



precluding the defendants from continuing to violate the rights of those placed in their custody or detention.

### **PARTIES**

3. Plaintiff Dana Clark (“Clark” or “Plaintiff”) is, and at all times relevant hereto has been, a resident of the State of New Jersey. On or about October 26, 2006, Clark was arrested by Carney’s Point Police Department for open municipal warrants and subsequently transported to the Salem County Jail with a bail of approximately \$500.00. Clark was illegally strip searched at the Jail on the day of her admission. Clark paid her bail and was released on or about October 28, 2006.

4. Defendant County of Salem (the “County”) is a county government organized and existing under the laws of New Jersey. At all times relevant hereto, the County, acting through its Sheriff’s Department and the Correctional Department, was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the Salem County Jail and was responsible for the appointment, training, supervision and conduct of all Sheriff’s Department and Salem County Correctional Department’s personnel, including those working at the Salem County Jail. In addition, at all relevant times, the County was responsible for enforcing the rules of the Salem County Correctional Department and for ensuring that Sheriff’s Department and Salem County Correctional Department’s employees obey the Constitution and the laws of the United States and New Jersey.

5. The Salem County Sheriff’s Department (the “Sheriff’s Department”) is a County of Salem political subdivision, organized and existing under the laws of New Jersey. At all times relevant hereto, the Sheriff’s Department, together with the County of

Salem, was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the Sheriff's Department, and was responsible for the appointment, training, supervision and conduct of all Sheriff's Department personnel and that they obey the Constitution and the laws of the United States and of the State of New Jersey.

7. Defendant Raymond Skradzinski ("Warden Skradzinski") is the Warden of the Correctional Department and, as such, is a policy maker with respect to the treatment of pretrial and other detainees over which the Correctional Department exercises custodial or other control. Warden Skradzinski is made a defendant in this action in both his individual and official capacities.

8. Defendant Charles Miller ("Sheriff Miller") is the Sheriff of Salem County and, as such, is a policy maker with respect to the treatment of pretrial and other detainees over which the Sheriff's Department exercises custodial or other control. Sheriff Miller is made a defendant in this action in both his individual and official capacities.

9. Collectively, Salem County and Sheriff's Department, will be referred to as the "Municipal Defendants" and Warden Skradzinski and Sheriff Miller will be referred to as the "Policy Making Defendants".

10. Collectively, the Municipal Defendants and Policy Making Defendants will be referred to as the "Defendants."

**JURISDICTION AND VENUE**

11. This Court has jurisdiction over this action under the provisions of 28 U.S.C. §§1331, 1341 and 1343, because it was 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 United States Constitution and by federal law pursuant to 42 U.S.C. §§1981 and 1983. This Court also has jurisdiction over this action under the provisions of 28 U.S.C. §2201, as it was filed to obtain declaratory relief relative to the Constitutionality of the policies of a local government.

12. Venue is proper under 28 U.S.C. §1391(e)(2) because the events giving rise to the Plaintiff's claims and those of proposed class members occurred in this judicial district.

**CLASS ACTION ALLEGATIONS**

13. 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 Plaintiff and a class of similarly situated individuals who were arrested for non-indictable offenses or other minor crimes and who were unlawfully detained and strip-searched upon their entry into the Salem County Jail.

14. The Class that Plaintiff seeks to represent is defined as:

All persons who have been placed into custody of the Salem County Jail after being charged with non-indictable offenses (such as fourth degree offenses, traffic infractions and/or civil commitments) and were strip-searched upon their entry into the Salem County Jail.

The Class period commences on or about May 8, 2005, and extends to the date on which the Defendants are enjoined from, or otherwise cease, enforcing their unconstitutional

policy, practice and custom of conducting strip-searches absent reasonable suspicion. Specifically excluded from the Class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

15. This action may be brought and properly 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. There are, and have been, hundreds of people who have been arrested for non-indictable offenses, traffic infractions, failing to make payment on outstanding traffic violations, failing to make payment on outstanding fines or other minor crimes, who were strip-searched under the circumstances described herein.

