

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Michelle Semelbauer, Paulette Bosch, Denise Vos, Case No. 1:14-cv-01245-JTN
Crisa Brown, Latrece Baker, Tammy Speers, Londora
Kitchens, Stashia Collins, individually and on behalf JUDGE JANET T. NEFF
of all similarly situated persons,

Plaintiffs,

vs.

Muskegon County, a municipal corporation; Dean
Roesler, in his official capacity as Muskegon County
Sheriff; Lt. Mark Burns, in his official capacity as Jail
Administrator; Correctional Officers Ivan Morris,
Grieves [sic.], DeYoung[sic.], and David Gutowski,
in their individual capacities; and unknown
correctional officers, in their individual capacities

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DEFENDANTS MUSKEGON COUNTY, DEAN ROESLER, LT. MARK BURNS,
CORRECTIONAL OFFICERS IVAN MORRIS, GREVE, DEJONG, AND DAVID
GUTOWSKI'S ANSWER TO COMPLAINT, AFFIRMATIVE DEFENSES AND
RELIANCE UPON JURY DEMAND

NOW come Defendants Muskegon County, Dean Roesler, Lt. Mark Burns, Correctional Officers Ivan Morris, Greve, DeJong, and David Gutowski, by and through their attorneys, Cummings, McClorey, Davis & Acho, P.L.C., and in answer to Plaintiff's Complaint state:

INTRODUCTION

1. This is a class action lawsuit challenging the unconstitutional and inhumane conditions of confinement at the Muskegon County Jail ("MCJ").

ANSWER: Admitted only that Plaintiffs have filed this action making these allegations. As to the substance of their allegations, denied as the same are untrue.

2. The named plaintiffs are eight women who are current and former inmates of MCJ. In this complaint they challenge severe overcrowding and other abysmal conditions that affect all MCJ inmates, as well as policies, practices and conditions at MCJ that uniquely harm women.

ANSWER: Denied that any Plaintiffs are current inmates at the Muskegon County Jail (MCJ). To the extent Plaintiffs' allegation implies any wrongdoing by these Defendants, it is denied as untrue. As to the remaining allegations, neither admitted nor denied, as the

Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

3. MCJ is severely overcrowded. Some plaintiffs were held for days with other women in a tiny holding cell without a shower or bed, and without even sufficient space for them to lie down.

ANSWER: Defendants are not able to provide a meaningful answer to this allegation as it fails to specify a time period the MCJ was “severely overcrowded” nor does it define the term “severely.” The allegation further fails to identify the Plaintiffs who were held in the alleged “tiny holding cell”(s) and during which time period. Therefore, the plaintiffs’ allegations as stated is neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

4. In some cases, plaintiffs were confined in this tiny space with other women who were experiencing the symptoms of drug or alcohol withdrawal, including vomiting.

ANSWER: Defendants are not able to provide a meaningful answer to this allegation as it fails to specify the time period and the identity of the Plaintiffs to whom it allegedly applies. Therefore, Plaintiffs’ allegation as stated is neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

5. Other appalling conditions at MCJ include vermin, insects, mold, overflowing and constantly running toilets, broken sinks, scalding water, unchecked contagious diseases, and falling ceiling tiles.

ANSWER: Plaintiffs’ allegation as stated is denied as the same is untrue.

6. In order to shower, some plaintiffs must stand in pools of water that fail to drain after other inmates, who have contagious infections or who are menstruating, have taken their showers.

ANSWER: Defendants are not able to provide a meaningful answer to this allegation as it fails to identify the Plaintiffs to whom it allegedly applies or the time periods. Therefore, Plaintiffs' allegation as stated is neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

7. Male MCJ guards routinely and regularly view women inmates while they are naked or partially naked, including while they are showering, changing clothes, or using the toilet.

ANSWER: Defendants are not able to provide a meaningful answer to this allegation as it fails to identify the "Male MCJ guards" or the "women inmates" to whom it allegedly applies. Plaintiffs' allegation as stated is denied as the same is untrue.

8. Defendants fail to provide adequate feminine hygiene products to women detained at MCJ, causing them to bleed through their clothes.

ANSWER: Defendants are not able to provide a meaningful answer to this allegation as it fails to identify which Defendants or women to whom it allegedly applies. Plaintiffs' allegation as stated is denied as the same is untrue.

9. Defendants also confiscated some women's brassieres and fail to provide replacements.

ANSWER: Defendants are not able to provide a meaningful answer to this allegation as it fails to identify which Defendants or women to whom it allegedly applies. Plaintiffs' allegation as stated is neither admitted nor denied, as the Defendants have insufficient

information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

10. With some limited exceptions, plaintiffs, like other men and women detained at MCJ, are essentially on lockdown 24 hours a day, seven days a week.

ANSWER: Denied as the same is untrue.

11. Female MCJ inmates are rarely or never permitted out-of-cell exercise.

ANSWER: Defendants are not able to provide a meaningful answer to this allegation as it fails to identify the time period or identify which “Female MCJ inmates” to whom it allegedly applies. Plaintiffs’ allegation as stated is denied as the same is untrue.

12. Women detained at MCJ suffer from severe verbal abuse by guards, and are routinely called “bitches” and “whores” by defendant correctional officers.

ANSWER: Defendants are not able to provide a meaningful answer to this allegation as it fails to identify the time period or identify which “Women”, “guards” or “correctional officers” to whom it allegedly applies. Plaintiffs’ allegation as stated is denied as the same is untrue.

13. African-American female inmates are called “niggers” by defendant correctional officers and are told they are “like animals in a zoo.”

ANSWER: Defendants are not able to provide a meaningful answer to this allegation as it fails to identify the time period or identity of the “African-American female inmates” or “correctional officers” to whom it allegedly applies. Therefore, Plaintiffs’ allegation as stated is denied as the same is untrue.

14. Defendants fail to respond to inmates’ grievances about the severe conditions.

ANSWER: Defendants are not able to provide a meaningful answer to this allegation as it fails to identify the time period or inmates to whom it allegedly applies. Therefore, Plaintiffs' allegation is denied as the same is untrue.

15. Women inmates are routinely told that grievances are ripped up and sometimes see guards throw them away.

ANSWER: Defendants are not able to provide a meaningful answer to this allegation as it fails to identify which "Women inmates" or "guards" to whom it allegedly applies. Therefore, plaintiffs' allegation as stated is neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

16. In part because of the absence of a functioning grievance system, defendants utterly fail to respond to inmates' urgent needs.

ANSWER: Defendants are not able to provide a meaningful answer to this allegation as it fails to define a "functioning grievance system" or identify the time period or "inmates" to whom it allegedly applies. Therefore, plaintiffs' allegation as stated is denied as the same is untrue.

17. One of the plaintiffs, Michelle Semelbauer, was even forced to endure these conditions for several weeks after she should have been released from MCJ.

ANSWER: Defendants are not able to provide a meaningful answer to this allegation as Plaintiffs fail to identify what they mean by "these conditions". Therefore, Plaintiffs allegation as stated is neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

18. Ms. Semelbauer was incarcerated in MCJ on October 9, 2012, pursuant to a “pay or stay” order issued by a state court judge in a criminal case. A “pay or stay” order is a type of disposition that requires a defendant to either pay a fine or go to jail.

ANSWER: Admitted that Ms. Semelbauer was incarcerated at the Muskegon County Jail on or about October 9, 2012. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

19. Ms. Semelbauer’s fines were paid soon after she arrived at MCJ, but she remained in custody for 28 more days.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

20. Ms. Semelbauer continually notified jail staff, both verbally and in writing, that she should have been released because her fines had been paid.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

21. Ms. Semelbauer’s friends repeatedly contacted the jail by phone to find out why she had not been released.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

22. Despite these warnings, Ms. Semelbauer remained incarcerated at MCJ until November 7, 2012.

ANSWER: Admitted that Ms. Semelbauer remained incarcerated at the Muskegon County Jail until on or about November 7, 2012.

23. Plaintiffs now bring this action to vindicate their rights, and the rights of those similarly situated, under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiff to his proofs.

SUMMARY OF CLASS ACTION STRUCTURE AND INDIVIDUAL CLAIMS

24. Plaintiffs seek to represent four overlapping classes as follows:

- a. The first class (the “Female Damages Class”) consists of former female inmates of MCJ seeking damages for harms specific to female inmates. This class seeks damages against the municipal defendants¹ under Count I of this Complaint (violation of privacy and bodily integrity); Count II (denial of exercise); and Count III (denial of access to feminine hygiene products and adequate clothing).
- b. The second class (the “Overcrowding Damages Class”) consists of former male and female inmates of MCJ seeking damages for overcrowding and other abysmal conditions of confinement that affect inmates of both genders at MCJ. This class seeks damages against the municipal defendants under Count IV of this Complaint (overcrowding and other abysmal conditions).
- c. The third class (the “Female Injunctive Class”) consists of current and future female inmates of MCJ seeking declaratory and injunctive relief from ongoing harms specific to female inmates. This class seeks declaratory and injunctive relief against the municipal defendants under Count I of this Complaint (violation of privacy and bodily integrity); Count II (denial of exercise); and Count III (denial of access to feminine hygiene products and adequate clothing).

