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COUNTY OF ERIE

MICHAEL A. SIRAGUSA
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MARK C. POLONCARZ
COUNTY EXECUTIVE
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SECOND ASSISTANT COUNTY ATTORNEY

July 19, 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:	*Walker, Trevell, Estate of, by Administrators Glenn and Susan Freeland v. County of Erie, Mark Poloncarz, Timothy B. Howard and Mark Wipperman*
Document Received:	Summons and Complaint
Name of Claimants:	Glenn and Susan Freeland 194 Greenfield Drive Tonawanda, New York 14150
Claimant's attorney:	Kevin T. Stocker, Esq. 2645 Sheridan Drive Tonawanda, New York 14150

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

GLENN and SUSAN FREELAND,
as Administrators for the
ESTATE of TREVELL WALKER
194 Greenfield Drive
Tonawanda, NY 14150
and
as Guardians of the Infant and Sole Issue
JALEN WALKER
194 Greenfield Drive
Tonawanda, NY 14150,

Plaintiffs,

-vs-

ERIE COUNTY, NEW YORK;
95 Franklin Street, 16th Floor
Buffalo, NY 14202
and
MARK POLONCARZ,
ERIE COUNTY EXECUTIVE;
95 Franklin Street, 16th Floor
Buffalo, NY 14202
and
TIMOTHY B. HOWARD,
ERIE COUNTY SHERIFF;
10 Delaware Avenue
Buffalo, NY 14202
and
MARK WIPPERMAN,
ERIE COUNTY UNDERSHERIFF;
10 Delaware Avenue
Buffalo, NY 14202,

Defendants.

SUMMONS

INDEX NO.: 800956/2013

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer upon Plaintiffs' attorney at the address stated below within twenty (20) days

after the personal service of this Summons, exclusive of the day of service, or within thirty (30) days after 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.

Plaintiff designates Erie County as the place of trial. The basis of venue is Plaintiffs' residence.

Dated: July 1, 2013
Tonawanda, New York

Kevin T. Stocker, Esq.
Attorney for Plaintiff
2645 Sheridan Drive
Tonawanda, NY 14150
Phone No.: (716) 832-3006

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

GLENN and SUSAN FREELAND,
as Administrators for the
ESTATE of TREVELL WALKER
and
as Guardians of the Infant and Sole Issue
JALEN WALKER

Plaintiffs,

-vs-

ERIE COUNTY, NEW YORK;
and
MARK POLONCARZ,
ERIE COUNTY EXECUTIVE;
and
TIMOTHY B. HOWARD,
ERIE COUNTY SHERIFF;
and
MARK WIPPERMAN,
ERIE COUNTY UNDERSHERIFF;

Defendants.

COMPLAINT AND JURY DEMAND

INDEX NO.: 800956/2013

The undersigned, KEVIN T. STOCKER, Esq., representing the Plaintiffs herein complain and allege as follows:

1. That Plaintiffs, GLENN and SUSAN FREELAND, JALEN WALKER and the ESTATE OF TREVELL WALKER, are and were at all relevant times residents of Erie County.

2. On March 7, 2012, Family Court appointed Glenn and Susan Freeland as Guardians of Jalen Walker. At said time, a course of action could be maintained as "Guardians of the Person."

3. On March 26, 2013, Surrogate's Court awarded letters of administration to Glenn and Susan Freeland for the Estate of Trevell Walker. At said time, a course of action could be brought by the "Guardians of the Property."

4. Pursuant to Gen. Mun. Law § 50-i, Plaintiffs filed and served a Notice of Claim on all Defendants on January 5, 2013. Adjustment or payment of these claims herein has been refused or neglected.

5. Due to the infancy of Jalen Walker, all claims were tolled pursuant to CPLR 208.

DEFENDANTS

6. The County of Erie owns the Erie County Holding Center ("ECHC") that houses detainees while criminal charges are pending. Defendant Erie County is a governmental subdivision created under the laws of the State of New York. The Erie County Sheriff's Office is a division of the Erie County government and operates ECHC.

7. Defendant Erie County is an entity charged by the laws of the State of New York with authority to maintain the conditions of ECHC and supervise its detainees. It is responsible for detainees' conditions of confinement and their health, safety, and welfare while detained at ECHC.

