

4. Defendant County of Rensselaer is a county government duly incorporated under the laws of the State of New York, with its principal place of business being 105 3rd Street, Troy, NY.

5. Defendant Jack Mahar was and remains the duly elected Sheriff of the County of Rensselaer, with his principal place of business being 4000 Main Street, Troy, N.Y.

6. At all relevant times, Defendant Elaine Young was a Registered Nurse employed at the Rensselaer County Jail with her principal place of business being 4000 Main Street, Troy, NY.

7. Defendant David Hetman was, at all relevant times, a duly appointed Lieutenant at the Rensselaer County Jail, with his principal place of business is 4000 Main Street, Troy, NY.

FACTS

8. At all relevant times, Samaritan Hospital in Troy, NY provided the Rensselaer County Jail (“RCJ”) nursing staff with access to the Hospital’s electronic medical records system to facilitate continuity of care for RCJ inmates who were treated at Samaritan Hospital. RCJ nursing staff could access the Hospital’s medical records via a computer terminal at the RCJ nurse’s station and were only authorized to access inmate medical files.

9. Defendant Elaine Young, the Nursing Supervisor at RCJ, signed a written agreement that she would access patient records for authorized purposes only, and not for any purpose prohibited under applicable privacy laws and hospital policies.

10. Defendant Young was responsible for securing the network password that provided RCJ access to Samaritan Hospital’s medical records, but Ms. Young failed to keep this password secure and instead taped it to a computer console in her office and/or left it in a drawer

near the computer. As a result, and upon information and belief, numerous nursing and corrections staff used this password for non-authorized purposes.

11. In or around 2004, Sheriff Mahar instituted a policy governing the use of sick days by RCJ employees. Employees deemed to be in violation of the policy were placed on “sick abuse” status and were denied privileges and/or required to submit a physician’s note to explain his/her absence.

12. Upon information and belief, sometime thereafter, Sheriff Mahar decided to take advantage of RCJ’s access to Samaritan Hospital medical records. Specifically, Mahar wanted to verify whether employees who were on sick leave were actually receiving medical treatment. As a result, and upon information and belief, Sheriff Mahar personally accessed, and/or directed various RCJ staff, including Defendants Hetman and Young, to access the medical records of numerous RCJ employees from 2007 – 2011. Many of the individuals whose records were accessed were being targeted by the Sheriff for various reasons, including but not limited to individuals: who were on “sick abuse” status; who brought lawsuits against the department; who applied for N.Y. Gen. Mun. Law §207(c) benefits; who participated in labor unions; and/or those who supported his opponent during the 2011 election.

13. In or about March 2013, several individuals, including numerous RCJ employees, received letters from Samaritan Hospital, which stated that information relating to the medical care they received at Samaritan Hospital may have been improperly accessed by other employees of RCJ. Some of those individuals include:

- In or around 2007, Defendant Young’s account was used to improperly access the medical records of Tamera Thomas, an employee of RCJ who was on sick leave for an injury she received while working at the jail. This improper access occurred at or around the time that Ms. Thomas applied for §207(c) benefits.

- In or around 2009, Defendant Young's account was used to improperly access the medical records of Keith Hancock, an employee of RCJ who was repeatedly targeted by Mahar because of his participation in a labor union and sick abuse status.
- In or around 2010, Defendant Young's account was used to improperly access records of a twelve year-old child involved in a personal injury lawsuit against two RCJ Corrections officers.
- In or around 2011, Defendant Young's account was used to improperly access records of Jason Dessingue, an employee of RCJ who supported Mahar's opponent in the 2011 election. This improper access occurred at or around the same time he was out on sick leave after he underwent heart surgery.
- In or around 2011, Defendant Young's account was used to improperly access records of Kevin Rogers, an employee of RCJ who supported Mahar's opponent in the 2011 election. This improper access occurred at or around the same time he was being unlawfully wiretapped by other RCJ employees.
- Plaintiff's Counsel has obtained documents from Rensselaer County in related litigation, which confirms that the records of numerous other RCJ employees were accessed from 2007 – 2010, including those of Plaintiff Charles Momrow.

14. Upon information and belief, shortly after these letters were sent out by Samaritan Hospital, an internal affairs investigation was launched by the Rensselaer County Jail. Lieutenant James Karam was in charge of this investigation for a substantial period of time. Recently, Lieutenant Karam provided sworn deposition testimony, wherein he stated that, after conducting the investigation, he concluded that Sheriff Mahar and Lieutenant Hetman were directly involved in the improper access of RCJ employees' medical records. See *Karam v. County of Rensselaer*, No. 1:13-CV-01018 (N.D.N.Y.) Upon information and belief, there is no question that Mahar was directly involved in the improper access of medical records, because he was solely responsible for approving all sick leave and/or other injury related benefits.

15. This investigation prompted many RCJ employees to personally check whether their medical records had been accessed. Upon information and belief, in or about January 2014,

one RCJ employee learned that Plaintiff's medical records had been accessed, and informed Mr. Momrow as much. Upon reviewing records provided by Rensselaer County to Plaintiff's counsel in related litigation, Mr. Momrow determined that Defendant Young's account was used to improperly access his records on or about January 11, 2010, January 14, 2010, and January 21, 2010. These dates correspond to the time he was out on sick leave and receiving treatment for severe depression.

16. At no point in time did Plaintiff give anyone at RCJ permission to access his medical records.

17. At all relevant times, the Individual Defendants acted within the scope of their authority to act as public servants for the County of Rensselaer and the State of New York.

