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COUNTY OF ERIE

JEREMY C. TOTH
COUNTY ATTORNEY

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

DEPARTMENT OF LAW

MEMORANDUM

JCT/dld

TO: Olivia Owens, Clerk, Erie County Legislature
FROM: Jeremy C. Toth, Erie County Attorney
DATE: January 8, 2025
RE: Transmittal of New Claims Against Erie County

Ms. Owens:

In accordance with the Resolution passed by the Erie County Legislature on June 25, 1987 (Int. 13-14), attached please find three (3) new claims brought against the County of Erie. The claims are as follows:

Claim Name

1. Willie Ellis/Estate of James Ellis v. County of Erie, et al.
2. Christa Cutrona v. Timothy Howard, et al.; and
3. Stephen Kyser v. County of Erie.

JCT:dld
Attachments



COUNTY OF ERIE

JEREMY C. TOTH
COUNTY ATTORNEY

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

DEPARTMENT OF LAW

December 5, 2024

Ms. Olivia Owens, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Ms. Owens:

In compliance with the Resolution No. 306 passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Ellis, Willie, as Administrator of the Estate of James Ellis, v. County of Erie and John Doe 1 through 20.</i>
Document Received:	Summons and Complaint
Name of Claimant:	Willie Ellis 18 Eggert Road Buffalo, New York 14215
Claimant's attorney:	Melissa D. Wischerath, Esq. Lipsitz Green Scime Cambria LLP 42 Delaware Avenue, Suite 120 Buffalo, New York 14202-3924

Should you have any questions, please call.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

This paper received at the
Erie County Attorney's Office
from John MacCarrick on
the 3rd day of December, 2024
at 2:06 a.m. / 03
Jerry A. [Signature]
Erie County, New York

WILLIE ELLIS, as Administrator of the
Estate of JAMES ELLIS, Deceased,
18 Eggert Rd.,
Buffalo, NY 14215,

Plaintiff,

SUMMONS

vs.

Index No.:

ERIE COUNTY,
95 Franklin Street
Buffalo, New York 14202

JOHN DOE 1 through 20 (said Erie County supervisor(s) and/or
Erie County Sheriff Department supervisor(s) or employee(s) or staff on
Duty involved in the incident on November 30, 2021 and/or
underlying claims),

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or, if the Complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiff's Attorneys within TWENTY (20) DAYS after the service of this Summons, exclusive of the day of service (or within THIRTY (30) DAYS after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of venue is plaintiff's residence which is located in Erie County, New York.

DATED: Buffalo, New York
November 26, 2024

LIPSITZ GREEN SCIME CAMBRIA LLP

By: /s/ Melissa D. Wischerath
MELISSA D. WISCHERATH, ESQ.
Attorneys for Plaintiff
42 Delaware Avenue, Suite 120
Buffalo, New York 14202-3924
(716) 849-1333

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

WILLIE ELLIS as Administrator of
of the Estate of JAMES A. ELLIS,
Deceased,

Plaintiff,

COMPLAINT

vs.

Index No.

ERIE COUNTY,
JOHN DOE 1 through 20 (said Erie County supervisor(s) and/or
Erie County Sheriff Department supervisor(s) or employee(s) or staff on
Duty involved in the incident on November 30, 2021 and/or
underlying claims),

Defendants.

These elementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration. An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical 'torture or a lingering death...'

Estelle v Gamble, 429 US 97, 103, (U.S. 1976).

Plaintiff, by and through his attorney, Melissa D. Wischerath of LIPSITZ GREEN SCIME CAMBRIA, LLP, hereby brings this Complaint and Jury Demand and alleges as follows:

INTRODUCTION

1. Erie County, Former Erie County Sheriff Howard, and current Erie County Sheriff Garcia, chose — for nearly two decades — to violate the constitutional rights of the people in their custody.¹

2. Though under a legal duty to provide adequate medical care for those in his custody, Sheriff Garcia has publicly admitted “We’re set up to fail, We don’t have the means to give individuals that come through the doors adequate medical help ...” See, “Why Do People Keep Dying in Erie County’s Jails?” available at <https://newrepublic.com/article/171009/erie-county-sheriff-garcia-howard> last accessed on June 9, 2023.

3. Erie County, has knowingly and recklessly denied medical care to the men and women in the Erie County Holding Center (EHC) for years, causing numerous investigations and deaths.²

4. In February of 2018, the New York State Commission of Correction, published “THE WORST OFFENDERS REPORT: THE MOST PROBLEMATIC LOCAL CORRECTIONAL FACILITIES OF NEW YORK STATE.”³

¹ See e.g., September 2009 US Department of Justice lawsuit against Erie County and Erie County Sheriff Timothy Howard available at <https://www.justice.gov/archive/opa/documents/erie-complaint.pdf>; US Department of Justice December 2014 Settlement With the County of Erie, New York to Prevent Disability Discrimination at the Erie County Jail available at <https://www.justice.gov/file/189161/download> last accessed on June 9, 2023; March 2021 lawsuit filed by Attorney General James on behalf of the New York State Commission of Correction (SCOC) against Erie County and Erie County Sheriff Timothy Howard available at https://ag.ny.gov/sites/default/files/2021.03.17_opening_papers_binder.pdf last accessed on August 7, 2024.

² Id. The investigations, reports, and decrees are hereby incorporated by referenced as is more fully set forth herein.

³ <https://scoc.ny.gov/system/files/documents/2023/09/problematic-jails-report-2-2018.pdf> last accessed on August 7, 2024.

5. After years of review, the Commission identified the ECHC as one of the top five worst offenders for violating state and federal laws, explaining “the five local jails that are deemed the ‘worst offenders’ for being in violation of state law. These facilities pose an ongoing risk to the health and safety of staff and inmates and, in instances, impose cruel and inhumane treatment of detainees in violation of their Constitutional rights.” At the time of the 2018 report, the NYS Commission had four open inmate mortality investigations at the Erie County Holding Center from 2012-2018 involving: inadequate medical and mental health care; minimum standards violations; and excessive use of force against detainees experiencing a medical and/or mental health crisis in the jail.⁴

6. For the past 20 years, a detainee in the Holding Center in downtown Buffalo or the Erie County Correctional Facility in Alden died, on average, every four and a half months.⁵

7. Despite the state and constitutional mandates to provide detainees with adequate medical care and the staggering death rate, ECHC knowingly and recklessly lacks the means to give individuals that come through its doors adequate medical help.

8. Since at least 2012, following the horrific and tragic death of Richard Metcalf, the Sheriff failed to provide its deputies with proper policy guidance and training on how to properly observe and attend to the medical needs of detainees subjected to prone restraint.

FACTS

9. On November 30, 2021, James Ellis died of Complications of Metastatic Carcinoma of probable gastrointestinal primary while in the custody of the Erie County Sheriff at the Erie County Holding Center. He was 58-years-old.

⁴ Id.

⁵ Jail deaths substantially higher than reported available at <https://www.investigativepost.org/2024/09/10/erie-county-jail-deaths/> last accessed on November 26, 2024.

10. 27 months after the death of James Ellis, on March 27, 2024, the Medical Review Board issued their findings regarding his death. “Although his death may not have been preventable, the Board did find that there were failures by the medical providers to recognize clinical indicators of serious disease process during Ellis’ incarceration and to address his chronic medical complaints.” The Medical Review Board’s report for James Ellis is available here at https://scoc.ny.gov/system/files/documents/2024/04/ellis-james-erie-hc_redacted.pdf last accessed on November 26, 2024.

11. As the Medical Review Board documented in its findings, Ellis had persistent gastrointestinal symptoms over the course of three weeks that could have been indicative of a more serious disease process. Id.

12. Although it was warranted, no medical provider nor employee of the County referred him to a physician for a gastroenterology consultation. Instead he continued to languish and vomit. Id.

13. The Medical Review opined that there was a failure by medical staff to properly assess, failure to notify and consult with a physician and a grossly missed diagnosis. Additionally, the Medical Review Board questioned the credibility of the medical staffs' findings that Ellis clear lung sounds at both sick call encounters on 11/28/21 and 11/29/21 as the gross anatomic findings at autopsy revealed that Ellis had edematous lungs (right 1560 g / left 1260 g) with bronchopneumonia and a necrotic abscess of the right lung indicating possibly weeks of developing infection. The Medical Review Board opined that the cited failures collectively indicated inadequate supervision of the medical staff and health services delivery.

