ontario Police Department. Tony Del Rio is sued
2 individually and in his capacity as a Captain for the Police Department of the City
3 of Ontario.

4 14. DEFENDANT BRAD SCHNEIDER was at all times relevant a
5 Sergeant for the Ontario Police Department. Brad Schneider is sued individually
6 and in his capacity as a Sergeant for the Police Department of the City of Ontario.

7 15. DEFENDANT JOE SIFUENTES was at all times relevant a private
8 person not employed by the City of Ontario but hired on a contract basis to
9 perform services for the City of Ontario. Joe Sifuentes is employed as a
10 surveillance video installer in the City of Upland, California, and helped install the
11 surveillance camera in the ceiling of the men's locker room in the Ontario Police
12 Department.

13 16. DEFENDANT DOES 1 through 10, ("DOES") inclusive, are not
14 known or identified at this time. On information and belief, PLAINTIFFS allege
15 that each DOE is in some manner responsible for the wrongs alleged herein, and
16 that each such defendant advised, encouraged, participated in, ratified, directed or
17 conspired to do, the wrongful acts alleged herein. When the true names and
18 capacities of said defendants become known, plaintiffs will seek relief to amend
19 this Complaint to show their true identities in place of their fictitious names as
20 DOES 1 through 10.

21 22 **CLASS ACTION ALLEGATIONS**

23 17. Named plaintiffs seek damages on their own behalf and on behalf of
24 all other persons similarly situated, pursuant to Fed. R. Civ. P. Rule 23(b)(3). The
25 class is composed of all persons who were employed by the Ontario Police
26 Department or volunteered for the Ontario Police Department and used the
27 Department's men's locker room during the period in which the surveillance
28 equipment was operated.

1 18. Plaintiffs are informed and believe, and on that basis allege, that the
2 class defined in the foregoing paragraph numbers approximately 240 people.
3 Approximately 125 persons have been identified on the one videotape that
4 Plaintiffs have seen. Numerous other persons appear who cannot be identified.
5 Approximately 220 sworn officers worked for the Ontario Police Department in
6 1996 and had occasion to use the men's locker room. In addition, approximately
7 another 20 people, such as youth members of the Police Explorers program, used
8 the men's locker room.

9 19. Questions of law and fact common to the members of the plaintiff
10 class predominate over issues affecting only individual members. These common
11 questions include:

12 a. whether defendants, without plaintiffs' knowledge, installed
13 hidden surveillance equipment in the Ontario Police Department men's locker
14 room that captured video recordings of plaintiffs, and other police officers and
15 department employees and volunteers, engaging in the ordinary conduct of a
16 locker room.

17 b. whether plaintiffs possessed a reasonable expectation of
18 privacy in the Ontario Police Department's men's locker room under the Fourth
19 Amendment to the United States Constitution, Article I § 1 of the Constitution of
20 the State of California, and under the common law of the State of California;

21 c. whether defendants' conduct constituted an unreasonable
22 intrusion into plaintiffs' privacy in violation of the Fourth Amendment to the
23 United States Constitution;

24 d. whether defendants' conduct constituted a serious invasion of
25 plaintiffs' privacy in violation of Article I § 1 of the Constitution of the State of
26 California; and

27 e. whether defendants' conduct was highly offensive to a
28 reasonable person so as to constitute an intrusion into private places, conversation,

1 or matter under the common law of the State of California.

2 20. The claims of the named plaintiffs are typical of the claims of the
3 class members.

4 21. The named plaintiffs will fairly and adequately protect the interests of
5 the class.

6 22. The named plaintiffs have no interest that is now or may be
7 potentially antagonistic to the interests of the class.

8 23. The attorneys representing the plaintiffs are experienced civil rights
9 attorneys and are considered able practitioners of federal court litigation.

10 24. No other litigation concerning this matter has been filed by any
11 members of the class.

12 25. Having the claims of all class members adjudicated in this judicial
13 district where all the named plaintiffs live, and where the vast majority of the
14 unnamed class members also reside, is desirable for the plaintiff class and also will
15 help conserve the resources of the Court by avoiding multiple cases concerning
16 the same events.

17 26. For all these and other reasons, a class action is superior to other
18 available methods for the fair and efficient adjudication of the controversy set
19 forth in this Complaint.

20
21 **FACTS COMMON TO ALL COUNTS**

22 27. Plaintiffs have at all times relevant to this complaint been employees
23 of the defendant City.

24 28. In approximately 1996, defendant Brad Schneider arranged for the
25 installation of a hidden surveillance camera in the City of Ontario Police
26 Department locker room (the “locker room”).

27 29. The surveillance camera was concealed in the ceiling of the locker
28 room and provided a view of the door and the adjacent lockers and dressing area.