¹ The “municipal defendants” are Muskegon County and the defendants sued in their official capacities.

- d. The fourth class (the “Overcrowding Injunctive Class”) consists of current and future male and female inmates of MCJ seeking declaratory and injunctive relief from ongoing overcrowding and other abysmal conditions that affect inmates of both genders at MCJ. This class seeks declaratory and injunctive relief against the municipal defendants under Count IV of this Complaint (overcrowding and other abysmal conditions).

ANSWER: To the extent Plaintiffs’ allegation implies any wrongdoing on behalf these Defendants, it is denied as untrue. By way of further answer, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs. By way of further answer Defendants state that Plaintiffs do not have standing to bring a claim for declaratory and/or injunctive relief.

25. The following plaintiffs seek to serve as class representatives:

- a. The Female Damages Class and the Overcrowding Damages Class (together, the “Damages Classes”) will be represented by plaintiffs Michelle Semelbauer, Paulette Bosch, Denise Vos, Crisa Brown, Latrece Baker, Tammy Speers, and Londora Kitchens.
- b. The Female Injunctive Class and the Overcrowding Injunctive Class (together, the “Injunctive Classes”) will be represented by plaintiff Stashia Collins.

ANSWER: Defendants state that the Plaintiffs do not have standing to seek declaratory and/or injunctive relief. Ms. Collins is no longer incarcerated at the Muskegon County Jail. As to the remaining allegations, neither admitted nor denied, as the Defendants have

insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

26. In addition to serving as class representatives, plaintiffs also seek damages individually (i.e., on their own behalf) as follows:

- a. All plaintiffs seek damages against the municipal defendants and unknown correctional officers under Counts I through IV.
- b. Plaintiff Michelle Semelbauer seeks damages against the municipal defendants, defendants Morris and Gutowski, and unknown correctional officers under Count V.
- c. Plaintiff Denise Vos seeks damages against defendant Gutowski under Count I.
- d. Plaintiff Londora Kitchens seeks damages against defendant Grieves under Count III.
- e. Plaintiff Stashia Collins seeks damages against defendant DeYoung under Count I and against defendant Morris under Count III.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

JURISDICTION AND VENUE

27. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331 and 1343 because federal questions are presented in this action under the Fourth, Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

ANSWER: Defendants do not contest this Court's jurisdiction.

28. Venue is proper under 28 U.S.C. §§ 1391(b)(1) and (2) because the defendants reside in this district and the events and omissions giving rise to the claims occurred and/or will occur in this district.

ANSWER: Defendants do not contest that venue is proper.

PARTIES

29. Plaintiff Michelle Semelbauer is a former MCJ inmate. She was incarcerated in MCJ from October 9, 2012 until November 7, 2012.

ANSWER: Admitted that Plaintiff, Michelle Semelbauer, is a former MCJ inmate. It is further admitted she was released from the MCJ on or about November 7, 2012. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

30. Plaintiff Paulette Bosch is a former MCJ inmate. She was incarcerated in MCJ from approximately November 2012 until April 2013. At the time she was incarcerated, her name was Paulette Gauthier.

ANSWER: Admitted that Plaintiff Paulette Bosch was incarcerated at the Muskegon County Jail from approximately November 2012 until April 2013. By way of further answer Defendants state that Plaintiff was also known as Paulette Marie Hankins, Paulette Marie Waterman, and Paulette Marie Gauthier. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

31. Plaintiff Denise Vos is a former MCJ inmate. She was incarcerated in MCJ from approximately June 2011 until February 2012.

ANSWER: Admitted that Plaintiff Denise Vos was incarcerated at the Muskegon County Jail from approximately June 2011 until February 2012. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

32. Plaintiff Crisa Brown is a former MCJ inmate. She was incarcerated in MCJ from approximately February 2014 until May 2014.

ANSWER: Admitted that Plaintiff Crisa Brown was incarcerated at the Muskegon County Jail beginning approximately February 2014. Denied as untrue that Plaintiff Crisa Brown was incarcerated until May 2014. By way of further answer Defendants state that Crisa Brown was incarcerated until April 16, 2014. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

33. Latrece Baker is a former MCJ inmate. She was incarcerated in MCJ from approximately March 2014 until April 2014 and again in November 2014.

ANSWER: Admitted that Plaintiff Latrece Baker was incarcerated at the Muskegon County Jail from approximately March 2014 until April 2014 and again in November 2014. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

34. Plaintiff Tammy Speers is a former MCJ inmate. She was incarcerated in MCJ from approximately March 2014 until September 2014.

ANSWER: Admitted that Plaintiff Tammy Speers was incarcerated at the Muskegon County Jail from approximately March 2014. Denied that she was incarcerated in the

Muskegon County Jail until September 2014. Admitted that Plaintiff was incarcerated in the Muskegon County Jail until August 28, 2014.

35. Plaintiff Londora Kitchens is a former MCJ inmate. She was incarcerated in MCJ from approximately January 2014 until September 2014.

ANSWER: Admitted that Plaintiff Londora Kitchens is a former inmate of the Muskegon County Jail incarcerated from approximately January 2014 until September 2014.

36. Plaintiff Collins is a current MCJ inmate. She has been incarcerated in MCJ since August 2014.

ANSWER: Admitted that Plaintiff, Stashia Collins, was incarcerated in the MCJ from on or about August 2014 until January 2015. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

37. All plaintiffs reside in the Western District of Michigan.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

38. Defendant Muskegon County is a municipal corporation organized under the laws of the State of Michigan. Muskegon County operates MCJ. Muskegon County and MCJ are located in the Western District of Michigan.

ANSWER: Admitted.

39. Defendant Dean Roesler is sued in his official capacity as Muskegon County Sheriff. He is the chief law enforcement officer for Muskegon County.

ANSWER: Admitted that Sheriff Dean Roesler is the chief law enforcement officer for Muskegon County whom Plaintiffs have sued in his official capacity.

40. Defendant Mark Burns is sued in his official capacity as Jail Administrator for MCJ.

ANSWER: Admitted that Mark Burns is the Muskegon County Jail Administrator whom Plaintiffs have sued in his official capacity.

41. Defendant Ivan Morris is a correctional officer at MCJ. Upon information and belief, he resides in the Western District of Michigan. He is being sued in his individual capacity.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

42. Defendant David Gutowski was at all times relevant to this Complaint a correctional officer at MCJ. Upon information and belief, he resides in the Western District of Michigan. He is being sued in his individual capacity.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

43. Defendant DeYoung is a correctional officer at MCJ. Upon information and belief, he resides in the Western District of Michigan. He is being sued in his individual capacity.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

44. Defendant Grieves is a correctional officer at MCJ. Upon information and belief, she resides in the Western District of Michigan. She is being sued in her individual capacity.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

45. Defendants unknown correctional officers are correctional officers who currently work at MCJ or, at any time relevant to this Complaint, previously worked at MCJ, and whose identities are not yet known. They are sued in their individual capacities.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

FACTUAL ALLEGATIONS

A. General Allegations

46. MCJ holds male and female inmates, including both pre-trial detainees and sentenced individuals.

ANSWER: Admitted.

47. MCJ was built in 1959, with some additions since that time.

ANSWER: Denied that the Muskegon County Jail was built in 1959. As to the remaining allegations neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs. By way of further answer Defendants state that Muskegon County Jail was constructed in 1958 with a rate of design capacity of 154 beds. In 1978 a renovation increased the rated design capacity to 244 beds. In 1999, renovations to the lower level of the County Building increased the rated design capacity to 370 beds.

48. MCJ is designed to house 370 inmates.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

49. MCJ routinely houses well over 400 inmates.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

50. Between January 2011 and April 2014 there were between 41 and 121 women held at MCJ on any given day.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

51. Women inmates are generally held either in 12-person cells along the “cat walk” (a corridor used by staff and inmates trustees), in other multi-person cells (e.g., 6 person cells), or in 2-person cells attached to a “day room.”

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

52. When inmates first arrive at MCJ they are processed through the booking area and “holding tanks” which are designed to hold inmates for brief periods until they are transferred to their cells, or while they are being transferred to court or other outside locations.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

B. Cross-Gender Viewing

53. Genitals, buttocks, and, for women, breasts are especially private parts of the human body.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

54. Involuntary exposure of these private body parts to members of the opposite sex is uniquely demeaning and humiliating.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

55. The act of using the toilet and, for women, of attending to the sanitary needs related to menstrual periods, are especially private acts.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

56. The toilets and showers used by plaintiffs and other female inmates are not shielded by privacy walls.

ANSWER: Denied as the same is untrue.

