(12)

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

# COUNTY OF ERIE

**MARK C. POLONCARZ**
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

October 31, 2014

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

Dear Ms. McCarthy:

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: | *Montalvo, Misael v. County of Erie, et al.* |
| Document Received: | Summons and Complaint |
| Name of Claimant: | Misael Montalvo<br>21259-055<br>Northeast Ohio Correctional Center<br>2240 Hubbard Road<br>Youngstown, Ohio 44505 |
| Claimant's attorney: | Claimant is proceeding *pro se*. |

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle Parker
First Assistant County Attorney

MMP:dld
Enc.

AO 440 (Rev. 06/12) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

Western District of New York

Misael Montalvo

Misael Montalvo

*Plaintiff(s)*

v.

Nurse Practitioner Janet

*Defendant(s)*

Civil Action No. 14cv6251

RECEIVED
2014 OCT 22 PM 12: 25
US MARSHALS SERVICE
WESTERN NEW YORK

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

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:

Misael Montalvo
131327
ERIE COUNTY HOLDING CENTER
40 Delaware Avenue
Buffalo, NY 14202

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.

*CLERK OF COURT*

Date: OCT 21 2014

Michael J. Roemer

*Signature of Clerk or Deputy Clerk*

Civil Action No. 14cv6251

## PROOF OF SERVICE

***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))***

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
*Server's signature*

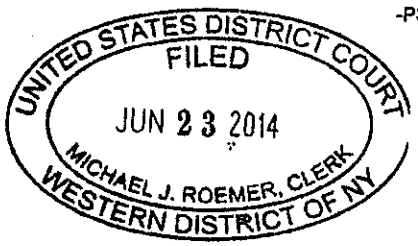
_____
*Printed name and title*

_____
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-PS-




MISAEL MONTALVO, 131327,

Plaintiff,

-v-

COMMISSIONER OF CORRECTION F. LAMY,
COMM. CORR. F. SULLIVAN,
SHERIFF T. HOWARD, UNDER SHERIFF
MARK WHIPPLEMAN, SUPER T. DUNA,
FIRST D.S. M. REARDON, CHIEF HARRIS,
CAPT. HARTMAN, SGT. VSINSKI,
SGT. KOPPEL, SGT. DIMOND,
SGT. MCANDREW, SGT. JOHN DOE,
DEP. SHERIFF JOHN DOE, DEP. SHERIFF
BROWN, DEP. SHERIFF HARVEY,
NURSE PRACTITIONER SHARON,
NURSE PRACTITIONER JANET,
COUNTY OF ERIE, KEEFE KIOSK ENTITY,
THOMAS REUTER and
THOMAS J. LOUGHREN,

Defendants.

**DECISION AND ORDER**
14-CV-6251W

Plaintiff, who is incarcerated in the Erie County Holding Center Correctional Facility, is hereby granted permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). Plaintiff has sent a letter to the Court expressing his inability to understand the Court Orders without translation assistance and raising issues regarding conditions not in the Complaint. If plaintiff wishes to pursue those claims in this action, he will need to file a supplement to this Complaint

indicating that he wishes to add those allegations to his complaint. Plaintiff's complaint has been screened by the Court with respect to the 28 U.S.C. §§ 1915(e) and 1915A criteria.

The Clerk of the Court is directed to reopen this action, to file plaintiff's papers, and to cause the United States Marshal to serve copies of the Summons, Complaint, and this Order upon the named defendants without plaintiff's payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in plaintiff's favor.[1]

The Clerk of the Court is also directed to forward a copy of this Order by email to Debra Martin, Assistant Attorney General in Charge, Rochester Regional Office <Debra.Martin@ag.ny.gov>.

Pursuant to 42 U.S.C. § 1997e(g)(2), the defendants are directed to answer the complaint.

IT IS SO ORDERED.

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

Dated: June 20, 2014

[1]Pursuant to a Standing Order of Court, filed September 28, 2012, a State employee defendant will have 60 days to file and serve an answer or other responsive pleading, *see* Fed.R.Civ.P. 12(a)-(b), if the defendant and/or the defendant's agent has returned an Acknowledgment of Receipt of Service by Mail Form within 30 days of receipt of the summons and complaint by mail pursuant to N.Y.C.P.LR. § 312-a.

Revised 10/06 WDNY

# UNITED STATES DISTRICT COURT
# WESTERN DISTRICT OF NEW YORK

14 CV 6251 W

## FORM TO BE USED IN FILING A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)

**All** material filed in this Court is now available via the **INTERNET**. See **Pro Se Privacy Notice** for further information.

UNITED STATES DISTRICT COURT
FILED
MAY 15 2014
MICHAEL J. ROEMER, CLERK
WESTERN DISTRICT OF NY

### 1. CAPTION OF ACTION

**A. Full Name And Prisoner Number of Plaintiff: NOTE:** *If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed authorization in the form required by the Clerk of Court. Failure to do so will be considered will be the plaintiff who filed an application and authorization*

1. MISAEL MONTALVO 131327
2.

-VS-

**B. Full Name(s) of Defendant(s) NOTE:** *Pursuant to Fed R Civ P 10(a) the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so*

1. COMMISSIONER OF CORRECTION F. LAMY
2. COMM. CORR. F. SULLIVAN
3. SHERIFF T. HOWARD
4. UNDER SHERIFF MARK WHIPPEMAN
5. SUPER. T. DUNA
6. FIRST D.S. M. REARDON

AP PLEASE SEE ATTACHED PAGE

### 2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

### 3. PARTIES TO THIS ACTION

**PLAINTIFF'S INFORMATION NOTE:** *To list additional plaintiffs, use this format on another sheet of paper*

Name and Prisoner Number of Plaintiff: MISAEL MONTALVO 131327

Present Place of Confinement & Address: ECHC 40 DELAWARE AV.
BUFFALO NY 14202

Name and Prisoner Number of Plaintiff:

Present Place of Confinement & Address:

CAPTION

1. PLAINTIFF MONTALVO VS.

7. CHIEF HARRIS
8. CAPT. HARTMAN
9. SGT. USINSKI
10. SGT KOPPEL
11. SGT. DIMOND
12. SGT MCANDREW
13. SGT JOHN DOE
14. DEP. SHERIFF JOHN DOE
15. DEP. SHERIFF BROWN
16. DEP. SHERIFF HARVEY
17. NURSE PRACTITIONER SHARON
18. NURSE PRACTITIONER JANET
19. COUNTY OF ERIE
20. KEEFE KIOSK ENTITY
21. THOMAS REUTER
22. THOMAS J. LOUGHREN

**DEFENDANT'S INFORMATION** **NOTE:** *To provide information about more defendants than there is room for here use this format on another sheet of paper*

Name of Defendant: THOMAS J. LOUGHREN

(If applicable) Official Position of Defendant: COMMISSIONER

(If applicable) Defendant is Sued in X Individual and/or X Official Capacity

Address of Defendant: 80 S. SWAN ST. 12th FLOOR ALBANY NY 12210

(518) 485-2346

Name of Defendant: FREDERICK LAMY

(If applicable) Official Position of Defendant: COMMISSIONER

(If applicable) Defendant is Sued in X Individual and/or X Official Capacity

Address of Defendant: 80 S. SWAN ST. 12th FLOOR ALBANY NY 12210

Name of Defendant: FRANCIS SULLIVAN

(If applicable) Official Position of Defendant: COMMISSIONER

(If applicable) Defendant is Sued in X Individual and/or X Official Capacity

Address of Defendant: 80 S. SWAN ST. 12th FLOOR ALBANY NY 12210

## 4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

**A.** Have you begun any other lawsuits in **state or federal court** dealing with **the same facts involved in this action?**