1 The surveillance camera was connected to a video tape recorder located in a
2 nearby office.

3 30. Defendant Schneider arranged for the installation under supervision
4 of others, including, but not limited to, Scharff. Scharff, as the Chief of Police and
5 Department Head, was at all relevant times charged with making policy decisions
6 such as the one herein alleged. Schneider arranged for the installation of the
7 surveillance equipment by Joe Sifuentes, a non-employee of the defendant City,
8 who was employed as an installer.

9 31. The surveillance camera itself was obtained from defendant Tony Del
10 Rio and was property of the Narcotics Division for the City of Ontario Police
11 Department.

12 32. The monitoring equipment installed by defendants electronically
13 recorded video images of plaintiffs in their ordinary conduct in the locker room.

14 33. In approximately Spring of 2003, the surveillance camera was
15 discovered, along with at least one known videotape.

16 34. The videotape has been reviewed by the plaintiffs and employees of
17 the defendant City of Ontario.

18 35. The videotape displayed surreptitious recording of the plaintiffs as
19 they engaged in the ordinary conduct of a locker room, including ranging states of
20 undress.

21 36. Prior to the discovery of the camera, plaintiffs believed that the locker
22 room was private and not subject to monitoring by anyone. Plaintiffs reasonably
23 believed that they could not be seen by anyone who was not in the locker room at
24 the time. Plaintiffs conducted themselves accordingly by using the locker room to
25 change clothes.

26 37. Plaintiffs have all times relevant to this action conducted themselves
27 in a manner consistent with an actual expectation of privacy in the locker room.
28 The plaintiffs at no time consented or waived their expectation of privacy.

1 38. The defendants, in committing the acts complained of herein, acted
2 pursuant to a policy, practice or custom of the City of Ontario. At all times, the
3 defendants were aware of their acts and omissions or should have been aware,
4 specifically their failure to comply with statutory and constitutional procedural
5 and substantive requirements, and consequently the violations of law that derived
6 thereof.

7 39. At all times relevant to this action, the defendants acted without
8 lawful authority, including, but not limited to, a lawfully obtained warrant or court
9 order permitting such conduct, and without legal justification.

10 40. Defendants Scharff, Del Rio, Schneider, and Sifuentes acted
11 despicably, with the intent to harm, oppress and deprive plaintiffs of their rights
12 under the United States and California Constitutions, and the common law right to
13 privacy entitling plaintiffs to punitive damages in an amount to be proven at trial.

14 41. Plaintiffs are entitled to an award of reasonable attorney fees as
15 allowed by law, including, without limitation, under 42 U.S.C. § 1988 and
16 California Code of Civil Procedure § 1021.5.

17 **FIRST CAUSE OF ACTION**

18 **Fourth Amendment to the United States Constitution; 42 U.S.C. § 1983**

19 42. Plaintiffs re-allege and incorporate herein all the allegations in the
20 preceding paragraphs.

21 43. Plaintiffs had a reasonable expectation of privacy while engaged in
22 regular and usual conduct for a locker room, in that they reasonably believed that
23 they were free from observation by those not present in the locker room and were
24 not subject to video surveillance or recording. Plaintiffs' privacy interest is one
25 recognized by the relative customs of the time and place, the occupation of the
26 plaintiffs and the habits of society.

27 44. Plaintiffs also had a subjective expectation of privacy while engaged
28 in regular and usual conduct for a locker room, in that they each believed that they

1 were free from observation by those not present in the locker room and were not
2 subject to video surveillance or recording.

3 45. Defendants' actions were unreasonable to the plaintiffs and to the
4 senses of ordinary persons. Defendants' conduct contravenes all boundaries of
5 decency and standards of a civilized society.

6 46. Defendants, by installing video surveillance in the locker room and
7 surreptitiously recording video images of plaintiffs in ranging states of undress as
8 alleged herein, violated the plaintiff's rights to be free from unreasonable searches
9 and seizures under the Fourth Amendment to the United States Constitution, and
10 are therefore liable to plaintiffs under 42 U.S.C. § 1983.

11 **SECOND CAUSE OF ACTION**

12 **California Constitution Art. I, § 1**

13 47. Plaintiffs re-allege and incorporate herein all the allegations in the
14 preceding paragraphs.

15 48. Plaintiffs maintained at all times relevant to this action, a specific,
16 legally protected privacy interest. That interest is to be free from invasions of
17 privacy, including surreptitious video monitoring and recording, while engaged in
18 conduct usual and regular for a locker room.

19 49. Plaintiffs had a reasonable expectation of privacy while engaged in
20 regular and usual conduct for a locker room, in that they reasonably believed that
21 they were free from observation by those not present in the locker room and were
22 not subject to video surveillance or recording. Plaintiffs' privacy interest is one
23 recognized by the relative customs of the time and place, the occupation of the
24 plaintiffs and the habits of society.

25 50. The defendants' conduct, as alleged herein, constitutes an egregious
26 breach of social norms underlying the privacy right and a serious invasion of
27 plaintiffs' privacy.

