(1)

COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

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COUNTY EXECUTIVE

DEPARTMENT OF LAW

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SECOND ASSISTANT COUNTY ATTORNEY

May 1, 2013

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution 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:	*Villar, Adam v. County of Erie, et al.*
Document Received:	Summons and Complaint
Name of Claimant:	Adam Villar
Claimant's attorney:	Terrence M. Connors, Esq. John T. Loss, Esq. Connors & Villardo, LLP 1000 Liberty Building Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld

Enclosure

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ADAM VILLAR,

Plaintiff,

-vs-

COUNTY OF ERIE
The Rath Building
95 Franklin Street, 16th Floor
Buffalo, New York 14202,

and

TIMOTHY B. HOWARD,
INDIVIDUALLY and as
ERIE COUNTY SHERIFF
10 Delaware Avenue
Buffalo, New York 14202,

Defendants.

SUMMONS

Index No.: 2013-0030

FILED
01/03/2013/ 16:29:38
ERIE COUNTY CLERK
RCPT # 13001468
I 2013000030

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorneys at their address stated below, an answer to the attached complaint.

If this summons was personally delivered to you in the State of New York, the answer must be served within twenty (20) days after such service of the summons, excluding the date of service. If the summons was not personally delivered to you within the State of New York, the answer must be served within thirty (30) days after service of the summons is complete as provided by law.

If you do not serve an answer to the attached complaint within the applicable time limitation stated above, a judgment will be entered against you, by default, for the relief demanded in the complaint, without further notice to you.

The plaintiff designates Erie County as the place of trial pursuant to CPLR § 504.

This summons was filed on January 3, 2013 with the Clerk of the Court in which this action is brought and assigned the Index Number appearing on the face of this summons.

DATED: Buffalo, New York
January 3, 2013

Terrence M. Connors, Esq.
John T. Loss, Esq.
CONNORS & VILARDO, LLP
Attorneys for Plaintiff
1000 Liberty Building
Buffalo, New York 14202
(716) 852-5533

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ADAM VILLAR,

Plaintiff,

-vs-

COUNTY OF ERIE and TIMOTHY B. HOWARD, INDIVIDUALLY and as ERIE COUNTY SHERIFF,

Defendants.

COMPLAINT

Index No.: 2013-0030

FILED
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ERIE COUNTY CLERK
RCPT # 13001468
2013000030

Plaintiff, ADAM VILLAR, by his attorneys, CONNORS & VILARDO, LLP, for his complaint, alleges:

1. At all times herein, plaintiff was and is a resident of the County of Erie, State of New York.

2. Upon information and belief, at all times herein, defendant, COUNTY OF ERIE, was and is a municipal corporation duly existing under and by virtue of the laws of the State of New York.

3. Upon information and belief, the Erie County Sheriff's Department is a department of the defendant, COUNTY OF ERIE.

4. At all times herein, defendant, COUNTY OF ERIE, was and is the owner of the Erie County Correctional Facility in Alden, New York.

Exhibit A

5. At all times herein, defendant, COUNTY OF ERIE, was and is the operator of the Erie County Correctional Facility in Alden, New York.

6. Upon information and belief, at all times herein, defendant, TIMOTHY B. HOWARD, was and is a resident of the County of Erie, State of New York.

7. Upon information and belief, at all times herein, defendant, TIMOTHY B. HOWARD, was and is the Erie County Sheriff.

8. Defendant, TIMOTHY B. HOWARD, is sued in both his official and individual capacities.

9. At all times herein, defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, as Erie County Sheriff, were and are responsible for the day-to-day operations of the Erie County Correctional Facility in Alden, New York.

10. Upon information and belief, defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, as Erie County Sheriff, have the custody, control, and charge of the Erie County Correctional Facility in Alden, New York and the inmates confined within.

11. Upon information and belief, defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, as Erie County Sheriff, are charged by the laws of the State of New York with authority to maintain the Erie County Correctional

Facility in Alden, New York and are responsible for the conditions of confinement and health and safety of persons incarcerated there.