Yes___ No ✓

If Yes, complete the next section. NOTE: *If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

   Plaintiff(s):

   Defendant(s):

2. Court (if federal court, name the district; if state court, name the county):

3. Docket or Index Number:

4. Name of Judge to whom case was assigned:

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes____ No____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

____ Dismissed (check the box which indicates why it was dismissed):

____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

____ By court for failure to exhaust administrative remedies;

____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

____ By court due to your voluntary withdrawal of claim;

____ Judgment upon motion or after trial entered for

____ plaintiff

____ defendant.

**B.** Have you begun **any other lawsuits in federal court** which **relate to your imprisonment**?

Yes____ No____

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

_____

Defendant(s): _____

_____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

_____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes____ No____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

____ Dismissed (check the box which indicates why it was dismissed):

____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted:

____ By court for failure to exhaust administrative remedies;

____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

____ By court due to your voluntary withdrawal of claim;

____ Judgment upon motion or after trial entered for

____ plaintiff

____ defendant.

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## 5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include **all** possible claims.)

- Religion
- Free Speech
- Due Process
- Equal Protection
- Access to the Courts
- False Arrest
- Excessive Force
- Failure to Protect
- Search & Seizure
- Malicious Prosecution
- Denial of Medical Treatment
- Right to Counsel

**Please note** that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

**Fed.R.Civ.P. 8(a)** states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far a practicable to a single set of circumstances."

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## Exhaustion of Administrative Remedies

Note that according to **42 U.S.C. § 1997e(a)**, "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

**A. FIRST CLAIM:** On (date of the incident) PLEASE SEE ATTACHED PAGES

defendant (give the **name and position held** of **each defendant** involved in this incident) _____

did the following to me (briefly state what each defendant named above did): _____

The constitutional basis for this claim under 42 U.S.C. § 1983 is: _____

The relief I am seeking for this claim is (briefly state the relief sought): _____

**Exhaustion of Your Administrative Remedies for this Claim:**

Did you grieve or appeal this claim? ✓ Yes _____ No If yes, what was the result? DENIED

Did you appeal that decision? ✓ Yes _____ No If yes, what was the result? DENIED

*Attach copies of any documents that indicate that you have exhausted this claim.*

If you did not exhaust your administrative remedies, state why you did not do so: _____

**A. SECOND CLAIM:** On (date of the incident) PLEASE ATTACHED PAGES

defendant (give the **name and position held** of **each defendant** involved in this incident) _____

did the following to me (briefly state what each defendant named above did): _____

The constitutional basis for this claim under 42 U.S.C. § 1983 is: _____

The relief I am seeking for this claim is (briefly state the relief sought): _____

**Exhaustion of Your Administrative Remedies for this Claim:**

Did you grieve or appeal this claim? ✓ Yes ____ No If yes, what was the result? DENIED

Did you appeal that decision? ✓ Yes ____ No If yes, what was the result? DENIED

*Attach copies of any documents that indicate that you have exhausted this claim.*

If you did not exhaust your administrative remedies, state why you did not do so: _____

**If you have additional claims, use the above format and set them out on additional sheets of paper.**

**6. RELIEF SOUGHT**

*Summarize the relief requested by you in each statement of claim above.*

PLEASE SEE ATTACHED PAGES

Do you want a jury trial? Yes ✓ No ____

I declare under penalty of perjury that the foregoing is true and correct.

Executed on MAY 2, 2014
(date)

**NOTE:** *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*

X Mutaal Montalvo

Signature(s) of Plaintiff(s)

PRELIMINARY STATEMENT:

1. THIS IS A CIVIL ACTION SEEKING RELIEF AND/OR DAMAGES TO DEFEND AND PROTECT THE RIGHTS GUARANTEED BY THE CONSTITUTION OF THE UNITED STATES. THIS ACTION IS BROUGHT PURSUANT TO 42 U.S.C. § 1983. THE COURT HAS JURISDICTION OVER THE ACTION PURSUANT TO 28 U.S.C. §§ 1331, 1343 (3) and (4), and 2201.

2. THE PLAINTIFF IS A CITIZEN OF THE UNITED STATES AND A RESIDENT OF NEW YORK STATE. THE PLAINTIFF, MISAEL MONTALVO, IS CURRENTLY INCARCERATED AT THE ERIE COUNTY HOLDING CENTER (ECHC). PLAINTIFF, MISAEL MONTALVO, IS A DISABLED PERSON WHO SINCE THE AGE OF FIFTEEN SUFFERS FROM DIABETES AND MUST RECIEVE MEDICAL TREATMENT FOR HIS DISABILITY ON A DAILY BASIS.

3. THE PLAINTIFF SEEKS TO FURTHER ENVOKE THE JURISDICTION OF THIS COURT PURSUANT TO 42 USCA 1983 TITLE II OF THE AMERICANS WITH DISABILITIES ACT, OF 1990, SUBSECTION 504 OF THE REHABILITATION ACT OF 1973, 42 USCA 12132, 42 USCA (2131), 29 USCA 794, 28 CFR, 35.105 AND FOR VIOLATIONS OF THE PLAINTIFFS RIGHTS UNDER THE UNITED STATES FIRST, EIGHTH AND

FOURTEENTH CONSTITUTIONAL AMENDMENTS.

4. THE GRAVEMENT OF THIS COMPLAINT IMMEDIATELY CONCERNS THE DISCRIMINATORY CUSTOM, POLICIES AND PRACTICES WHICH HAVE EXCLUDED THE PLAINTIFF FROM FULL PARTICIPATION IN THE KEEFE KIOSK COMMISSARY PROGRAM.

5. ECHC IS A PUBLIC ENTITY SUPERVISED AND MANAGED BY THE SHERIFFS OFFICE WHICH IS ALSO A PUBLIC ENTITY AND AS SUCH THE SHERIFFS OFFICE AND THE ECHC HAS CONTRACTED THE KEEFE KIOSK COMPANY WHICH IS A SEPARATE ENTITY TO MANAGE THE COMMISSARY PROGRAM WITHIN THE ECHC. WHEREFOR, THE SHERIFFS OFFICE, ECHC AND KEEFE KIOSK ENTITIES ARE MANDATED TO COMPLY WITH TITLE II OF THE ADA WHICH STATES, "PUBLIC ENTITY" SECTION, PROVIDES THAT "NO QUALIFIED INDIVIDUAL WITH A DISABILITY SHALL, BY REASON OF SUCH DISABILITY, BE EXCLUDED FROM PARTICIPATION IN OR BE DENIED THE BENEFITS OF THE SERVICES, PROGRAMS OR ACTIVITIES OF A PUBLIC ENTITY, OR BE SUBJECTED TO DISCRIMINATION BY ANY SUCH ENTITY" 669 SECTION 504 OF THE REHABILITATION

ACT PROVIDES THAT "[N]O OTHERWISE QUALIFIED INDIVIDUAL WITH A DISABILITY IN THE UNITED STATES, . . . SHALL, SOLELY BY REASON OF HER OR HIS DISABILITY, BE EXCLUDED FROM THE PARTICIPATION IN, BE DENIED THE BENEFITS OF, OR BE SUBJECTED TO DISCRIMINATION UNDER ANY PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE OR UNDER ANY PROGRAM OR ACTIVITY CONDUCTED BY ANY EXECUTIVE AGENCY . . ." THIS MEANS THAT ANY AGENCY - INCLUDING A DEPARTMENT OF CORRECTIONS, SHERRIFF'S OFFICE, ETC. — THAT RECEIVES ANY FEDERAL FUNDING IS COVERED BY THE REHABILITATION ACT FOR ALL OF ITS SERVICES, PROGRAMS AND ACTIVITIES. FEDERAL AGENCIES AND PRISONS ARE NOT SUBJECT TO THE APA, BUT THEY ARE SUBJECT TO THE REHABILITATION ACT. DEPARTMENT OF JUSTICE REGULATIONS PROMULGATED UNDER THE STATUTES ARE APPLICABLE TO PRISONS AND JAILS.