8. Defendant Erie County is legally responsible, in whole or in part, for the operation and conditions of the ECHC, and for the health and safety of persons incarcerated at the ECHC. Erie County has an obligation and duty to provide a reasonably safe facility for the detainees to be housed in.

9. Defendants Timothy B. Howard and Mark Wipperman, based upon information and belief, have business addresses referenced in the caption above.

10. Defendant Timothy B. Howard is the Sheriff of Erie County and is responsible for the day-to-day operations of ECHC. In his official capacity as Sheriff, Mr. Howard has the custody, control, and charge of ECHC and the detainees confined within. Defendant Timothy Howard is sued in his official capacity.

11. Defendant Mark Wipperman is the Undersheriff of Erie County and is responsible for the day-to-day operations of ECHC. In his official capacity as Undersheriff, Mr. Wipperman has the custody, control, and charge of ECHC and the detainees confined within. Defendant Mark Wipperman is sued in his official capacity.

12. All the Defendants are legally responsible, in whole or in part, for the operations and conditions of ECHC, and for the health, safety, and welfare of the detainees within.

MERITS OF THE CASE

13. ECHC is a correctional facility because it constitutes an institution that falls under 42 U.S.C. § 1997(1) and NYS Corrections Law Article 1 § 2(4).

14. It is reported that on the morning of December 7, 2010, Trevell Walker was involved in a domestic dispute with his wife, Chandra Freeland-Walker. On this date, it was alleged that Defendant killed his wife by repeatedly stabbing her.

15. As a result of this altercation and the resulting death, Trevell Walker was arrested on said date by the Cheektowaga Police Department and charged with the homicide. After screening Trevell Walker, the Cheektowaga Police placed Trevell Walker on suicide watch.

16. Prior to being taken into custody, Trevell Walker was transferred and held in a jail cell at ECHC before his trial. Based upon information and belief, Cheektowaga Police informed Defendants that Trevell Walker was on suicide watch.

17. The Defendants had a duty to place Trevell Walker on suicide watch and take all preventative measures to ensure he did not attempt suicide.

18. On October 12, 2011, Trevell Walker committed suicide by hanging himself in his cell at ECHC while awaiting the disposition of his case.

19. Defendants should have taken the proper procedural steps to prevent Trevell Walker from harming himself.

20. Under a previous settlement agreement between the United States of America and Defendants, Defendants were required to modify the ECHC's cells and make them suicide proof. See attached Exhibit "A" hereto.

21. Defendants were aware that their facility had a suicide rate five (5) times higher than other holding facilities and had a known dangerous facility as to its design which helped facilitate detainee suicides.

22. Trevell Walker's cell was not modified to prevent suicide.

23. Based upon information and belief, Trevell Walker committed suicide by using the bed sheets to hang himself from the ceiling and/or air grates.

24. Federal regulations, New York State regulations, and industry standards require detainees to be screened for mental health issues, placed on suicide watch when warranted, that all

instruments or conditions which a detainee could use to harm himself be removed, and that suicide prone detainees be sent to mental health counselors.

25. Trevell Walker's situation warranted all the above actions, and by not taking these actions, the Defendants failed to protect him from harm.

26. Common law requires Defendants to protect detainees from harm. In addition, a provision in the settlement agreement also (Exhibit "A") required Defendants to protect its detainees from "significant risk of harm from suicide or self-injurious behavior." In order to protect its detainees, ECHC was required to: (1) conduct suicide and health screening of all its detainees; (2) identify detainees who are potentially suicidal; (3) assess detainees based on a specific set of criteria; and (4) review and revise its suicide prevention training program, which all staff would have to complete.

27. In addition to these procedures, the settlement agreement required Erie County to modify its housing facility so that a detainee could not commit suicide. The modifications included: (1) place suicide-resistant plexiglass over the bars in the cells; (2) replace the existing air ventilation grates in the cells with grates that have no protrusions; (3) modify all bunk holes to be made suicide resistant; and (4) employ a qualified health professional to set forth the conditions of observations commensurate with each detainee's security level.

28. Defendants are obligated to operate ECHC in a manner that does not infringe upon the federal and state constitutional rights of persons confined at ECHC.