28 51. Defendants, by installing video surveillance in the locker room and

1 surreptitiously recording video images of plaintiffs, including some images of
2 plaintiffs in ranging states of undress as alleged herein, invaded said privacy right
3 as protected by the Constitution of the State of California, Article I, Section 1.

4 52. Plaintiffs Anderson, Bernhard and Pepperle filed tort claims on behalf
5 of themselves and Roes 1-250 against all Defendants, except Mr. Sifuentes, under
6 California Government Code § 900 *et seq.* with the City of Ontario on July 15,
7 2004 alleging a violation of California Constitution Art. I, § 1. The City rejected
8 the claim by letter dated August 5, 2004.

9 53. Plaintiffs Trujillo and Quon filed tort claims against all Defendants,
10 except Mr. Sifuentes, under California Government Code § 900 *et seq.* with the
11 City of Ontario on August 20, 2004, alleging a violation of California Constitution
12 Art. I, § 1. Their claim was denied by letters dated August 25, 2004.

13 54. Plaintiffs Ansman and Rivera, as well as all others similarly situated,
14 filed tort claims against all Defendants, except Mr. Sifuentes, under California
15 Government Code § 900 *et seq.* with the City of Ontario on August 20, 2004,
16 alleging a violation of California Constitution Art. I, § 1. Their claim was denied
17 by letter dated August 25, 2004.

18 **THIRD CAUSE OF ACTION**

19 **Common Law Invasion of Privacy**

20 55. Plaintiffs re-allege and incorporate herein all the allegations in the
21 preceding paragraphs.

22 56. Plaintiffs had a reasonable expectation of privacy while engaged in
23 regular and usual conduct for a locker room, in that they reasonably believed that
24 they were free from observation by those not present in the locker room and were
25 not subject to video surveillance or recording. Plaintiffs' privacy interest is one
26 recognized by the relative customs of the time and place, the occupation of the
27 plaintiffs and the habits of society.

28 57. Plaintiffs have a right to avoid disclosure of confidential personal

1 information, including the surveillance of said plaintiffs while in ranging states of
2 undress, and to be free from invasions of said right, while engaged in conduct
3 regular and usual for a locker room.

4 58. Defendants' actions were unreasonable and highly offensive to the
5 Plaintiffs, and to the senses of ordinary persons. Defendants' conduct contravenes
6 all boundaries of decency and standards of a civilized society.

7 59. Defendants, by installing video surveillance in the locker room and
8 surreptitiously recording video images of plaintiffs in ranging states of undress as
9 alleged herein, invaded plaintiffs' right to privacy and intruded upon plaintiffs'
10 private matters and are therefore liable to plaintiffs under the laws of the State of
11 California.

12 60. Plaintiffs Anderson, Bernhard and Pefferle filed tort claims on behalf
13 of themselves and Roes 1-250 against all Defendants, except Mr. Sifuentes, under
14 California Government Code § 900 *et seq.* with the City of Ontario on July 15,
15 2004, alleging a violation of the common law right to privacy. The City rejected
16 the claim by letter dated August 5, 2004.

17 61. Plaintiffs Trujillo and Quon filed tort claims against all Defendants,
18 except Mr. Sifuentes, under California Government Code § 900 *et seq.* with the
19 City of Ontario on August 20, 2004, alleging a violation of the common law right
20 to privacy. Their claim was denied by letter dated August 25, 2004.

21 62. Plaintiffs Ansman and Rivera, as well as all others similarly situated,
22 filed tort claims against all Defendants, except Mr. Sifuentes, under California
23 Government Code § 900 *et seq.* with the City of Ontario on August 20, 2004,
24 alleging a violation of the common law right to privacy. Their claim was denied
25 by letter dated August 25, 2004.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiffs pray for the following relief:

- 3 1. General, special, and exemplary damages against all Defendants
4 according to proof;
- 5 2. Punitive damages against Defendants Scharff, Del Rio, Schneider,
6 and Sifuentes;
- 7 3. Costs of suit;
- 8 4. Attorneys' fees under 42 U.S.C. § 1988, California Code of Civil
9 Procedure § 1021.5, California Government Code § 800, and
10 otherwise as permitted by law; and
- 11 5. Such other and further relief as the Court deems just and proper.
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Dated: October 28, 2004

Respectfully Submitted

Peter J. Eliasberg
ACLU Foundation of
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Dieter C. Dammeier
Michael A. McGill
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ATTORNEYS FOR PLAINTIFFS

By: Peter Eliasberg

By: Peter Bibring

By: Mike Lackie

1 DEMAND FOR JURY TRIAL

2 Pursuant to Federal Rule of Civil Procedure 38, plaintiffs hereby demand a
3 jury trial.

4
5 Dated: October __, 2004

Respectfully Submitted

6 Peter J. Eliasberg
7 ACLU Foundation of
8 Southern California

9 Della Bahan
10 Puja Batra
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16 ATTORNEYS FOR PLAINTIFFS

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By: Peter Eliasberg