6. PLAINTIFF ALLEGES AMONG OTHER THINGS THAT THE DEFENDANTS COMMISSIONERS OF CORRECTIONS

FREDERICK LAMY AND FRANCIS SULLIVAN, SHERIFF HOWARD, UNDERSHERIFF MARK WHIPPERMAN ET. AL, ARE POLICY MAKERS FOR THE SHERIFF'S OFFICE, CORRECTIONAL FACILITIES, JAILS AND ECHC AND AS SUCH THESE DEFENDANTS HAVE CREATED POLICIES IN THE JAIL MANAGEMENT DIVISION INMATE HANDBOOK THAT DELIBERATELY AND INTENTIONALLY DISCRIMINATE AGAINST THE PLAINTIFF WHO IS A DISABLED PERSON THAT SUFFERS FROM DIABETES AND IS ALLEGEDLY PRESCRIBED A SPECIAL DIET. THE DEFENDANTS LAMY, SULLIVAN, HOWARD WHIPPERMAN ET. AL CREATED A POLICY OR CUSTOM UNDER WHICH UNCONSTITUTIONAL PRACTICES OCCURRED, OR ALLOWED THE CONTINUANCE OF SUCH A POLICY OR CUSTOM. THE DEFENDANTS WERE ALSO GROSSLY NEGLIGENT IN SUPERVISING SUBORDINATES WHO COMMITTED THE WRONGFUL ACTS. THE DEFENDANTS EXHIBITED DELIBERATE INDIFFERENCE TO THE RIGHTS OF INMATES BY FAILING TO ACT ON INFORMATION INDICATING THAT UNCONSTITUTIONAL ACTS WERE OCCURRING.

7. THE DEFENDANTS LAMY, SULLIVAN, HOWARD WHIPPERMAN, DINA ET.AL IMPLEMENTED AND ENFORCED A POLICY IN THE REVISED JAIL MANAGEMENT DIVISION INMATE HANDBOOK DATED JULY 2013 ON PAGE FOURTEEN "COMMISSARY ORDERING LEVELS" WHICH STATES "INMATES WITH DIETARY RESTRICTIONS WILL NOT BE ALLOWED TO ORDER ANY FOOD ITEMS ON COMMISSARY." PLAINTIFF WHO IS A DIABETIC AND ON A FRAUDULANT SPECIAL DIET HAS BEEN DISCRIMINATED AGAINST BY A POLICY THAT IS UNCONSTITUTIONAL WHICH EXCLUDES THE PLAINTIFF FROM RECEIVING THE BENEFITS FROM FOOD ITEMS BEING SOLD IN THE KEEFE KIOSK COMMISSARY PROGRAM. THE DEFENDANTS LAMY, SULLIVAN, HOWARD WHIPPERMAN, DINA, KEEFE KIOSK ET.AL HAVE BEEN ARBITRARY IN THEIR POLICY MAKING AND HAVE FAILED TO MAKE A SELF EVALUATION OF EXISTING POLICIES THAT DISCRIMINATE AGAINST QUALIFIED INDIVIDUALS WITH A KNOWN DISABILITY. THESE DEFENDANTS HAVE REFUSED TO MODIFY SUCH UNCONSTITUTIONAL POLICIES THAT

BLATANTLY DISCRIMINATE AGANST INMATES WHO SUFFER FROM DIABETES, AND MUST RELY ON AN ADEQUATE DIET MENU WHICH ALSO THE DEFENDANTS HAVE FAILED TO PROVIDE.

8. LAMY IS THE SUPERIOR OF SULLIVAN, SULLIVAN IS THE SUPERIOR OF HOWARD, HOWARD IS THE SUPERIOR OF WHIPPERMAN, WHIPPERMAN IS THE SUPERIOR OF DINA AND DINA IS CONTRACTED WITH KEEFE KIOSK WHICH HAVE ALL ACTED IN COLUSION TO DISCRIMINATE AGAINST THE PLAINTIFF BY EXCLUDING THE PLAINTIFF FROM PURCHASING NEARLY TWENTY SEVEN FOOD ITEMS IN COMMISSARY PROGRAM THAT ARE BENEFICIAL TO DIABETICS.

9. THE DEFENDANTS NURSE PRACTITIONER SHARON AND NURSE PRACTITIONER JANET HAVE SUBJECTED THE PLAINTIFF TO MEDICAL DELIBERATE INDIFFERENCE BECAUSE THE PLAINTIFF REQUIRES AN ADEQUATE DIET MENU TO STABILIZE HIS INSULIN LEVEL. HOWEVER, THE DEFENDANTS HAVE ALL

FAILED TO EMPLOY AN ADEQUATE DIETICIAN THAT WOULD IMPLEMENT A CONDUSIVE DIABETIC MENU. THE DEFENDANTS ARE ALL BEING SUED IN THEIR INDIVIDUAL AND OFFICIAL CAPACITY.

10. THE DEFENDANTS LAMY, SULLIVAN ET. AL HAVE BEEN MALICIOUS IN THEIR OFFICIAL CAPACITY WHEN IMPLEMENTING POLICIES WHICH RECKLESSLY DISREGARD THE RIGHTS OF DISABELED PERSONS.

11. THE PLAINTIFF ASSERTS THAT THE DEFENDANTS HOWARD, WHIPPERMAN, DINA, REARDON, CHIEF HARRIS, CAPT. HARTMAN, GRIEVANCE COORDINATOR SGT. McANDREW ET. AL HAVE ALL VIOLATED THE PLAINTIFFS FIRST CONSTITUTIONAL AMENDMENT BY DEPRIVING THE PLAINTIFF FROM EXERCISING HIS RIGHT TO GRIEVE AND STONEWALLING THE PLAINTIFF FROM EXERCISING HIS DUE PROCESS RIGHTS

12. THE DEFENDANTS LAMY, SULLIVAN, HOWARD, ~~REA~~ WHIPPERMAN, DINA, REARDON, HARRIS CAPT. HARTMAN, SGT. MCANDREW ET. AL ALL HAVE A CUSTOM POLICY IN PRACTICE

OF RETALIATING AGAINST INMATES WHO PETITION THE GOVERNMENT FOR REDRESS BY PLACING SUCH INMATES ON TRANSFERS AND FABRICATING ERRONEOUS ALLEGATIONS THAT ARE WHOLLY UNCONSTITUTIONAL

13. THE DEFENDANTS LAMY, SULLIVAN, HOWARD WHIPPERMAN DIINA, REARDON, CAPT. HARTMAN SGT. MCANDREW, SGT. DIMOND ET. AL HAVE ALL MALICIOUSLY AND SADISTICALLY ACTED WITH A CULPABLE STATE OF MIND TO DEPRIVE THE PLAINTIFF OF HIS RIGHTS UNDER THE UNITED STATES CONSTITUTION BY NOT PROVIDING THE PLAINTIFF WITH A SPANISH INTERPRETER WHICH PLAINTIFF DOES NOT SPEAK ENGLISH AND HAS BEEN SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT WHICH THAT AMOUNTS TO ATYPICAL AND SIGNIFICANT HARDSHIP.

