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

January 30, 2014

Mr. Scott W. Kroll, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Kroll:

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:	*Norton, Carl E., Sr. v. County of Erie, et al.*
Document Received:	Summons and Complaint
Name of Claimant:	Carl E. Norton, Sr.
Claimant's attorney:	Cheryl Meyers Buth, Esq. Murphy Meyers, LLP 6506 East Quaker Street, Second Floor Orchard Park, New York 14127

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. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of New York

CARL E. NORTON, SR.,	)	
Plaintiff(s)	)	
v.	)	Civil Action No. 13-CV-6355
COUNTY OF ERIE, et al.	)	
Defendant(s)	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* John/Jane Doe(s),
Lieutenant(s)
Erie County Holding Center
40 Delaware Avenue
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:

Cheryl Meyers Buth, Esq.
Murphy Meyers, LLP
6506 East Quaker Street
Suite 200
Orchard Park, New York 14127

Laurie A. Baker, Esq.
6506 East Quaker Street
Suite 200
Orchard Park, New York 14127

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: JAN 1 5 2014

Michael J. Roemer

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CARL E. NORTON, SR.,

Plaintiff,

vs.

SECOND AMENDED COMPLAINT

13-CV-6355

ERIE COUNTY;
TIMOTHY B. HOWARD, in His Individual and Official Capacity as Erie County Sheriff;
BRIAN DOYLE, in His Individual and Official Capacity as Erie County Sheriff's Department Administrative Chief or Undersheriff;
JOHN DOE, in His Individual and Official Capacity as First Deputy Superintendent ECHC;
JOHN/JANE DOE(S), SERGEANTS(S), Erie County Holding Center;
JOHN/JANE DOE(S), LIEUTENANT(S), Erie County Holding Center;
JOHN/JANE DOE(S), DEPUTY SHERIFF(S), Erie County Holding Center;
Erie County Deputy Sheriff Gavin;
Erie County Deputy Sheriff Boyce;
Erie County Deputy Sheriff VanderCort;
Erie County Deputy Sheriff Roman;
Erie County Deputy Sheriff Stevens;
Erie County Deputy Sheriff Allman;
Erie County Deputy Sheriff Klein;
JOHN/JANE DOE, Supervisor, Medical Staff, Erie County Holding Center;
JOHN/JANE DOE(S), Medical Department Staff, Erie County Holding Center

Defendants.

b) Denial of access to medical care and treatment, prescription medication, or other reasonable accommodations were not provided in violation of the Americans With Disabilities Act and/or the Rehabilitation Act;

c) The municipal Defendants, including the Erie County Sheriff and other "policymakers" engaged in a pattern and practice of discrimination against Mr. Norton in a manner demonstrating a "deliberate indifference" to the medical needs of such inmates with a history of heart disease in violation of 42 USC Section 1983 and the United States Constitution.

d) Supervisory personnel failed to train and/or supervise officers and civilian employees or rectify unconstitutional practices, including failing to implement protocol regarding the handling and treatment of inmates with history of heart disease in violation of their constitutional rights and their rights under 42 USC Section 1983.

e) Despite being aware of NYSDOC directives regarding the treatment of inmates with heart disease, Defendants failed to implement the directives, failed to comply with the requirements of the ADA as it applies to local jails, failed to develop an appropriate protocol for responding to an accommodation request from Plaintiff, and engaged in other conduct all of which resulted in discrimination against Mr. Norton as a qualified individual

("DOCCS") serving his sentence.

12. While detained at the E.C.H.C., Mr. Norton was completely dependent upon the named Defendants for his care and well-being.

13. Defendant Erie County (hereinafter "County") is a governmental subdivision created under the laws of the State of New York.

14. The Erie County Sheriff's Department is a division of Erie County government.

15. The county owns, operates and administers E.C.H.C. through the Jail Management Division of the Erie County Sheriff's office.

16. This action concerns the treatment of Mr. Norton while he was a pretrial detainee confined at E.C.H.C.

17. At all times referred to herein, Defendant Timothy B. Howard was the elected Sheriff of Erie County.

18. Defendant Timothy B. Howard was responsible for the promulgation, implementation and maintenance of county policy affecting E.C.H.C.