57. As a result, male guards and male inmate trustees repeatedly and routinely observe plaintiffs, and other female inmates, while they are using the toilet, including times when plaintiffs have had their menstrual period.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

58. Furthermore, male guards repeatedly and routinely observe plaintiffs, and other female inmates, while they are showering or changing clothes, and are naked or partially naked.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

59. Plaintiffs and other women inmates are subject to cross-gender viewing beginning when they first enter the jail and are held in the holding tank.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

60. All plaintiffs and other women inmates have been held in the holding tank upon arrival at the jail. Male guards, as well as all inmates walking past the holding tank, can see the holding tank's toilet and observe inmates while they use the toilet.

ANSWER: Denied that male guards as well as inmates walking past the holding tank can see the holding tanks' toilet and observe inmates while they use the toilet. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

61. After leaving the holding tank, plaintiffs and other women inmates remain subject to cross-gender viewing, regardless of whether they are held in the 12-person cells near the cat walk, other multi-person cells, or the 2-person cells around the day room, as all cells are constructed so that women inmates using the toilet, showering, or changing clothes can be viewed by male guards.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

62. For the 12-person and 6-person cells, male guards and male inmate trustees have a clear and unobstructed view of the toilets and showers. There is also no location in these cells where plaintiffs and other women inmates can change clothes without being seen by male guards and male inmate trustees from the cat walk.

ANSWER: Denied as the same is untrue.

63. For women held in 2-person cells near the day room, male guards and male inmates can see women toileting, showering, and changing clothes. Male guards have a clear and unobstructed view of the showers in the day room, and a clear and unobstructed view from the day room of the toilets in the 2-person cells surrounding the day room.

ANSWER: Denied as the same is untrue.

64. During their incarceration, plaintiffs Michelle Semelbauer, Paulette Bosch, Denise Vos, Latrece Baker and other women inmates had to wear one-piece jump suits.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

65. Because they were required to wear one-piece jump suits, in order to use the toilet, plaintiffs had to disrobe and expose their bodies.²

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

66. MCJ confiscates and does not replace the bras of some women inmates.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

² Recently, the MCJ began providing inmates with two-piece suits.

67. Ms. Bosch and other female inmates whose bras were confiscated by MCJ officers were forced to expose their naked breasts when lowering their jumpsuits to use the toilet.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

68. Male guards repeatedly and routinely enter cells and day room facilities without knocking or announcing themselves while female inmates are using the toilet, disrobing, or using the showers.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

69. For example, while Ms. Vos was using the toilet, defendant Gutowski walked in and began talking with other inmates and passing out medication.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

70. At the time of this encounter, Ms. Vos, who had been wearing a one-piece jumpsuit, was completely naked.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted

nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

71. Plaintiffs and other women inmates have attempted to protect their bodily privacy by using their bodies, trash bags, towels or bed linens to prevent male guards and inmates from seeing women who are changing clothes, using the toilet or using the shower.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

72. Plaintiffs and other women have attempted to protect their privacy by temporarily covering the windows on cell doors with plastic bags or other items while using the toilet.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

73. Women inmates are either disciplined or threatened with discipline when they attempt to protect their own privacy and bodily integrity in this manner.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

74. For example, Ms. Collins attempts to gain privacy while using the toilet by hanging a sheet over the window into her cell. When she does this, guards including defendant DeYoung tear down the sheet and reprimand her.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted

nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

75. Ms. Vos hung up sheets to protect her privacy while showering and using the toilet, but defendants David Gutowski and unknown correctional officers took them down.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

76. Unknown correctional officers confiscated all bedding when Ms. Vos or other inmates sought to protect their privacy by hanging sheets.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

77. When Ms. Vos was held in a cell off the dayroom, she tried to temporarily put up toilet paper on her cell door window in order to protect her privacy while using the toilet, but defendants David Gutowski and unknown correctional officers tore it down.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

78. MCJ staff repeatedly tell women inmates that they have no privacy rights once they enter jail and if they wanted privacy rights, they should not have gotten arrested.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

79. MCJ does not have any penological justification for allowing male guards and male inmate trustees to routinely observe plaintiffs and other female inmates while they use the toilet, shower, or change clothes.

ANSWER: Denied that male inmate trustees routinely observed Plaintiffs and other female inmates while they use the toilet, shower or change clothes. The remaining allegation is denied as untrue.

C. Denial of Exercise Opportunities

80. Plaintiffs and other women inmates at MCJ rarely if ever receive out-of-cell exercise opportunities. They are essentially locked in their cells 24 hours per day, 7 days per week.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

81. Upon information and belief, male inmates at MCJ receive out-of-cell exercise opportunities more regularly.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

82. MCJ has an indoor gym with exercise equipment.

ANSWER: Admitted.

83. Plaintiffs and other women inmates could be and could have been, but are not and were not, brought to that gym for regular out-of-cell exercise. When they are brought to the gym, it is for very short periods, and they are not even allowed to use the exercise equipment.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. By way of further answer Defendants state that Plaintiffs' allegation contradicts itself. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiff to his proofs.

84. MCJ's "Rules and Regulations for Inmates" contains a list of "privileges," which list exercise as a "privilege."

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

85. Plaintiffs and other female inmates held in the 2-person cells adjoining the day room are routinely locked down in their tiny cells and cannot leave those cells for extended periods of time.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

86. During the six-month period that Ms. Bosch was incarcerated at MCJ, she was allowed to go the gym only twice.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

87. During Ms. Vos's 7 ½ -month-long incarceration, she was allowed to go to the gym on only two brief occasions and only because her cell was being searched.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

88. During the approximately 30 days Ms. Semelbauer was incarcerated, she was never allowed access to the gym.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

89. During the approximately 89 days Ms. Brown was incarcerated, she was allowed to go to the gym only once for 30 minutes while corrections officers searched her cell.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

90. During Ms. Kitchens' approximately eight-month incarceration, she asked to use the gym repeatedly and was never allowed access. In order to exercise while at MCJ, Ms. Kitchens tried to walk laps around her cell because she was denied access to the gym or any outdoor recreational area.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

91. During Ms. Speers' six-month incarceration, she was allowed to go to the gym only three times.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

92. During Ms. Baker's month-long incarceration, she was never allowed access to the gym.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

93. Since the beginning of Ms. Collin's incarceration in August 2014, she has been given access to the gym only once, and during that visit the exercise equipment kept in the gym was locked away.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

94. Plaintiff have suffered physical injuries including muscle atrophy and weight gain due to lack of out-of-cell exercise.

ANSWER: To the extent Plaintiffs' allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

95. For example, Ms. Collins has gained weight and lost muscle mass since becoming incarcerated. She fears further deterioration of her health.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

D. Denial of Feminine Hygiene Products, Toilet Paper, and Adequate Clothing

96. Plaintiffs and other women inmates at MCJ are not provided with adequate feminine hygiene products or toilet paper.

ANSWER: Denied as the same is untrue.

97. Female inmates who menstruate do not receive sanitary napkins in a timely fashion and in some instances are not provided with sanitary napkins at all.

ANSWER: Denied as the same is untrue.

98. Plaintiffs and other female inmates who menstruate and are denied pads bleed into their clothing and are often not provided with clean clothing until the next laundry day, which only occurs once per week.

ANSWER: Denied as the same is untrue.

99. Consequently, women may have to wear bloody clothing for as long as a week before a clean jumpsuit is provided.

ANSWER: Denied as the same is untrue.

100. When Ms. Vos got her menstrual period while incarcerated at MCJ, she pleaded again and again for several hours before she was finally provided with sanitary napkins.

ANSWER: To the extent that Plaintiffs' allegation implies any wrongdoing on behalf of these defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

101. When officers finally provided feminine hygiene products to Ms. Vos, they did not provide enough.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted

nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

102. When Ms. Vos was held in the day room, unknown correctional officers provided only one pack of 12 pads for as many as 30 women, and told them to share.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

103. Ms. Kitchens asked MCJ staff for pads on July 13, 2014. She did not receive any for hours, and was told by defendant Grieves that she was “shit out of luck” and “don’t bleed on the floor.”

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

104. Ms. Speers bled into her clothes when she had her period. Although she begged for sanitary products, Ms. Speers was not given pads for approximately two days.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

105. Ms. Brown requested sanitary products during her period, but was not given any for approximately eight hours.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs..