STATEMENT OF FACTS

14. THE PLAINTIFF WHO IS A DISABLED PERSON AND SUFFERS FROM DIABETES WHICH SUCH TERM IS DEFINED UNDER S.S. (A) OF TITLE II OF THE ADA AS A QUALIFIED INDIVIDUAL WITH A KNOWN DISABILITY THE PLAINTIFF ON OR ABOUT NOV. 19 2011 WAS ARRESTED, TAKEN INTO CUSTODY AND DETAINED AT THE ECHC. THE PLAINTIFF IMMEDIATELY INFORMED JAIL OFFICIALS AND THE MEDICAL DEPARTMENT THAT HE DID NOT SPEAK ENGLISH AND NEEDED A SPANISH INTERPRETER. HOWEVER, SUCH REQUEST REMAIN TO NO AVAIL.

15. IN LIEU OF PLAINTIFF BEING A DIABETIC, THE DEFENDANTS NURSE PRACTITIONER SHARON AND JANET, AS OF NOV. 19th 2011 up UNTIL THE CURRENT DATE OF MAY 1st 2014 HAS FAILED TO ENSURE THAT PLAINTIFF RECEIVED AN ADEQUATE DIABETIC DIET WHICH SUCH DELIBERATE INDIFFERENCE OF MEDICAL CARE HAS PLACED THE PLAINTIFF AT THREAT OF SUFFERING IRREPARABLE HARM.

16. ALTHOUGH PLAINTIFF HAS REPEATEDLY REQUESTED FOR THE NURSE PRACTITIONER SHARON

TO PRESCRIBE AND ORDER FOR JAIL OFFICIALS TO PROVIDE PLAINTIFF WITH SNACKS DURING THE LONG PERIOD HOURS OF 4:30 PM UNTIL APPROXIMATELY 9:AM WHICH IS THE DURATION THAT PLAINTIFF IS LEFT WITHOUT EATING AND THE PLAINTIFFS SUGAR LEVEL HAS BOTTOMED OUT BUT THE DEFENDANT NURSE PRACTITIONER SHARON HAS STATED "NO WE DO NOT ISSUE PRISONERS SNACKS."

17. ON OR ABOUT FEB 16, 2013 PLAINTIFF WAS CHARGED WITH ERRONEOUS BEHAVIOR ALLEGATIONS. PLAINTIFF DUE PROCESS WAS VIOLATED BY THE HEARING OFFICER DEFENDANT JOHN DOE CONDUCTED THE HEARING IN A DISCRIMINATORY AND PREJUDICAL MANNER THAT WAS BIAS TO THE PLAINTIFF. DEFENDANT HEARING OFFICER JOHN DOE WHILE CONDUCTING THE HEARING ON OR ABOUT FEB 20, 2013 DENIED THE PLAINTIFF THE RIGHT TO HAVE A SPANISH SPEAKING INTERPRETER, THE RIGHT TO THER HEARING ASSISTANCE, THE RIGHT TO CALL WITNESSES, THE RIGHT TO CONDUCT LEGAL RESEARCH AND THE RIGHT TO A BILINGUAL INTERPRETOR

TO ASSIST PLAINTIFF WITH APPEAL PROCESS (SEE EXHIBIT A)

18. THE DEFENDANT SGT. USINSKI CONSPIRED WITH DEPUTY DEFENDANT JOHN DOE BY NOT AFFORDING THE PLAINTIFF WITH A WRITTEN DISCIPLINARY REPORT SO THAT THE PLAINTIFF CAN HAVE PROPER NOTICE OF HIS CHARGES, THE DEFENDANT HEARING OFFICER KOPPEL CONDUCTED THE HEARING IN A MALICIOUS AND ARBITRARY MANNER. DEFENDANT KOPPEL FAILED TO REMAIN AN IMPARTIAL FACT FINDER OF EVIDENCE AND ALSO PRECLUDED THE PLAINTIFF FROM THE RIGHT TO HAVE THE HEARING RECORDED.

19. THE DEFENDANT H.O. KOPPEL SENTENCED THE PLAINTIFF 180 DAYS SHU. WHICH SUCH SOLITARY CONFINEMENT TANTAMOUNTED TO CRUEL AND UNUSUAL PUNISHMENT AND ATYPICAL AND INSIGNIFICANT HARDSHIP BECAUSE PLAINTIFF COULD NOT SPEAK ENGLISH AND ACCESS TO LAW MATERIAL IN SPANISH WAS DENIED, ACCESS TO LAW LIBRARY DENIED. DUE TO NO TRANSLATOR PLAINTIFF WAS DENID THE RIGHT

TO CONDUCT LEGAL RESEARCH AND
ACCESS TO COURTS FROM FEB 20 2013
TO JULY 26 2013. THE PLAINTIFF
WHILE IN SOLITARY CONFINEMENT
WAS SUBJECTED TO MEDICAL DELIBERATE
INDIFFERENCE AS A DIABETIC BECAUSE
HIS SUGAR LEVEL WOULD BOTTOM OUT
AND HE HAD TO BE PROVIDED
EMERGENCY MEDICAL ATTENTION
ON NUMEROUS OCCASIONS. WHILE
IN SHU. THE PLAINTIFF ON OR
ABOUT APRIL 7 2013 NEARLY DIED
WHILE IN SHU. IN THE EARLY AM
HOURS CALLED FOR THE DEPUTY
SHERIFF BECAUSE HIS SUGAR
LEVEL HAD WENT TOO LOW. BUT
THE DEPUTY SHERIFF NEVER
ANSWERED. WHEN THE PLAINTIFF
AWAKENED HE WAS BEING
TREATED BY MEDICAL.
(SEE EXHIBIT B)
20 DURING THE PERIOD OF NOV. 19 2011
UP UNTIL FEB 10 2013 PLAINTIFF
WAS ALLOWED TO PURCHASE FOOD
ITEMS FROM COMMISSARY PROGRAM.
AS INMATES WERE SUBMITTING
COMMISSARY PURCHASE ORDERS
THROUGH COMMISSARY PAPER SHEETS,

HOWEVER, ON OR ABOUT FEB 13 2013, THE ECHC HAD INSTALLED THE KEEFE KIOSK TOUCH - SCREEN EQUIPMENT DEVICE. IT WAS THEN THE DEFENDANTS LAMY, SULLIVAN, HOWARD, WHIPPERMAN, DIINA, KEEFE KIOSK ET. AL ALONG WITH THE HEALTH DEPT. OF MEDICAL, DEFENDANTS NURSE PRACTITIONERS SHARON AND JANET ACTED IN COLUSION WITH IMPLEMENTING A DISCRIMINATORY POLICY THAT DISCRIMINATED AGAINST DIABETICS AND PRECLUDED THE PLAINTIFF FROM PURCHASING FOOD FROM COMMISSARY PROGRAM.
(SEE EXHIBIT C)

21. ON OR ABOUT OCT. 6 2013, THE DEFENDANT DEPUTY SHERIFF BROWN RETALIATED AGAINST PLAINTIFF BECAUSE PLAINTIFF FILED GRIEVANCES AGAINST BROWN, ISSUED THE PLAINTIFF FABRICATED MISBEHAVIOR REPORTS.
(SEE EXHIBIT D)

22 ON OR ABOUT APRIL 23 2014 THE PLAINTIFF WITH ASSISTANCE FROM A SPANISH SPEAKING INMATE FILED A

GRIEVANCE AGAINST E.C. SHERIFFS OFFICE, ECHC EMPLOYEES AND MEDICAL DEPT. EMPLOYEES FOR DISCRIMINATING AGAINST THE PLAINTIFF AND IMPLEMENTING POLICIES THAT DISCRIMINATED AGAINST THE PLAINTIFF THUS EXCLUDING PLAINTIFF FROM FULL PARTICIPATION IN THE KEEFE COMMISSARY PROGRAM.