17. Joinder of all 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 residing outside of Salem County and this Judicial District. Further, many members of the Class are low-income persons, may not speak English, may not know of their rights 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 that predominate over any questions that affect only individual members of the Class. The predominant common questions of law and fact include, without limitation, whether the Defendants' written and/or *de facto* policies of strip-searching individuals who were charged with non-indictable offenses or other minor crimes when transferred to and placed into the custody of the Salem County Jail violate 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.

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

20. The representative Plaintiff have 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. 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.

22. The named Plaintiff has retained counsel with substantial experience and success in the prosecution of class action and civil rights litigation. Plaintiff is being represented by Jonathan W. Cuneo, Charles J. LaDuca, and Alexandra C. Warren of

Cuneo Gilbert & LaDuca, LLP; Elmer Robert Keach, III, Esquire of the Law Offices of Elmer Robert Keach, III, PC; Seth Lesser and Fran Rudich of the Locks Law Firm, PLLC and William Riback, Esquire. Plaintiff's counsel have the resources, expertise and experience to successfully prosecute this action against the Defendants. Plaintiff has no conflicts with members of the Class, and there are no conflicts between counsel and members 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 detainees, even though the Defendants have maintained their illegal strip-search regimen for at least the past several years.

24. This action, in part, seeks declaratory and injunctive relief. As such, 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 non-indictable offenses or other minor crimes that were transported to and placed into the custody of the Salem County Jail. In short, the Municipal Defendants and the Policy Making Defendants acted on grounds generally applicable to all Class members.

25. In addition to, and in the alternative, Plaintiff seeks certification under Rule 23(b)(3) or seek partial certification under Fed. R. Civ. P. 23(c)(4).

## **FACTS**

### **Facts Applicable to the Class Generally**

26. The Fourth Amendment of the United States Constitution prohibits state officials, such as the Policy Making Defendants in this action and the employees they supervise, from performing strip searches of arrestees who have been charged with non-

indictable offenses or other minor crimes unless there is reasonable suspicion to believe that the arrestee is concealing a weapon or contraband.

27. Salem County, the Sheriff's Department and the Policy Making Defendants have, nonetheless, instituted a written and/or *de facto* policy, custom or practice of strip-searching all individuals who enter the custody of the Salem County Jail, 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. Upon information and belief, detainees are strip searched upon admission to the Salem County Jail when they receive the jail uniform. At a minimum, each detainee is forced to disrobe to a state of complete undress while being visually observed by a Corrections Officer. The purpose of forcing detainees to completely undress so their naked bodies can be visually observed by a Corrections Officer is so that they can be searched for contraband. Many members of the proposed class are also searched in a more intrusive manner, where they are required to bend themselves or manipulate body parts to allow for a visual inspection of their body cavities. Further, Salem County, the Sheriff's Department, and the Policy Making Defendants have also instituted a written and/or *de facto* policy, custom or practice of conducting visual inspections of detainees in a state of undress on all individuals who enter the custody of the Correctional Department, regardless of the individual characteristics or the nature of their charged crime. For purposes of this Amended Complaint, this practice is collectively referred to as "strip-searches."

28. Salem County, the Sheriff's Department, and the Policy Making Defendants knew or should have known that they may not institute, enforce or permit



enforcement of a policy or practice of conducting strip-searches without particularized, reasonable suspicion.

29. The Defendants' written and/or *de facto* policy, practice and custom mandating wholesale strip-searches of all non-indictable offenses or other minor crimes has been promulgated, effectuated and/or enforced in bad faith and contrary to clearly established law.

30. 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.

31. Salem County, the Sheriff's Department, and Policy Making Defendants have promulgated, implemented, enforced, and/or failed to rectify a written and/or *de facto* policy, practice or custom of strip-searching **all** individuals placed into the custody of the Salem County Jail without any requirement of reasonable suspicion, or indeed suspicion of any sort. This written and/or *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.

32. Pursuant to this written and/or *de facto* policy, each member of the Class, including the named Plaintiff, was the victim of a routine strip-search upon their entry into the Salem 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 such as, traffic violations , outstanding traffic fines and other minor fines.