106. Ms. Collins requested sanitary products from defendant Morris and did not receive any for over ten hours. By the time she finally received sanitary products she had bled into her clothing. She was not able to obtain fresh clothing for several hours.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

107. During her incarceration Ms. Baker was forced to wait hours in order to obtain toilet paper.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

108. Women who enter MCJ while wearing a bra that is not approved, such as a colored bra, have their bras confiscated.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

109. When the MCJ confiscates a bra, MCJ does not provide a replacement bra, forcing women to go without a bra.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiff to his proofs.

110. When Ms. Bosch was taken to jail, unknown correctional officers confiscated her red sports bra and her boxer underwear.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

111. MCJ did not provide Ms. Bosch with a replacement bra, and she did not get a bra until a family member put money in her commissary account and she was able to buy one.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

112. MCJ does not provide underwear.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

113. Ms. Speers wore the same single pair of underwear for most of her time at MCJ.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

114. When Ms. Speers bled into that underwear and washed it, she had go without underwear while it dried.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

115. Women inmates are given inadequate clean clothing, laundry and linens.

ANSWER: Denied as the same is untrue.

116. During wash day women are forced to wrap themselves in towels or sheets because they lack adequate clothing.

ANSWER: Denied as the same is untrue.

E. Extended Stays in the Overcrowded Holding Tank

117. Upon information and belief, the holding tanks at MCJ are the size of a large closet. However, plaintiffs and other women have been held in these small cells with as many as 18 other women at one time.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

118. At MCJ, women inmates are often held in a holding tanks for days at a time.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

119. There are no beds in the holding tank. Women sleep on concrete benches or on the concrete floor without mats. When the holding tanks are overcrowded, there is not sufficient space for inmates to lie down.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

120. The holding tanks in MCJ do not have showers. Women held in the holding tank do not have a way to clean themselves, even when they are there for several days and are ill or menstruating.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

121. The holding tanks in MCJ have toilets that can be viewed by male guards.

ANSWER: Denied as the same is untrue.

122. Plaintiff Tammy Speers was held in the MCJ holding tank for approximately seven days. Ms. Speers experienced opiate withdrawal while in the holding tank. During these seven days, she was vomiting and had diarrhea. Although Ms. Speers was covered in vomit and feces, she was not allowed to shower.

ANSWER: Denied as the same is untrue.

123. MCJ housed up to 18 women in the holding tank while Ms. Speers was held there. During this time, there was insufficient space in the holding tank for the inmates to sit down.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

124. During times when there were fewer inmates in the holding tank, Ms. Speers found a space on the floor where she could lie down. However, Ms. Speers was not given a mat or blanket, and she was forced to lie next to a leaking toilet with ants crawling over her and up her nose.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

125. Ms. Bosch was held in the MCJ holding tank for approximately seven days with up to 15 other women.

ANSWER: Denied as the same is untrue.

126. Ms. Brown was placed in the holding tank for approximately two days.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

127. Ms. Semelbauer was in the holding tank for three to four days with many other women.

ANSWER: Denied as the same is untrue.

128. While in the holding tank Ms. Semelbauer was punched in the face by another inmate and woke up to another inmate straddling her face—exposing her genitals to Ms. Semelbauer. Ms. Semelbauer requested a complaint form so she could report this assault, but she was never given a form.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

129. Ms. Collins was in the holding tank for four or five days with as many as 18 other women.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

130. In November 2014, Ms. Baker was in the holding tank for approximately three days. Her hip still hurts from sleeping on the cement floor without a mat. During both her March and November 2014 incarcerations, the sink in the holding tank was broken, meaning nobody, including her, could wash their hands for sanitation or drink water except when provided with meals.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

F. Other Abysmal Conditions of Confinement

131. The walls, floors, windows, showers, and shower curtains inside the MCJ are covered in mold.

ANSWER: Denied as the same is untrue.

132. Due to unsanitary conditions, the MCJ is infested with sewer bugs, water bugs, silver fish, spiders, ants, and other insects, as well as mice.

ANSWER: Denied as the same is untrue.

133. Ceiling tiles inside the MCJ are falling down.

ANSWER: Denied as the same is untrue.

134. Toilets routinely overflow or back up, spilling human waste into the cells. Inmates are regularly exposed to human feces, urine, blood, and vomit. In some cells there is standing liquid on the floors that contains human waste.

ANSWER: Denied as the same is untrue.

135. In the cells of the day room, when an inmate flushes the toilet, waste or menstrual blood comes back up into the toilet of the adjoining cell.

ANSWER: Denied as the same is untrue.

136. In some cases inmates work together in an attempt to cope with the plumbing problems: they count to three in their adjoining cells, and then flush simultaneously in an effort to make the waste from both cells go down the pipes.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

137. In order to shower, some inmates, including plaintiffs, must stand in pools of water that failed to drain after other inmates, who have infections or who are menstruating, take their showers.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

138. During Ms. Bosch's incarceration, the shower in her cell stopped working, and was not repaired for three days, despite repeated written complaints by the twelve women in that cell who were unable to shower during that time.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

139. Some showers have only burning hot water. Plaintiffs and other female inmates collect the scalding water in rubber or plastic totes, and wait for it to cool before using it to bathe. The guards who see this mock the women as taking "bird baths."

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

140. On one occasion, the tote Ms. Bosch was using to collect hot water tore open, causing hot water to burn her skin. Jail guards refused to take Ms. Bosch to the medical unit after this incident.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

141. Ms. Speers was burned on her scalp by scalding water from the shower. MCJ medical staff prescribed her medicinal shampoo and suggested that she move to a cell with a working shower.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

142. Staff at MCJ have known about and acknowledged these conditions for years.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

143. The Michigan Department of Corrections has inspected the MCJ, and has called for immediate improvements in conditions.

ANSWER: Admitted the Michigan Department of Corrections has inspected the Muskegon County Jail and has suggested improvements. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

144. The most recent MDOC inspection report available to plaintiffs' counsel noted, among other things, that leaking toilets created a "serious potential health hazard"; that flushing toilets cause sewage backups in toilets of other cells; that shower water is "extremely hot" in many cells, creating "a potential hazard to the user"; that water is leaking onto cell floors; that shower curtains are soiled and "contain a black substance suspected to be mold/mildew"; that air vents contain a black substance suspected to be mold/mildew; and that there were bugs in the sleeping areas.

ANSWER: Defendants note that the contents of any report speak for themselves. As to any remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

G. Severe Overcrowding

145. The MCJ is routinely severely overcrowded, and constantly exceeds its rated design capacity to house 370 inmates.

ANSWER: Denied as the same is untrue.

146. The Michigan County Jail Overcrowding State of Emergency Act (“JOA”), M.C.L. § 801.51 *et seq.*, provides standards on jail overcrowding that can inform the court in assessing plaintiffs’ claim that the level of overcrowding at MCJ is unconstitutional.

ANSWER: Plaintiffs’ allegation states a legal conclusion to which no answer is required. To the extent that an answer is required, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

147. The JOA directs that if the general prisoner population of a county jail exceeds 100% of the rated design capacity of the jail for seven consecutive days, the county sheriff must declare a jail overcrowding state of emergency. M.C.L. §§ 801.52, 801.53.

ANSWER: Plaintiffs’ allegation states a legal conclusion to which no answer is required. To the extent that an answer is required, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

148. The JOA provides a progressive series of steps designed to eliminate the overcrowding emergency by reducing the jail population to an acceptable level, defined in M.C.L. § 801.56(1) as the higher of (a) 90% of capacity or (b) at least ten empty beds for facilities of less than 500 beds. For the MJC, the acceptable level is 360 inmates (ten empty beds).

ANSWER: Plaintiffs' allegation states a legal conclusion to which no answer is required. To the extent that an answer is required, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

149. For the first fourteen days of an overcrowding emergency, local officials, including the sheriff, should seek to reduce the prisoner population by existing legal means, such as pretrial diversion, reduction in bonds, use of community mental health resources, and use of community programs. M.C.L. § 801.55.

ANSWER: Plaintiffs' allegation states a legal conclusion to which no answer is required. To the extent that an answer is required, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

150. Where steps taken under M.C.L. § 801.55 fail to reduce the jail population sufficiently to eliminate jail overcrowding within 14 days, then the JOA directs that the sheriff supply the chief circuit judge with information about each prisoner. The chief judge is directed to classify prisoners into those whose release would present a high risk to public safety and those whose release would not present such a risk. The sheriff must then reduce the sentences of low-risk prisoners by an equal percentage, set by the chief circuit judge, until the overcrowding is

alleviated. The circuit judge may also modify bonds of pre-trial detainees. M.C.L. § 801.56(2)-(4).