14. A response to the preliminary report was received by the Commission on January 29, 2024. The Medical Review Board stated, “[t]he quality care issues identified by the Medical

Review Board were not specifically addressed in the response. The Medical Review Board remains affirmed in their findings and the identified issues in this case. Id.

15. The County and/or employee(s) or staff on Duty involved in the care and treatment for Mr. Ellis during his incarceration and/or underlying claims) willful and deliberate indifference to James Ellis' serious medical needs, directly led to his death.

16. Upon information and belief, the County and/or employee(s) or staff on Duty involved in the care and treatment for Mr. Ellis during his incarceration and/or underlying claims) failed to: sufficiently monitor or treat, or supervise and/or train, those responsible for him; adequately screen or supervise and/or train, those responsible for screening him for medical conditions; failed to timely or adequately respond to requests for medical care or supervise and/or train, those responsible for him; and denied or delayed for excessive periods the provision of necessary chronic and specialty care, including transport to a hospital or supervise and/or train, those responsible for him.

17. The defendants failure to provide adequate medical care resulted in the death of James Ellis.

18. The County has been aware of the constitutionally and legally inadequate care and conditions in its jails for years, thereby possessing actual and constructive notice of these ongoing and recurring violations.

19. Erie County is the appointing authority for the delivery of jail incarcerated individual health services pursuant to Correction Law section 501 for the ECHC.

PARTIES

20. Plaintiff, at all times hereinafter mentioned was and still is a resident of the City of Buffalo located within the County of Erie and the State of New York.

21. On or about the 22nd day of November, 2024, plaintiff, Willie Ellis, was appointed temporary administrator of the Estate of James A. Ellis, pursuant to an Order of the Surrogate's Court of Erie County, and Temporary Letters Testamentary of the Estate of James A. Ellis were served on the plaintiff, and he is duly qualified and thereafter acted and is still acting as such administrator.

22. Defendant, ERIE COUNTY (the "County") is a governmental subdivision created under the laws of the State of New York. The County is charged by the laws of the State of New York with authority to maintain the Erie County Holding Center (ECHC). The Erie County Holding Center in Buffalo, New York is a pretrial facility owned by Erie County; many people held there are not convicted of a crime.

23. Upon information and belief, at all times hereinafter mentioned, defendant, JOHN DOE 1 through 20, were and still are residents of the County of Erie and the State of New York. He/she/they are sued in his/her/their official capacities.

24. Upon information and belief, at all times hereinafter mentioned, defendants, JOHN DOE 1 through 20, were hired and/or employed by defendants, Erie County and/or the Erie County Sheriff, and were acting within their authority as an Erie County Deputy Sheriff(s) and/or officer(s) and/or staff and acting under color of state law.

25. Upon information and belief, at all times hereinafter mentioned, defendant Erie County is responsible for the supervision, administration, policy, practices, procedures, and customs of the Erie County medical providers, and is responsible for the hiring, training, discipline, and control of the ECHC staff.

26. Upon information and belief, the County, owned, maintained, operated, managed, directed, controlled, and staffed the Erie County Holding Center, located at 40 Delaware Avenue

within the City of Buffalo, County of Erie, and State of New York, and is responsible for the care and custody of all detainees at said facility.

27. Upon information and belief, at all times hereinafter mentioned, defendant County employed and controlled the individuals responsible for the hiring, training, and discipline deputies and staff, and also created, instituted, and oversaw enforcing the policies, practice, and procedures at issue in this action.

28. Defendant, Erie County, was responsible for the hiring, training, supervision, discipline, retention, and promotion of employees of the ECHC staff.

**FIRST CAUSE OF ACTION
AGAINST ERIE COUNTY and JOHN DOE 1 through 20**

42 U.S.C. §1983 AND FOURTEENTH AMENDMENT

(Deliberate Indifferent to Serious Medical Need in Violation of the Fourteenth Amendment)

29. Plaintiff incorporates by reference each and every allegation contained in the above paragraphs as if set forth fully herein.

30. James Ellis, while under the care, custody and control of Erie County, and JOHN DOE 1 through 20, at the ECHC, was caused to suffer serious injuries, due to their failure to ensure for and/or provide timely and proper medical treatment to him; in their failure to provide medications and proper medical treatment that he required; the denial of treatment by defendants amounts to deliberate indifference to a serious medical need, in violation of the Fourteenth Amendments' prohibition against cruel and unusual punishment and 42 U.S.C. § 1983; in their failure and refusal to make a reasonable accommodation by providing Mr. Ellis with access to proper treatment and medications, rather than prolonged illness, thereby discriminating against him on the basis of disability, even though accommodation would in no way alter the nature of

the healthcare program, and unconstitutionally deprived him of his liberty and he was otherwise tortuously and maliciously harmed by the actions of the defendants, all in violation of Title 42 of the United States Code, Section 1983 et. seq. and the AMERICANS WITH DISABILITIES ACT. Said negligent and improper delay in medical treatment led to the untimely and wrongful death of James Ellis on or around November 30, 2021.

31. Mr. Ellis' repeated complaints of gastrointestinal distress over a three-week period; complaints of chest pain and unstable vital signs; 15 lbs. weight loss and repeated vomiting constituted a serious medical need.

32. Upon information and belief, defendant Erie County, and JOHN DOE 1 through 20 failed to detect his acute illness and significant disease during his 9 weeks of incarceration even though the medical standard of care warrants it.

33. Erie County, and JOHN DOE 1 through 20 knew of and disregarded or should have known of the excessive risk of harm to James Ellis if he was not provided prompt and appropriate medical treatment for his complaints.

34. The failure to provide and/or denial of access to the standard of care caused James Ellis physical and psychological suffering and injuries resulting in death.

35. The denial of treatment constitutes a deliberate indifference to a serious medical need, in violation of the Fourteenth Amendment and 42 U.S.C. §1983.

36. As a result of the foregoing, plaintiff has sustained general and special damages in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction.

SECOND CAUSE OF ACTION

AGAINST ERIE COUNTY

(Monell Claim-Municipal Liability Pursuant to 42 U.S.C. Section 1983)

37. Plaintiff incorporates by reference each and every allegation contained in the above paragraphs as if set forth fully herein.

38. The County knew or should have known that their supervisory policy as related to fitness of the medical providers in its jails was deficient.

39. Defendant, Erie County established, condoned, ratified, and/or encouraged customs, policies, patterns, and practices that directly and proximately caused the deprivation of the civil and constitutional rights of Plaintiff's decedent James Ellis, and the damages and injuries described herein. It did so with deliberate indifference to the rights of the detainee. These written and unwritten policies, customs, patterns, and practices included:

- i. Failing to adequately staff their department with sufficient physicians, staff, and employees (including health care workers), for welfare checks, medical assessment, monitoring, and medical treatment and transport.
- ii. Failing to train, supervise and discipline physicians, staff, and employees at the ECHC responsible for welfare checks, medical assessment, monitoring, and medical treatment.
- iii. Failing to utilize qualitative benchmarks to assess the quality of medical care ECHC provides to its detainees.
- iv. Failing to take steps to ensure that deputies, staff, and employees at the ECHC do not falsify welfare checks and/or medical assessments and logs.
- v. Failing to adequately staff their department with sufficient physicians, staff, and employees (including health care workers), for detainees with serious

- physical injuries suffered before presenting to defendant Erie County and its employees, agents and/or representatives.
- vi. Failing to have in place, or failing to follow, a policy or procedure to prevent physicians and/or nurses from denying detainees access to necessary medical treatment.
 - vii. Failing to properly screen, during the booking process, and supervise thereafter, prisoner, inmate, and/or detainee for serious chronic and acute medical conditions.
 - viii. Failing and omitting to properly and in a timely manner administer, provide and/or ensure for adequate medical treatment, including transport, assessments, monitoring, examinations, and medications.
 - ix. Failing to properly and in a timely manner respond to medical complaints, symptoms, and requests for treatment.
 - x. Deliberately, purposefully, and knowingly denying detainees access to necessary medical treatment for acute and/or chronic medical conditions, such as cancer.
 - xi. Failing to properly and adequately train, supervise, instruct their employees, staff and/or officers about the proper and timely medical treatment of detainees; and in recognizing the signs and symptoms of acute disease and chronic disease.
 - xii. Failing to immediately seek a physician referral and/or hospital treatment for detainees in need of it.
 - xiii. Failing to review or implement findings of the NYS Commission of Correction pursuant to Correction Law section 501.