18. At all relevant times, the individual Defendants were acting under color of state law, that is, under the color of statutes, laws, charters, ordinances, rules regulations, customs and the usages of the County of Rensselaer and the State of New York.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

-- Violation of Constitutional Rights under Color of State Law -- Invasion of Privacy

19. Plaintiff incorporates by reference and realleges each and every allegation stated herein.

20. The Fourteenth Amendment of the United States Constitution protects a citizen's rights to privacy against unreasonable government intrusion. Citizens have a clearly established right in maintaining the confidentiality of medical information.

21. The actions of the Individual Defendants violated Plaintiff's right to privacy in their medical information, in that the Individual Defendants used the RCJ medical computer to access the Plaintiff's medical records to gain advantage over him in his employment with the Rensselaer County Sheriff's Department. In the alternative, the Individual Defendants, even if they did not actually access the Plaintiff's medical records, conspired with each other to violate the Plaintiff's right to privacy.

22. The individual Defendants' actions were motivated by bad faith and malice.

23. The County of Rensselaer is directly responsible for this constitutional violation based on the actions of their chief policy maker, Sheriff Jack Mahar. Specifically, Sheriff Mahar is, upon information and belief, responsible for the efforts to access the Plaintiff's medical records to gain advantage over the Plaintiff regarding his legitimate use of sick leave.

24. Defendants' conduct also represents a violation of 42 U.S.C. § 1983, given their actions were undertaken under color of state law.

25. As a direct and proximate result of the unconstitutional acts described above, Plaintiff has been irreparably injured.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS JACK
MAHAR AND THE COUNTY OF RENSSELAER**

**--Violation of Constitutional Rights under Color of State Law --
Implementation of Municipal Policies and Practices that Directly Violate Constitutional
Rights and/or Failure to Implement Municipal Policies to Avoid Constitutional
Deprivations**

26. Plaintiff incorporates by reference and realleges each and every allegation stated herein.

27. Upon information and belief, Defendants Jack Mahar and the County of Rensselaer are responsible for establishing policies and procedures to be utilized by employees of the Rensselaer County Jail, including Defendants Young and Hetman.

28. Upon information and belief, given the allegations made herein, and the on-going patterns of official abuse of power as it relates to the improper access of RCJ employees, and other individuals including a twelve year-old girl, Defendants Mahar and the County of Rensselaer did not and/or have not established policies or procedures detailing the appropriate circumstances under which medical records can be accessed at the Rensselaer County Jail.

29. In the alternative, Defendants have instituted appropriate policies, but then through gross negligence and carelessness have demonstrated deliberate indifference to the constitutional rights of citizens by failing or intentionally refusing to enforce them.

30. These policies, procedures, and practices of the above-named Defendants violated the rights of Plaintiff Charles Momrow.

31. As a direct and proximate result of the unconstitutional acts described above, Plaintiff has been irreparably injured.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS JACK MAHAR AND THE COUNTY OF RENSSELAER

**--Violation of Constitutional Rights under Color of State Law--
Failure to Train and Supervise Employees under Color of State Law**

32. Plaintiff incorporates by reference and realleges each and every allegation stated herein.

33. Upon information and belief, Defendant Mahar and the County of Rensselaer are directly responsible for supervising Defendants Hetman and Young.

34. Upon information and belief, given the allegations made herein, and the on-going patterns of official abuse of power as it relates to the improper access of RCJ employees, and other individuals including a twelve year-old girl, Defendants Mahar and the County of Rensselaer have failed to supervise and/or discipline employees under their supervision, including Defendants Hetman and Young.

35. Additionally, Defendants have failed to institute an appropriate training regimen on a variety of subjects, including appropriate circumstances under which medical records can be accessed at the Rensselaer County Jail.

36. In the alternative, Defendants have instituted training regimens to address the issues listed above, but then have, through gross negligence and carelessness, demonstrated deliberate indifference to citizen's privacy rights by failing to adequately hire, screen, train, and supervise employees of Rensselaer County .

37. The policies, procedures, customs, and practices of the above-named Defendants violated the Constitutional rights of the Plaintiff.

38. As a direct and proximate result of the unconstitutional acts described above, the Plaintiff has been irreparably injured.

DEMAND FOR PUNITIVE DAMAGES

39. The actions of the individual Defendants described herein were extreme and outrageous, and shock the conscience of a reasonable person. Consequently, an award of punitive damages is appropriate to punish the Defendants for their cruel and uncivilized conduct. Plaintiff does not seek an award of punitive damages against the Defendant County of Rensselaer.

DEMAND FOR TRIAL BY JURY

40. The Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Charles Momrow requests that this Honorable Court grant him the following relief:

A. A judgment in favor of Plaintiff against all Defendants for compensatory damages in an amount to be determined by a properly charged jury;

B. A judgment in favor of Plaintiff against the Individual Defendants for punitive damages in an amount to be determined by a properly charged jury;

C. A monetary award for attorney's fees and the costs of this action, pursuant to 42 U.S.C. § 1988;

D. Any other relief that this Court finds to be just, proper, and equitable.

Respectfully Submitted By:

/s Elmer Robert Keach, III

Dated: April 29, 2015

Elmer Robert Keach, III, Esquire
Maria K. Dyson, Esquire
LAW OFFICES OF ELMER ROBERT
KEACH, III, PC
One Pine West Plaza, Suite 109
Albany, NY 12205
Telephone: 518.434.1718
Telecopier: 518.770.1558
Electronic Mail:
bobkeach@keachlawfirm.com