

contains little-to-no protein. Additionally, the fruits and vegetables provided are almost always canned and/or preserved and as such, are devoid of appropriate vitamins and minerals. Therefore, it is not surprising that many individuals who leave the Montgomery County Jail, including the Plaintiffs, have lost an enormous amount of weight and hair, develop skin conditions, and exhibit other symptoms and conditions caused by malnutrition, including, upon information and belief, scurvy.

A more abusive and inhumane environment is difficult to imagine. This is especially so given that Defendant Michael Amato, the Sheriff of Montgomery County, has recently bragged on the radio about allowing inmates to purchase extra food, and how this will generate new revenue for Montgomery County. Proper sustenance while held in a local jail is a right, and should not be subjected to the whim of municipal officials with a long history of misconduct. As such, the Plaintiffs seek monetary damages from Defendants for themselves and each member of the Proposed Class, a ruling, in the form of a declaratory judgment, that Defendants' policies and actions are unconstitutional, and an injunction precluding the Defendants from continuing to violate the rights of those placed into the custody of the Montgomery County Jail.

AND NOW, comes the Plaintiffs, through counsel, and hereby states as follows:

JURISDICTION

1. This Court has jurisdiction over this action under the provisions of 28 U.S.C. §§ 1331, 1341 & 1343 because it is filed to obtain compensatory damages and injunctive relief for the deprivation, under color of state law, of the rights of citizens of the United States secured by the Constitution and federal law pursuant to 42 U.S.C. § 1983. This Court also have jurisdiction over this action under the provisions of 28 U.S.C. § 2201, as it is filed to obtain declaratory relief relative to the constitutionality of the policies of a local government.

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

PARTIES

3. Plaintiff Perry Hill is a citizen of the United States and resides in Montgomery County, NY. From October 2013 until March 2014, Mr. Hill was detained at the Montgomery County Jail for a parole violation. Upon information and belief, Mr. Hill's status was that of a pre-trial detainee.

4. Plaintiff James Rogers is a citizen of the United States and resides in Montgomery County, NY. From June 2014 until February 2015, Mr. Rogers was detained at the Montgomery County Jail. Mr. Rogers spent approximately four months as a pre-trial detainee and four months as a post-trial detainee.

5. At all times relevant herein, Defendant Michael Amato was and remains the duly-elected Sheriff of Montgomery County, with his principal place of business being 200 Clark Drive, Fultonville, NY 12072.

6. At all times relevant herein, Defendant Michael Franko was and remains the Jail Administrator of the Montgomery County Jail, with his principal place of business being 200 Clark Drive, Fultonville, NY 12072.

7. At all times relevant herein, Defendant County of Montgomery is a municipal entity organized under the laws of the State of New York. At all times relevant hereto, Montgomery County was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the Montgomery County Jail and was responsible for the appointment, training, supervision and conduct of all jail personnel. Defendant County of Montgomery's primary place of business is 64 Broadway, Fonda, NY 12068.

CLASS ACTION ALLEGATIONS

8. Plaintiffs bring this action pursuant to Rule 23(c)(4) of the Federal Rules of Civil Procedure on behalf of themselves and a Class of similarly situated individuals who were detained and not provided with proper sustenance at the Montgomery County Jail.

9. The Class that Plaintiffs seek to represent is defined as follows:

Primary Class

All detainees who have been or will be placed into the custody of the Montgomery County Jail and were detained for at least two consecutive weeks. The class period commences on July 24, 2011, and extends to the date on which Montgomery County is enjoined from, or otherwise ceases, enforcing its policy, practice and custom of refusing to provide an appropriate amount of nutritional sustenance to all detainees admitted to the Montgomery County Jail. Specifically excluded from the class are Defendant and any and all of its respective affiliates, legal representatives, heirs, successors, employees or assignees.

Pre-Trial Detainee Class

All members of the Primary Class but who were serving as a Pre-Trial Detainee, in that they had not yet been convicted of their charges.

Post-Trial Detainee Class

All members of the Primary Class, but who were serving as a Post-Trial Detainee, in that they had been convicted of their charges, either by a plea or jury trial.

10. This action has been brought and may properly be maintained as a Class action under Federal law and satisfies the numerosity, commonality, typicality and adequacy requirements for maintaining a class action under Fed. R. Civ. P. 23(a).