12. Upon information and belief, prior to January 3, 2010, defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, repeatedly and consistently disregarded known or serious risks of harm to inmates at the Erie County Correctional Facility in Alden, New York, as set forth in a letter issued by Acting Assistant Attorney General Loretta King on July 15, 2009, detailing the investigative findings of conditions at the Erie County Holding Center and Erie County Correctional Facility in Alden, New York. *See* Exhibit A (Exhibit B to federal lawsuit).

13. Upon information and belief, prior to January 3, 2010, defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, failed to correct and remedy those failures and risks of harm identified in that letter.

14. Upon information and belief, defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, failed to protect the County's vulnerable inmates by failing to have an adequate inmate classification system and failed to implement an inmate classification system that adequately assessed the risk factors for inmate-on-inmate violence and sexual attacks.

15. Upon information and belief, defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, had been on notice (since at least 2007) of this deficient inmate classification system and the obvious risks to vulnerable inmates

but failed to correct the deficiencies despite notice from state and federal officials and despite the investigative findings as set forth in a letter issued by Acting Assistant Attorney General Loretta King on July 15, 2009, detailing the investigative findings of conditions at the Erie County Holding Center and Erie County Correctional Facility in Alden and despite a federal lawsuit (filed on September 30, 2009) by the United States against defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD. *See* Exhibit A (including Exhibit B to federal lawsuit).

16. Upon information and belief, plaintiff was arrested on December 31, 2009 and was taken into custody at the Erie County Holding Center in Buffalo, New York.

17. Upon information and belief, on or about January 2, 2010, plaintiff was transported to the Erie County Correctional Facility in Alden, New York.

18. Upon information and belief, plaintiff remained in custody at the Erie County Correctional Facility in Alden until January 7, 2010.

19. Plaintiff, while in custody at the Erie County Correctional Facility in Alden, was subjected to sexual assault, rape and battery, on two occasions, in the shower area of his unit.

20. Upon information and belief, on January 3, 2010, between 5-9 p.m., plaintiff was in the shower in the shower area connected to the Nova Unit of the Erie County Correctional Facility in Alden.

21. Upon information and belief, while plaintiff was in the shower, three inmates came into the same shower stall.

22. Plaintiff weighs 150 pounds and is 5-feet, 5-inches tall.

23. Upon information and belief, one of the three inmates is 6-feet tall and weighs between 275 and 300 pounds.

24. Upon information and belief, that inmate "ran" the Nova Unit and was well known to defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, and their guards, corrections officers, agents, and employees at the Erie County Correctional Facility in Alden.

25. Upon information and belief, that inmate sexually assaulted and raped plaintiff in his rectum.

26. Upon information and belief, that inmate said something like that he had done this before.

27. Upon information and belief, on January 4, 2010, between 5-9 p.m., plaintiff was again in the shower in the shower area connected to the Nova Unit of the Erie County Correctional Facility in Alden.

28. Upon information and belief, while plaintiff was in the shower, that same inmate and two other inmates (one of whom was present at the time of the first incident) came into the same shower stall.

29. Upon information and belief, that same inmate again sexually assaulted and raped plaintiff in his rectum.

30. Upon information and belief, at the time of the rapes, sexual assaults, and batteries of plaintiff at the Erie County Correctional Facility in Alden, defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, and their guards, corrections officers, agents, and employees were on notice that plaintiff, ADAM VILLAR, was at risk of injury and harm inflicted by other inmates.

31. During his incarceration at the Erie County Correctional Facility in Alden in January 2010, including on January 3, 2010 and January 4, 2010, plaintiff, ADAM VILLAR, was entrusted to the custody and care of defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, as Erie County Sheriff.

32. As Erie County Sheriff, defendant, TIMOTHY B. HOWARD, acted as policymaker for Erie County regarding the custody, control, and care of the County's prisoners.