ANSWER: Plaintiffs' allegation states a legal conclusion to which no answer is required. To the extent that an answer is required, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

151. If the steps taken under M.C.L. §§ 801.55 and 801.56 fail to reduce the jail population sufficiently to eliminate jail overcrowding within 28 days, then under § 801.57, the sheriff must equally reduce prisoner sentences in order to reduce the jail population to an acceptable level, as defined in M.C.L. § 801.56(1).

ANSWER: Plaintiffs' allegation states a legal conclusion to which no answer is required. To the extent that an answer is required, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

152. If the steps taken under §§ 801.55, 801.56 and 801.57 fail to reduce the jail population sufficiently to eliminate jail overcrowding within 42 days, then the sheriff must defer acceptance for incarceration of persons committed to the jail (with exceptions for certain persons convicted or charged with certain specified offenses) until the overcrowding state of emergency is ended. M.C.L. § 801.58.

ANSWER: Plaintiffs' allegation states a legal conclusion to which no answer is required. To the extent that an answer is required, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

153. According to an August 22, 2012 written statement by defendants Roesler and/or Burns, the MCJ has been in a “persistent state of overcrowding since September 2008.”

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

154. Plaintiffs’ counsel and their assistant have reviewed inmate count data provided by MCJ from January 2011 to April 2014.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

155. This data shows that the MCJ virtually always exceeds its rated design capacity of 370 inmates, and virtually never is below the level of 360 inmates which is acceptable under JOA.³

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

156. Specifically, the data shows that:

- a. There were only 9 days between January 1, 2014 and April 16, 2014, where the MJC was below the rated design capacity of 370 inmates. There were only 2 days where the MCJ was below the 360-inmate acceptable level.
- b. There was only one day in 2013 where the MCJ was below the rated design capacity. (This excludes the period from 8/29/13-10/31/13, for which the MCJ did not provide count data.)
- c. There was not a single day in 2012 where the MCJ was below the rated design

³ Plaintiffs rely on the data as provided by MJC pursuant to a Freedom of Information Act request. However, this data appears to contain many errors, and plaintiffs therefore believe the data may actually understate the extent of the problem.

capacity.

- d. There were only 5 days in 2011 where the MCJ was below the rated design capacity. On none of those 5 days was the count below the 360-inmate acceptable level.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

157. This data also shows that MCJ daily counts are routinely over 400 inmates.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

158. Specifically, the data shows that:

- a. There were 65 days between January 1, 2014 and April 16, 2014, where the MCJ held over 400 inmates. On one date in February, 484 inmates-114 inmates over the rated design capacity-were house in the jail.
- b. In 2013, there were 228 days where the MCJ held over 400 inmates.
- c. In 2012, there were 309 days where the MCJ held over 400 inmates.
- d. In 2011, there were 252 days where the MCJ held over 400 inmates.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

159. Over the past five years, Defendant Roessler has repeatedly declared an overcrowding emergency under the JOA.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

160. Defendant Roessler has released some inmates under the provisions of the JOA.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

161. However, the steps taken by defendants have failed to lower the MCJ population to acceptable levels under M.C.L. § 801.56(1).

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

162. Upon information and belief, despite the fact that the MCJ has consistently failed to meet the standards set out in M.C.L. § 801.56(1), defendants have not continued to employ overcrowding reduction measures mandated by the JOA.

ANSWER: Denied as the same is untrue.

163. Due to overcrowding at the MCJ, defendants routinely require inmates to sleep:

- a. on cots in the common area of the day room;
- b. on the floors of cells that are designed with beds for 12 inmates; and
- c. in the holding tank for several days at a time with so many other inmates that there is limited space to sit or lie down.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

164. Due to the severe overcrowding, coupled with inadequate staffing, the MCJ is unable to maintain basic sanitation, provide basic medical care, or ensure the health and safety of inmates.

ANSWER: Denied as the same is untrue.

H. Non-Functional Complaint System

165. In order to seek medical attention, request assistance with basic needs (e.g., obtain pads or toilet paper), or raise other issues, MCJ inmates are ostensibly allowed to submit “kites,” or written requests.

ANSWER: Admitted that the Muskegon County Jail inmates submit “kites” or written requests. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

166. The MCJ ostensibly has a grievance policy, which provides that inmates may bring problems to the attention of MCJ staff through a written complaint.

ANSWER: Admitted that the Muskegon County Jail has a grievance policy. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

167. The MCJ’s “Rules and Regulations for Inmates” contains a list of “privileges,” which lists as a “privilege” the ability “to file grievances.”

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

168. In practice, defendants routinely ignore both kites and grievances.

ANSWER: Denied as the same is untrue.

169. MCJ staff, including defendants Morris and Gutowski, repeatedly and routinely tell inmates that their grievances will simply be discarded, and sometimes even rip up or throw away the grievances in front of inmates.

ANSWER: Denied as the same is untrue.

170. Ms. Bosch wrote approximately 20 grievances while at the MCJ, which concerned the jail's failure to treat a MRSA infection in her C-section, as well as access to jail programming. Ms. Bosch never received any response to her grievances. In desperation, Ms. Bosch began mailing her grievances through the U.S. Postal System to the jail, in the hopes that they would reach senior jail staff, but she did not receive a response.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

171. Ms. Vos attempted to write kites requesting medical care for an abscessed tooth. The MCJ never allowed Ms. Vos to see a doctor for her tooth. After approximately three months, Ms. Vos was given Tylenol for pain.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

172. Defendant Morris told Ms. Vos that when inmates write grievances, the grievances are given to the officer in question, who then puts them right into the garbage.

ANSWER: Denied as the same is untrue.

173. Ms. Brown wrote approximately eight grievances while incarcerated at MCJ. These grievances concerned issues [sic.] such as the showers being so hot that she was burned, and the lack of feminine hygiene products. MCJ staff did not respond to any of them.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

174. On one occasion, Ms. Brown was put in a restrictive and revealing anti-suicide smock in the holding tank for several hours in retaliation for writing a grievance.

ANSWER: Denied as the same is untrue.

175. Ms. Speers wrote multiple grievances on issues ranging from her excessive detention in the holding cell, to the overall abysmal conditions of the facility, to threats by other inmates, to mistreatment by guards, but she received only one response.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

176. The one grievance for which Ms. Speers received a response was regarding guard misconduct.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

177. The guard against whom Ms. Speers had filed a grievance personally brought Ms. Speers a copy of the supervisor's response, which stated that Ms. Speers had submitted many grievances and her grievances were without merit.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

178. Ms. Speers also wrote multiple kites, without response.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

179. Ms. Speers tried writing directly to the sergeant and lieutenant, but received no response.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

180. Ms. Speers was also put in an anti-suicide suit in retaliation for filing grievances. In addition, Ms. Speers was mocked by guards and told that her life would be much easier if she did not complain.

ANSWER: Denied as the same is untrue.

181. In Ms. Collins' experience, guards ignore verbal requests and written kites.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

182. Ms. Collins has filed grievances regarding mistreatment by guards, lack of toiletries, lack of cleaning supplies, cross-gender viewing, and other issues to no avail.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

L. The Unlawful Incarceration of Michelle Semelbauer

183. Michelle Semelbauer was sentenced to MCJ on a "pay or stay" sentence on September 10, 2012.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

184. The "pay or stay" sentence required Ms. Semelbauer to serve 54 days in jail unless she paid fines, costs, and other court-ordered assessments related to a conviction for driving on a suspended license.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

185. On September 12, 2012, Ms. Semelbauer's outstanding fees were paid at the clerk's office. That same day, Ms. Semelbauer told various staff members at the MCJ that her fees had been paid and that she should be released.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

186. Ms. Semelbauer was not released that day.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

187. Ms. Semelbauer continued to tell jail staff, both orally and through the jail's written "kite" system, that her fees had been paid in full and that her sentence was completed.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

188. MCJ staff responded to Ms. Semelbauer's pleas with indifference or outright scorn.

ANSWER: Denied as the same is untrue.

189. Some corrections officers told Ms. Semelbauer that she was lying, while others laughed in her face.

ANSWER: Denied as the same is untrue.

190. In one instance, Ms. Semelbauer was removed from her cell by defendants Morris and Gutowski, who asked her to explain why she kept complaining that she should be released. Ms. Semelbauer told them that she was serving a pay-or-stay sentence, and that her balance had been paid in full. Upon information and belief, Defendants Morris and Gutowski failed to take any action in response.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

191. Ms. Semelbauer's incarceration continued after she informed Defendants Morris and Gutowski of her unlawful incarceration. She continued to inform jail staff that she was being unlawfully held.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

192. During Ms. Semelbauer's incarceration, her friend called the jail, explained that her court-ordered fees had been paid, and asked why she had not been released. Again, defendants took no action to address Ms. Semelbauer's situation.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

193. During Ms. Semelbauer's unlawful incarceration she was subjected to cross-gender viewing, spent four consecutive days in the holding tank, and was never given access to the jail's gym. She was also exposed to mold, broken plumbing, and the various unsanitary and abysmal conditions inside the MCJ identified in this Complaint.

