

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

CHRISTINE RIORDAN, as Administrator of the
Estate of SEAN CHRISTOPHER RIORDAN, Deceased
9 Inwood Place
Lancaster, New York 14086,

Plaintiff,

SUMMONS

vs.

Index No.:

ERIE COUNTY,
95 Franklin Street
Buffalo, New York 14202

SHERIFF JOHN C. GARCIA, in his Official and
Individual Capacity as Sheriff of Erie County
10 Delaware Avenue
Buffalo, New York 14202,

JOHN DOE 1 through 20 (said Erie County supervisor(s) and/or
Erie County Sheriff Department supervisor(s) or employee(s) or staff on
Duty involved in the incident from June 1, 2022 to June 5, 2022 and
underlying claims),

Defendants.

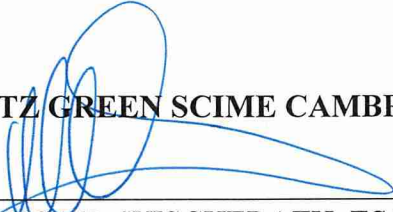
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or, if the Complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiff's Attorneys within TWENTY (20) DAYS after the service of this Summons, exclusive of the day of service (or within THIRTY (30) DAYS after the 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.

The basis of venue is plaintiff's residence which is located in Erie County, New York.

DATED: Buffalo, New York
June 13, 2023

LIPSITZ GREEN SCIME CAMBRIA LLP

By: 
MELISSA D. WISCHERATH, ESQ.
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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

CHRISTINE RIORDAN, as Administrator of the
Estate of SEAN CHRISTOPHER RIORDAN, Deceased,

Plaintiff,

COMPLAINT

vs.

ERIE COUNTY,
SHERIFF JOHN C. GARCIA, in his Official and
Individual Capacity as Sheriff of Erie County, and
JOHN DOE 1 through 20 (said Erie County supervisor(s) and/or
Erie County Sheriff Department supervisor(s) or employee(s) or staff on
Duty involved in the incident from June 1, 2022 to June 5, 2022 and/or
underlying claims),

Defendants.

These elementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration. An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical 'torture or a lingering death...'

Estelle v Gamble, 429 US 97, 103, (U.S. 1976).

Plaintiff, by and through her attorney, Melissa D. Wischerath of LIPSITZ GREEN SCIME CAMBRIA, LLP, hereby brings this Complaint and Jury Demand and alleges as follows:

INTRODUCTION

1. Erie County, former Erie County Sheriff Howard, and current Erie County Sheriff Garcia, chose — for nearly two decades — to violate the constitutional rights of the people in their custody.¹ Though under a legal duty to provide adequate medical care for those in his custody, Sheriff Garcia has publicly admitted “We’re set up to fail, We don’t have the means to give individuals that come through the doors adequate medical help ...” See, “Why Do People Keep Dying in Erie County’s Jails?” available at <https://newrepublic.com/article/171009/erie-county-sheriff-garcia-howard> last accessed on June 9, 2023.

2. Erie County, former Erie County Sheriff Howard and current Erie County Sheriff Garcia have knowingly and recklessly denied medical care to the men and women in the Erie County Holding Center (ECHC) for years, causing numerous investigations and deaths.²

3. In February of 2018, the New York State Commission of Correction, published “THE WORST OFFENDERS REPORT: THE MOST PROBLEMATIC LOCAL CORRECTIONAL FACILITIES OF NEW YORK STATE.”³

4. After years of review, the Commission identified the ECHC as one of the top five worst offenders for violating state and federal laws, explaining “the five local jails that are deemed

¹ See e.g., September 2009 US Department of Justice lawsuit against Erie County and Erie County Sheriff Timothy Howard available at <https://www.justice.gov/archive/opa/documents/erie-complaint.pdf>; US Department of Justice December 2014 Settlement With the County of Erie, New York to Prevent Disability Discrimination at the Erie County Jail available at <https://www.justice.gov/file/189161/download> last accessed on June 9, 2023; March 2021 lawsuit filed by Attorney General James on behalf of the New York State Commission of Correction (SCOC) against Erie County and Erie County Sheriff Timothy Howard available at https://ag.ny.gov/sites/default/files/2021.03.17_opening_papers_binder.pdf last accessed on June 9, 2023.