40. The County knew or should have known that the custom, policy, or practice of ignoring acute medical conditions was constitutionally infirm because of the known risks and death attributable to it, and because it delayed medical aid to those in need of it.

41. The County knew or should have known of these ongoing customs, policies, and practices.

42. Despite having actual or constructive knowledge of these customs, policies, and practices, the County exhibited deliberate indifference to these ongoing policies, customs, and practices.

43. A reasonable supervisor would conclude that the County's official policy to effectively not supervise its physicians and medical staff, and its custom, policy, or practice of ignore acute symptoms, would foreseeably result, by deliberate indifference, in the injuries and/or deaths of detainees such as Mr. Ellis (i.e., an individual with clearly-established medical needs).

44. The above-described actions violated Mr. Ellis' clearly-established constitutional rights under the Eighth and Fourteenth Amendments to the United States Constitution.

45. The particular injuries suffered by Ellis and his estate are the obvious consequence of the failure to supervise and its unconstitutional customs.

**THIRD CAUSE OF ACTION
AGAINST ERIE COUNTY**

AMERICANS WITH DISABILITIES ACT

(Unlawful Discrimination Against Qualified Individuals with Disabilities)

46. Plaintiff incorporates by reference each and every allegation contained in the above

paragraphs as if set forth fully herein.

47. Erie County Holding Center (“ECHC”), which is owned and/or operated by defendant, the County, is a public facility subject to the Americans with Disabilities Act (ADA).

48. Cancer is a “disability” under the ADA. See 42 U.S.C. §12102 and 12131(2); 28 C.F.R. §35.108.

49. The ADA applies to individuals, such as James Ellis, who require or are receiving treatment for cancer.

50. Defendants denied James Ellis, the benefit of medical programs through the Erie County Holding Center on the basis of his disability.

51. Defendants refused to and/or failed to make a reasonable accommodation to Mr. Ellis, by providing him with a physician consultation, thereby discriminating against him on the basis of disability, even though accommodation would in no way alter the nature of the healthcare program.

52. As a result of the foregoing, plaintiff has sustained general and special damages in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction.

RELIEF REQUESTED

Plaintiff, respectfully requests that this Court:

- a. Exercise jurisdiction over plaintiff’s claims and grant him a jury trial;
- b. Award plaintiff economic and non-economic damages, in an amount to be ascertained according to proof, and interest on said sums from the date of Judgment;

- c. Award plaintiff punitive damages against the individual (non-municipal) defendants in an amount sufficient to punish them and deter others from similar conduct;
- d. Award plaintiff reasonable attorney's fees and costs as provided by 42 U.S.C. § 1988; and
- e. Grant plaintiff such other and further relief as this Court deems just and appropriate, including, declaratory and injunctive relief.

DATED: Buffalo, New York

November 26, 2024

LIPSITZ GREEN SCIME CAMBRIA LLP

By: /s/ Melissa D. Wischerath
MELISSA D. WISCHERATH, ESQ.
Attorneys for Plaintiff
42 Delaware Avenue, Suite 120
Buffalo, New York 14202-3924
(716) 849-1333

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

WILLIE ELLIS, as Administrator of
the Estate of JAMES ELLIS, Deceased,

Plaintiff,

vs.

Index No. 817543/2024

ERIE COUNTY,
JOHN DOE 1 through 20 (said Erie County supervisor(s) and/or
Erie County Sheriff Department supervisor(s) or employee(s) or
staff on Duty involved in the incident on November 30, 2021 and/or
underlying claims),

Defendants.

**NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b)(3) of that Section.

The New York State Courts Electronic Filing System (“NYSCEF”) is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: (1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and (2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at www.nycourts.gov/efile, or contact the NYSCEF Resource Center (at 646-386-3033 or efile@courts.state.ny.us).

Dated: December 2, 2024

LIPSITZ GREEN SCIME CAMBRIA, LLP

s/ Melissa Wischerath

By: Melissa D. Wischerath, Esq.
Attorneys for Plaintiff
42 Delaware Avenue, Suite 120
Buffalo, NY 14202
Tel: 716-849-1333

TO:

ERIE COUNTY
DEPARTMENT OF LAW
Edward A. Rath County Office Building
95 Franklin Street, Rm 1634
Buffalo, New York, 14202



COUNTY OF ERIE

JEREMY C. TOTH
COUNTY ATTORNEY

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

DEPARTMENT OF LAW

December 12, 2024

Ms. Olivia Owens, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Ms. Owens:

In compliance with the Resolution No. 306 passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Cutrona, Christa v. Timothy Howard, et al.</i>
Document Received:	Summons and Complaint
Name of Claimant:	Christa Cutrona
Claimant's attorney:	Anna Marie Richmond, Esq. 2500 Rand Building 14 Lafayette Square Buffalo, New York 14203-1295

Should you have any questions, please call.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CHRISTA CUTRONA,
Plaintiff,

vs.

COMPLAINT

Jury Trial Demanded

TIMOTHY HOWARD, JOHN GARCIA
JOHN GREENAN, WILLIAM J. COOLEY
SANDRA AMOIA, THOMAS DIINA,
MICHAEL PHILLIPS, and JAMES BALYS,
Defendants

INTRODUCTION

1. This is a complaint for violation of Plaintiff's First Amendment right to freedom of speech brought pursuant to 42 U.S.C. § 1983, and discrimination on the basis of gender in violation of the New York State Human Rights Law.

The lawsuit addresses deliberate disregard of their legal obligations to the incarcerated individuals committed to their care by high-ranking officials of the Erie County Sheriff's Department in two successive administrations, the efforts of Plaintiff Christa Cutrona, a Registered Nurse, to protect the incarcerated persons, and the steps taken by the Defendants to silence and discredit that nurse, which include retaliation, and criminal prosecution.

Plaintiff Cutrona's state law claims address a continuing pattern of discrimination in employment on the basis of gender beginning in March of 2021. This lawsuit seeks damages and declaratory and injunctive relief.

JURISDICTION AND VENUE

2. Jurisdiction is conferred upon this Court by 28 USC §§ 1331 and 1343; jurisdiction over Plaintiff's state law claims is conferred upon the Court by 28 USC §§ 1367.
3. All conditions precedent to the filing of suit have been performed or have occurred.
4. Venue is properly laid in the Western District of New York pursuant to 28 USC § 1391(b) because the Defendants are located in the Western District of New York, and because the events giving rise to the Complaint occurred in the Western District of New York.

PARTIES

5. Plaintiff, Christa Cutrona is a former employee of the County of Erie. As is set forth in detail *below*, between 2012 and May of 2015, Plaintiff, Christa Cutrona was Director of Nursing; from May of 2015 until 2016 she was the Director of the Erie County Department of Health's Correctional Health Division; from 2016 until December of 2021, she was the Director of the Correctional Health Division within the Sheriff's Department; and from January of 2022 until July of 2022, she was Director of Correctional Health within the Jail Management Division of the Erie County Sheriff's Department.
6. Defendant Timothy Howard was the Sheriff of Erie County from the date of Plaintiff's hire until January 1, 2022. He is sued in his personal and official capacities.
7. Defendant John Garcia was the Sheriff of Erie County January 1, 2022 until the present. He is sued in his personal and official capacities.

8. Defendant John Greenan was Chief of Administration of the Erie County Sheriff's Department from 2014 until 2020, and Under Sheriff of Erie County from 2020 until December 31, 2021. He is sued in his personal and official capacities.

9. Defendant William J. Cooley was Under Sheriff of Erie County from January 1, 2022 until the present. He is sued in his personal and official capacities.

10. Defendant Sandra Amoia was First Deputy Superintendent for Compliance of the Jail Management Division of the Erie County Sheriff's Department from January 1, 2022 until the present. She is sued in her personal and official capacities.