29. Defendants have repeatedly and consistently disregarded federal regulations, NYS Corrections Law, industry standards, and the serious risks of harm to detainees at ECHC, and have failed to take reasonable measures to mitigate these risks to their detainees.

30. Defendants have repeatedly and consistently disregarded NYS Corrections Law and their settlement agreement with the federal government, their common law duties, and the serious risks of harm to detainees at ECHC, and have failed to take reasonable measures to mitigate these risks to their detainees.

31. Defendants have repeatedly failed to provide adequate mental health and medical treatment services to detainees with serious mental health and medical needs. The Defendants have practiced inadequate suicide prevention, placing suicidal detainees in cells that contain multiple means for committing suicide, and the Defendants have failed to remove all harmful objects from cells, and did not properly watch and observe Trevell Walker. Additionally, the Defendants have provided inadequate mental health care and treatment, and have not provided detainees with care that involves the necessary steps to prevent self-injurious behavior and respond to clear signs of mental illness.

32. Defendants' failure to adopt and implement policies that prevented constitutional violations continued the inadequate medical and mental health care practices.

33. Additionally, Defendant has failed to adequately train ECHC employees on proper procedures to prevent violations of the detainees' constitutional rights.

34. Defendants failed to place Trevell Walker on suicide watch and take preventative measures so he could not attempt suicide.

35. Based upon the findings set forth in paragraphs "1" through "32", Defendants knew or should have known that their policies and practices were, and continue to be, deficient enough to result in negligence and constitutional violations.

COUNT I:
WRONGFUL DEATH

36. Plaintiff repeats and realleges paragraphs "1" through "35" above with the same force and effect as if they were fully set forth herein.

37. On or about October 12, 2011, Trevell Walker died as the legal and proximate result of the wanton, reckless, and/or negligent acts of the Defendants in their official roles relating to ECHC. ECHC failed to properly supervise, monitor, protect, and medically treat Trevell Walker as a detainee, who was being held there awaiting trial.

38. The Estate of Trevell Walker sustained pain, suffering, and injuries because of this event, and is able to sue under EPTL § 5-4.1. An action is maintainable by the "Guardian of the Property" and said damages flow to the decedent's intestate distributees.

COUNT II:
NEGLIGENCE

39. Plaintiff repeats and realleges paragraphs "1" through "38" above with the same force and effect as if they were fully set forth herein.

40. Defendants have a duty to protect its detainees' health and safety when they are held at ECHC, to screen, supervise, and monitor detainees, and to place detainees on suicide watch, remove harmful objects from their cells, and medically treat suicidal detainees.

41. On or about October 12, 2011, ECHC breached its duty owed to Trevell Walker when he committed suicide in his cell by failing to screen, supervise, monitor, medically treat, and protect him from harm. In addition thereto, the County had a duty to modify the holding cells and maintain proper staffing levels. The Sheriff had a duty to oversee the training and supervision of

staff, to implement suicide prevention efforts, to screen and treat potentially suicidal detainees, and to protect all detainees from self-injurious harm. The Sheriff breached this duty by not placing Trevell Walker on suicide watch, failing to remove harmful objects from Trevell Walker's cell, failing to medically treat Trevell Walker, and by not protecting him from harming himself.

42. Defendants' negligence and failure to supervise, screen, treat, and protect Trevell Walker was the proximate cause of Mr. Walker's death.

43. As a result of Defendant's negligence, the Estate of Trevell Walker sustained pain, suffering, and injuries.

COUNT III:
FEDERAL CIVIL RIGHTS VIOLATIONS UNDER 42 U.S.C. § 1983

44. Plaintiff repeats and realleges paragraphs "1" through "43" above with the same force and effect as if they were fully set forth herein.

45. Defendants have deprived Plaintiff of rights, privileges, and immunities secured by the United States Constitution through their wanton and reckless acts and omissions.

COUNT IV:
NEW YORK STATE CIVIL RIGHTS VIOLATIONS UNDER 9 NYCRR 7010

46. Plaintiff repeats and realleges paragraphs "1" through "45" above with the same force and effect as if they were fully set forth herein.

47. Defendants have deprived Trevell Walker of his rights, privileges, and immunities secured by the Codes, Rules, and Regulations of the State of New York through their wanton and reckless acts and omissions, which caused Plaintiff emotional harm and financial damages.