11. The members of the Class are so numerous as to render joinder impracticable. Upon information and belief, there are hundreds of citizens who are placed into the custody of Montgomery County every month – almost all of whom are members of the Proposed Class. Upon information and belief, the size of the Proposed Class totals at least thousands of individuals, some of whom have had their civil rights violated on multiple occasions.

12. Upon information and belief, joinder of all these individuals is impracticable because of the large number of Class Members and the fact that Class members are likely dispersed over a large geographical area, with some members presently residing outside of New York and this Judicial District. Furthermore, upon information and belief, many members of the Class are low-income persons, may not speak English, and likely would have great difficulty in pursuing their rights individually.

13. Common questions of law and fact exist as to all members of the Class, in that they all had their right to be free from cruel and unusual punishment violated by Defendants' conduct in that members were refused adequate nutritional sustenance.

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

15. The representative Plaintiffs have the requisite personal interests in the outcome of this action and will fairly and adequately protect the interests of the Class. Plaintiffs have no interests that are adverse to the interests of the Members of the Class.

16. Plaintiffs have retained counsel with substantial experience in the prosecution of class actions and civil rights litigation, including successful litigation of civil rights cases. Plaintiffs' counsel has the resources, expertise, and experience to successfully prosecute this action against Montgomery County. Counsel for the Plaintiffs know of no conflicts among members of the Class or between counsel and members of the Class.

17. This action, in part, seeks injunctive and declaratory relief. As such, the Plaintiffs seek Class Certification under Fed. R. Civ. P. 23(b)(2), in that all Members of the Proposed Class were subjected to the same policy in which detainees were provided inadequate sustenance. In short, Montgomery County personnel acted on grounds generally applicable to all members of the Class.

18. In addition to certification under Rule 23(b)(2), and in the alternative, Plaintiffs seek issue certification under Rule 23(c)(4).

19. Common questions of law and fact exist as to all members of the Class and predominate over any questions that affect only individual members of the Class. These common questions of law and fact include, without limitation, the common and predominate question of whether the Defendant's written and/or *de facto* policy of providing inadequate substance to all Montgomery County detainees is a violation of the Fourteenth and Eighth Amendments to the

United States Constitution, and whether such a written and/or *de facto* policy existed during the Class Period.

20. A Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all individual members of the Class is impracticable given the large number of members of the Class and the fact that they are dispersed over a large geographical area. Furthermore, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them. The cost to the federal court system of adjudicating thousands of individual cases would be enormous. Individualized litigation would also magnify the delay and expenses to all parties and the court system. By contrast, maintaining this action as a Class action in this District presents far fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each member of the Class.

21. Upon information and belief, there are no other actions pending to address the Defendants' flagrant violation of the civil rights of thousands of individuals, even though upon information and belief, the Defendant has maintained its illegal practice for several years.

FACTS

Facts applicable to the Class Generally

22. The Eighth and Fourteenth Amendments of the United States Constitution prohibits Montgomery County Officials, such as Montgomery County jail personnel in this action, from subjecting detainees to cruel and unusual punishment. Failing to provide an adequate amount of food to detainees housed in the Montgomery County Jail is an obvious violation of the United States Constitution.

23. Upon information and belief, Montgomery County has instituted a written and/or *de facto* policy, custom or practice of refusing to provide detainees adequate food in that they provide not more than 1,700 calories to all detainees. Further, the scant amount of food that is provided is substantially devoid of the protein, minerals, and vitamins necessary to human survival. For the vast majority of detainees, this conduct has resulted in their losing substantial percentages of body weight and/or the development of symptoms and conditions associated with malnutrition.

24. The County knows that it may not institute, enforce, or permit enforcement of a policy or practice that results in the subjection of cruel and unusual punishment of detainees. The County's policies, practices and customs, as addressed above, are both inhumane and unconscionable. Forcing detainees to live on an unsustainable diet, that results in the development of severe health conditions is blatantly illegal and is unacceptable in a civilized society.

25. The Defendant's written and/or *de facto* policies, practices, and customs of refusing to provide detainees adequate nutritional sustenance have been promulgated, effectuated and/or enforced in bad faith and contrary to clearly established law.

26. Pursuant to these written and/or *de facto* policies, each member of the Class, including the Plaintiffs, were the victim of hunger and malnutrition caused by the provision of inadequate sustenance.

27. As a direct and proximate result of the written and/or *de facto* policies, the victims of the unlawful practices – each member of the Class, including the Plaintiffs – have suffered or will suffer severe physical and psychological pain, suffering and mental anguish as a direct result of not being provided with proper sustenance.