11. Defendant Thomas Diina was Superintendent of the Jail Management Division of the Erie County Sheriff's Department from the date of Plaintiff's hire until December 31, 2021. He is sued in his personal and official capacities

12. Defendant Michael Phillips was Superintendent of the Jail Management Division of the Erie County Sheriff's Department from January 1, 2022 until the present. He is sued in his personal and official capacities.

13. At all times relevant to this matter Defendant James Balys held the rank of captain within the Jail Management Division. He was First Deputy of Compliance within the Correctional Health Division of the Erie County Sheriff's Department from July of 2021 to January of 2022. In January 2022 Defendant Balys was named Chief of Compliance in the Jail Management Division. He is sued in his personal and official capacities.

BACKGROUND: Federal Litigation and Consent Decree

14. On September 30, 2009, the United States of America, represented by the US Department of Justice ("USDoJ"), filed a complaint against Erie County, New York, alleging

that certain conditions at the Erie County Holding Center (ECHC) and the Erie County Correctional Facility (ECCF) violated the constitutional rights of persons confined in ECHC and ECCF. The complaint was assigned docket number 09-cv-849 and assigned to the Honorable William M. Skretny. *See* 09-cv-849-WMS-JJM, Item No.1.

15. On August 18, 2011, the parties filed a Stipulated Order of Dismissal, *See* 09-cv-849-WMS-JJM, Item No. 225-1, which was “so Ordered” by Judge Skretny on August 26, 2011. *See* 09-cv-849-WMS-JJM, Item NO. 227.

16. Pursuant to that Stipulation and Order, the County of Erie agreed to *inter alia*:
- a. Continue to develop and implement policies and procedures to provide prisoners with a safe and secure environment and continue to take all reasonable steps to protect them from harm;
 - b. Provide mental health care pursuant to stipulated provisions relating to suicide prevention, screening, referrals to outside providers and specific provisions for mentally ill prisoners;
 - c. Ensure that clinical decisions and actions regarding health care provided to inmates are the sole responsibility of qualified health professionals;
 - d. Ensure inmates’ medical privacy and confidentiality;
 - e. Improve medical record keeping;
 - f. Ensure that all medications are appropriately prescribed, stored, controlled, dispensed and administered;
 - g. Ensure that inmates have access to care to meet their serious medical needs, including, but not limited to, emergency care, follow-up care, chronic disease care, dental care, and pre-natal care. *Id.*

17. Pursuant to the Stipulated Order of Dismissal, the County agreed to create a Correctional Health Division within the Erie County Department of Health that was charged with the responsibility of implementing the medical-related aspects of the Order of Dismissal.

18. The Stipulated Order of Dismissal included a provision that the agreement would not terminate until after the County had achieved and maintained substantial compliance with all the provisions of the Stipulated order for eighteen consecutive months.

19. The Jail Management Division achieved substantial compliance in 2013 or 2014; the Correctional Health Division reached sustained compliance in October of 2019; on information and belief, the Forensic Mental Health Division reached substantial compliance in 2021.

20. On June 9, 2023 the parties jointly moved to terminate the stipulated Order of Dismissal and for the Court to enter Judgment of Dismissal. Item No. 335.

21. The Court entered a Final Order of Dismissal on June 13, 2023. Item No. 336.

BACKGROUND: Missions of the Jail Management and Correctional Health Divisions

22. The Erie County Sheriff's Department has numerous divisions, one of which is the Jail Management Division, which operates the Erie County Holding Center ("ECHC") and the Erie County Correctional Facility ("ECCF").

23. The Correctional Health Division was identified as a separate Division of the Erie County Sheriff, along with the Division of Public Services and the Jail Management Division in the 2021 and 2024 Erie County Budgets.

24. The Mission Statement of the Jail Management Division set forth in the Erie County Annual Budget for 2021 includes: “maintaining safe, secure and humane detention and correctional facilities” and “Enforce all laws, ordinances rules and regulations.”

25. The top priority of the Jail Management Division for 2021 set forth in the Budget is: “Maintain a safe and secure environment.”

26. The Mission Statement of the Correctional Health Division set forth in the Erie County Annual Budget for 2021 includes: “to pursue and establish the highest ideals and ethical standards in the provision of health services to those who are incarcerated.”

STATEMENT OF FACTS

27. Pursuant to the Stipulated Order, in 09-cv-849, Plaintiff, Christa Cutrona was hired as the Director of Nursing, Correctional Health Division, under the supervision of the Erie County Department of Health in 2012.

28. At the time of Plaintiff’s hire, Mark Wipperman was Under Sheriff, Michael Reardon was First Deputy Superintendent/Compliance Officer, and Thomas Diina was Superintendent of the Jail Management Division.

29. The First Deputy Superintendent/Compliance Officer position was within the Jail Management Division of the Erie County Sheriff’s Department and reported directly to the Under Sheriff.

30. In 2014, Defendant John Greenan was appointed Chief of Administration of the Erie County Sheriff’s Department.

31. In May of 2015, Plaintiff Cutrona was promoted to Director of the Correctional Health Division.

32. The Director of the Correctional Health Division was a Civil Service position with a formal job description approved by the Erie County Legislature, and a line item in the Sheriff's Department budget.

33. Plaintiff's duties set forth in the job description for Director of Correctional Health Services included, but were not limited to:

- a. Direction and delivery of all health services and related services to inmates housed in the Erie County Youth Detention Facility, (ECYDF), Erie County Correctional Facility (ECCF), and Erie County Holding Center (ECHC);
- b. Supervision of health service staff;
- c. Direction of use, delivery, ordering, maintenance, storage, control, disposal and recording of medical and pharmaceutical supplies and equipment;
- d. Development of policies and procedures for all aspects of delivery of health care services;
- e. Coordination of the use of public and private health care facilities as required for care of inmates;
- f. Coordination with the Erie County Forensic Mental Health Department;
- g. Preparation of the yearly budget for the Division of Correctional Health Services; and
- h. Preparation of statistical documentation and the year-end report for the Correctional Health Division.

34. In 2016, the Division of Correctional Health was relocated from the Erie County Department of Health to the Erie County Sheriff's Department, and established as a Division of the Sheriff's Department parallel to the Jail Management Division.

35. As Director of the Correctional Health Division, Plaintiff reported directly to the Erie County Commissioner of Health until 2016, and to the Under Sheriff from January 1, 2016 to January of 2022.

36. In 2017, the Compliance Officer position was placed in the Correctional Health Division.

37. The relocation of the Correctional Health Division was approved by the Erie County Legislature and the USDoJ.

38. The USDoJ conditioned its approval of the relocation of the Correctional Health Division upon the Correctional Health Division remaining an independent Division of the Sheriff's Department.

39. Upon the Correctional Health Division's relocation to the Sheriff's Department, Plaintiff was placed on the Sheriff Command staff.

40. Plaintiff was the only woman on the Sheriff Command staff until December of 2021.

41. Plaintiff's job description and duties did not change when her position was relocated from the Department of Health to the Sheriff's Department.

42. As part of her regular duties, Plaintiff Cutrona provided frequent reports to the Under Sheriff on quality data, including, but not limited to monthly summaries.

43. The First Deputy Superintendent/Compliance Officer utilized information contained in Plaintiff's reports to the Under Sheriff to prepare reports for submission to the US DoJ, as mandated by the Stipulation and Order in 09-cv-849.

44. In August of 2020, Defendant John Greenan was appointed Under Sheriff.

45. In January of 2021 Defendant Howard announced that he would not seek re-election as Erie County Sheriff.

46. From May of 2015 until March of 2021, Plaintiff worked closely with the First Deputy Superintendent/Compliance Officer to implement the provisions of the Stipulation of Dismissal in 09-cv-849.

47. In March of 2021 Michael Reardon was removed from the position First Deputy Superintendent/Compliance Officer, and transferred to the Courts Division of the Sheriff's Department.

48. Upon Mr. Reardon's reassignment, Defendant Greenan assumed responsibility for compliance duties, in addition to Greenan's other duties.

49. As the Director of the Correctional Health Division, Plaintiff was the direct advocate to the Under Sheriff and Jail Management Division regarding concerns related to access to medical care and medical safety.

50. On or about March 31, 2021, Plaintiff sent a fourteen-page letter to Defendant Timothy Howard, detailing the accomplishments of the Correctional Health Division from 2015 to date, and advising Defendant Howard that the Correctional Health Division's goals and accomplishments were jeopardized by the removal of Reardon from his Compliance Officer position.