² Id. The investigations, reports, and decrees are hereby incorporated by referenced as is more fully set forth herein.

³ <https://scoc.ny.gov/pdfdocs/Problematic-Jails-Report-2-2018.pdf> last accessed on June 12, 2023.

the ‘worst offenders’ for being in violation of state law. These facilities pose an ongoing risk to the health and safety of staff and inmates and, in instances, impose cruel and inhumane treatment of detainees in violation of their Constitutional rights.” At the time of the 2018 report, the NYS Commission had four open inmate mortality investigations at the Erie County Holding Center from 2012-2018 involving: inadequate medical and mental health care; minimum standards violations; and excessive use of force against detainees experiencing a medical and/or mental health crisis in the jail.⁴

5. Under former Sheriff Timothy B. Howard, and now current Sheriff John C. Garcia, a detainee in the Holding Center in downtown Buffalo or the Erie County Correctional Facility in Alden died, on average, every six months.

6. Despite the state and constitutional mandates to provide detainees with adequate medical care and the staggering death rate, ECHC knowingly and recklessly lacks the means to give individuals that come through its doors adequate medical help.

FACTS

7. On or about June 2, 2022, Sean Riordan involuntarily walked into the Erie County Holding Center (“ECHC”) after being stopped for a traffic violation. He never came home.

8. Sean Riordan had a past medical history including asthma and chronic ethanolism. Upon intake, Sean Riordan was placed in the “detox” unit, a large cell with other men experiencing alcohol and/or opioid withdrawal.

9. Within hours of being at ECHC, Sean was vomiting blood and requesting medical attention. Upon information and belief, a nurse eventually looked him over, and instead of

⁴ Id.

treatment, he was told he “was fine” and “this is what you get for drinking a pint of vodka a day” and was merely given a garbage can to vomit in.

10. As Sean’s symptoms began to intensify, defendants, all employees of Erie County, watched as he became increasingly delirious. Still, they failed to provide Sean with the medical attention he so desperately needed.

11. Left untreated, delirium tremens is frequently fatal; however, if appropriately identified and treated, the expected mortality is in the range of 1% or less.

12. Over the following days, he exhibited classic and severe symptoms of acute ethanol (alcohol) withdrawal, including persistent nausea and vomiting, anxiety, agitation, tremor, paroxysmal sweats, and seizure activity. He had at least two documented falls.

13. Again, as Sean’s symptoms grew even worse, defendants, all employees of Erie County, watched as he continued to become increasingly delirious. Again, they failed to provide Sean with the medical attention he so desperately needed.

14. Upon information and belief, instead of providing Sean medical aid, defendants used excessive force against him, and unlawfully isolated and/or restrained him, which caused blunt force trauma and other injuries.

15. On June 5, 2022, after suffering for four-days in plain view of his jailers, Sean went into cardiac arrest somewhere in the jail. Upon information and belief, the cardiac arrest was brought on by lack of adequate medical attention, care, and treatment and/or unlawful force.

16. An ambulance was called to the holding center where, after being told to wait what ended up being 9 minutes to be led to him, medics found Sean Riordan laying unresponsive on a mattress on the floor of the health center.

17. His body was cold to the touch, his skin was mottled and blue. The medics went to extraordinary means to save him, placed him on a stretcher, intubated him, and rushed him to the emergency room.

18. Sean never recovered. He was declared brain dead days later and placed on life support for several days.

19. Tragically, nine days after he was found unresponsive and cold to the touch in the holding center, Sean Riordan was taken off life support. The date was June 14, 2022, his 30th birthday.

20. Defendants failed to provide adequate and required medical care to Sean Riordan, a person in their custody.

21. If any of the defendants had initiated an appropriate and required medical intervention or intervened on behalf of Sean, he would be alive today.

22. Defendants' willful and deliberate indifference to Sean Riordan's serious medical needs directly led to his untimely, easily preventable, and unjustifiable death.

