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COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 30, 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:	*Boyce, Thomas v. County of Erie*
Document Received:	Summons and Complaint
Name of Claimant:	Thomas Boyce 36 Ashton Place Buffalo, New York 14220
Claimant's attorney:	Lindy Korn Electric Tower 535 Washington Street, 9th Floor Buffalo, New York 14203

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

Enc.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of New York

Thomas Boyce *Plaintiff* v. Erie County *Defendant*	)	Civil Action No. 13-CV-619 - S

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Erie County
95 Franklin Street, 16th Floor
Buffalo, New York 14202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Law Office of Lindy Korn
Electric Tower
535 Washington St.
Ninth Floor
Buffalo, NY 14203

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

CLERK OF COURT

Date: 6/14/2013

Signature of Clerk or Deputy Clerk

This paper received at the
Erie County Attorney's Office
from [illegible] on
the 26 day of July, 2013
at 12:45 a.m./p.m.

Assistant County Attorney

This paper received at the
Erie County Attorney's Office
from David Curtin on
the 26 day of July, 2013
at 12:40 a.m./p.m.
Assistant County Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
Buffalo Division

THOMAS BOYCE,

PLAINTIFF,

v.

ERIE COUNTY,

DEFENDANT.

COMPLAINT

13-CV-00619

Plaintiff Thomas Boyce ("Plaintiff" or "Mr. Boyce") alleges as follows:

PARTIES

1. The Plaintiff, Thomas Boyce, is a natural person with a place of residence at Ashton Place Buffalo, NY 14220.

2. Upon information and belief, Defendant Erie County ("Defendant" or "County"), is a municipal entity with offices located at 95 Franklin Street, 16th Floor, Buffalo, New York 14202

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 and as conferred by 42 U.S.C. §§ 12111 et. seq. and §1983.

4. Defendant is subject to the jurisdiction of this Court and venue is proper in this District pursuant to 28 U.S.C. § 1391 (b) as the acts and omissions giving rise to the claims in this complaint occurred within the Western District of New York.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

5. Mr. Boyce has exhausted administrative remedies prerequisite to bringing this claim as follows:

6. On June 27, 2012, Mr. Boyce filed a charge of discrimination with the New York Division of Human Rights (DHR) and the Equal Employment Opportunity Commission

(EEOC). The DHR assigned the case number as 10155927. The DHR cross filed the Complaint with the EEOC as Federal Charge No. 16GB203659.

7. The EEOC mailed Mr. Boyce a 'Right to Sue' letter proving that he has exhausted his administrative remedies Under Title VII.

FACTUAL BACKGROUND

8. Mr. Boyce is a Deputy Sheriff for Erie County.
9. Mr. Boyce works at the Erie County Holding Center.
10. Mr. Boyce has a property interest in his continued employment.
11. Mr. Boyce is a person with a disability under the meaning of the ADA.
12. Mr. Boyce suffers from PTSD acute stress disorder and high blood pressure.
13. The County has been notified many times since 2010 of Mr. Boyce's disability.
14. Mr. Boyce can otherwise perform the essential functions of this job with reasonable accommodation.
15. Historically, the County had allowed officers to split eight hour overtime shifts between them.
16. Defendant has refused to allow Mr. Boyce to use split shifts to cover the overtime.
17. On July 27, 2011 Mr. Boyce presented a doctor's note with medical restrictions to Chief Rodriguez.
18. The medical restrictions included not working more than 48 hours a week with a maximum shift of 12 hours per day.
19. Chief Rodriguez informed Mr. Boyce that he would no longer be allowed to work any overtime until he was taken off of medical restrictions.
20. After informing Defendant of these medical restrictions Mr. Boyce was harassed and mocked by fellow officers.