51. Plaintiff's duties included bringing violations of policy and procedure, policy edits, and concerns regarding incidents that had occurred in the jails to Defendant Diina's attention.

52. Until March of 2021, Plaintiff communicated with Defendant Diina through Mr. Reardon.

53. After Mr. Reardon was removed from the position of First Deputy Superintendent/Compliance Officer, there was no longer a liaison between the Correctional Health Division and the Jail Management Division, and Plaintiff was required to interact directly with Jail Superintendent Defendant Thomas Diina.

54. As of March 2021, Plaintiff was the only woman holding a command-level position in the Sheriff's Department.

55. Defendant Diina was hostile to Plaintiff as a woman in a position of authority and subjected her to verbal abuse and bullying.

56. Defendant Diina ignored communications from Plaintiff or responded to her requests in a hostile and aggressive manner.

57. When Defendant Diina did respond to Plaintiff's emails and to emails from other women within the Correctional Health Division, Diina's emails attempted intimidation and offensiveness.

58. Defendant Diina was confrontational in his dealings with Plaintiff and attempted to bully her.

59. Defendant Diina refused to participate in inter-departmental meetings with Plaintiff, and excluded Plaintiff from meetings to discuss challenges and concerns identified by the Correctional Health Division.

60. Defendant Diina refused to include Plaintiff in discussions of amendments to Jail policies that had implications for correctional health, including policies governing the use of OC spray (pepper spray), camera recording of inmates, and notification to the Correctional Health Division of inmates' placement on administrative segregation.

61. As one example of Defendant Diina's actions, in the middle of March of 2021, ECHC was on lockdown, and security staff would not permit Correctional Health Division nurses to administer prescribed medications to inmates.

62. During the latter part of March 2021, one inmate in ECHC died, and another inmate was found unresponsive – the second inmate survived after transport to the hospital.

63. Plaintiff sent emails to Defendant Diina expressing concern about the denial of medical care to inmates, and her staff's inability to obtain access to inmates during the lockdown.

64. Defendant Diina did not respond.

65. Defendant Diina refused to respond to Plaintiff's request for information about the Jail Management Division's follow-up to a Prison Rape Elimination Act ("PREA" 34 USC § 3401, et seq.) complaint in mid-April of 2021.

66. Beginning in the summer of 2021, Defendant Diina invited a male contract employee of the Correctional Health Division, Chief Medical Officer Dr. Kevin McGee to meetings in place of, or in addition to, Plaintiff.

67. Dr. McGee had been hired to oversee the medical practice within the ECCF and ECHC; in that capacity he reported to Plaintiff.

68. In late May 2021, Plaintiff informed Defendant Greenan that Defendant Diina was harassing her because she was a woman.

69. Defendant Greenan encouraged Plaintiff to file a complaint with the County's Equal Employment Opportunity ("EEO") office.

70. Plaintiff filed an EEO complaint on or about June 3, 2021.

71. Plaintiff's EEO complaint was dismissed as unfounded by the County EEO office on or about June 18, 2021.

72. In May of 2021 there was an inmate disturbance at ECCF.

73. In June of 2021, Plaintiff was contacted directly by a medical liaison from the New York State Commission of Corrections ("SCOC") and asked whether the Correctional Health Division had received complaints relating to the disturbance at ECHC in May.

74. Plaintiff reviewed the medical and forensic mental health records for the relevant period, and found numerous complaints of beatings by corrections staff, denial of food for several days, denial of bedding, placement in cells fouled with feces and urine, denial of showers and changes of clothing for up to a week, and other constitutional and civil rights violations.

75. Plaintiff reported her findings to the SCOC liaison.

76. At a command meeting with Defendant Greenan, Plaintiff informed Greenan that she had been contacted by the SCOC, and had reported her findings.

77. Defendant Greenan was infuriated that Plaintiff had communicated directly with the SCOC, and told her that the Jail Management Division had taken care of the issues.

78. Defendant Greenan told Plaintiff to "shut [her] mouth."

79. Thereafter, Defendant Greenan frequently ignored Plaintiff's medically supported recommendations and reports.

80. On or about June 2, 2021, Defendant Greenan advised Plaintiff that he was considering assigning Captain James Balys to the Compliance Officer position.

81. Defendant Balys lacked the skills and experience required for the position.

82. Plaintiff advised Defendant Greenan that she believed Defendant Balys was not qualified for the position due to Balys' lack of knowledge of medical issues and lack of administrative experience.

83. On or about June 17, 2021, Defendant Greenan advised Plaintiff that the Sheriff was appointing Defendant Balys as Compliance Officer.

84. After Defendant Balys' appointment, Defendant Greenan modified the skills and experience requirements for the Compliance Officer position to match Defendant Balys' qualifications.

85. After Defendant Balys' appointment as Compliance Officer and the EEO Office's dismissal of Plaintiff's complaint, Defendant Diina discontinued communicating directly with Plaintiff.

86. Instead, Defendant Diina communicated with Plaintiff primarily through Defendant Balys.

87. Defendant Balys continued to treat Plaintiff in the same demeaning and hostile fashion as Defendant Diina had done.

88. On or about June 25, 2025, Plaintiff met with Defendant Balys, and advised him that her goal was to help him succeed.

89. On or about June 28, 2021, Plaintiff emailed Defendant Balys copies of policies, documents, manuals, etc., relevant and necessary to the performance of the Compliance Officer position.

90. Beginning in July 2021, Defendant Greenan began including Dr. McGee, a male contract employee who reported to Plaintiff, to regular command staff meetings.

91. Defendants Greenan and Balys excluded Plaintiff from the discussions at the meetings, instead addressing comments and questions to Dr. McGee.

92. On or about July 7, 2021, at a meeting with Defendants Balys and Greenan, Plaintiff advised that she had noticed a pattern of inmates reporting constitutional and civil rights violations (including excessive use of force, and cruel and unusual punishment) to medical staff (who were documenting those reports in the medical records), but that there were no corresponding formal investigations of the complaints being undertaken by the Professional Standards Division.

93. At the same meeting Plaintiff advised Defendants Greenan and Balys of the need to review uses of OC spray (pepper spray), the restraint chair, and Prison Rape Elimination Act (“PREA” 34 USC § 3401, et seq.) reporting and investigation.

94. Defendants Greenan and Balys ignored Plaintiff’s recommendations.

95. In August of 2021, Plaintiff emailed Defendants Greenan and Balys regarding inmates arriving for medical care for injuries, without there being corresponding Unusual Incident reports prepared by the Jail Management Division.

96. From July of 2021 through September 2021, Plaintiff advised Defendant Balys and Defendant Greenan in writing and in face-to-face meetings of Plaintiff’s concerns relating to inmate health, including, but not limited to

- a. Shortage of staff (including but not limited to Nurse Practitioner, Registered Nurses and Licensed Practical Nurses) due to the elimination of 23 positions from the Correctional Health Division;
- b. Significant increase in the number of inmate-on-inmate assaults and hospitalizations for injuries sustained during the incidents;

- c. Increased hospitalizations due to ingestion of foreign bodies and contraband;
- d. Failure to follow legally mandated protocols for providing medical care in response to PREA complaints;
- e. Failure to investigate inmate complaints to medical staff of civil rights violations by security staff;
- f. Delays in receiving necessary medical supplies; and
- g. Failure to comply with guidelines governing provision of mental health care.

97. Defendants Greenan and Balys did not address Plaintiff's concerns.

98. On or about October 6, 2021 Plaintiff emailed Defendant Greenan advising him that despite significant reductions in the total jail population since 2019, inmate visits to outside emergency rooms had doubled since the prior year; Plaintiff provided detailed data in support of that assessment.

99. Defendants Greenan did not address Plaintiff's concerns.

100. From October 2021 through the end of December 2021, Defendants Greenan, Diina, and Balys continued to exclude Plaintiff from the decision making process and to ignore her efforts to communicate and work with them regarding areas within the scope of Plaintiff's responsibilities.

101. In mid-October of 2021 Plaintiff contacted an attorney in the Department of Justice ("DoJ") who was involved in the litigation of 09-cv-849 to report violations of the consent decree in that case.