23. Upon information and belief, defendants filed false reports, failed to adequately screen Sean Riordan for medical conditions, failed to timely or adequately respond to requests for medical care, and denied or delayed for excessive periods the provision of necessary chronic and specialty care, including transport to a hospital.

24. Defendants failed to sufficiently monitor or treat Sean Riordan, an individual experiencing alcohol or drug withdrawal, leaving him instead to languish.

25. Defendants' failure to provide adequate medical care resulted in the death of Sean Riordan.

26. Sean Riordan has joined the growing list of human beings who have died in the care and custody of Erie County, the Sheriff, and the Erie County Sheriff's Department since 2005.

As of this writing, this list is now at 32:

- William B. Henley. 57.
- Sean Riordan. 29.
- James Ellis. 58.
- Michael Frears.
- Robert Ingalsbe. 33
- Daniel Spicola. 40.
- Connell Burrell. 44.
- Joseph E. Bialaszewski. 29.
- Michael J. Girard. 33.
- David Stitt. 63.
- Vincent Sorrentino. 31.
- David Liddick. 42.
- RosieLee Yvette Mendez. 26.
- Richard A. Metcalf Jr. 35.
- Patrick Yale. 49.
- Edward Berezowski. 54.
- Kristian Woods. 40.
- Lester J. Foster. 47.
- Trevell Walker. 36.
- Rakim Scriven. 18.
- Keith John. 26.
- Jeremy Kiekbush. 29.
- Adam Murr. 31.
- Marguerite Arrindell. 54.
- John Reardon. 53.
- Joann L. Jesse. 48.
- Robert J. Hennen. 42.
- Joseph Balbuzoski. 37.
- Michael G. Roberts. 49.
- Marlon Clay. 35.
- Daniel McNeil.
- Nathan Frailey. 53.

27. Defendants have been aware of the constitutionally and legally inadequate care and conditions in their jail for years, thereby possessing actual and constructive notice of these ongoing and recurring violations.

28. Reports from multiple outside agencies and consultants have repeatedly documented inadequate medical care, poor education, and poor training of corrections staff in recognizing the signs and symptoms of acute ethanol withdrawal, and inappropriate administration of the CIWA questionnaire.

29. As more fully set forth below, upon information and belief, the defendants Erie County and Erie County Sheriff Garcia have a custom, policy, and practice of failing to provide detainees with mandated medical care and treatment, and instead of treatment, have at times, inflicted punishment, including unlawful use of force, restraint and isolation upon citizen detainees experiencing drug and/or alcohol withdrawal or are otherwise seeking medical aid.

CONDITION PRECEDENT

30. On or about the 27th day of February, 2023, a notice of claim was served on behalf of the Sean Riordan on defendants, in duplicate, which notice of claim sets forth the name and post office address of the claimant, the name and post office address of his attorneys, the nature of the claim, the time when the place where, and the manner in which the claim arose, together with the items of damages and injuries then known to exist, and was served upon defendants within ninety (90) days of the date upon which the claim arose. At least thirty (30) days have elapsed since the service of the notice of claim, and defendants have failed and neglected to adjust or pay the said claim.

31. This action falls within one or more of the exceptions set forth in the CPLR §1602.

PARTIES

32. Plaintiff, Christine Riordan, at all times hereinafter mentioned, was and still is a resident of the Town of Lancaster located within the County of Erie and the State of New York.

33. On or about the 22nd day of February, 2023, plaintiff, Christine Riordan, was appointed Administrator of the Estate of Sean Riordan, pursuant to an Order of the Surrogate's Court of the County of Erie and the State of New York, and Letters of Administration of the Estate of Sean Christopher Riordan were served on the plaintiff, and she is duly qualified and thereafter acted and is still acting as such Administrator.

34. Defendant, ERIE COUNTY (the "County") is a governmental subdivision created under the laws of the State of New York. The County is charged by the laws of the State of New York with authority to maintain the Erie County Holding Center (ECHC). The Erie County Holding Center in Buffalo, New York is a pretrial facility owned by Erie County; many people held there are not convicted of a crime.