23. THE DEFENDANT GRIEVANCE COORDINATOR SGT. MCANDREW DENIED PLAINTIFFS GRIEVANCE AND REFUSED TO PROCESS SUCH SAID GRIEVANCE ALLEGING THAT INMATES CANNOT GRIEVE MEDICAL OR SITUATIONS THAT INVOLVE THE MEDICAL DEPT. (SEE EXHIBIT E)

24. ON MAY 1st 2014 THE DEFENDANT SGT. MCANDREW ON FOX SOUTH STATED TO THE PLAINTIFF, "THE POLICY ON PG. 14 IS MEDICALS DOING, THE SHERIFF'S OFFICE CANNOT SUPERCEDE MEDICAL."

25. DEFENDANT LOUGHREN HAS A CUSTOM POLICY IN PRACTICE OF FAILING TO INVESTIGATE INMATES GRIEVANCES AND CONDUCTING INVESTIGATIONS & LOUGHREN FAILED TO BE IMPARTIAL. (SEE EXHIBIT F)

SUMMARY OF RELIEF SOUGHT

1. THE DEFENDANTS BE ORDERED BY THE COURT TO COMPENSATE PLAINTIFF IN THE AMOUNT OF ONE MILLION DOLLARS.

2. THE DEFENDANTS BE ORDERED BY THIS COURT TO PAY THE PLAINTIFF PUNITIVE DAMAGES IN THE AMOUNT OF TWO MILLION DOLLARS.

3. THE DEFENDANTS BE ORDERED TO PUT IN PLACE A SPANISH/BILINGUAL PROGRAM FOR INMATES WHO DO NOT SPEAK ENGLISH.

4. THE DEFENDANTS BE ORDERED BY THIS COURT TO RECORD ALL DISCIPLINARY HEARINGS AND TRANSCRIBE WRITTEN DISCIPLINARY NOTICES FROM ENGLISH TO SPANISH.

5. THE DEFENDANTS BE ORDERED BY THIS COURT TO PROVIDE TRANSLATION OF LEGAL MATERIALS, CASE LAW, LAW BOOKS AND TRANSLATION FROM ENGLISH TO SPANISH ON THE LEGAL RESEARCH PROGRAM THOMAS REUTER PREMISE FOUR.

6. THE DEFENDANTS BE ORDERED TO EMPLOY AN ADEQUATE DIETICIAN FOR DIABETIC MENUS.

7. THE DEFENDANTS BE ORDERED BY THIS COURT TO REFRAIN FROM DISCRIMINATING AGAINST THE PLAINTIFF AND ALLOW FULL PARTICIPATION AND RECEIPT OF BENEFITS IN ALL PROGRAMS, SERVICES AND ACTIVITIES WITHIN A PUBLIC ENTITY.

8. THE DEFENDANTS BE ORDERED BY THIS COURT TO TAKE SENSITIVITY TRAINING AND LEARN HOW TO INTERACT WITH DISABLED PERSONS.

9. THE DEFENDANTS BE ORDERED BY THIS COURT TO IMPLEMENT AN ADEQUATE GRIEVANCE PROGRAM WHICH REMAINS IMPARTIAL AND PROCESSES ALL INMATES GRIEVANCES WITH A GRIEVANCE COMMITTEE PANEL.

10. THE DEFENDANTS BE ORDERED TO EMPLOY AN ADEQUATE DOCTOR THAT WILL NOT COMPROMISE HEALTH AND WELL BEING

OF INMATES

11. THAT DEFENDANTS BE ORDERED TO IMPLEMENT A SPANISH TRANSLATION OF THE REFER COMMISSARY RECIEPTS.

(EX A)

EX A

# ERIE COUNTY SHERIFF'S OFFICE – JAIL MANAGEMENT DIVISION

# DISCIPLINARY REPORT

| Inmate Name | ICN# | H.U. # | Date of Report |
|---|---|---|---|
| MONTALVO MIGUEL | 131327 | 1-2B-3 | 2-16-13 |
| **Location of Offense** | **Date/Time of Offense** | **Incident #** | **Reporting Officer** |
| FOX NORTH | 2/16/13 1000 | | PAVEL |

| CHARGE# | OFFENSE | CLASS |
|---|---|---|
| 104-1A | CONTRABAND [illegible] | A |
| 105-[illegible] | [illegible] | B |
| 105-[illegible] | [illegible] | C |
| | | |
| | | |
| | | |

## NARRATIVE

ON THIS DATE [illegible] AT APPROXIMATELY 1000 hrs ON FOX NORTH THIS [illegible] INMATE [illegible] MONTALVO MIGUEL [illegible] [illegible] UPON FURTHER INVESTIGATION THIS [illegible] [illegible]

Under penalty of perjury, I attest that the above Statement is are true to the best of my knowledge and belief.

[signature] 1543 2-16-13

Signature of reporting Officer Badge # Date

## Inmate's Receipt

I have been advised of my rights with regard to the disciplinary process and have been provided with a written copy of the disciplinary charges filed against me.

Inmate's signature Date

☒ Inmate refused to sign receipt [signature]

Witness signature

## Waiver

I understand that I am entitled to a minimum of 24 hours to prepare a defense, prior to any disciplinary proceeding. I voluntarily waive that right and request that my hearing be held at the next scheduled meeting of the Disciplinary Committee.

Inmate's Signature Date

## SUPERVISOR REVIEW

This report meets the standards for disciplinary reports as established by the Jail Management Division of the Erie County Sheriff's Office.