102. Plaintiff explained that she had tried to address the concerns with the relevant County officials without success.

103. Citing her medical oath, Plaintiff described substantial increases in incidents that required medical assessment and intervention, increased inmate injuries, and violations of the Consent Decree in 09-cv-849.

104. Plaintiff followed her text with an email in early November 2021, attaching documentation of her concerns.

105. The DoJ attorney responded that she could not talk directly to Plaintiff about matters relating to 09-cv-849 without the permission and participation of the County's attorneys.

106. In November 2021, Defendant John Garcia was elected Sheriff of Erie County.

107. In November and December of 2021, Plaintiff notified Defendants Greenan and Balys of violations of the Consent Decree and applicable policy with respect to transfers of inmates to outside emergency rooms, Defendant Balys' failure to meet with the Director of Nursing on a daily basis to review daily incidents, failure to comply with the established COVID prevention procedure, and failure of the Jail Management Division to provide shift summary reports to the Correctional Health Division administrative team.

108. In mid-December 2021, Defendant Sheriff Garcia announced his command staff to the news media; Plaintiff was listed as the Director of Correctional Health instead of her Civil Service title which was Director of the Correctional Health Division.

109. On or about December 28, 2021, Plaintiff received an email from Defendant Garcia's Administrative Assistant that listed the chain of command in each Division of the Sheriff's Department for the incoming administration.

110. Plaintiff was listed third in command in the Correctional Health Division, below incoming First Deputy, Defendant Amoia, and below Kevin McGee, MD, the contract employee, who, pursuant to his contract, reported to Plaintiff.

111. Defendant Greenan was replaced as Under Sheriff by Defendant Michael Cooley upon Defendant Garcia taking office.

112. On or about January 9, 2022, Plaintiff emailed Defendants Garcia and Cooley with suggestions for training of staff concerning the requirements of the Consent Decree in 09-cv-849.

113. On or about January 10, 2022, Plaintiff received a response to her January 9, 2022 email from Defendant Phillips directing Plaintiff to follow the chain of command in communicating with the Sheriff, namely Defendant Amoia, himself, and Under-Sheriff Cooley.

114. On or about January 11, 2022 Plaintiff provided the new incoming Sheriff Administrative staff including Defendant Garcia, Defendant Cooley, Defendant, Phillips, Defendant Amoia and Defendant Greenan a bound copy of the USDoJ Stipulated Order of Dismissal, the 2021 Correctional Health Quality Report and a full version of the Correctional Health Transitional Plan for Correctional Health Division.

115. On or about January 12, 2022, Plaintiff emailed Defendant Amoia statistics for 2011-2021 which demonstrated the significant increase in inmate visits to emergency rooms, and other medical concerns.

116. On or about January 13, 2022, Defendant Garcia announced at the Command Staff meeting that Defendant Balys was the Chief of Compliance; Defendant Balys was also a Captain in the Teamster Union.

117. On or about January 19, 2022, Defendant Amoia met with the Correctional Health Division administration and presented an organizational chart, prepared at the direction of Defendant Garcia.

118. The organizational chart referenced in ¶ 117 nominally placed the Correctional Health Division under the Jail Management Division, but effectively eliminated the Correctional Health Division as a separate Division of the Sheriff's Department co-equal with the Jail Management Division.

119. The organizational chart referenced in ¶ 117 listed Plaintiff's position within the Jail Management Division as reporting to Chief of Compliance, James Balys.

120. Plaintiff reached out to her attorney contact in the US DoJ on or about January 3, 2022 and January 27, 2022 to provide statistical data of the increase in reportable incidents, and to bring information about perceived violations of inmates' constitutional and civil rights to the attorney's attention.

121. In January and early February 2022, Plaintiff was excluded from meetings and communications concerning the Correctional Health Division involving both her subordinates within the Correctional Health Division and Defendants Amoia and Balys.

122. On or about February 2, 2022, Defendant Amoia informed Plaintiff that she (Amoia) was now the head of the Correctional Health Division, and that Defendant Balys was Second in Command; Defendant Amoia also informed Plaintiff that the Chain of Command for the Correctional Health Division placed her below Defendants Amoia and Balys, and removed all of Plaintiff's administrative duties.

123. Defendant Amoia further advised Plaintiff that her responsibilities were limited to Billing, Insurance, Budget, Material Management, and Vendors.

124. Plaintiff advised Defendant Amoia that the organization chart and distribution of duties violated the agreement with the USDoJ, the Stipulation of Dismissal of 09-cv-847 and the

Erie County Legislature's actions in creating the Correctional Health Division as a co-equal Division of the Sheriff's Department along with the Jail Management Division.

125. Defendant Amoia stated words to the effect of, "I never want to hear that out of your mouth again. The Sheriff gets what the Sheriff wants."

126. Later that same day, Defendant Balys directed Plaintiff to vacate her office and remove all of her possessions from it, as he would be taking over that office.

127. The staff reorganization described in ¶¶ 122 through 123, and memorialized in the organizational chart referenced in ¶ 117, violated the Consent Decree in 09-cv-849.

128. The staff reorganization described in ¶¶ 122 through 123 also violated Civil Service rules and did not comply with the Erie County budget then in effect.

129. The staff reorganization described in ¶¶ 122 through 123 effected a demotion of Plaintiff to a position with less authority and less prestige.

130. The staff reorganization described in ¶¶ 122 through 123 was a continuation of the discriminatory exclusion of Plaintiff from decision-making and administrative responsibility that had begun in or about March of 2021.

131. On information and belief, the actions of Defendants Garcia, Cooley, Amoia, Phillips and Balys in 2021 were a continuation of the hostile work environment and discriminatory change in the terms and conditions of Plaintiff's employment that had been initiated by Defendants Howard, Greenan, Diina and Balys beginning in March of 2021.

132. Plaintiff contacted the Erie County Attorney, the Erie County Commissioner of Personnel, the Erie County Commissioner of Budget and the US DoJ concerning the staff reorganization.

133. Plaintiff also contacted Defendant Greenan and expressed concern that she had been blackballed, and that medical concerns and procedures were being addressed without her participation.

134. Defendant Greenan responded that he was no longer part of the decision-making process.

135. On information and belief, neither Defendant Amoia nor Defendant Balys have any medical training.

136. On or about February 8, 2022, members of the nursing staff reported to Plaintiff that all of the procedures the Correctional Health Division had established to comply with the Consent Decree and improve the Correctional Health Division were being eliminated by the new administration.

137. On or about February 9, 2022, Plaintiff called off sick from work due to stress arising from the actions of Defendants Garcia, Cooley, Phillips, Amoia and Balys described in ¶¶ 121 to 137 herein.

138. On or about February 14, 2022, Plaintiff was admitted to BryLin Hosp for a nervous breakdown; Plaintiff was diagnosed with major depressive disorder and anxiety

139. Plaintiff was an inpatient at BryLin from February 14, 2022 until February 21, 2022.

140. While Plaintiff was in the hospital, an on-duty Sheriff's deputy came to the hospital and attempted to elicit information from the hospital staff about Plaintiff's condition.

141. BryLin did not provide HIPPA-protected information to the Sheriff's deputy

142. Plaintiff was placed on a continuous FMLA leave starting on February 9, 2022

143. Beginning in approximately March of 2021, Plaintiff had begun experiencing mental health symptoms due to stress caused by Defendant Diina's, Balys' and Greenan's harassment.

144. Towards the end of 2021, Plaintiff's symptoms escalated.

145. Plaintiff suffered from extreme sadness, hopelessness, increased irritation, isolation, tiredness, inability to sleep, headaches.

146. The symptoms described in ¶ 145, along with extreme hopelessness and suicidal thoughts, led to Plaintiff's admission to BryLin Hospital.

147. While an inpatient at Brylin, Plaintiff underwent intensive counseling at minimum twice daily.

148. Plaintiff was placed on sleep medication, antidepressants and anxiety medication.

149. After her release from BryLin, Plaintiff attended counseling every other week, then monthly.

150. Since February 2022, Plaintiff's doctor has prescribed increases of her antidepressant and Vrylar to help with the depression.

151. After her release from in-patient care Plaintiff continued to treat with mental health professionals including both therapy and medication.