35. ERIE COUNTY SHERIFF JOHN C. GARCIA ("Garcia") is the Sheriff of Erie County and is responsible for the day-to-day operations of ECHC. In his official capacity as Sheriff, he has the custody, control, and charge of the ECHC, and the pre-trial detainees confined within. Sheriff Garcia is sued in both his individual and official capacity.

36. Upon information and belief, at all times hereinafter mentioned, defendant, JOHN DOE 1 through 20, were and still are residents of the County of Erie and the State of New York. He/she/they are sued in his/her/their individual and official capacities.

37. Upon information and belief, at all times hereinafter mentioned, defendant, Garcia, was acting within his authority as an Erie County Sheriff and acting under color of state law.

38. Upon information and belief, at all times hereinafter mentioned, defendants, JOHN DOE 1 through 20, were hired and/or employed by defendants, Erie County and were acting within their authority as an Erie County Deputy Sheriff(s) and/or officer(s) and/or staff and acting under color of state law.

39. Upon information and belief, at all times hereinafter mentioned, defendants Erie County and/or Sheriff Garcia were responsible for the supervision, administration, policy, practices, procedures, and customs of the Erie County Sheriff's Department, and are responsible for the hiring, training, discipline, and control of the ECHC staff.

40. At all times hereinafter mentioned and in all their actions described herein, defendants, pursuant to the authority vested in the employees, servants, and agents of Erie County and/or the Sheriff, were acting under color of the statutes, ordinances, regulations, policies, customs, and usages of Erie County and/or Sheriff Garcia and under color of state law.

41. At all times hereinafter mentioned and in all their actions described herein, the employees, servants, agents, and sheriffs at the ECHC were acting within the scope of their employment and incidental to their otherwise lawful duties and functions.

42. Upon information and belief, at all times hereinafter mentioned, defendants, Erie County and/or Sheriff Garcia, owned, maintained, operated, managed, directed, controlled, and staffed the Erie County Holding Center, located at 40 Delaware Avenue within the City of Buffalo, County of Erie and State of New York, and were responsible for the care and custody of all detainees at said facility.

43. Upon information and belief, at all times hereinafter mentioned, defendants Erie County and/or Sheriff Garcia employed and controlled the individuals responsible for the hiring, training, and discipline of JOHN DOE 1 through 20. Defendant, Erie County and/or Sheriff Garcia,

employed and controlled the individuals responsible for the assignment, dispatch, oversight and supervision of defendants, JOHN DOE 1 through 20. Defendant, Erie County and/or Sheriff Garcia, also created, instituted, and oversaw enforcing the policies, practice, and procedures at issue in this action.

44. Defendant, Erie County and/or Sheriff Garcia, was responsible for the hiring, training, supervision, discipline, retention, and promotion of employees of the ECHC staff.

**FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
(MEDICAL NEGLIGENCE UNDER NEW YORK LAW)**

45. Plaintiff incorporates by reference each and every allegation contained in the above paragraphs as if set forth fully herein.

46. Upon information and belief, the incident hereinbefore described and the resultant injuries and death were caused as a result of the negligence, carelessness, recklessness and/or unlawful conduct on the part of the agents, servants, and/or employees of defendants, ERIE COUNTY, SHERIFF JOHN C. GARCIA and JOHN DOE 1 through 20, and more particularly, among other things, in their failing and omitting to properly and in a timely manner administer, provide and/or ensure for adequate medical treatment, including transport, assessments, monitoring, examinations and medications; in filing of false reports; in failing to properly and in a timely manner respond to Sean Riordan's medical complaints, symptoms and requests for treatment and/or medication; in deliberately, purposefully, and knowingly denying detainees like Sean Riordan access to necessary medical treatment for opioid and/or alcohol use disorders; in deploying unlawful force because of illness and/or requests for medical aide; and in negligently furthering the deterioration of Sean Riordan's medical condition by ignoring his symptoms and complaints.