ANSWER: To the extent that this allegation implies any wrongdoing on behalf of these Defendants, denied as the same is untrue. As to the remaining allegations, neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

194. Furthermore, during her unlawful incarceration, Ms. Semelbauer was assaulted by another inmate, who punched Ms. Semelbauer in the eye and shoved her genitals into Ms. Semelbauer's face.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

195. Finally, on November 7, 2012, Ms. Semelbauer was released due to overcrowding.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

196. Ms. Semelbauer is not the only inmate that MCJ has held past her release date in recent years. In a similar incident in 2011, an inmate was held three days beyond her sentence.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

J. Construction of New Jail

197. After years of housing inmates in intolerable conditions, Muskegon County recently began construction of a new jail facility to replace the existing facility.

ANSWER: Admitted that Muskegon County is building a new jail facility to replace the existing facility. As to the remaining allegations, denied as the same is untrue.

198. Inmates will continue to be housed in the existing facility until construction of the new facility is completed.

ANSWER: Admitted.

199. It was recently reported that the new jail is scheduled to be completed in June 2015, although the completion date has been pushed back several times.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

200. In bringing this action, plaintiffs seek to ensure that the new jail is constructed in a manner that remedies the constitutional violations outlined above. For example, plaintiffs seek

to ensure that toilet and shower facilities are designed to provide privacy from cross-gender viewing.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

201. Plaintiffs also seek to ensure that current and future inmates can obtain interim injunctive relief from unconstitutional conditions of confinement until such time as the new jail is completed.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

202. For issues which are not directly related to facility design, the transition to the new jail provides an opportunity to ensure that defendants satisfy their constitutional obligations to plaintiffs and the class members they seek to represent.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

CLASS ACTION ALLEGATIONS

203. Plaintiffs seek to represent four overlapping classes as follows:

- a. Class I, or the “female Damages Class,” is a class of former female inmates seeking damages for harms specific to female inmates under Counts I through III of this Complaint.
- b. Class II, or the “Overcrowding Damages Class,” is a class of former male and female inmates seeking damages for overcrowding and other abysmal conditions of confinement under Count IV of this Complaint.
- c. Class III, or the “Female Injunctive Class,” is a class of current and future

female inmates seeking declaratory and injunctive relief from ongoing harms specific to female inmates under Counts I through III of this Complaint.

- d. Class IV, or the “Overcrowding Injunctive Class,” is a class of current and future male and female inmates seeking declaration and injunctive relief from overcrowding and other abysmal conditions under Count IV of this Complaint.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

204. For each of the four classes identified above:

- a. the class is so numerous that joinder of all members is impracticable;
- b. there are questions of law or fact common to the class;
- c. the claims of the plaintiffs seeking to represent the class are typical of the claims of the class; and
- d. the plaintiffs seeking to represent the class will fairly and adequately protect the interests of the class.

ANSWER: Denied as the same is untrue.

205. For Classes I and II (together, the “Damages Classes”), the common questions predominate over questions affecting only individual class members, and a class action is superior to other methods for adjudicating the class members’ claims.

ANSWER: Denied as the same is untrue.

206. For Classes III and IV (together, the “Injunctive Classes”), the municipal defendants have acted or refused to act on grounds that apply generally to the class, so that declaratory and injunctive relief is appropriate respecting the class as a whole.

ANSWER: Denied as the same is untrue.

**Class I: Former Female Inmates
("Female Damages Class")**

207. Plaintiffs Semelbauer, Bosch, Vos, Brown, Baker, Speers, and Kitchens bring this action for damages on their own behalf, and pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3), on behalf of all others similarly situated.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

208. These plaintiffs seek to represent a class ("Class I" or the "Female Damages Class") consisting of all former female inmates who were incarcerated at the MCJ at any time within three years prior to the filing of this litigation.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

209. All members of Class I were harmed by the municipal defendants' policy, custom or practice of (a) regularly and routinely subjecting female inmates to viewing by male guards while the inmates are toileting, showering, or changing clothes; (b) denying female inmates exercise time outside their cells; and (c) denying class members adequate access to feminine hygiene products, toilet paper, and undergarments and other clothing. These allegations encompass Counts I through III of this Complaint.

ANSWER: Denied as the same is untrue.

210. These are questions of law and fact common to the class, namely whether defendants engaged in the challenged policies/customs/practices, and whether those policies/customs/practices violated class members' rights under the Fourth Amendment, Eighth

Amendment, and Due Process Clause of the Fourteenth Amendment of the United States Constitution.

ANSWER: Denied as the same is untrue.

211. The proposed class representatives' claims are typical of the claims of Class I because all women inmates were subjected to the same unconstitutional conditions at the MCJ as challenged in Counts I through III of this Complaint.

ANSWER: Denied as the same is untrue.

**Class II: Former Inmates
("Overcrowding Damages Class")**

212. Plaintiffs Semelbauer, Bosch, Vos, Brown, Baker, Speers, and Kitchens bring this action for damages on their own behalf, and pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3), on behalf of all others similarly situated.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

213. These plaintiffs seek to represent a class ("Class II" or the "Overcrowding Damages Class") consisting of all former inmates who were incarcerated at the MCJ at any time within three years prior to the filing of this litigation.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

214. All members of Class II were harmed by the municipal defendants' policy, custom or practice of failing to remedy the severe overcrowding and other abysmal conditions at the MCJ. These allegations encompass Count IV of this Complaint.

ANSWER: Denied as the same is untrue.

215. These are questions of law and fact common to the class, namely whether defendants engaged in the challenged policies/customs/practices, and whether those policies/customs/practices violated class members' rights under the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

ANSWER: Denied as the same is untrue.

216. The proposed class representatives' claims are typical of the claims of Class II because all inmates were subjected to the same unconstitutional conditions at the MCJ as challenged in Count IV of this Complaint.

ANSWER: Denied as the same is untrue.

**Class III: Current and Future Female Inmates
("Female Injunctive Class")**

217. Plaintiff Collins brings this action for declaratory and injunctive relief on her own behalf, and pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(2), on behalf of all others similarly situated.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

218. Plaintiff Collins seek [sic.] to represent a class ("Class III" or the "Female Injunctive Class") consisting of all current and future female inmates at the MCJ.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

219. All members of Class III are being harmed, or absent injunctive relief will be harmed, by the municipal defendants' policy, custom or practice of (a) regularly and routinely subjecting class members to viewing by male guards while the inmates are toileting, showering, or changing clothes; (b) denying class members exercise time outside of their cells; and (c)

denying class members adequate access to feminine hygiene products, toilet paper, and undergarments and other clothing. These allegations encompass Counts I through III of this Complaint.

ANSWER: Denied as the same is untrue.

220. There are questions of law and fact common to the class, namely whether defendants engage in the challenged policies/customs/practices, and whether those policies/customs/practices violate class members' rights under the Fourth Amendment, Eighth Amendment, and Due Process Clause of the Fourteenth Amendment to the United States Constitution.

ANSWER: Denied as the same is untrue.

221. Proposed class representative's claims are typical of the claims of Class III because all women inmates are subjected to the same unconstitutional conditions at the MCJ as challenged in Counts I through III of this Complaint.

ANSWER: Denied as the same is untrue.

**Class IV: Current and Future Inmates
("Overcrowding Injunctive Class")**

222. Plaintiff Collins brings this action for declaratory and injunctive relief on her own behalf, and pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(2), on behalf of all others similarly situated.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

223. Plaintiff Collins seeks to represent a class ("Class IV" or the "Overcrowding Injunctive Class") consisting of all current and future inmates at the MCJ.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

224. All members of Class IV are being harmed, or absent injunctive relief will be harmed, by the municipal defendants' policy, custom or practice of failing to remedy the severe overcrowding and other abysmal conditions at the MCJ. These allegations encompass Counts IV of this Complaint.

ANSWER: Denied as the same is untrue.

225. There are questions of law and fact common to the class, namely whether defendants engage in the challenged policies/customs/practices, and whether those policies/customs/practices violate class members' rights under the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

ANSWER: Denied as the same is untrue.

226. The proposed class representative's claims are typical of the claims of Class IV because all inmates are subjected to the same unconstitutional conditions at the MCJ as challenged in Count IV of this Complaint.

ANSWER: Denied as the same is untrue.

MUNICIPAL LIABILITY

227. The municipal defendants maintained and continue to maintain a custom, policy or practice of (a) regularly and routinely subjecting female inmates to viewing by male guards while showering, changing clothes or using the toilet; (b) denying female inmates access to out-of-cell exercise opportunities; (c) failing to provide adequate feminine hygiene products, toilet paper and undergarments and other clothing to female inmates; and (d) subjecting all inmates to severe overcrowding and other abysmal conditions of confinement.