33. As set forth above and further detailed in Acting Assistant Attorney General Loretta King's letter of July 15, 2009, *see* Exhibit A at Exhibit B,

defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, in his official capacity of Erie County Sheriff, acting under color of law, instituted a policy, custom, and practice of (1) providing inadequate care and protection for inmates housed at the Erie County Correctional Facility in Alden; (2) providing inadequate supervision of inmates housed at the Erie County Correctional Facility in Alden; (3) maintaining an inadequate inmate classification system; (4) ignoring and failing to prevent assaults against inmates, including inmate-on-inmate sexual assaults; and (5) failing to adequately train and supervise guards, corrections officers, agents and employees at the Erie County Correctional Facility in Alden.

34. Furthermore, defendant, TIMOTHY B. HOWARD, in his individual capacity, acting under color of law, failed to maintain humane conditions for inmates housed in the Erie County Correctional Facility in Alden by, *inter alia*, (1) providing inadequate care and protection for inmates housed at the Erie County Correctional Facility in Alden; (2) providing inadequate supervision of inmates housed at the Erie County Correctional Facility in Alden; (3) maintaining an inadequate inmate classification system; (4) ignoring and failing to prevent assaults against inmates, including inmate-on-inmate sexual assaults; and (5) failing to adequately train and supervise guards, corrections officers, agents and employees at the Erie County Correctional Facility in Alden.

35. As a result of the actions and omissions of defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, plaintiff, ADAM VILLAR, faced a substantial risk of serious harm from being assaulted by another inmate.

36. By virtue of Acting Assistant Attorney General Loretta King's letter, as well as previous incidents of which defendant was aware, defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, knew that plaintiff, ADAM VILLAR, faced a substantial risk of serious harm from being assaulted by another inmate.

37. Defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, disregarded that risk and failed to take reasonable measures to prevent plaintiff, ADAM VILLAR, from suffering serious harm as a result of inmate assault.

38. Therein, defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, acted with deliberate indifference to plaintiff's constitutional right to be free of cruel and unusual punishment and right to due process under the Eighth and Fourteenth Amendments to the Constitution of the United States and corresponding provisions of the Constitution of the State of New York.

39. As a result of the foregoing acts and omissions of defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, plaintiff, ADAM VILLAR, sustained severe and debilitating injuries and damages, including damages for past and future medical, health-care, counseling, therapy, and prescription expenses, past and future lost wages, past and future conscious pain and suffering (including loss of enjoyment of life), and any other damages (including punitive damages) as permitted by law.

40. The foregoing acts and omissions on the part of defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, acting under color of law, violated plaintiff's constitutional right to be free from cruel and unusual punishment and right to due process and proximately caused the aforementioned injuries and damages to plaintiff, ADAM VILLAR, and without any negligence on the part of plaintiff.

41. By reason of the foregoing, plaintiff, ADAM VILLAR, is entitled to monetary damages under 42 U.S.C. § 1983 and attorney's fees under 42 U.S.C. § 1988(b).

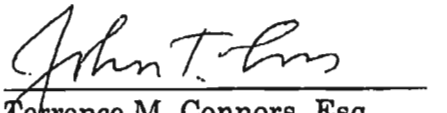
42. In addition, plaintiff, ADAM VILLAR, is entitled to punitive damages against defendant, TIMOTHY B. HOWARD, in his individual capacity.

43. Plaintiff, ADAM VILLAR, has suffered damages in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, and plaintiff will seek damages in an amount to be proven and determined at the time of trial, as well as attorney's fees.

WHEREFORE, plaintiff, ADAM VILLAR, demands judgment against defendants, COUNTY OF ERIE and TIMOTHY B. HOWARD, INDIVIDUALLY and as ERIE COUNTY SHERIFF, in an amount to be proven and determined at the

trial of this action, together with attorney's fees, the costs and disbursements of this action, and such other and further relief as this Court may deem just and proper.

DATED: Buffalo, New York
January 3, 2013



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