47. Upon information and belief, the incident hereinbefore described and the resultant injuries and death were caused as a result of the negligence, carelessness, recklessness and/or unlawful conduct on the part of the agents, servants, and/or employees of defendants, ERIE COUNTY, SHERIFF JOHN C. GARCIA and JOHN DOE 1 through 20, were caused by those acts and omissions of the agents, servants and/or employees of the ERIE COUNTY, SHERIFF JOHN C. GARCIA and JOHN DOE 1 through 20, in their failure to properly and adequately train, supervise, instruct their employees, staff and/or officers with regard to the proper and timely medical treatment of detainees; in failing to properly and adequately train, supervise, instruct their employees, staff and/or officers in recognizing the signs and symptoms of acute ethanol withdrawal as well as in the appropriate administration of the CIWA questionnaire; in the failure to respond to Sean's medical crisis in an expeditious manner; and in violating Sean's state and federal constitutional and statutory rights as well as internal policies by engaging in excessive force, failing to provide adequate medical care, and failing to take reasonable measures to guarantee the safety of Sean Riordan.

**SECOND CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(Wrongful Death)**

48. Plaintiff incorporates by reference each and every allegation contained in the above paragraphs as if set forth fully herein.

49. Decedent left surviving his mother, Christine Riordan.

50. The decedent's next of kin was dependent upon decedent for support, maintenance, nurture, comfort, advice, aid, and society, which she is now deprived of because of the aforesaid incident.

51. The decedent's next of kin suffered loss of love, society, protection, comfort, companionship, and consortium resulting from Sean's death, which she is now deprived of because of the aforesaid incident.

52. As a result of the aforesaid incident, medical, funeral, and burial expenses have been incurred.

53. By reason of Sean's death caused by the negligence, neglect, and constitutional violations of the defendants, his distributee has been damaged, and the amount of damages shall exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**THIRD CAUSE OF ACTION
AGAINST ALL DEFENDANTS**

42 U.S.C. §1983 AND FOURTEENTH AMENDMENT

(Deliberate Indifferent to Serious Medical Need in Violation of the Fourteenth Amendment)

54. Plaintiff incorporates by reference each and every allegation contained in the above paragraphs as if set forth fully herein.

55. Sean Riordan, while under the care, custody and control of ERIE COUNTY AND SHERIFF JOHN C. GARCIA, at the ECHC, was caused to suffer serious injuries, due to the failure of ERIE COUNTY, SHERIFF JOHN C. GARCIA and JOHN DOE 1 through 20, to ensure for and/or provide timely and proper medical treatment to Sean Riordan; in their failure to provide medications and proper medical treatment that he required; the denial of treatment by defendants amounts to deliberate indifference to a serious medical need, in violation of the Fourteenth Amendments' prohibition against cruel and unusual punishment and 42 U.S.C. § 1983; in their failure and refusal to make a reasonable accommodation by providing him with access to proper treatment and medications, thereby discriminating against him on the basis of disability, even

though accommodation would in no way alter the nature of the healthcare program, and unconstitutionally deprived him of his liberty and he was otherwise tortuously and maliciously harmed by the actions of the defendants, all in violation of Title 42 of the United States Code, Section 1983 et. seq. and the AMERICANS WITH DISABILITIES ACT. Said negligent and improper delay in medical treatment led to the untimely and wrongful death of Sean Riordan on or around June 14, 2022.

56. The opioid and/or alcohol symptoms suffered because of chronic opioid and/or alcohol use disorder by Sean Riordan, constituted a serious medical need.

57. Upon information and belief, defendants, ERIE COUNTY and the ERIE COUNTY SHERIFF'S DEPARTMENT failed to provide Treatment/Medication for Addiction Treatment (MAT) for detainees suffering from opioid and/or alcohol use disorder even though the medical standard of care for opioid and/or alcohol use disorder is MAT.

58. Defendant knew of and disregarded or should have known of the excessive risk of harm to Sean Riordan if he was not provided prompt and appropriate medical treatment for opioid and/or alcohol use disorder symptoms suffered as a result of the opioid and/or alcohol use disorder.

59. The failure to provide and/or denial of access to Treatment/Medication for Addiction Treatment (MAT) caused Sean Riordan physical and psychological suffering and injuries resulting in death.