ANSWER: Denied as the same is untrue.

228. This custom, policy or practice is evidenced by (1) defendants' official policies and practices; (2) the actions and decisions of officials with final decision-making authority; (3) defendants' failure to adequately train and supervise MCJ staff; and (4) a custom of tolerating or acquiescing to repeated violations of the constitutional rights of MCJ inmates.

ANSWER: Denied as the same is untrue.

229. Defendants have long had actual or constructive notice of the unconstitutional conditions at the MCJ.

ANSWER: Denied as the same is untrue.

230. Nevertheless, defendants have failed to take action to remedy the unconstitutional conditions.

ANSWER: Denied as the same is untrue.

231. Plaintiffs and other inmates have repeatedly submitted written grievances and kites and have repeatedly made verbal complaints regarding the challenged conditions.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

232. The Michigan Department of Corrections' inspection reports have identified serious deficiencies at the MCJ.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

233. On August 8, 2013, plaintiffs' counsel wrote to defendants' counsel outlining the problems at the jail, and seeking to resolve the matter short of litigation.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

234. After meeting with MCJ officials and their counsel, plaintiffs' counsel commissioned an expert report from Peter Wilson, a corrections consultant and expert.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

235. Mr. Wilson's report and recommendations, which were based on an August 15, 2013 tour of the facility and review of numerous MCJ records, was provided to the MCJ on January 9, 2014.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

236. Key findings of the expert report were that (a) the MCJ is chronically overpopulated and that the MCJ and Muskegon Circuit Court have failed to execute a population control plan; (b) the safety, security and sanitary conditions at the MCJ are below constitutional standards; (c) the MCJ is in a general state of disrepair; (d) female inmates are required to expose their breasts and genitals to male guards while showering or use the toilet; (d) medical assessments are not provided in a timely fashion; and (e) exercise opportunities for inmates are inadequate or entirely lacking.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

237. In a March 22, 2014 letter, defendants' counsel responded to the expert report by asserting either that the problems did not exist, had been addressed, or were not defendants' responsibility.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

238. In fact, the experiences of current inmates such as Ms. Collins, as well as other recent inmates such as Ms. Brown, Ms. Baker, Ms. Speers and Ms. Kitchens, reveal that that conditions raised in the August 8, 2013 letter and January 9, 2014 expert report have remained essentially unchanged.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

239. Defendants have failed to meet their duty to adequately train and supervise MCJ staff in order to ensure that those staff act in accordance with well-established constitutional principles.

ANSWER: Denied as the same is untrue.

240. Defendants have also failed to meet their duty to appropriately discipline their staff for legitimate grievances filed by inmates.

ANSWER: Denied as the same is untrue.

241. This failure to train, supervise and discipline has had, and continues to have, the highly predictable consequence of allowing staff to overpopulate the holding tanks, ignore requests to fix basic plumbing and maintenance problems, ignore requests to provide sanitary items, verbally degrade female inmates and engage in the other unconstitutional action or inaction outlined above. It has also led to at least two instances of inmates being incarcerated beyond their proper release dates.

ANSWER: Denied as the same is untrue.

242. Defendants have failed to adequately train, supervise, and discipline MCJ staff despite the fact that the defendants had actual or constructive notice of the challenged conditions. The Failure to train, supervise and discipline under these circumstances constitute deliberate indifference to the rights of plaintiffs.

ANSWER: Denied as the same is untrue.

243. Despite a clear and persistent pattern of constitutional rights violations, and despite the fact that defendants had actual or constructive notice of this clear and persistent pattern, defendants either explicitly or tacitly approved of this unconstitutional conduct, such that their failure to act constitutes deliberate indifference to the rights of plaintiffs.

ANSWER: Denied as the same is untrue.

244. The custom, policy and practice of Defendants-including official policies, the actions of officials with final decision-making authority, the failure to adequately train, supervise, and discipline MCJ staff for the challenged conduct, and the tolerance of repeated violations of individuals' constitutional rights-are the moving force behind and the proximate cause of the challenged conduct.

ANSWER: Denied as the same is untrue.

CAUSES OF ACTION

COUNT I VIOLATION OF PRIVACY AND BODILY INTEGRITY

245. Jail inmates retain a constitutional right to bodily privacy during their incarceration.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

246. Due to defendants' policy, practice or custom, plaintiffs and class members have been, are being, and will be subjected, without any penological justification or other legitimate

purpose, to routine and systematic viewing by members of the opposite sex while naked and partially naked, while showering, while toileting, and while attending to their menstrual periods.

ANSWER: Denied as the same is untrue.

247. Due to defendants' policy, practice or custom, plaintiffs and class members have been, are being, and will be subjected to discipline, punishment and threats of discipline and punishment for trying to use reasonable means to protect their privacy and bodily integrity while they shower, dress, and use toilets at the MCJ.

ANSWER: Denied as the same is untrue.

248. With respect to convicted inmates incarcerated at the MCJ, the routine viewing by male guards and male trustees constitutes unnecessary and wanton infliction of pain and are maintained with deliberate indifference to Plaintiffs' Eighth Amendment rights.

ANSWER: Denied as the same is untrue.

249. With respect to pretrial detainees incarcerated at the MCJ, the routine viewing by male guards and male trustees has caused such detainees who have not yet been convicted of any crime to suffer punishment without due process of law.

ANSWER: Denied as the same is untrue.

250. Routine viewing by male guards and trustees also constitutes an unjustified invasion of privacy and bodily integrity in violation of the Fourth Amendment to the United States Constitution.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

251. Defendants, acting under color of state law, violated and are violating the prohibition against unreasonable searches and seizures under the Fourth Amendment of the

United States Constitution; the prohibition against cruel and unusual punishment under the Eighth Amendment of the United States Constitution; and the prohibition against punishment of pretrial detainees under the Due Process Clause of the Fourteenth Amendment by permitting male guards and male trustees to regularly, routinely and without penological justification view plaintiffs and class members while they shower, dress and use toilets at the MCJ, and by punishing or threatening to punish plaintiffs and class members when they try to protect their privacy.

ANSWER: Denied as the same is untrue.

252. Persons violating the Fourth, Eighth, or Fourteenth Amendments to the United States Constitution under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

253. Under Count I, the Female Damages Class seeks damages against the municipal defendants; the Female Injunctive Class seeks declaratory and injunctive relief against the municipal defendants; all plaintiffs individually seek damages against the municipal defendants and unknown correctional officers; plaintiff Collins seeks declaratory and injunctive relief against the municipal defendants; plaintiff Vos seeks damages against defendant Gutowski; and plaintiff Collins seeks damages against defendant DeYoung.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

**COUNT II
DENIAL OF EXERCISE**

254. Due to defendants' policy, practice or custom, plaintiffs and class members have been, are being, and will be denied out-of-cell exercise.

ANSWER: Denied as the same is untrue.

255. With respect to convicted inmates incarcerated at the MCJ, the denial of exercise constitutes unnecessary and wanton infliction of pain evidencing deliberate indifference to plaintiffs' Eighth Amendment rights. The denial of exercise is not justified by any legitimate penological interest.

ANSWER: Denied as the same is untrue.

256. With respect to pretrial detainees incarcerated at the MCJ, the denial of exercise constitutes punishment without due process of law.

ANSWER: Denied as the same is untrue.

257. By denying, as a rule, out-of-cell exercise to female inmates at the MCJ, defendants have violated and are violating the prohibition against cruel and unusual punishment under the Eighth Amendment and the prohibition against punishment of pre-trial detainees under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

ANSWER: Denied as the same is untrue.

258. Persons violating the Eighth or Fourteenth Amendment to the United States Constitution under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

259. Under Count II, the Female Damages Class seeks damages against the municipal defendants; the Female Injunctive Class seeks declaratory and injunctive relief against the

municipal defendants; all plaintiffs individually seek damages against the municipal defendants and unknown correctional officers; and plaintiff Collins seeks declaratory and injunctive relief against the municipal defendants.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

**COUNT III
DENIAL OF ACCESS TO FEMININE HYGIENE PRODUCTS, TOILET PAPER, AND
ADEQUATE UNDERWEAR AND OTHER CLOTHING**

260. Due to defendants' policy, practice or custom, plaintiffs and class members have been, are being, and will be denied feminine hygiene products, toilet paper, and adequate underwear and other clothing.

ANSWER: Denied as the same is untrue.

261. By denying these items to female inmates at the MCJ, defendants have violated and are violating the prohibition against cruel and unusual punishment under the Eighth Amendment and the prohibition against punishment of pre-trial detainees under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

ANSWER: Denied as the same is untrue.