☒ Forward to the Disciplinary Committee [signature]

Signature of Reviewing Supervisor Date

## NOTIFICATION OF INMATE'S RIGHTS

- You will be given an opportunity to be heard in your own behalf.
- You will be provided with a minimum of 24 hours in which you may prepare a defense and present it to the Disciplinary Committee. You may submit a written statement, which will be maintained as part of the record. You may request that witnesses be called to testify, or to submit written statements on your behalf.
- You will receive written notice of the decision of the Disciplinary Committee.
- You may appeal the decision of the Disciplinary Committee, in writing within 2 business days, to the Chief of Operations.
- If you refuse to attend your Disciplinary Hearing, the hearing will be held without you being present. Your refusal to attend may result in the forfeiture of your right to appeal the Committee's decision. (Watson V. Coughlin 517 N.Y.S.2d 620 [3d D. 1987])

ECHC 1811(01)

(EX B)

EX B

# ERIE COUNTY HOLDING CENTER
# DISCIPLINARY HEARING RECORD

| Inmate Name | ICN# | Housing Unit / # | Date of Report |
|---|---|---|---|
| MONTALVO MISAEL | 131327 | FNDR 28-3 | 2-16-13 |

| Location of Offense | Date / Time of Offense | | Incident # | Reporting Officer |
|---|---|---|---|---|
| FOX NORTH | 2-16-13 | 1000 | | PRIZEL |

[X] Defendant Present at Hearing
[ ] Defendant Refused to Attend
X [signature]
(Inmate's Signature)

| Charges | Class | Inmate's Plea | | Findings | |
|---|---|---|---|---|---|
| 104-1A | A | G | NG | G | NG |
| 106-B | B | G | NG | G | NG |
| 109-C | C | G | NG | G | NG |
| | | G | NG | G | NG |
| | | G | NG | G | NG |
| | | G | NG | G | NG |
| | | G | NG | G | NG |

NOTES

## INMATE'S STATEMENT:

I Admit that I took the Razor, I know that I was wrong. This the hard Problem that you will have Gang

The finding of INNOCENCE / GUILT is based upon the following credible evidence presented at the hearing:

[ ] Officer's direct observations.
[ ] Inmate's statement(s).
[ ] Review of INCIDENT REPORT J-28.
[ ] Review of physical evidence.
[ ] Witness statement(s).
[ ] Other _____

## SANCTIONS IMPOSED:

[ ] Time Served
[ ] Verbal reprimand
[ ] Probation: _____ days; _____ days KLNP if violated
[ ] Restitution: $ _____ payable from existing/future funds
[X] Loss of privilege(s): KL for 180 days
[ ] Disciplinary Segregation: _____ days
[ ] Recommend Admin. Action: _____

Sanctions to run for a period of 180 days, From 2/16/13 to 8/14/13

You will be returned to general population on 8/14/13 at 6:30 p.m.

DISCIPLINARY COMMITTEE DAY: _____ DATE: _____ TIME: _____

Disciplinary Committee Signature | Disciplinary Committee Signature | Disciplinary Committee Signature

(EX C)

KEEFE COMMISSARY NETWORK SALES
P.O. BOX 8401
KANSAS CITY MO 64[illegible]

EXC

NAME: MONTALVO MISAEL
MBR: 131327
BLOCK: ECHO TIER: G CELL: 5A
SITE: ERIE CO CORRECTIONAL FACILITY G 27 [illegible] 001

ORDER DATE:
ORDER NBR:
OPR NBR:
BOX FORM #:
PAGE

ORDER SITE: KEEFE

| QTY | ITEM# | ITEM# | ITEM DESCRIPTION | UNIT | TOTAL |
|---|---|---|---|---|---|
| 1 | 0147 | 822336 | H-UP W/P DEC [illegible] WAVE | | |
| 1 | 0898 | 28933 | DIAL TRANSLU[illegible] [illegible] 404P | | [illegible] |
| 1 | 1060 | 28835 | 8.5 X 11 LET[illegible] WHT | | [illegible] |
| 1 | 1094 | 28844 | MTV [illegible] | | [illegible] |
| 10 | 2100 | 901445 | N/A 5E ORANG[illegible] | | [illegible] |

Secure Items:

| | | | | | |
|---|---|---|---|---|---|
| 1 | 1001 | 8983 | LARGE STAMPED ENVELOPE | ea | 1.00 |

SUB-TOTAL 10.40

SALES TAX .47

GRAND TOTAL 11.87

NEW BALANCE 84.[illegible]

LIST SHORTAGES AND/OR DAMAGES HERE:
ITEM# QUANTITY DISTRIBUTOR RECEIVED TODAY

SIGNED Misael Montalvo DATE 2/28/13

WITNESSED BY _____ DATE 2/22/13

(EX D)

EX D

# ERIE COUNTY SHERIFF'S OFFICE

## JAIL MANAGEMENT DIVISION

10/10/2013

**TO: Montalvo, Misael 12127** **FSO 81**

**RE: Grievance 13G-156**

Please read the decision of the Chief Administrative Officer

Please check that you have read his decision, Then;

Check;

I agree to accept the decision, or:

I wish to appeal to the Citizen's Policy and Complaint Review Council

Sign the form.

Then you must return the form within business two days by 10/14/2013 or the grievance will be closed.

Thank you,

Chief A. Harris

Chief Administrative Officer

early L/D
rep unthoughtful

EX P

# New York State Commission of Correction

## Grievance Form Part I

**Facility:** Erie County Sheriff's Office—Jail Management Div.
- ☐ Holding Center NY014023C 1403
- ☐ Correctional Facility NY014013C 1402
- ☐ Yankee Compound NY011043C 1410

**Housing Location :** fx South #81

**Grievance #:** 136 - 156
FACILITY ASSIGNS THIS NUMBER

**Inmate's Name:** Montalvo Misael **ICN #:** 131387

**Brief Description of the Grievance** *(Completed by the Grievant)* : **Number of Additional Sheets Attached ( )**

We were told to lock in by Deputy Brown #1286 on Sept 29th for noise the pod was quiet all night, there is no people in our unit and never have a problem until he works. He refused me a grievance and said if I want one he will put me in the box. He threatened the pod and at one point got into a inmates face with threats to physically harm him. Brown verbal abuse brings tension to an environment thats never had or caused a serious problem.

**Action Requested by the Grievance** *(Completed by the Grievant)* : **Number of Additional Sheets Attached ( )**

He should be under review for his temper towards inmates. Also the facility should have counceling for violent C.O'S / Deputy'S.

He should not be allowed to work in the pods with all his personal problems.

Grievant Signature : Misael Montalvo **Date/Time Submitted:** Sept 30 2013

Receiving Staff Signature : 1393 **Date/Time Submitted:** 9/30/13 1536

**Summary of Facility Staff attempts to resolve** *(Attach Relevant Documentation)* : **Number of Additional Sheets Attached ( )**

unable to resolve unit L/D due to excessive noise per SGT Bates

☐ Language Barrier, List language_____: Name of Interpreter and affiliation_____

☐ Cognitive Disability Barrier, Low literacy. If box is checked, what steps were taken to assist grievant? (List above)

Officer/Supervisor Signature : 1393 **Date/Time :** 9/30/13

**( ) I agree to accept the informal resolution to my Grievance**

**(X) I do not agree to accept the informal resolution to my Grievance**

Grievant Signature : Misael Montalvo **Date/Time Submitted:** 9/30/13

**Forward to the Grievance Coodinator :** *Grievance must be forwarded to the Grievance Coordinator within 24 hours of submission*

Officer/Supervisor Signature : **Date/Time :** 9/30/13 2100

**Received by the Grievance Coodinator :**

Grievance Coordinator Signature : Sgt Franklin **Date/Time :** 10/1/13 @ 0700

Ex D

# ERIE COUNTY HOLDING CENTER
# DISCIPLINARY HEARING RECORD

| Inmate Name | ICN# | Housing Unit / # | Date of Report |
|---|---|---|---|
| Montalvo Misael | 131327 | B-SH44 | 10/6/13 |

| Location of Offense | Date/Time of Offense | Incident # | Reporting Officer |
|---|---|---|---|
| E 50 Common Area | 10/6/13 2200 | | Brown |

[ ] Defendant Present at Hearing
[ ] Defendant Refused to Attend
X [signature]
(Inmate's Signature)

| Charges | Class | Inmate's Plea | | Findings | |
|---|---|---|---|---|---|
| 106-B | B | (G) | NG | (G) | NG |
| 107-J | C | (G) | (NG) | G | (NG) |
| 106-G | B | G | (NG) | G | (NG) |
| 107-I | C | (G) | NG | (G) | NG |
| | | G | NG | G | NG |
| | | G | NG | G | NG |
| | | G | NG | G | NG |

NOTES

**INMATE'S STATEMENT:**

I DIDN'T LOCK IN BECAUSE THE OFF REFUSED TO NOTIFY THE SGT. AND I WANTED TO PLEAD MY CASE.