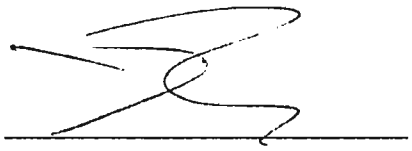
48. Specifically, "[p]rompt screening is essential to identify serious of life-threatening medical conditions requiring immediate evaluation and treatment." N.Y. Comp. Codes R. & Regs. tit. 9, § 7010.1. Defendants shirked this responsibility imposed by law.

WHEREFORE, Plaintiffs GLENN AND SUSAN FREELAND, as Administrators for the ESTATE OF TREVELL WALKER and as guardians of infant JALEN WALKER, seek damages in excess of this Court's jurisdictional limits, and any other remedies this Court deems just and reasonable.

JURY DEMAND

Plaintiffs demand a jury trial on all issues of fact and damages as claimed in this Complaint.

Dated: July 1, 2013
Tonawanda, New York



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Phone No.: (716) 832-3006

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

GLENN and SUSAN FREELAND,
as Administrators for the
ESTATE of TREVELL WALKER
and
as Guardians of the Infant and Sole Issue
JALEN WALKER

Plaintiffs,

-vs-

INDEX NO.: 80009 56/2015

ERIE COUNTY, NEW YORK;
and
MARK POLONCARZ,
ERIE COUNTY EXECUTIVE;
and
TIMOTHY B. HOWARD,
ERIE COUNTY SHERIFF;
and
MARK WIPPERMAN,
ERIE COUNTY UNDERSHERIFF;

Defendants.

NOTICE REGARDING AVAILABILITY OF ELECTRONIC FILING
SUPREME COURT CASES

PLEASE TAKE NOTICE that plaintiff(s)/petitioner(s) [defendant(s)/respondent(s)] in the case captioned above intends that this matter proceed as an electronically-filed case in the New York State Courts Electronic Filing System ("NYSCEF") in accordance with the procedures therefor, set forth in Uniform Rule 202.5-b and described below. Under that Rule, filing and service of papers by electronic means cannot be made by a party nor can electronic service be made upon a party unless that party has consented to use of the System for the case in question. Each party served with this Notice must promptly file with the court and serve on all other parties either aconsent or a declination of consent to electronic filing and service through NYSCEF for this case. (See Instruction # 2 below.)

General Information

Electronic filing offers significant benefits for attorneys and litigants, permitting documents to be filed with the County Clerk and the court and served, between or among consenting parties, by posting the documents on the NYSCEF Website, which can be done at any time of the day or night

on any day of the week. There is no fee to use the NYSCEF System, whether for filing, service, or consultation of the electronic docket, nor is there a charge to print documents from the docket. Normal filing fees must be paid, but this can be done by credit or bank card on-line. For additional procedures and information, see Uniform Rule 202.5-b, any e-filing protocol that may have been promulgated by the court in question, and the NYSCEF Website at www.nycourts.gov/efile.

Instructions

1. Service of this Notice constitutes consent to e-filing and a statement of intent by the undersigned to use the NYSCEF System in this case. When an action or proceeding is being commenced through the NYSCEF System, this Notice must accompany service of the initiating papers.

2. Each party served with this Notice may consent to e-filing either: (i) by filing with the court and serving on all parties of record a consent to e-filing, or (ii) if an authorized e-filing user, by filing a consent electronically in the manner provided at the NYSCEF site. Parties who do not wish to consent must file and serve a written declination of consent. If one party or some but fewer than all parties consent, NYSCEF may be used by and between or among consenting parties.

3. Each participating attorney, unless already registered, or self-represented party must PROMPTLY create a NYSCEF account and obtain the confidential Filing User Identification Number and Password necessary to use the system. To create a NYSCEF account, go to www.nycourts.gov/efile, click the Create an Account link, and follow the instructions.

4. For additional information about NYSCEF, see the User's Manual and Frequently Asked Questions on the Website, or contact the court in question or the NYSCEF Resource Center (at 646-386-3033 or efile@courts.state.ny.us).

Dated: 7/2/2013

Kevin T. Stocker (Name)

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