Facts Applicable to the Named Plaintiffs

28. Plaintiff Perry Hill resides in Montgomery County, New York. In or around October 2013, Mr. Hill was arrested for a probation violation and detained at the Montgomery County Jail until March 2014.

29. Plaintiff James Rogers resides in Montgomery County, New York. In or around June 2014, Mr. Rogers was arrested for harassment in the 2nd degree and a violation of an order of protection.

30. Upon information and belief, Montgomery County Jail has a strict policy of providing detainees no more than 1,700 calories a day. This amount is slightly more than concentration camp prisoners received during the latter part of World War II.¹ However, Plaintiffs maintain that on most days, they were provided substantially less than that. Typically, active adult males need to consume anywhere from 2,400 to 3,000 calories a day depending on their amount

¹ http://en.wikipedia.org/wiki/Mauthausen-Gusen_concentration_camp#The_treatment_of_inmates_and_methodology_of_crime. In fact, the amount of calories provided in the Montgomery County Jail is actually less than that provided to concentration camp victims during the early part of World War II.

of physical exertion. The food in question also provided little-to-no protein, and little fresh fruit and vegetables.

31. Individuals who are placed on dietary restrictions, whether for religious or medical reasons, face an even worse situation. Upon information and belief, rather than provide substitute nutritional provisions, jail personnel are merely instructed to remove the undesired food and/or provide the detainees with a smaller meal as a punitive measure for “complaining” about the food. This obviously results in the detainees receiving a meal with a substantially reduced amount of calories and nutritional sustenance from an already meager fare.

32. Therefore, it is not surprising that Montgomery County Jail detainees suffered severe medical consequences as a result of being starved for prolonged periods of time. Upon information and belief, as a result of the above-mentioned policies, every Montgomery County detainee loses weight shortly after their admission to the jail. In many cases, the weight loss is substantial.

33. For example, Plaintiff Perry Hill was approximately 160 pounds upon his admission to the jail. Upon his release approximately five months later, Mr. Hill lost approximately 24 pounds, which, given his small Body Mass Index (“BMI”), was substantial.

34. Mr. Rogers was approximately 195 pounds upon his admission to the jail. Mr. Rogers lost approximately 15 pounds during his eight-month admission to the jail. Mr. Rogers weight loss was also substantial given he is 6’1 and an already extremely thin male.

35. Additionally, the Plaintiffs are aware of numerous other individuals who lost unbelievable amounts of weight – in some cases in excess of 90 pounds in less than six months. In fact, one individual was informed by medical staff that his prosthetic leg no longer fit and was

unusable because he has lost so much weight, and then was forced to walk with crutches during the duration of his term in the Montgomery County Jail.

36. Plaintiffs and other detainees also experienced other symptoms commonly associated with malnutrition. While in custody, Plaintiffs lost a significant amount of hair, experienced loosening of his teeth, pain and bleeding in his gums, and their gum lines began to recede. He also suffered constantly from intense pains associated with constant hunger. Plaintiffs also suffered from skin rashes and routinely felt depressed, exhausted, dizzy, and faint. Plaintiffs witnessed numerous other detainees experiencing similar symptoms. These are all symptoms of malnutrition and related medical conditions including scurvy, which is a medical condition caused by a lack of Vitamin C.

37. Plaintiffs and numerous other detainees filed grievances regarding the lack of adequate food, some of which were directly addressed to the Sheriff, Defendant Michael Amato and the Jail Administrator, Defendant Michael Franko. Upon information and belief, all of these grievances were categorically denied and/or ignored. Plaintiffs never received an appropriate response to the grievance they filed. Detainees also constantly complained to Corrections Officers about the inadequate food but were routinely informed that there was nothing any of the officers could do about it.

38. In limited situations, some detainees are permitted to work in the jail's kitchen. This position is highly coveted because kitchen employees are sometimes given an opportunity to eat more food than other detainees. However, kitchen employees who attempt to put more food on the plates that are distributed to the general population are threatened with severe penalties.

39. Up until several years ago, detainees were permitted to purchase extra food items including ramen noodles, through the MCJ Commissary. Unfortunately, and until recently,

Defendant Amato removed the Commissary and prohibited family members from sending detainees food packages. This decision obviously impacted detainees tremendously in that they had no other option then to starve. During the past few months, Amato has reversed course and allowed for additional food purchases, claiming that doing so will allow the County to make money off of their failure to provide detainees with sufficient food at the Montgomery County Jail.