19. Defendants Erie County and Timothy B. Howard are charged by the laws of the State of New York with maintaining E.C.H.C. and are responsible for all conditions of confinement, health, safety and medical care

confined therein as granted to him by the laws of Erie County and the State of New York.

23. At all times referred to herein, Defendant John/Jane Doe Sergeant(s) and John /Jane Doe Lieutenant (s) were employed by the Erie County Sheriff's Department. In their capacity as supervisory personnel, they exercised control over subordinate officers. Upon information and belief, Mr. Norton apprised these Defendants of his heart condition and complained of the intentional and negligent denial and deprivation of his heart medication. In addition, these officers supervised officers who were involved in the handling and treatment of Mr. Norton.

24. At all times relevant herein, Defendant Deputy Gavin was a Sheriff's Deputy at E.C.H.C.; Defendant Deputy Boyce was a Sheriff's Deputy at E.C.H.C; Defendant Deputy VanderCort was a Sheriff's Deputy at E.C.H.C; Defendant Deputy Roman was a Sheriff's Deputy at E.C.H.C; Defendant Deputy Stevens was a Sheriff's Deputy at E.C.H.C; Defendant Deputy Allman was a Sheriff's Deputy at E.C.H.C; Defendant Deputy Klein was a Sheriff's Deputy at E.C.H.C; the foregoing Defendant Sheriffs Deputies and Defendant John/Jane Doe(s), Sheriff's Deputy(s) at E.C.H.C were responsible for the general custody and care of Mr. Norton. They

27. The named Defendants are legally responsible, in whole and in part, for the operation, maintenance, and provision of services, medical treatment, creation and implementation of policies and conditions at E.C.H.C. and are responsible for the health and safety of pretrial detainees held at those facilities.

28. The named medical supervisors/staff evinced or displayed deliberate indifference to Mr. Norton's medical condition and care and treatment and denied him of his legal rights as afforded to him under the statutes and legislation cited herein.

FACTUAL ALLEGATIONS

29. While Mr. Norton was held as a pretrial detainee at E.C.H C. from the period of May 2009 through April 2011, Mr. Norton was denied medical care and treatment by all named defendants and as a result sustained severe, painful and permanent personal injury.

30. From the time of Mr. Norton's intake at E.C.H.C. in May 2009 through his discharge in April 2011, Mr. Norton attempted to make jail officers, staff and civilian personnel aware that he suffered from severe heart disease and other medical aliments.

31. Upon information and belief, at the time of medical screening

36. Even on those occasions when Mr. Norton was given nitroglycerin by Defendants, his medication was subsequently confiscated from him during pat frisks by Defendant Deputy Sheriffs. On multiple occasions, Defendant Deputy Sheriffs told Mr. Norton he could not keep medication in his cell; that it was contraband; and they flushed it down the toilet. This was a regular and repeated course of conduct continued through his release in April 2011.

37. Upon information and belief, from May 2009 through April 2011, Mr. Norton had multiple episodes of coronary symptomology, including severe chest pain. On numerous dates when Mr. Norton requested medical attention, he was denied and at times was threatened with physical violence if he persisted in making such requests.

38. In or about December 2009, Mr. Norton complained to Defendant Deputy Sheriffs of severe chest pain and discomfort and was denied medical care and treatment. As a result Mr. Norton suffered a coronary event and/or myocardial infarction that went untreated.

39. In or about December 2010, Mr. Norton complained of severe chest pain to Defendant Deputy Sheriffs, including Defendant Deputy Stevens and Defendant Deputy VanderCort. Mr. Norton's numerous pleas

44. Upon information and belief, this emergent surgery required an artery to be excised from his left arm. As a result, Mr. Norton sustained an extensive surgical incision down his left arm and resultant permanent scarring.

45. Upon information and belief, due to Defendants' deliberate indifference to Mr. Norton's medical complaints, Mr. Norton endured increased physical and mental pain and stress which persisted and contributed to his second coronary event. Upon information and belief, if Mr. Norton had received proper medical care and treatment, he may have been able to prevent this cardiac event or its severity may have been decreased so as not to require surgery on an emergent basis.

