

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

UNITED STATES DISTRICT COURT

for the

Western District of New York

DAVID L. REID, MICHAEL PALMERI, and
DAVID RICOTTA

Plaintiff

v.

COUNTY OF ERIE

Defendant

Civil Action No. 1:15-CV-1078A

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) COUNTY OF ERIE
95 Franklin Street, 10th Floor
Buffalo, New York 14202

This paper received at the
Erie County Attorney's Office
from Doug DiFilippo on
the 30 day of Dec., 2015
at 12:15 a.m./p.m.

Kenneth R. Luby
Assistant County Attorney

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:

Andrew P. Fleming, Esq.
CHIACCHIA & FLEMING, LLP
5113 South Park Avenue
Hamburg, New York 14075

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.

Date: 12/30/15



CLERK OF COURT

Patrick J. Stally

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAVID L. REID,
MICHAEL PALMERI, and
DAVID RICOTTA

COMPLAINT

Plaintiffs,

-against-

Civ. No: _____

COUNTY OF ERIE,

Defendant.

Plaintiffs DAVID L. REID, MICHAEL PALMERI, and DAVID RICOTTA, by their attorneys Chiacchia & Fleming, LLP, Andrew P. Fleming, Esq., of Counsel, as and for their Complaint against Defendant, hereby allege:

1. This is an action to redress unlawful employment practices, under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq. ("Title VII"), 42 U.S.C. § 1983, and the New York State Human Rights Law ("NYSHRL") N.Y. Exec. L. § 290 et seq.

2. Plaintiff DAVID L. REID is an African-American male employed by the defendant who was discriminated against by Defendant based on his race and retaliated against for exercising his rights under Title VII. Plaintiffs DAVID RICOTTA and MICHAEL PALMERI are also employed by the Defendant; they were retaliated against by Defendant for speaking up in support of Plaintiff Reid's claims of racial discrimination and for otherwise exercising their rights under Title VII in support of Plaintiff Reid.

3. Money damages, including lost wages and benefits, compensatory damages and other appropriate legal relief are sought pursuant to said statutes for each of the Plaintiffs.

THE PARTIES

4. At all times hereinafter mentioned, Plaintiff, DAVID L. REID (hereinafter “Plaintiff Reid”), was and continues to be a resident of the County of Erie and State of New York.

5. At all times hereinafter mentioned, Plaintiff, MICHAEL PALMERI (hereinafter “Plaintiff Palmeri”), was and continues to be a resident of the County of Erie and State of New York.

6. At all times hereinafter mentioned, Plaintiff, DAVID RICOTTA (hereinafter “Plaintiff Ricotta”), was and continues to be a resident of the County of Erie and State of New York.

7. At all times hereinafter mentioned, and upon information and belief, Defendant COUNTY OF ERIE, was and continues to be a municipal corporation duly existing under and by virtue of the laws of the State of New York.

JURISDICTION

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as plaintiffs allege that defendant violated rights guaranteed to them by the Constitution of the United States.

9. Supplemental jurisdiction over New York State Executive Law § 296 and other claims based upon New York State law are predicated upon 28 U.S.C. § 1367.

10. Venue is proper in the United States District of the Western District of New York pursuant to 28 U.S.C. § 1391(b), as the unlawful practices alleged were committed in this district.

11. Plaintiffs filed charges with the United States Equal Employment Opportunity Commission claiming discrimination on the basis of race and/or retaliation.

12. Plaintiffs received determination letters from the EEO Buffalo Office, finding discrimination and/or retaliation occurred towards each of the Plaintiffs herein.

13. Plaintiffs received "Right to Sue Letters" from the United States Department of Justice and have timely commenced this action within ninety (90) days of receipt thereof.

STATEMENT OF CLAIM

14. The claims hereinafter arise out of the same transaction, occurrence, or series of transactions and/or occurrences, as well as common issues of law and fact. Plaintiffs share a common interest in obtaining the same and/or similar relief.

As for Plaintiff Reid

15. Plaintiff Reid began working for Defendant in the Department of Public Works on or around September 24, 2012, as a laborer stationed within the Erie County Supreme Court Building located at 25 Delaware Avenue in Buffalo, New York.

16. Plaintiff Reid is African American.

17. Plaintiff Reid has usually worked the evening shift at the Erie County Supreme Court Building, 4:30 p.m. to 12:30 p.m., every Monday through Friday.

18. Plaintiff Reid has been usually assigned to begin his work duties on the first floor of the building. While waiting for the building to clear between 4:30 p.m. and 5:00 p.m., Plaintiff Reid has routinely stood or sat in the front of the building on the Franklin Street side of the building.