60. The denial of treatment and failure by defendants to provide medical care and treatment to Sean Riordan constitutes a deliberate indifference to a serious medical need, in violation of the Fourteenth Amendment and 42 U.S.C. §1983.

61. As a result of the foregoing, plaintiff has sustained general and special damages in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction.

**FOURTH CAUSE OF ACTION
AGAINST ERIE COUNTY**

(Monell Claim-Municipal Liability Pursuant to 42 U.S.C. Section 1983)

62. Plaintiff incorporates by reference each and every allegation contained in the above paragraphs as if set forth fully herein.

63. A municipality, such as Erie County, may be held liable under § 1983 when their official policies, practices, or customs violate the Constitution. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–91, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

64. Defendants, ERIE COUNTY and SHERIFF JOHN C. GARCIA, established, condoned, ratified, and/or encouraged customs, policies, patterns, and practices that directly and proximately caused the deprivation of the civil and constitutional rights of Sean Riordan, and the damages and injuries described herein. They did so with deliberate indifference to the rights of the detainee. These written and unwritten policies, customs, patterns, and practices included:

- a) Failing to adequately staff their department with sufficient deputies, staff, and employees (including health care workers), for welfare checks, medical assessment, monitoring, and medical treatment.
- b) Failing to train, supervise and discipline deputies, staff, and employees at the ECHC responsible for welfare checks, medical assessment, monitoring, and medical treatment.
- c) Failing to utilize qualitative benchmarks to assess the quality of medical care ECHC provides to its detainees.

- d) Failing to take steps to ensure that deputies, staff, and employees at the ECHC do not falsify welfare checks and/or medical assessments and logs.
- e) Failing to have in place, or failing to follow, a policy or procedure to prevent officers from using excessive force against and/or improperly restraining and/or isolating detainees experiencing symptoms of opioid and/or alcohol withdrawal.
- f) Retaining deputies, staff, and employees, when they knew or should have known of their propensity to abuse their position of authority at the ECHC.
- g) Failing to adequately staff their department with sufficient deputies, staff, and employees (including health care workers), for detainees with opioid and/or alcohol use disorders.
- h) Failing to have in place, or failing to follow, a policy or procedure to prevent officers from denying detainees access to necessary medical treatment for chronic opioid and/or alcohol use disorders.
- i) Failing to have in place, or failing to follow, a policy or procedure to prevent officers from using excessive force on detainees when exhibiting symptoms of opioid and/or alcohol disorder.
- j) Failing to properly screen, during the booking process, and supervise thereafter, prisoner, inmate, and/or detainee for chronic opioid and/or alcohol use disorders.
- k) Failing and omitting to properly and in a timely manner administer, provide and/or ensure for adequate medical treatment, including transport, assessments, monitoring, examinations, and medications.
- l) Failing to properly and in a timely manner respond to medical complaints,

symptoms, and requests for treatment and/or medication.

- m) Deliberately, purposefully, and knowingly denying detainees access to necessary medical treatment for opioid and/or alcohol use disorders.
- n) Failing to properly and adequately train, supervise, instruct their employees, staff and/or officers about the proper and timely medical treatment of detainees; and in recognizing the signs and symptoms of acute ethanol withdrawal as well as in the appropriate administration of the CIWA questionnaire.
- o) Failing to immediately seek hospital treatment for detainees in need of it.
- p) Failing to recognize the signs and symptoms acute ethanol withdrawal.

66. At all relevant times, defendants acted unreasonably and with deliberate indifference and disregard for the constitutional and civil rights of the detainee Sean Riordan. The actions of the defendants were malicious, willful, wanton, and reckless.

67. The failure by defendants to supervise, train, or discipline personnel was so obvious that the failure to do so amounted to a policy of "deliberate indifference."

68. Such acts as alleged herein were the proximate cause of injury and damage to the inmate, detainee, and/or prisoner.

**FIFTH CAUSE OF ACTION
AGAINST ERIE COUNTY and SHERIFF GARCIA**

AMERICANS WITH DISABILITIES ACT

(Unlawful Discrimination Against Qualified Individuals with Disabilities)

69. Plaintiff incorporates by reference each and every allegation contained in the above paragraphs as if set forth fully herein.