21. When calling in sick to use FMLA leave Mr. Boyce was further harassed and mocked by superiors and peers.
22. Defendant also began issuing Mr. Boyce "records of counseling" for not attending trainings that were scheduled off his regular shift.
23. Defendant refused to either reschedule him or allow him overtime to attend these trainings.
24. Upon information and belief the overtime necessary to attend these trainings would have complied with Mr. Boyce's medical restrictions.
25. Defendant also began issuing Mr. Boyce "records of counseling" for not attending training that he did attend.
26. Mr. Boyce has a property interest in his continued employment.
27. Upon information and belief the County has the authority to mandate that its deputies work overtime in certain circumstances.
28. Upon information and belief those circumstances are limited to emergencies.
29. The holding center is routinely short-staffed.
30. The short-staffing requires at least 60 overtime shifts per shift.
31. The Sheriff's Department routinely mandates deputies to work overtime multiple times per week.
32. The Sheriff's Department rarely has a shift that does not use mandatory overtime to fill.
33. The use of mandatory overtime is expected on effectively every shift.
34. This does not fit the plain language meaning of emergency.

FIRST CAUSE OF ACTION
Failure to accommodate in violation of the ADA

35. Plaintiff repeats each and every allegation set forth herein in preceding paragraphs as though fully set forth herein.

36. In order to establish a *prima facie* case of *failure to accommodate discrimination*, a plaintiff must show that "(1) plaintiff is a person with a disability under the meaning of the ADA; (2) an employer covered by the statute had notice of his disability; (3) with reasonable accommodation, plaintiff could perform the essential functions of the job at issue; and (4) the employer has refused to make such accommodations." *Graves v. Finch Pruyn & Co., Inc.*, 457 F.3d 181, 184 (2d Cir. 2006).

37. Mr. Boyce is a person with a disability under the meaning of the ADA.

38. Mr. Boyce suffers from PTSD, acute stress disorder, and high blood pressure.

39. The County has been notified many times since 2010 of Mr. Boyce's disability.

40. Mr. Boyce can otherwise perform the essential functions of this job with reasonable accommodation.

41. Historically, the County had allowed officers to split eight hour overtime shifts between them.

42. Split shifts are therefore reasonable.

43. Defendant has refused to allow Mr. Boyce to use split shifts to cover the overtime.

44. Upon information and belief the operation of the mandatory overtime process as currently implemented is illegal.

45. Upon information and belief procedural corrections to the implementation of the overtime policy would both render it compliant with the law and provide an effective accommodation for Mr. Boyce.

46. Defendant has pursued neither accommodation.

SECOND CAUSE OF ACTION
Retaliation in Violation of ADA

47. Plaintiff repeats each and every allegation set forth herein in preceding paragraphs as though fully set forth herein.

48. In order to establish a *prima facie* case of retaliation, the Complainant must show (1) he engaged in a protected activity; (2) his employer was aware of this activity; (3) the employer took adverse action against him; and (4) a causal connection exists between the alleged adverse action and the protected activity. *Treglia v. Town of Manlius*, 313 F.3d 713, 719 (2d Cir. 2002).

49. Mr. Boyce engaged in protected activity each time he asked for accommodation to his disability.

50. Defendant was aware of this apparent protected activity because the doctor's notes and requests for accommodations were given to officers within Mr. Boyce's chain of command.

51. On July 27, 2011 Mr. Boyce presented a doctor's note with medical restrictions to Chief Rodriguez.

52. The medical restrictions included not working more than 48 hours a week with a maximum shift of 12 hours per day.

53. Chief Rodriguez informed Mr. Boyce that he would no longer be allowed to work any overtime until he was taken off of medical restrictions.

54. After informing Defendant of these medical restrictions Mr. Boyce was harassed and mocked by fellow officers.

55. When calling in sick to use FMLA leave Mr. Boyce was further harassed and mocked by superiors and peers.

56. Defendant also began issuing Mr. Boyce "records of counseling" for not attending trainings that were scheduled off his regular shift.

57. Defendant refused to either reschedule him or allow him overtime to attend these trainings.

58. Upon information and belief the overtime necessary to attend these trainings would have complied with Mr. Boyce's medical restrictions.

59. Defendant also began issuing Mr. Boyce "records of counseling" for not attending training that he did attend.

60. Because Defendant's officers complained Mr. Boyce's medical restrictions were the reason they had to issue "records of counseling," Defendant acted in a clearly harmful and dissuasive manner towards Mr. Boyce because of his disability.

61. Mr. Boyce is currently on a six-week suspension.

62. Upon information and belief the suspension is based on trumped up and nonsensical charges that were issued because of Mr. Boyce's continued protected activity.