19. Additionally, as employees and personnel leave for the evening, Plaintiff Reid had routinely exchanged pleasantries and well wishes to those leaving the building. At all times Plaintiff Reid remained friendly, cordial, and professional.

20. In or about March 2013, Plaintiff Reid was informed by his supervisor, Ron Kaun ("Mr. Kaun"), that Assistant Administrative Clerk Amy Hughes ("Ms. Hughes"), a Caucasian woman, was uncomfortable with his presence on the first floor of the building because of her work with the District Attorney's Office and the number of blacks and minorities prosecuted by her office.

21. Upon learning of this, Plaintiff Reid ceased exchanging pleasantries with Ms. Hughes.

22. In or about April 2013, Ms. Hughes again complained about Plaintiff Reid's presence due to his race. Plaintiff Reid informed his supervisor, Mr. Kaun, he had not spoken with Ms. Hughes since her earlier (inappropriate) comments and he had no intention of speaking with her. Defendant, through its agent, somehow was seeking an accommodation of Ms. Hughes' fear of African Americans by causing Plaintiff Reid to change his pleasant behavior/presence, an accommodation that was not appropriate or legal.

23. On or about August 7, 2013, Ms. Hughes, upon information and belief, again complained about Plaintiff Reid's presence due to his race, and Mr. Kaun instructed Plaintiff Reid "to stay out of sight." Plaintiff Reid informed Mr. Kaun he still had not spoken to Ms. Hughes since the first complaint and he also informed Mr. Kaun that this was not acceptable.

24. On or about August 14, 2013, Plaintiff Reid filed an internal complaint with the County of Erie Equal Employment Opportunity ("EEO") Office, alleging he was being harassed and discriminated against on account of his race.

25. On or about August 29, 2013, Plaintiff Reid attended a meeting with his supervisor, Mr. Kaun, EEO Director Jesse Burnett, and Deputy Commissioner of Buildings and Grounds for the Department of Public Works, Daniel Rizzo ("Mr. Rizzo"). The discussion at the meeting pertained to seeking a resolution in regards to Plaintiff Reid's discrimination complaint, and included some discussion about Plaintiff Reid starting his work shift in a different area. There was no discussion about Ms. Hughes' inappropriateness and/or the legality of her alleged accommodation needs.

26. On or about September 9, 2013, Plaintiff Reid received a telephone call from EEO Director Jesse Burnett. During the telephone conversation, Plaintiff Reid informed Mr. Burnett that he was not withdrawing his EEO complaint.

27. On or about September 12, 2013, upon information and belief, security guard Charles Krathuas was instructed by Mr. Rizzo to monitor and report on Plaintiff Reid's work location.

28. On or about September 16, 2013, Mr. Rizzo gave Plaintiff Reid a written warning, charging him with disobeying a direct order to start his work shift in a different area. No such direct order was ever given.

29. In retaliation for Plaintiff Reid's EEO complaint concerning racial discrimination, he was subjected to monitoring and disciplinary action.

30. On or about September 27, 2013, Plaintiff Reid filed a grievance with the Union concerning the unjustified and unlawful written warning he received from Mr. Rizzo.

31. On or about October 18, 2013, Plaintiff Reid filed a formal complaint with the Equal Employment Opportunity Commission against Defendant and Mr. Rizzo.

32. On or about April 28, 2015, the Buffalo Office of the EEO Commission issued a written decision in regards to Plaintiff Reid's claims. The Commission determined that probable cause exists that Plaintiff Reid was mistreated because of his race and in retaliation for having complained about race discrimination, in that he was monitored and disciplined, in violation of Title VII of the Civil Rights Act of 1964.

33. On or about October 8, 2015, Plaintiff Reid was issued a Right-to-Sue letter by the United States Department of Justice.

As for Plaintiff Palmeri

34. Plaintiff Palmeri has been employed by Defendant in its Department of Public Works as a Maintenance Mechanic since approximately 1991.

35. In the role of Maintenance Mechanic, Plaintiff Palmeri is primarily responsible for plumbing, grounds work, electrical work, etc., at various County of Erie buildings, and was most recently stationed at the Edward A. Rath County Office Building ("Rath Building"), working the second shift from 4:00 p.m. to 12:00 a.m.

36. Additionally, Plaintiff Palmeri is a member of the American Federation of State, County and Municipal Employees Local 1095, Council 66, AFL-CIO ("the Union"), and acts as a Union Representative.