70. Erie County Holding Center (“ECHC”), which is owned and operated by Defendants, Erie County and Sheriff Garcia, is a public facility subject to the Americans with Disabilities Act (ADA).

71. Alcoholism and/or opioid use is a “disability” under the ADA. See 42 U.S.C. §12102 and 12131(2); 28 C.F.R. §35.108 (the phrase “physical or mental impairment includes but is not limited to ...alcoholism.”).

72. The ADA applies to individuals, such as Sean Riordan, who require or are receiving treatment for alcohol addiction.

73. Defendants denied Sean Riordan, the benefit of medical programs through the Erie County Holding Center on the basis of his disability.

74. Sean Riordan, while under the care, custody and control of the ERIE COUNTY and Sheriff Garcia, at the ECHC, was caused to suffer serious injuries, due to the failure of ERIE COUNTY, SHERIFF JOHN C. GARCIA and JOHN DOE 1 through 20 to ensure for and/or provide timely and proper medical treatment to Sean Riordan, in their failure to provide medications and proper medical treatment that he required, the denial of treatment by defendants amounts to deliberate indifference to a serious medical need, in violation of the Fourteenth Amendments’ prohibition against cruel and unusual punishment and 42 U.S.C. § 1983, in their refusal to make a reasonable accommodation by providing him with access to proper treatment and medications, thereby discriminating against her on the basis of disability, even though accommodation would in no way alter the nature of the healthcare program, and was unconstitutionally deprived of his liberty and otherwise tortuously and maliciously harmed by the actions of the defendants, all in violation of Title 42 of the United States Code, Section 1983 et.

seq. and the ADA. Said negligent and improper delay in medical treatment led to the untimely and wrongful death of Sean Riordan on or around June 14, 2022.

75. Defendants refused to and/or failed to make a reasonable accommodation to Sean Riordan, by providing him with Treatment/Medication for Addiction Treatment for opioid and/or alcohol use disorders, thereby discriminating against him on the basis of disability, even though accommodation would in no way alter the nature of the healthcare program. Upon information and belief, defendants do not deny medically necessary, physician-prescribed medications to other detainees with serious, chronic medical conditions, such as diabetes.

76. As a result of the foregoing, plaintiff has sustained general and special damages in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction.

**SIXTH CAUSE OF ACTION
AGAINST JOHN DOE 1 through 20
(42 U.S.C. §1983 Excessive Force)**

77. Plaintiff restates and realleges each and every paragraph of this Complaint as if fully set forth herein.

78. By their unlawful actions as described herein, defendants, under color of law, subjected Sean Riordan, to the deprivation of rights, privileges, or immunities guaranteed and secured by the United States Constitution, namely, Sean's rights to freedom from unreasonable seizure by the use of unlawful, unnecessary, and excessive use of force against Sean Riordan.

79. Defendants violated rights held by Sean Riordan which were clearly established, and no reasonable official similarly situated as defendants could have believed that such conduct was lawful or within the bounds of reasonable discretion. Therefore, defendants lack qualified or statutory immunity from suit or liability.

80. Defendants' use of force was sufficiently unreasonable and conscience shocking.

81. The actions of defendants, as described herein, were malicious, deliberate, intentional, and embarked upon with the knowledge of, or in conscious disregard of, the harm that would be inflicted upon Sean Riordan. As a result of this intentional conduct, plaintiff, is entitled to punitive damages against defendants, in an amount sufficient to punish them and to deter others from similar conduct.

82. Plaintiff was required to hire attorneys to represent her in this action and is thus entitled to an award of reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988.

**SEVENTH CAUSE OF ACTION
(Failure to Intervene)**

83. Plaintiff restates and realleges each and every paragraph of this Complaint as if fully set forth herein.

84. "It is widely recognized that all law enforcement officials have an affirmative duty to intervene to protect the constitutional rights of citizens from infringement by other law enforcement officers in their presence." *Anderson v. Branen*, 17 F.3d 552, 557 (2d Cir.1994).