262. Persons violating the Eighth or Fourteenth Amendment to the United States Constitution under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

263. Under Count III, the Female Damages Class seeks damages against the municipal defendants; the Female Injunctive Class seeks declaratory and injunctive relief against the municipal defendants; all plaintiffs individually seek damages against the municipal defendants

and unknown correctional officers; plaintiff Collins seeks declaratory and injunctive relief against the municipal defendants; plaintiff Kitchens seeks damages against defendant Grieves; and plaintiff Collins seeks damages against defendant Morris.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

**COUNT IV
SEVERE OVERCROWDING AND OTHER ABYSMAL CONDITIONS**

264. Due to defendants' policy, practice or custom, plaintiffs and class members have been, are being, and will be subjected, without any penological justification or other legitimate purpose, to severe overcrowding and other inadequate, unsanitary and dangerous conditions, and prolonged stays in the holding tank, as alleged above.

ANSWER: Denied as the same is untrue.

265. With respect to convicted inmates incarcerated at the MCJ, the conditions maintained by defendants constitute unnecessary and wanton infliction of pain and are maintained with deliberate indifference to plaintiffs' Eighth Amendment rights. The conditions are not justified by any legitimate penological interest.

ANSWER: Denied as the same is untrue.

266. With respect to pretrial detainees incarcerated at the MCJ, the conditions maintained by the defendants have caused such detainees to suffer punishment without due process of law.

ANSWER: Denied as the same is untrue.

267. Defendants, through their policy, practice or custom of permitting such overcrowding and such abysmal conditions, have violated and are violating the prohibition against cruel and unusual punishment under the Eighth Amendment and the prohibition against

punishment of pretrial detainees under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

ANSWER: Denied as the same is untrue.

268. Persons violating the Eighth or Fourteenth Amendment to the United States Constitution under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

269. Under Count IV, the Overcrowding Damages Class seeks damages against the municipal defendants; the Overcrowding Injunctive Class seeks declaratory and injunctive relief against the municipal defendants; all plaintiffs individually seek damages against the municipal defendants and unknown correctional officers; and plaintiff Collins seeks declaratory and injunctive relief against the municipal defendants.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

COUNT V
Michelle Semelbauer Only

270. Defendants' policy, practice, and custom, as well as the individual actions of the named and unnamed correctional officers, caused plaintiff Michelle Semelbauer to be unlawfully held in the MCJ for 28 days.

ANSWER: Denied as the same is untrue.

271. The Fourth, Eighth and Fourteenth Amendments to the U.S. Constitution prohibit the continued incarceration of an inmate beyond her legal sentence.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

272. Persons violating the Fourth, Eighth or Fourteenth Amendment to the United States Constitution under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

273. Under Count V, plaintiff Semelbauer seeks damages against the municipal defendants and defendants Morris and Gutowski.

ANSWER: Neither admitted nor denied, as the Defendants have insufficient information and/or belief upon which to form an answer and, therefore, leave Plaintiffs to their proofs.

WHEREFORE, Defendants respectfully request this Honorable Court dismiss the Plaintiff's Complaint and enter a judgment in favor of these Defendants, together with an award of costs and attorney fees wrongfully incurred.

REQUEST FOR RELIEF

Based on the foregoing, plaintiffs request that the Court provide relief as follows:

1. Certify a Female Damages Class, an Overcrowding Damages Class, a Female Injunctive Class, and an Overcrowding Damages Class, as those classes have been defined above;
2. Declare that defendants are violating or have violated the constitutional rights of plaintiffs and the classes they represent by:
 - a. permitting male guards to regularly, routinely and without penological justification view plaintiffs and class members while they shower, dress, and use the toilets at the MCJ, and punishing or threatening to punish plaintiffs and class members when they try to protect their privacy;
 - b. denying plaintiffs and class members adequate out-of-cell exercise;

- c. denying plaintiffs and class members adequate feminine hygiene products, toilet paper, and underwear and other clothing;
 - d. permitting severe overcrowding; and
 - e. maintaining otherwise abysmal conditions as outlined above;
3. Enjoin defendants from:
- a. permitting male guards to regularly, routinely and without penological justification view plaintiff Collins and the class members she represents while they shower, dress, and use the toilets at the MCJ, and punishing or threatening to punish Collins and other class members when they try to protect their privacy;
 - b. denying Collins and the class members she represents adequate out-of-cell exercise;
 - c. denying Collins and the class members she represents adequate feminine hygiene products, toilet paper, and underwear and other clothing;
 - d. *continuing to permit severe overcrowding*; and
 - e. *continuing to maintain otherwise abysmal conditions as outlined above*;
4. Award damages to all plaintiffs and members of the Damages Classes for the constitutional violations set forth in Counts I through V of this Complaint;
5. Award plaintiffs reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and
6. Grant any other relief the Court deems just and proper.

WHEREFORE, Defendants respectfully request this Honorable Court dismiss the Plaintiff's Complaint and enter a judgment in favor of these Defendants, together with an award of costs and attorney fees wrongfully incurred.

RELIANCE UPON JURY DEMAND

Defendants hereby rely upon the Demand for Trial by Jury filed by Plaintiffs in the above entitled cause of action.

AFFIRMATIVE DEFENSES

NOW COME the Defendants and give notice that they may establish by way of motion, at trial or otherwise, the following Affirmative Defenses:

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted. For example, overcrowding per se is not a constitutional violation. Temporary inconveniences such as those alleged are not constitutional violations. A violation of state law or regulation does not state a claim under 42 U.S.C. § 1983.
2. Plaintiffs' claims are barred by governmental immunity, whether it be statutory, common law, absolute or qualified immunity.
3. Plaintiffs' claims are barred in whole or in part by their own intentional acts and/or negligent acts which caused or contributed, in whole or in part, to the injuries and damages alleged in Plaintiffs' Complaint.
4. Plaintiffs' Complaint fails to state a custom, policy, practice or procedure of these Defendants which violated the constitutional rights of the Plaintiffs, and any acts or omissions of these Defendants were not the proximate cause of Plaintiffs' injuries or damages.
5. Plaintiffs have failed to state facts in avoidance of governmental immunity for their state law claims.
6. Plaintiffs' claims may be barred by res judicata and/or collateral estoppel.
7. Plaintiffs' claims may be barred by the applicable statute of limitations, particularly M.C.L. §600.5805(5) and (7).

8. Defendants object to the misjoinder or non-joinder of any and all claims and any and all parties.

9. Plaintiffs' claims may be barred by the doctrines of release, waiver, consent, unclean hands, laches and/or estoppel.

10. Muskegon County Sheriff Roesler, Lt. Burns, Correctional Officers Morris, Grieves, DeYoung, and Gutowski are entitled to qualified immunity as to Plaintiffs' Constitutional claims under 42 U.S.C. §1983, as no reasonable officer or official in their positions would have known he or she was violating Plaintiffs' Constitutional rights.

11. Defendants cannot be held vicariously liable in an action under 42 U.S.C. §1983, based on the facts as alleged in Plaintiffs' Complaint.

12. The injuries and damages as alleged by Plaintiffs, were the sole and proximate result of someone else's negligence or willful acts or the negligence or willful acts of a third party other than these Defendants.

13. Plaintiffs' injuries, if any, may have been caused in whole or in part by the comparative negligence, fault or want of care of Plaintiffs for failing to use reasonable care for their own interests.

14. The proximate cause of any and all injuries suffered by Plaintiffs was the result of negligence of a person(s) and/or entities other than these Defendants.

15. Plaintiffs' injuries were caused, in whole or in part, by their own actions.

16. Any inquiry into the constitutionality of security measures employed in a penal institution must be analyzed from the initial premise that the prison administrator should be acquitted wide ranging difference in the adoption and execution of policies and practices which, in their judgment, are needed to preserve internal order and discipline and to maintain

institutional security. *Bell v Wolfish*, 441 U.S. 520, 99 S.Ct. 861 (1979); *Hudson v Palmer*, 468 U.S. 517, 104 S.Ct. 319 (1984). Imprisonment carries with it the circumscription or loss of many rights as being necessary to accommodate the institutional needs and objectives of prison facilities, particularly internal security and safety. Wherefore, inmates do not retain a right of privacy in their cells. *Hudson, supra*.

17. Since Defendants Dean Roesler and Lt. Mark Burns were not present, they did not actively participate, supervise or direct the actions of deputies involved with the Plaintiffs. Therefore, the claims against them must be dismissed as a matter of law.

18. None of the Defendants acted with deliberate indifference.

19. These Defendants reserve the right to add any other special and/or Affirmative Defenses which may become known through the course of subsequent discovery, investigation and/or trial in the above captioned matter.

Respectfully submitted,

CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C.

/s/ Allan C. Vander Laan

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