37. Plaintiff Palmeri is familiar with Plaintiff Reid and has witnessed some of the discriminatory conduct against Plaintiff Reid.

38. Plaintiff Palmeri witnessed a security guard following and/or monitoring Plaintiff Reid at Erie County Hall on or about September 12, 2013.

39. On or about September 16, 2013, Plaintiff Palmeri was asked to participate in the meeting between Plaintiff Reid and Mr. Rizzo, as a Union Representative, at which time Plaintiff

Reid received his written warning (“write-up”) for allegedly disobeying a direct order from a supervisor.

40. Upon information and belief, on the date of said meeting, Defendant deceptively told Plaintiff Palmeri that Plaintiff Reid wanted to speak with him about an issue at the Erie County Supreme Court Building, where Plaintiff Reid was working. Defendant did not tell Plaintiff Palmeri that he was attending a “write-up” meeting.

41. During the “write-up” meeting, Plaintiff Palmeri witnessed behavior by Mr. Rizzo toward Plaintiff Reid that was both unprofessional and demeaning.

42. Plaintiff Reid subsequently asked Plaintiff Palmeri to attend a scheduled EEOC mediation meeting on Plaintiff Reid’s behalf, scheduled at the EEOC’s regional offices in Buffalo, New York on January 22, 2014.

43. In or about early January 2014, Defendant learned that Plaintiff Palmeri was scheduled to attend the mediation as a witness on Plaintiff Reid’s behalf. Within days, Plaintiff Palmeri was placed on administrative leave by Defendant and later terminated.

44. On or about January 16, 2013, Plaintiff Palmeri was escorted from Defendant’s property by one of Defendant’s sheriffs in the presence of numerous individuals, causing Plaintiff Palmeri to suffer severe humiliation.

45. On or about January 17, 2013, Plaintiff Palmeri was formally terminated from his employment with the defendant.

46. The reasons offered by Defendant for Plaintiff Palmeri’s termination were/are pretextual.

47. Plaintiff Palmeri's termination by Defendant was retaliation for his participation and/or intent to participate as a witness on behalf of Plaintiff Reid in the investigation by the Buffalo Office of the United States Equal Employment Opportunity Commission.

48. On or about January 22, 2014, Plaintiff Palmeri filed a grievance with the Union for his unlawful termination. On or about January 27, 2014, Plaintiff Palmeri filed a Charge of Discrimination against Defendant with the EEOC, alleging he was terminated in retaliation for his "lawful EEO activity" as a witness for Plaintiff Reid.

49. On or about August 21, 2014, arbitrator Howard G. Foster, determined that defendant violated the union contract when it terminated Plaintiff Palmeri.

50. Plaintiff Palmeri was reinstated to his position with Defendant, however, he was erroneously not awarded any compensation for lost pay or benefits and he has thus suffered economic harm due to Defendant's retaliation.

51. On or about November 20, 2015, Plaintiff Palmeri was issued a Right-to-Sue letter by the United States Department of Justice.

As for Plaintiff Ricotta

52. In or about 1998, Plaintiff Ricotta began working for Defendant as a Seasonal Laborer. Plaintiff Ricotta later became a Building Maintenance Mechanic.

53. Plaintiff Ricotta is familiar with Plaintiff Reid and has witnessed some of the discriminatory conduct against Plaintiff Reid.

54. Plaintiff Ricotta spoke with Mr. Krathaus about his monitoring of Plaintiff Reid on September 12, 2013, and Mr. Krathaus informed Plaintiff Ricotta he was following direct orders from Mr. Rizzo to monitor Plaintiff Reid's location.

55. Plaintiff Reid asked Plaintiff Ricotta to attend the scheduled EEOC mediation meeting on Plaintiff Reid's behalf, scheduled at the EEOC's regional offices in Buffalo on January 22, 2014.

56. Upon information and belief, on or about January 10, 2014, Defendant learned that Plaintiff Ricotta was scheduled to attend the mediation as a witness on Plaintiff Reid's behalf. Within days, Plaintiff Ricotta was terminated.

57. On or about January 17, 2014, Plaintiff Ricotta was discharged from his employment with Defendant.

58. The reasons offered by Defendant for Plaintiff Ricotta's termination were/are pretextual.

59. Plaintiff Ricotta's termination by Defendant was retaliation for his participation and/or intent to participate as a witness on behalf of Plaintiff Reid in the EEOC's investigation.

60. On or about January 21, 2014, Plaintiff Ricotta filed a grievance with the Union regarding his unlawful termination. On February 18, 2014, Plaintiff Ricotta filed a Charge of Discrimination against Defendant with the EEOC, alleging he was terminated in retaliation for his participation on Plaintiff Reid's behalf on his EEOC Charge.