85. An officer who fails to intercede when unlawful, unnecessary, and excessive force is used, or another constitutional violation occurs, is liable for the preventable harm caused by the actions of other officers.

86. Here, upon information and belief there were several deputies and/or supervisors who had a "realistic opportunity" to intervene and prevent unlawful and unnecessary force yet failed to do so.

87. The actions of defendants, as described herein, were malicious, deliberate, intentional, and embarked upon with the knowledge of, or in conscious disregard of, the harm that would be inflicted against Sean Riordan. As a result of this intentional conduct, plaintiff is entitled

to punitive damages against defendants, in an amount sufficient to punish them and to deter others from similar conduct.

88. Plaintiff was required to hire attorneys to represent her in this action and is thus entitled to an award of reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988.

EIGHTH CAUSE OF ACTION

(Assault)

89. Plaintiff restates and realleges each and every paragraph of this Complaint as if fully set forth herein.

90. Defendants JOHN DOE 1 through 20 used unlawful and unnecessary force causing Sean Riordan to suffer blunt force traumatic injuries and/or death.

91. Defendants JOHN DOE 1 through 20 intended to either to inflict personal injury upon Sean Riordan *or* to arouse apprehension of harmful or offensive bodily contact.

92. The actions of defendants, as described herein, were malicious, deliberate, intentional, and embarked upon with the knowledge of, or in conscious disregard of, the harm that would be inflicted against Sean Riordan. As a result of this intentional unlawful conduct, plaintiff is entitled to punitive damages against defendants, in an amount sufficient to punish them and to deter others from similar conduct.

93. Plaintiff was required to hire attorneys to represent her in this action and is thus entitled to an award of reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988.

NINTH CAUSE OF ACTION

(Battery)

94. Plaintiff restates and realleges each and every paragraph of this Complaint as if fully set forth herein.

95. Defendants, JOHN DOE 1 through 20, intentionally made bodily contact with Sean Riordan, the intended contact was itself offensive and was without the consent of Sean Riordan.

96. The actions of defendants, as described herein, were malicious, deliberate, intentional, and embarked upon with the knowledge of, or in conscious disregard of, the harm that would be inflicted against Sean Riordan. As a result of this intentional conduct, plaintiff is entitled to punitive damages against defendants, in an amount sufficient to punish them and to deter others from similar conduct.

97. Plaintiff was required to hire attorneys to represent her in this action and is thus entitled to an award of reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988.

RELIEF REQUESTED

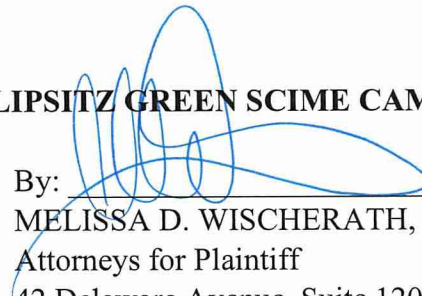
Plaintiff, respectfully requests that this Court:

- a. Exercise jurisdiction over plaintiff's claims and grant her a jury trial;
- b. Award plaintiff economic and non-economic damages, in an amount to be ascertained according to proof, and interest on said sums from the date of Judgment;
- c. Award plaintiff punitive damages against defendants Garcia and John Doe 1 through 20 in an amount sufficient to punish them and deter others from similar conduct;
- d. Award plaintiff reasonable attorney's fees and costs as provided by 42 U.S.C. § 1988; and
- e. Grant plaintiff such other and further relief as this Court deems just and appropriate, including, declaratory and injunctive relief

- a. appointing experts to investigate and identify appropriate solutions to the chronic and unconstitutional practices described herein; and
- b. ordering the defendants be required to implement an intensive education and training of their staff in recognizing the signs and symptoms of acute ethanol withdrawal as well as in the appropriate administration of the CIWA questionnaire.

DATED: Buffalo, New York
June 13, 2023

LIPSITZ GREEN SCIME CAMBRIA LLP

By: 
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