THIRD CAUSE OF ACTION
INTERFERENCE in violation of the FMLA

63. Plaintiff repeats each and every allegation set forth herein in preceding paragraphs as though fully set forth herein.

64. In approximately July 2011 Mr. Boyce applied for FMLA leave.

65. Mr. Boyce was granted the use of FMLA leave to avoid working eight hour mandatory overtime shifts.

66. Chief Rodriguez informed Mr. Boyce that he would no longer be allowed to work any overtime until he was taken off of medical restrictions.

67. After informing Defendant of these medical restrictions Mr. Boyce was harassed and mocked by fellow officers.

68. When calling in sick to use FMLA leave Mr. Boyce was further harassed and mocked by superiors and peers.

69. Defendant also began issuing Mr. Boyce "records of counseling" for not attending trainings that were scheduled off his regular shift.

70. Defendant refused to either reschedule him or allow him overtime to attend these trainings.

71. Upon information and belief the overtime necessary to attend these trainings would have complied with Mr. Boyce's medical restrictions and therefore would not required FMLA leave.

72. Upon information and belief Defendant was undertaking these actions as punishment for Mr. Boyce's use of FMLA leave.

FOURTH CAUSE OF ACTION
§ 1983 Violation of Due Process as provided by the 14th Amendment

73. Plaintiff repeats each and every allegation set forth herein in preceding paragraphs as though fully set forth herein.

74. In order to establish a violation of §1983 "two-and only two-allegations are required in order to state a cause of action under that statute. First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has

deprived him of that right acted under color of state or territorial law." *Gomez v. Toledo*, 446 U.S. 635, 640, 100 S. Ct. 1920, 1923, 64 L. Ed. 2d 572 (1980)

75. Upon information and belief Defendant Erie County is a public employer.

76. Mr. Boyce is a Sheriff's Deputy with civil service protections.

77. Mr. Boyce has a property interest in his continued employment.

78. Upon information and belief the County has the authority to mandate that its deputies work overtime in certain circumstances.

79. Upon information and belief those circumstances are limited to emergencies.

80. The holding center is routinely short-staffed.

81. The short staffing requires at least 60 overtime shifts per shift.

82. The Sheriff's Department routinely mandates deputies to work overtime multiple times per week.

83. The Sheriff's Department rarely has a shift that does not use mandatory overtime to fill.

84. The use of mandatory overtime is expected on effectively every shift.

85. This does not meet the plain language meaning of emergency.

86. As it currently operates, the County's mandatory overtime process is illegal.

87. Sheriff's Deputies have a liberty interest to not be compelled to work by the government.

88. Mr. Boyce further suffers from disabilities.

89. Working mandatory overtime, as operated currently by the Sheriff's Department, is detrimental to Mr. Boyce's health.

90. Mr. Boyce has been routinely ordered to work mandatory overtime.

91. These orders force Mr. Boyce to choose between his health and his liberty interest or his property interest.

92. As operated these orders are routinely illegal.

93. The officers of the County who have issued these orders to Mr. Boyce have variously harmed his health and deprived him of his liberty and property interests.

94. These orders have been made under color of law.

WHEREFORE, Mr. Boyce respectfully requests this Court to enter an Order:

A. Awarding Mr. Boyce past lost wages and benefits in an amount to be determined at trial;

B. Awarding Mr. Boyce damages for his pain, suffering, loss of enjoyment of life, humiliation and other injuries in an amount to be determined at trial;

C. Directing Defendant to pay all unreimbursed medical costs incurred by Mr. Boyce as a result of the stress and anxiety resulting from the discrimination he suffered and the hostile working conditions he endured, including diagnostic analysis, treatment and therapy, and follow up therapy;

D. Defendant to pay Mr. Boyce the costs of this action, together with reasonable attorneys' fees and disbursements;

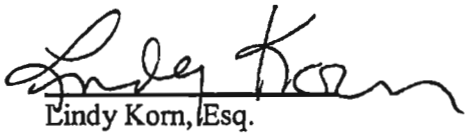
E. Mr. Boyce to have such other and further relief as this Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) Fed. R. Civ. P., Plaintiff hereby demands a trial by jury for all issues triable of right by a jury in this case.

Dated: June 13, 2013

Respectfully submitted,
Plaintiff Tom Boyce
By his Attorneys



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