33. As a direct and proximate result of the unlawful strip-searches conducted pursuant to this written and/or *de facto* policy, the victims of the unlawful strip-searches – each member of the Class, including the named Plaintiff – has suffered or will suffer psychological pain, humiliation, suffering and mental anguish.

#### **Facts Applicable to the Named Plaintiff**

35. Plaintiff's experiences are representative of the Class.

36. On or about October 26, 2006, Dana Clark was arrested for failing to appear for court. Upon her admission to the Salem County Correctional Facility, and as part of the search process, a corrections officer required Clark to remove all of her clothing and a tampon, and then to lift her arms and turn around for inspection. Clark was released two days later, after posting bail.

### **CAUSES OF ACTION**

#### **AS AND FOR A FIRST CAUSE OF ACTION**

##### **Violation of Constitutional Rights Under Color of State Law**

##### **(Unreasonable Search and Failure to Implement Municipal Policies To Avoid Constitutional Deprivations Under Color of State Law)**

38. Plaintiff incorporates by reference and realleges each and every allegation stated in paragraphs 1 through 37.

39. 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 non-indictable offenses or other

minor crimes absent some particularized suspicion that the individual in question has either contraband or weapons.

40. The actions of all Defendants, as detailed above, violated Plaintiff's and the Class' rights under the United States Constitution. Simply put, it was not objectively reasonable for Correctional Facility personnel to strip-search Plaintiff and the members of the Class based on their arrests for non-indictable or other minor charges. It was also not objectively reasonable for the Policy Making Defendants to order/direct Correctional Department personnel to conduct such searches or to have a policy or practice permitting such searches.

41. These strip-searches were conducted pursuant to the policy, custom or practice of Salem County and the Sheriff's Department. As such, these Defendants are directly liable for the damages of the Class.

42. Upon information and belief, Salem County, the Sheriff's Department, and the Policy Making Defendants are responsible for establishing the policies and procedures to be utilized in the operation of the Correctional Department and are responsible for the implementation of the strip-search policy questioned in this lawsuit. As such, Salem County, the Sheriff's Department, and the Policy Making Defendants are each individually responsible for the damages of the named Plaintiff and the members of the Class.

43. Salem County, the Sheriff's Department, and the Policy Making Defendants knew that the above-described strip-search policy was illegal, and acted willfully, knowingly, and with specific intent to deprive Plaintiff and the members of the Class of their Constitutional rights.

44. 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.

45. As a direct and proximate result of the unconstitutional acts described above, Plaintiff and the Class have been irreparably injured and seek damages, as well as the declaratory and injunctive and relief set out in the Prayer for Relief.

**DEMAND FOR PUNITIVE DAMAGES**

46. The actions of the Policy Making 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.

47. It is clear that the Policy Making Defendants have no, or little, 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 Policy Making Defendants, and to send a message to them that the requirements of the United States Constitution also apply to government officials in Salem County.

**DEMAND FOR TRIAL BY JURY**

48. The Plaintiff hereby demands a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff individually and on behalf of a Class of others similarly situated, request that this Honorable Court grant them the following relief:

A. An order certifying this action as a class action pursuant to Fed. R. Civ. P. 23 with Plaintiff as Class representative.

B. A judgment against all Defendants, jointly and severally on Plaintiff's Cause of Action detailed herein, awarding Compensatory Damages to the 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 Policy Making Defendants on Plaintiff's Cause of Action for punitive damages in an amount to be determined at trial.

D. A declaratory judgment against Salem County and the Sheriff's Department declaring their policy, practice and custom of strip searching all detainees entering the Correctional Department, regardless of the crime charged or suspicion of contraband, to be unconstitutional and improper.

E. A preliminary and permanent injunction enjoining Defendants Salem County and the Sheriff's Department from continuing to strip search individuals charged with non-indictable or minor crimes and violations absent particularized, reasonable suspicion that the arrestee subjected to the search is concealing weapons or other contraband.

F. A monetary award for attorney's fees and the costs of this action, pursuant to 42 U.S.C. § 1988, Fed. R. Civ. P. 23 and the Court's inherent powers.

G. Such other and further relief as the Court may deem just and proper.

Respectfully submitted by:

Dated: September 28, 2007

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