152. On March 1, 2022, Plaintiff was placed on paid administrative leave for alleged misconduct; Plaintiff was not informed of what the alleged misconduct was.

153. Plaintiff contacted her Union about the change in her title and what she perceived to be harassment and bullying to which she was subjected by Defendants Amoia and Balys; she was informed that the Union would prepare a complaint to the Public Employees Relations Board ("PERB").

154. A PERB complaint was filed on March 1, 2022.

155. While Plaintiff was on paid administrative leave, Defendant Balys stated in the Sheriff's main office that he and First Deputy Superintendent Phil Kuppel were going to do everything in their power to get rid of Plaintiff.

156. On or about April 27, 2022, Plaintiff again contacted the US DoJ attorney and provided information about reviews of incidents involving potential violations of inmates' constitutional and civil rights.

157. On or about June 13, 2022, Plaintiff was contacted by an Investigator from the Erie County District Attorney's office who asked to schedule a meeting about "some problems at the Holding Center."

158. Plaintiff understood the call to be in response to her efforts to report violations of the Consent Decree in 09-cv-849 and the change in her job title in violation of County budget provisions and Civil Service rules, and agreed to meet with the Investigator.

159. The Investigator did not inform Plaintiff that Plaintiff was herself a subject of Investigation.

160. Plaintiff answered the Investigator's questions, many of which related to Plaintiff's cell phone usage.

161. Plaintiff was puzzled by the questions, and asked the Investigator if the conversation related to Plaintiff's report of civil rights violations within the County Jails.

162. The Investigator answered that was not the focus of the conversation, at which point Plaintiff terminated the conversation.

163. The lack of information exacerbated Plaintiff's stress and depression.

164. On or about July 15, 2022, after Plaintiff had been on administrative leave for four and a half months without learning anything meaningful about the reason for that leave, Plaintiff submitted a letter of resignation to Defendant Phillips.

165. Plaintiff resigned from her position in hopes of stabilizing her mental health.

166. On or about August 5, 2022, Plaintiff received a letter from the Erie County District Attorney advising that she was being investigated for unidentified misconduct.

167. Plaintiff retained counsel.

168. In May of 2023, more than fifteen months after she was placed on administrative leave, Plaintiff learned for the first time that the alleged misconduct involved approximately \$1,800 of discrepancies in her time records between November 1, 2021 and February 7, 2022.

169. Plaintiff was offered a plea agreement pursuant to which she would initially enter a plea to a Misdemeanor offense and accept a referral to Mental Health Court.

170. Pursuant to the plea agreement, if Plaintiff successfully complied with the Mental Health Court referral, the criminal plea would be withdrawn, and she would enter a plea to disorderly conduct, a non-criminal Violation.

171. In light of the ongoing stress and depression caused by the events described herein, Plaintiff, in consultation with her attorney, therapist, and husband, concluded that it was in her best interest to accept the plea.

172. On September 15, 2023, Plaintiff was arraigned and processed by the District Attorney's office.

173. On or about September 26, 2023, Defendant Garcia stated at a press conference that Plaintiff had pled guilty to making false timesheet entries totaling "approximately \$1,300."

174. On information and belief, the amount of money at issue was approximately \$1,200.

175. Plaintiff entered a plea pursuant to the plea agreement on November 14, 2023.

176. As of the date of this Complaint, Plaintiff has been in full compliance with the terms of the referral to Mental Health Court for nearly a year.

177. Plaintiff has been assured that she will shortly withdraw her original plea and be allowed to plead guilty to a non-criminal violation.

178. In May of 2024 Plaintiff began treating with a psychotherapist to help deal with her social isolation and anxiety, in addition to her ongoing treatment with a psychiatrist.

179. Plaintiff suffers from anxiety and fear much of the time.

180. In addition to resigning from her position with the County, Plaintiff has lost her legal nurse consulting business.

181. As of the date of this Complaint, Plaintiff continues to treat for Major Depressive Disorder, Anxiety, and PTSD via medication and therapy.

182. The actions of Defendants Howard, Greenan, Diina and Balys in excluding Plaintiff from decision making responsibilities, and refusing to work with her in her capacity as Director of the Correctional Health Division demeaned Plaintiff among her colleagues and caused her to suffer extreme mental health harm.

183. The actions of Defendants Garcia, Cooley, Phillips and Amoia in stripping Plaintiff of the duties contained in her civil service job description and assigning her to quasi-clerical duties demeaned Plaintiff among her colleagues and caused her to suffer extreme mental health harm.

184. The actions of Defendants Garcia, Cooley, Phillips and Amoia in suspending Plaintiff without an explanation exacerbated the mental health harm to Plaintiff caused by the actions described in ¶¶ 182-183.

185. The actions of Defendants Garcia, Cooley, Phillips and Amoia in delaying approximately four months before referring the matter to the District Attorney for investigation further exacerbated the mental health harm to Plaintiff caused by the actions described ¶¶ 182-1840.

FIRST CAUSE OF ACTION: VIOLATION OF 42 USC § 1983

186. Plaintiff reasserts and realleges the allegations set forth in ¶¶ 1 through 185 as though fully set forth herein.

187. From March of 2021 through early February 2022, Plaintiff repeatedly brought to the relevant Defendants' attention violations of the consent decree in 09-cv-849 and of the laws protecting inmates' constitutional and other civil rights.

188. When Plaintiff's efforts to secure an end to the violations of inmates' rights were unsuccessful, Plaintiff notified representatives of the USDoJ and the SCOC of Defendants' actions.

189. Plaintiff's notifications to the USDoJ and the SCOC were not made pursuant to her official duties as Director of Correctional Health.

190. Plaintiff's notifications to the USDoJ and the SCOC were made in her capacity as a concerned private citizen of Erie County who was speaking out on a matter of public concern and importance.

191. After Plaintiff contacted the USDoJ and the SCOC, Defendants retaliated against Plaintiff by demoting her, stripping her of her administrative duties, and excluding her from communications and meetings relating to her duties as Director of the Division of Correctional Health.

192. Defendants thereafter placed Plaintiff on an indefinite administrative leave, referred the matter to the District Attorney for investigation, and accepted her resignation, approximately four and one half months after Plaintiff's administrative leave began.

193. In May of 2023, ten months after Plaintiff resigned, and fourteen months after she was placed on paid administrative leave, the District Attorney finally notified Plaintiff of the nature of the alleged misconduct of which she was accused, and entered into negotiations that ultimately led to Plaintiff accepting a plea agreement nearly two years after Defendants' retaliation against Plaintiff commenced.

194. Defendants' actions violated Plaintiff's right to freedom of speech under the First Amendment to the Constitution of the United States.

195. As a result of Defendants' illegal actions, Plaintiff suffered loss of income, damage to reputation, injury to her mental health, loss of enjoyment of life and other pain and suffering justifying an award of damages against said Defendants, plus interest.

SECOND CAUSE OF ACTION: VIOLATION OF NEW YORK HUMAN RIGHTS LAW

196. Plaintiff reasserts and realleges the allegations set forth in ¶¶ 1 through 195 as though fully set forth herein.

197. Beginning in or about March of 2021, Plaintiff was subjected to a hostile work environment on the basis of her gender by Defendant Diina.

198. Plaintiff complained of Defendants Diina's actions to Defendant Greenan.

199. On information and belief, Defendant Greenan took no actions to stop Defendant Diina's harassment, nor to remove Plaintiff from the hostile situation, but merely referred Plaintiff to the County EEO office.

200. At approximately the same time, Defendant Greenan recommended to Defendant Howard that Defendant Balys be placed in the position of Compliance Officer for which Defendant Balys was not qualified, and modified the Compliance Officer job description to meet Defendant Balys' qualifications.

201. Defendant Greenan's actions placed Defendant Balys in a position from which Balys could continue the pattern of gender-based harassment and bullying of Plaintiff commenced by Defendant Diina.

202. Defendants Howard, Greenan, Diina and Balys thereafter excluded Plaintiff from the decision-making process, prevented her from effectively fulfilling the responsibilities of her position, and placed a male subordinate employee in a position that was *de facto* equivalent to Plaintiff's own position.

203. In 2022, Defendants Garcia, Cooley, Amoia and Phillips officially implemented the *de facto* demotion of Plaintiff referenced in ¶ 202.