The finding of INNOCENCE / GUILT is based upon the following and the evidence presented at the hearing:

[X] Officer's direct observations.
[X] Inmate's statement(s).
[ ] Review of INCIDENT REPORT J-28.
[ ] Review of physical evidence.
[ ] Witness statement(s).
[ ] Other _____

**SANCTIONS IMPOSED:**

[ ] Time Served
[ ] Verbal reprimand
[X] Probation: 10 days; 5 days KLNP if violated
[ ] Restitution: $ _____ payable from existing/future funds
[ ] Loss of privilege(s): _____ for _____ days
[ ] Disciplinary Segregation: _____ days
[ ] Recommend Admin. Action: _____

Sanctions to run for a period of 10 days, From 10/9/13 to 10/19/13.
You will be returned to general population on _____ at 6:30 p.m.

DISCIPLINARY COMMITTEE DAY: WED DATE: 10/9/13 TIME: 0900

[signature] Disciplinary Committee Signature
_____ Disciplinary Committee Signature
[signature] Disciplinary Committee Signature

ECHC 19 (08/03)

EXD

# ERIE COUNTY SHERIFF'S OFFICE • JAIL MANAGEMENT DIVISION

# DISCIPLINARY REPORT

| Inmate Name | ICN# | H.U. # | Date & Time of Report | |
|---|---|---|---|---|
| Mojatollo Misael | 131337 | 4x South - 31 | 10-6-13 | |
| **Location of Offense** | **Date/Time of Offense** | **Incident #** | **In Date** | **Out Date** |
| 4x South - Common Area | 10-6-13 [illegible] | | | |

| CHARGE# | OFFENSE | CLASS |
|---|---|---|
| 105-B | Disorderly Conduct - which results threatens safety security or good order of facility | B |
| 107-J | Failure to immediately obey oral order from a staff member | C |
| 106-J | Making unreasonable noise | C |
| 106-G | Harassment / obscene language / gestures | B |
| | | |

**NARRATIVE**

On above date approx time this deputy gave inmate Mojatollo (131337) a direct order to stop talking very loud from the [illegible] 3rd floor to inmate 1st floor. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] talk [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 1st floor [illegible] [illegible] [illegible] [illegible] pointed his [illegible] at this deputy [illegible] [illegible] [illegible] give inmate Mojatollo direct order [illegible] [illegible] [illegible] comply. [illegible] further [illegible] at this time [illegible] End of Report (DB)

(DO/11P)

Under penalty of perjury, I attest that the above Statements are true to the best of my knowledge and belief:

Signature of reporting Officer: Dep / D.B[illegible] Badge #: 1286 Date: 10/6/13

| Inmate's Receipt | Waiver |
|---|---|
| I have been advised of, and provided with a written copy of the disciplinary charges filed against me. | I understand that I am entitled to a minimum of 24 hours to prepare a defense, prior to any disciplinary proceeding. I voluntarily waive that right and request that my hearing be held at the next scheduled meeting of the Disciplinary Committee. |
| Inmate's Signature: X REFUSED Date: 10-6-13 | Inmate's Signature: ______ Date: ______ |
| ☒ Inmate refused to sign receipt. Signature of Employee & Title: [signature] 1120 [illegible] | Signature of Employee & Title: ______ |

**SUPERVISOR'S REVIEW**

This report meets the standards for disciplinary reports as established by the Jail Management Division of the Erie County Sheriff's Office.

☑ Forward to the Disciplinary Committee

☐ File

Signature of Reviewing Supervisor: Sgt [signature] Date: 10-7-13

**NOTIFICATION OF INMATE'S RIGHTS**

- You will be given an opportunity to be heard in your own behalf.
- You will be provided with a minimum of 24 hours in which you may prepare a defense and present it to the Disciplinary Committee. You may submit a written statement, which will be maintained as part of the record. You may request that witnesses be called to testify, or to submit written statements on your behalf.
- You will receive written notice of the decision of the Disciplinary Committee.
- You may appeal the decision of the Disciplinary Committee, in writing within two (2) business days, to the Superintendent or Designee.
- If any good time is revoked; on or about ten (10) days prior to your minimum outdate, you may apply to the Disciplinary Committee for restoration of lost good time.

(EX E)

# ERIE COUNTY SHERIFF'S OFFICE

Ex. E

## JAIL MANAGEMENT DIVISION

4/29/2014

**TO: Montalvo, Misael 131327 F SO 81**

**RE: Grievance 14RG-164 Date Grievance Submitted: 4/26/2014**

I have received and reviewed your Inmate Grievance dated 4/26/2014

Pursuant to 9NYCRR7032.4(h) Program Requirements:
Grievances regarding issues that are outside the authority of the chief administrative officer to control are not grievable and may be returned to the inmate by the grievance coordinator. Such grievances may not be appealed to the chief administrative officer or the Citizens' Policy and Complaint Review Council.

A Health Care Professional determines all medical actions related to your health care plan. This may include, but is not limited to: any treatments, diets, medications, medication dosages, decisions related to hospitalization and consultations to any outside health care professional. Medical related actions are outside the authority of the Chief Administrative Officer.

Therefore, this shall serve to inform you that your grievance dated 4/26/2014 cannot be processed and is being returned to you. This grievance may not be appealed to the Chief Administrative Officer or to the Citizens' Policy and Complaint Review Council.

Thank you.

Sgt. McAndrew

Grievance Coordinator

CC: Grievance File

RE: LACK OF DIABETIC COMMISSARY ITEMS.

EXE

New York State Commission of Correction

## Grievance Form Part I

Facility: Erie County Sheriff's Office—Jail Management Div.
- ☒ Holding Center NY014023C 1403
- ☐ Correctional Facility NY014013C 1402
- ☐ Yankee Compound NY011045C 1410

Housing Location: Fox South

Grievance #: 1426-104
FACILITY ASSIGNS THIS NUMBER

Inmate's Name: Misael Montalvo

ICN #: 131327

Brief Description of the Grievance (Completed by the Grievant):

Number of Additional Sheets Attached (4)

INMATE STATES SEE 4 PGS OF STATEMENT OF FACTS ATTACHED

Action Requested by the Grievant (Completed by the Grievant):

Number of Additional Sheets Attached ( )

1. I AM REQUESTING TO BE ALLOWED TO PURCHASE COMMISSARY FOOD ITEMS
2. I AM REQUESTING THAT ECHC OFFICIALS REFRAIN FROM COMMITTING ANY FURTHER DISCRIMINATION AGAINST ME

Grievant Signature: Misael Montalvo Date/Time Submitted: 4-26-14

Receiving Staff Signature: V. C[illegible] 1302 Date/Time Submitted: 4/26/14 1340 hrs.