46. Upon information and belief, in or about February 2011, while undergoing cardiac rehab at the Erie County Medical Center, Mr. Norton was prematurely removed from his treatment facility at the request of the above-named defendants prior to his recommended date of discharge for the purpose of attending court proceedings despite the fact the judge did not order him to be produced. Despite his fragile medical state, during his transfer Defendant Deputy Sheriffs used excessive force in cuffing Mr. Norton causing bruises and contusions to his left arm.

qualified disabled individual, and upon information and belief, there was a substandard protocol for addressing his special medical needs or such protocol did not exist at all.

52. As a result of the named Defendants' deliberate indifference to his medical needs, Mr. Norton was caused to sustain multiple coronary events which ultimately required emergent triple bypass surgery, suffer side effects from his chronic medical condition, including physical discomfort and mental and emotional distress, and developed a serious infection further threatening his health.

53. Upon information and belief, the Defendants have engaged in a pattern and practice of failing to maintain, generate and/or preserve accurate medical records for detainees, including Mr. Norton.

54. Upon information and belief, the Defendants have engaged in a pattern and practice of denying adequate medical care to special needs detainees, including Mr. Norton.

55. Upon information and belief, the Defendants have engaged in a pattern and practice of failing to develop clinical practice guidelines for special needs inmates, including those pretrial detainees with heart disease.

56. Upon information and belief, Defendants have engaged in

61. Further, Defendant Erie County, through Defendant Timothy B. Howard, failed to implement the provisions of the ADA and DOCCS directives pertaining to inmates with heart disease. Mr. Norton suffered damages that were a proximate result of such custom and practice and were a foreseeable consequence of same.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION AS AGAINST DEFENDANT ERIE COUNTY ALLEGING A VIOLATION OF 42 USC SECTION 1983

62. Plaintiff repeats and realleges the allegations of all previous paragraphs in this complaint as if fully set forth herein.

63. Defendant Erie County was deliberately indifferent to the serious medical needs of Plaintiff Carl E. Norton, Sr.

64. Defendant Erie County's actions and omissions violated the rights guaranteed to Mr. Norton under the Eighth and/or Fourteenth Amendments to the Constitution of the United States.

65. Violations of Mr. Norton's constitutional rights occurred as a result of customs, policies and practices pursued by Defendant Erie County.

66. The customs, policies and practices of Defendant Erie County include, but are not limited to:

inmate;

j) Failure to promulgate or implement any procedures to evaluate an inmate's need for diagnostic procedures such as x-rays, lab work, cultures, EKG's, Angiograms, or other such testing;

k) Failure to promulgate or implement any procedures to evaluate an inmate's need for medication and to ensure that the prescribed medication is appropriate;

l) Failure to provide medical staff qualified to treat the serious medical needs of inmates;

m) Inadequate management of medical services and treatment, including inadequate record keeping and inadequate procedures for sanctioning medical staff for failing to respond to clear signs of illness or harm;

n) Failure to maintain onsite health care administrators to manage health care services;

o) Failure to designate a coordinator for disabled inmates to ensure compliance with ADA guidelines;

p) Allowing nurses, medical aides, and physician assistants to perform the functions in the treatment and care of inmates that should

supervisory roles at the E.C.H.C. These Defendants had actual knowledge or constructive knowledge that Mr. Norton was a qualified individual with a disability and that he had requested, on numerous occasions, that he be provided with medical care and treatment for his chronic heart disease.

72. Defendants, in their supervisory roles, failed to train subordinate officers or discipline same regarding the proper handling and treatment of inmates with chronic heart disease, including Mr. Norton.

73. Defendants caused Mr. Norton to suffer constitutional deprivations and to incur discrimination based upon his disability, and/or acquiesced in same by subordinate or fellow officers and personnel.

74. Despite knowing that Mr. Norton was diagnosed with chronic heart disease, they allowed the inmate to be subjected to unduly dangerous conditions, denied medical treatment during acute coronary events including myocardial infarction, and took no steps to provide medical care and treatment to Mr. Norton, or to instruct subordinate officers in the proper treatment and handling of Mr. Norton, or the possible risks posed to Mr. Norton as an inmate with chronic heart disease.