40. During their admissions at the Montgomery County Jail, Plaintiffs quickly learned that food dominates the culture of the jail. Almost all of the fights that occur at the jail are instigated by food, or the lack thereof. Oftentimes contraband in the form of food is smuggled into the jail, which causes serious fights because of the detainees' desperate hunger. Most detainees resort to the humiliating and debilitating practice of eating non-edible substances to fill their stomach. On several occasions, Plaintiff Hill was so hungry he consumed non-edible substances including toothpaste and coco-butter lotion. Plaintiff Hill witnessed numerous other detainees eating the same or similar substances.

41. As a direct and proximate result of starving for nearly five months, Plaintiffs have suffered and continues to suffer physical and psychological pain, humiliation, suffering and mental anguish.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

**--Violation of Constitutional Rights Under Color of State Law –
--Infliction of Cruel and Unusual Punishment—**

42. Plaintiffs incorporate by reference and realleges each and every allegation stated herein.

43. The Eighth and Fourteenth Amendments to the United States Constitution preclude prison officials from denying a detainee an appropriate amount of food as such conduct would constitute cruel and unusual punishment and/or a violation of the right to due process of law.

44. Defendants' actions, detailed above, violated Plaintiffs and Proposed Class Members' rights under the United States Constitution. Simply put, it is not objectively reasonable, under any stretch of the imagination, to deny detainees an adequate amount of food necessary to basic human survival. It is difficult to imagine a more inhumane and abusive policy than subjecting individuals to malnutrition, either for financial reasons or because of wanton cruelty.

45. The denial of adequate food was conducted pursuant to the policy, custom or practice created by Defendants Amato and Franko as supervisory officials of the Montgomery County Jail and the Montgomery County Sheriff's Department. As such, Montgomery County is directly liable for the damages of the Plaintiffs and the members of the Class.

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

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

AS AND FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

--Demand for Preliminary and Permanent Injunction Or, In the Alternative, for the Issuance of a Declaratory Judgment --

48. Plaintiffs incorporate by reference and realleges each and every allegation stated herein.

49. The policies, customs and practices of the Defendants are clearly unconstitutional and violate detainees' right to be free from cruel and unusual punishment. Specifically, refusing to provide detainees adequate food is unconstitutional.

50. The continuing pattern of providing inadequate food will cause irreparable harm to the new and/or prospective members of the Class, an adequate remedy for which does not exist at law.

51. Wherefore, Plaintiffs request that unconstitutional conduct be prohibited in that Defendants should be immediately required to provide adequate food to detainees and seeks both a preliminary and permanent injunction from this Court ordering as much.

52. In the alternative to the issuance of an injunction, the Plaintiffs seek the issuance of a declaratory judgment detailing that Montgomery County has failed to provide proper sustenance to detainees at the Montgomery County Jail during the proposed class period.

DEMAND FOR PUNITIVE DAMAGES

53. The actions of Defendants Michael Amato and Michael Franko described above are extreme, outrageous, and wantonly cruel. They also shock the conscience of a reasonable person. Therefore, an award of punitive damages is appropriate to punish the Defendants for their cruel and uncivilized conduct. The Plaintiffs do not seek punitive damages against Montgomery County.

DEMAND FOR TRIAL BY JURY

54. The Plaintiffs hereby demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of others similarly situated, request that this Honorable Court grant them the following relief:

1. An order certifying this action as a Class Action pursuant to Fed. R. Civ. P. 23.
2. A judgment against Defendants Montgomery County, Michael Amato, and Michael Franko awarding compensatory damages to Plaintiffs and each Member of the Proposed Class in an amount to be determined by a properly charged jury and/or the Court on both an individual and a Class-wide basis.
3. A judgment against Defendants Montgomery County, Michael Amato, and Michael Franko awarding punitive damages to Plaintiffs and each Member of the Proposed Class in an amount to be determined by a properly charged jury and/or the Court on both an individual and a Class-wide basis.
4. A preliminary and permanent injunction enjoining the Defendants from continuing to enforce its' unconstitutional policies, customs and practices.
5. A declaratory judgment detailing that the Defendants' policies, customs and practices are unconstitutional.
6. A monetary award for attorneys' fees and the costs of this action, pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 23.

Respectfully Submitted By:

/s Elmer Robert Keach, III

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