Signature of Facility Staff Attempts to resolve (Attach Relevant Documentation):

Number of Additional Sheets Attached (4)

There is nothing this deputy can do regarding commissary choices for Diabetics

☐ Language Barrier, List language _____ ; Name of Interpreter _____

☐ Cognitive Disability Barrier, Low literacy: If box is checked, what steps were taken to assist grievant? (List above)

Officer/Supervisor Signature: _____ Date/Time: _____

( ) I agree to accept the informal resolution to my Grievance

(✓) I do not agree to accept the informal resolution to my Grievance

Grievant Signature: Misael Montalvo Date/Time Submitted: 4/26/14 4:14 PM

Forward to the Grievance Coordinator: Grievances must be forwarded to the Grievance Coordinator within 24 hours of submission

Officer/Supervisor Signature: _____ Date/Time: _____

Received by the Grievance Coordinator: 66

Grievance Coordinator Signature: D. [illegible] Date/Time: 4/28/14 [illegible]

EXE

MICHAEL MONTHLY
ECHC
40 DELAWARE AVE
BUFFALO NY 14202

GRIEVANCE COORDINATOR
ECHC
40 DELAWARE AVE.
BUFFALO NY 14202

APRIL 26 2014

1. WHEREAS ECHC IS A PUBLIC ENTITY WITH FIFTY OR MORE EMPLOYEES, AND AS SUCH, ECHC IS SUPPOSED TO COORDINATE IT'S EFFORTS TO COMPLY WITH TITLE II OF THE ADA AND SUBSECTION 504 OF THE REHABILITATION ACT.

2. THE FEDERAL DISABILITIES ACT STATES TITLE II OF THE PUBLIC ENTITY SECTION PROVIDES THAT, "NO QUALIFIED INDIVIDUAL WITH A DISABILITY BE EXCLUDED FROM PARTICIPATION IN OR BE DENIED THE BENEFITS OF THE SERVICES, PROGRAMS OR ACTIVITIES OF A PUBLIC ENTITY OR BE SUBJECTED TO DISCRIMINATION BY ANY SUCH ENTITY." SECTION 504 OF THE REHABILITATION ACT ROVSE V. PLANTIER 997 F SUPP 575-582 (D.N.J 1998) (EVIDENCE THAT BY FAILING TO TREAT THEIR DIABETES, THE DEFENDANTS EXCLUDED PRISONERS FROM PARTICIPATION IN SOME PROGRAMS SUPPORTED

EXE

A CLAIM UNDER THE ADA) VACATED ON OTHER GROUNDS 162 F 3 612
6TH CIRCUIT 1998) KERMAC V. HOLY FAMILY HEALTH PLUS 13 F. SUPP. 2ND 737, 746 (N.D I 11 1998) (JUVENILE DEPENDANT DIABETES IN ITS UNTREATED FORM "MEETS ALL THE PRONGS" OF THE ADA'S DISABILITY DEFINITION)
PROVIDES THAT NO OTHERWISE QUALIFIED INDIVIDUAL WITH A DISABILITY IN THE UNITED STATES SHALL SOLELY BY REASON OF HIS OR HER DISABILITY BE EXCLUDED FROM THE PARTICIPATION OR BE DENIED THE BENEFITS OF OR BE SUBJECTED TO DISCRIMINATION UNDER ANY PROGRAMS OR ACTIVITIES RECIEVING FEDERAL FINANCIAL ASSISTANCE OR UNDER ANY PROGRAM OR ACTIVITY CONDUCTED BY ANY EXECUTIVE AGENCY . (ECHC D.O.C) THIS MEANS THAT ANY AGENCY INCLUDING THE D.O.C SHERIFF'S OFFICE ETC . THAT RECIEVES ANY FEDERAL FUNDING IS COVERED BY THE REHABILITATION ACT FOR ALL OF ITS SERVICES PROGRAMS AND ACTIVITIES FEDERAL AGENCIES AND PRISONS ARE NOT SUBJECT TO THE ADA BUT THEY ARE SUBJECT TO THE REHABILITATION ACT. DEPARTMENT OF JUSTICE REGULATIONS PROMULGATED UNDER THE STATUTES ARE APPLICABLE TO ALL PRISONS AND JAILS

EX E

3. IN ADDITION, I AM QUALIFIED WITH A KNOWN DISABILITY (DIABETES) WITH SUCH TERMS IS DEFINED UNDER TITLE II OF THE ADA. I HAVE BEEN INCARCERATED AT ECHC AS OF NOV. 19, 2011 AND I HAVE BEEN PURCHASING COMMISSARY UP UNTIL FEB 2013.

4. MOREOVER, SINCE THE KEEFE COMMISSARY ENTITY HAS TAKEN OVER THE COMMISSARY PROGRAM AT ECHC I HAVE BEEN DISCRIMINATED AGAINST AS A DISABLED PERSON AND DENIED THE BENEFITS OF THE COMMISSARY PROGRAM SUCH AS FOOD ITEMS

5. WHEREFOR, THE JAIL MANAGEMENT DIVISION INMATE HANDBOOK PG 14 AND THE MEDICAL HEALTH DEPARTMENT WITHIN ECHC HAS IMPLEMENTED A POLICY THAT DIABETES CANNOT PURCHASE ANY FOOD ITEMS FROM COMMISSARY.

6. ALTHOUGH ECHC HAS FAILED TO PROVIDE DIABETICS WITH AN ADEQUATE DIET MENU, DIABETIC INMATES ARE BEING DISCRIMINATED AGAINST, LIMITED AND DENIED EQUAL PARTICIPATION IN THE COMMISSARY PROGRAM.

EX E

7 THE ADA REGULATES THAT COVERED ENTITIES MAKE A SELF EVALUATION OF EXISTING POLICIES THAT DISCRIMINATE AGAINST DISABLED PERSONS. A PUBLIC ENTITY MUST MODIFY THOSE POLICIES THAT LIMIT OR DENY DISABELED PERSONS FROM FULL PARTICIPATION IN THEIR PROGRAMS 28 C.F.A. 35 PART 105.

8 THEREFORE, ECHC OFFICIALS AND THE MEDICAL STAFF HAS RECKLESSLY DISREGARDED THE ADA AND REHABILITATION ACT FOR THE SOLE PURPOSE OF INFLICTING CUSTOMS, POLICIES AND PRACTICES THAT DISCRIMINATINGLY INDIFFERENT TO DIABETIC INMATES.

(EX F)

EX F

STATE OF NEW YORK • EXECUTIVE DEPARTMENT
**STATE COMMISSION OF CORRECTION**
Alfred E. Smith State Office Building
80 S. Swan Street, 12th Floor
Albany, New York 12210-8001
(518) 485-2346
FAX (518) 485-2467

CHAIRMAN
Thomas A. Beilein

COMMISSIONERS
Phyllis Harrison-Ross, M.D.
Thomas J. Loughren

March 18, 2014

Erie County Sheriff's Office
Sheriff Timothy Howard
10 Delaware Avenue
Buffalo, NY 14202

Re: Grievance # 13-LG-41576 - Facility # 13G-156 Misael Montalvo

Dear Sheriff Howard :

The Citizen's Policy and Complaint Review Council has reviewed the above-referenced grievance at its March 13, 2014 meeting and the Council voted to deny the grievance. The Council sustains the action taken by the facility administration.

Sincerely,

Thomas Loughren

Thomas J. Loughren
Commissioner

cc: Grievance Coordinator
Misael Montalvo