75. Further, these defendants failed to supervise the administration of medical treatment to Mr. Norton or other impaired inmates, or have a

by Mr. Norton about symptoms related to coronary events, including myocardial infarction; delaying in responding to sick call requests, etc.

80. Based upon Defendants deliberate indifference to Mr. Norton, he was caused to incur constitutional deprivations and, as a result, Mr. Norton now seeks compensatory damages as against these Defendants.

AS AND FOR A FOURTH CAUSE OF ACTION AS AGAINST JOHN/JANE DOE(S) MEDICAL STAFF SUPERVISOR AT E.C.H.C. IN VIOLATION OF 42 USC SECTION 1983

81. Plaintiff repeats and realleges the allegations of all previous paragraphs of this complaint as if fully set forth herein.

82. Upon information and belief, John/Jane Doe(s) Medical Staff Supervisor exercised control over the E.C.H.C. medical staff at all times material herein. Through his/her acts or omissions, John/Jane Doe Medical Staff Supervisor denied Plaintiff adequate medical care by, including, but not limited to, failing to properly supervise medical personnel, failing to train personnel, failing to obtain proper diagnoses for Mr. Norton from a medical doctor or cardiologist, failing to supervise Mr. Norton's course of treatment, failing to sanction subordinate employees for administration of inadequate medical care.

83. John/Jane Doe Medical Staff Supervisor failed to recommend

subjected to pat frisks and cell searches wherein his prescribed heart medication was confiscated and destroyed by these Deputy Sheriffs.

88. As a result of the deliberate indifference of these officers to Mr. Norton's serious medical needs and the deprivation of his constitutional rights, Plaintiff is now seeking compensatory damages from these Defendants.

AS AND FOR A SIXTH CAUSE OF ACTION AS AGAINST DEFENDANT ERIE COUNTY IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

89. Plaintiff repeats and realleges the allegations of all previous paragraphs of this complaint as if fully set forth herein.

90. Mr. Norton brings this suit against Erie County under Title II of the Americans With Disabilities Act 42 USC Section 12131 ET Seq. ("ADA").

91. This Court has jurisdiction under 29 USC 794(a) as incorporated into 42 USC 12133 (Enforcement Clause).

92. Plaintiff Carl E. Norton, Sr. is a qualified individual with a disability as defined in the ADA as he suffers from chronic heart disease.

93. As a pretrial detainee in the E.C.H.C. Plaintiff was entitled to reasonable accommodations for his disability. Upon information and belief, from May 2009 through April 2011 which Plaintiff was detained, he was

AS AND FOR A SEVENTHCAUSE OF ACTION AS AGAINST DEFENDANT ERIE COUNTY IN VIOLATING THE REHABILITATION ACT

99. Plaintiff repeats and realleges the allegations of all previous paragraphs of this complaint as if fully set forth herein.

100. Plaintiff Carl E. Norton, Sr. is a qualified individual with a disability as defined under the Rehabilitation Act.

101. Defendant Erie County is a public entity within the meaning of the Act.

102. During Mr. Norton's incarceration at E.C.H.C. he was deprived of reasonable accommodations for his disability, medical care and treatment, including prescribed medications.

103. Defendant Erie County discriminated against Mr. Norton solely on the basis of his disability in violation of Section 504 Rehabilitation Act, 29 USC 794 (1982).

104. Defendant Erie County, acting by and through managerial, supervisory, and other employees, retaliated against Plaintiff for seeking reasonable accommodations as provided for under the Rehabilitation Act. Such retaliation included threats of physical violence, denial of access to medical care and treatment, denial of prescribed medications, denial of

d) Provide such other relief as the Court deems just and equitable.

DATED: November 21, 2013
Orchard Park, New York

Yours, etc.

/s/Cheryl Meyers Buth

Cheryl Meyers Buth, Esq.
Murphy Meyers, LLP
Attorneys for Plaintiff
6506 East Quaker Street
Suite 200
Orchard Park, New York 14127
(716) 662-4186

Laurie A. Baker, Esq.
Law Office of Laurie A. Baker
Attorney for Plaintiff
6506 East Quaker Street
Suite 200
Orchard Park, New York 14127
(716) 662-5274