204. Defendants' actions subjected Plaintiff to a hostile work environment and to adverse changes in the terms and conditions of her employment because of her gender in violation of the New York Human Rights Law.

205. As a result of Defendants' illegal actions, Plaintiff suffered loss of income, damage to reputation, injury to her mental health, loss of enjoyment of life and other pain and suffering justifying an award of damages against said Defendants, plus interest.

WHEREFORE, Plaintiff respectfully requests this Court to enter Judgment:

- a. Holding that Defendants have violated Plaintiff's rights under 42 U.S.C. §1983 and the New York Human Rights Law;
- b. Awarding Plaintiff damages to the maximum amount permitted by law for the violation of her First Amendment rights and her right to be free from gender-based discrimination;
- c. Awarding Plaintiff injunctive relief;
- d. Awarding Plaintiff pre-judgment and post-judgment interest to the maximum amount permitted by law;
- e. Awarding Plaintiff attorney's fees and costs to the maximum amount permitted by law; and
- f. Providing such other relief as the Court deems just and equitable.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury.

Dated:

_____/s/ Lindy S. Korn_____
LINDY S. KORN
Attorney for Plaintiff
22 Washington Street
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Buffalo, NY 14203
716-856-5676
lkorn@lkornlaw-law.com

_____/s/ Anna Marie Richmond_____
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COUNTY OF ERIE

JEREMY C. TOTH
COUNTY ATTORNEY

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

DEPARTMENT OF LAW

December 17, 2024

Ms. Olivia Owens, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Ms. Owens:

In compliance with the Resolution No. 306 passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Kyser, Stephen v. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Stephen Kyser 349 Dewey Avenue Buffalo, New York 14214
Claimant's attorney:	Kenneth P. Lowe, Esq. Law Offices of Robert D. Berkun 501 John James Audubon Parkway, Suite 300 Amherst, New York 14228 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney

JCT:dld
Enc.

IN THE MATTER OF THE CLAIM OF:

STEPHEN KYSER,

Claimant,

v.

NOTICE OF CLAIM

ERIE COUNTY,

Respondent.

TO: Jeremy C. Toth, Esq.
Erie County Attorney
Edward A. Rath County Office Building
95 Franklin Street, Room 1634
Buffalo, New York 14202

Michael P. Kearns
Erie County Clerk
92 Franklin Street
Buffalo, New York 14202

PLEASE TAKE NOTICE, that the Claimant, STEPHEN KYSER, by and through his attorneys, the Law Offices of Robert D. Berkun, 501 John James Audubon Parkway, Suite 300, Amherst, NY 14228, hereby makes a claim against the Respondent, ERIE COUNTY, as follows:

1. The claim is made by STEPHEN KYSER (“Claimant”), and his date of birth is December 20, 1966.
2. The Claimant resides at 349 Dewey Avenue, Buffalo, New York 14214.
3. That on or about the 17th day of September 2024, the Claimant was caused to trip and fall as a result of the negligently maintained, dilapidated, broken, raised, and/or depressed portion of sidewalk adjacent/and or appurtenant to the premises identified as Erie County Family Court, 1 Niagara Street, Buffalo, New York 14202 (property ownership identifies the property as 194 Pearl Street, Buffalo, New York 14202) (“Subject Premises”). Specifically,

Claimant tripped and fell on the sidewalk running along West Eagle Street, adjacent and/or appurtenant to the Subject Premises.

4. Upon information and belief, maintenance of said sidewalk is the responsibility of ERIE COUNTY.

5. That the incident described above was caused by the negligence of ERIE COUNTY, its agents, servants, employees and/or contractors, in that ERIE COUNTY did not take all adequate, reasonable, and necessary steps to provide for the safety of the Claimant. That, specifically, ERIE COUNTY, its agents, servants, employees and/or contractors, were careless, negligent, and/or reckless in the following ways: failing to maintain the sidewalk adjacent to the Subject Premises; failing to timely correct the defective condition; failing to warn Claimant of the dangerous/hazardous condition of the aforementioned sidewalk and surrounding area when ERIE COUNTY, its agents, servants, employees, and/or contractors, knew, or should have known in the exercise of reasonable care, that people lawfully on the premises would walk on said sidewalk and surrounding area which was then dangerous/hazardous due to the negligently maintained, dilapidated, broken, raised, and/or depressed portion of sidewalk adjacent and/or appurtenant to the Subject Premises; failing to correct the condition of the aforementioned sidewalk and surrounding area which was in existence for hours and/or days prior to Claimant's fall; ERIE COUNTY, its agents, servants, employees, and/or contractors, knew, or should have known in the exercise of reasonable care, of the aforesaid dangerous and/or hazardous condition and failed to take any measures to block access to the dangerous/hazardous area to prevent injury to those lawfully thereon; Claimant was injured as a result of the dangerous/hazardous condition which was allowed to occur and continue on the premises due to the action and/or inaction of ERIE COUNTY, its agents, servants, employees, and/or contractors; ERIE COUNTY, its agents,

servants, employees, and/or contractors, had a duty to properly inspect and maintain the premises, and keep same in a reasonably safe condition to prevent foreseeable injury to this persons on the premises; ERIE COUNTY, its agents, servants, employees, and/or contractors, knew, or should have known in the exercise of reasonable care, of the existence of the dangerous/hazardous condition; failing to exercise ordinary and reasonable care in that ERIE COUNTY, its agents, servants, employees, and/or contractors, were generally careless and negligent, causing injury to the Claimant who was lawfully on the premises.

6. Specifically, the claim arises from a trip-and-fall-type incident resulting from the aforementioned negligently maintained sidewalk, which was caused by the actions and/or inactions of ERIE COUNTY, its agents, servants, employees, and/or contractors.

7. That as a result of this fall, the Claimant, sustained serious personal injuries, including, but not limited to a right shoulder/rotator cuff injury.

8. That the Claimant has incurred various medical expenses and is continuing to treat with medical providers for the injuries he sustained due to the negligence of the Respondent, ERIE COUNTY.

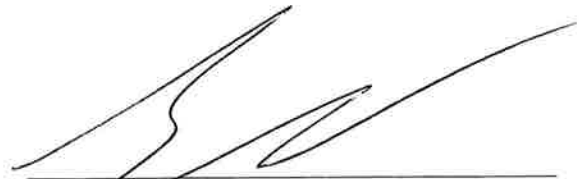
9. Attached hereto as **Exhibit A** are nine (9) photographs of the subject location.

10. That the Claimant, STEPHEN KYSER, hereby makes a claim against the Respondent, the ERIE COUNTY, for personal injuries, medical expenses, past, present and future pain suffering and loss of enjoyment of life suffered as a result of the incident that occurred on or about September 17, 2024 on the negligently maintained portion of sidewalk adjacent and/or appurtenant to the Subject Premises.

11. That the Claimant, respectfully reserves the right to amend this Notice of Claim if necessary.

PLEASE TAKE NOTICE, that in the event that the Respondent fails to resolve the matter, the Claimant intends to commence an action in the Supreme Court of the State of New York, County of Erie, to recover damages in an amount which is currently undetermined, together with the costs and disbursements of this action, and for such this and further relief as the Court deems just and proper.

DATED: Amherst, New York
September 27, 2024



Kenneth P.L. Lowe, Esq.
LAW OFFICES OF ROBERT D. BERKUN
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Amherst, NY 14228
(716) 855-3255

IN THE MATTER OF THE CLAIM OF:

STEPHEN KYSER,

Claimant,

v.

NOTICE OF CLAIM

ERIE COUNTY,

Respondent.

STEPHEN KYSER, being duly sworn, deposes and says, that the deponent is the claimant in the within action; that the deponent has read the foregoing NOTICE OF CLAIM and knows the contents hereof; that the same is true to the deponent's knowledge, except as to the matters herein stated to be alleged upon information and belief, and that as to those matters the deponent believes them to be true.

Stephen B Kyser Sr.
STEPHEN KYSER

Sworn to before me this 27 day
of September, 2024.

[Signature]
NOTARY PUBLIC

Kenneth P.L. Lowe, Esq.
NOTARY PUBLIC, STATE OF NEW YORK
No. 02L06445233
Qualified in Erie County
My Commission Expires 12/12/2026