61. On or about August 21, 2014, arbitrator Howard G. Foster, determined that the defendant violated the CBA when it terminated Plaintiff Ricotta.

62. Plaintiff Ricotta was reinstated to his position with Defendant, however, he was erroneously not awarded any compensation for lost pay or benefits and he has thus suffered economic harm due to Defendant's retaliation.

63. On or about May 22, 2015 the Buffalo Office of the EEO Commission issued a written decision in regards to Plaintiff Ricotta's claims. The Commission determined that

probable cause exists to believe that Plaintiff Ricotta was terminated in retaliation for having participated in an EEOC investigation, in violation of Title VII of the Civil Rights Act of 1964.

64. On or about November 20, 2015, Plaintiff Ricotta was issued a Right-to-Sue letter by the United States Department of Justice.

**FIRST CAUSE OF ACTION—TITLE VII OF THE CIVIL RIGHTS ACT OF
1964, 42 U.S.C. § 2000e**

65. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs “1” through “64” as if fully set forth herein.

66. Defendant through its agents and employees, racially discriminated against Plaintiff Reid in his employment, and retaliated against Plaintiffs Reid, Ricotta, and Palmeri in their employment, as set forth in the preceding paragraphs.

67. Defendant lacked any business, reason or justification for its aforesaid disparate treatment of Plaintiffs, and instead subjected Plaintiffs to the above described adverse employment actions based upon race and/or in retaliation for Plaintiffs filing of and/or participation in the filing of charges of discrimination and opposing discrimination. Defendant’s discriminatory and retaliatory conduct violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 20003, as amended.

68. Plaintiff Reid, an African American, has been treated differently from similarly situated white employees and has been abused and violated because of his race and color. Additionally, Plaintiff Reid was retaliated against, through monitoring and disciplinary action, for his opposition to said discrimination.

69. Plaintiffs Ricotta and Palmeri were retaliated against for their opposition to discrimination and support of Plaintiff Reid.

70. Plaintiffs have suffered physical and emotional harm as a result of Defendant's actions. The discrimination and/or retaliation they were subjected to was blatant and unjustified and damaged them physically, emotionally, and professionally.

71. Plaintiffs Reid, Ricotta, and Palmeri have suffered, are now suffering and will continue to suffer irreparable injury and monetary damages as a result of the defendant's discriminatory and/or retaliatory conduct unless and until this Court grants relief and an award, *inter alia*, of lost wages and benefits for Plaintiffs Ricotta and Palmeri, and compensatory damages for all Plaintiffs against Defendant.

72. Plaintiffs have been damaged in an amount to be determined at trial.

SECOND CAUSE OF ACTION—NEW YORK STATE EXECUTIVE LAW § 296

73. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs "1" through "72" as if fully set forth herein.

74. Defendant through its agents and employees racially discriminated against Plaintiff Reid in his employment, and retaliated against Plaintiffs Reid, Ricotta, and Palmeri in their employment, as set forth in the preceding paragraphs.

75. The above discriminatory practices based on race, color, and/or retaliation by Defendant its agents and employees, violates the New York State Human Rights Law.

76. Plaintiffs have suffered physical and emotional harm as a result of Defendant's actions. The discrimination and/or retaliation they were subjected to was blatant and unjustified and damaged them physically, emotionally, and professionally.

77. Plaintiffs Reid, Ricotta, and Palmeri have suffered, are now suffering and will continue to suffer irreparable injury and monetary damages as a result of Defendant's discriminatory and/or retaliatory conduct unless and until this Court grants relief and an award,

inter alia, of lost wages and benefits for Plaintiffs Ricotta and Palmeri, and compensatory damages for all Plaintiffs against Defendant.

78. Plaintiffs have been damaged in an amount to be determined at trial.

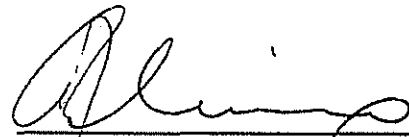
DEMAND FOR JURY TRIAL

79. Plaintiffs hereby demand a jury trial.

WHEREFORE, Plaintiffs respectfully requests that this Court grant them the following relief:

- (A) Judgment in favor of the Plaintiffs against Defendant for compensatory damages, including lost wages and benefits, in an amount to be determined by a properly charged jury;
- (B) A monetary award for attorney's fees and the costs necessary to this action; and
- (C) Any such other and further relief as this Court deems just and proper.

December 29, 2015
Hamburg, New York



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