

JUDGE HOLWELL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT BARLEY,

Plaintiff,

11 CIV 1300

NOTICE OF REMOVAL

-against-

Case No. 11 Civ. _____

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF CORRECTIONS, BERNARD B.
KERIK, GARY M. LANIGAN, WILLIAM J. FRASER,
MARTIN F. HORN, JOHN J. ANTONELLI, and DORA
B. SCHIRO, CITY OF NEW YORK DEPARTMENT
OF HEALTH AND MENTAL HYGIENE,

Defendants.



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PLEASE TAKE NOTICE that Bernard B. Kerik, Gary M. Lanigan, William J. Fraser,

Martin F. Horn, John J. Antonelli, Dora B. Schiro, and The City of New York ("Defendants"),
by and through their attorney, Michael A. Cardozo, Corporation Counsel of the City of New
York, hereby remove the above-entitled action from the Supreme Court of the State of New
York, County of Bronx, to the United States District Court for the Southern District of New York
in accordance with 28 U.S.C. § 133, 128 U.S.C. §§ 1441(b) and 1443.

In support of this Notice of Removal, Defendants state:

1. On or about February 9, 2011, Defendants were served with the Verified
Complaint in the above entitled action, pending in the Supreme Court of the State of New York,
County of Bronx, Index No. 301151-11, naming each of them as Defendants therein, and setting
forth the claims for relief upon which the action is based. A copy of the Verified Complaint is
annexed hereto as Exhibit "1."

2. The above-captioned suit is a civil action with respect to which the District
Court has original jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction). This
action is therefore removable to the District Court without regard to the citizenship or residence

of the parties pursuant to 28 U.S.C. §§ 1441(b) and 1443.

3. Specifically, in the Verified Complaint, Plaintiff cites to 42 U.S.C. § 1983 and purports to allege violations under that statute. Defendants respectfully refer the Court to Paragraph 33 of the Verified Complaint, annexed hereto as Exhibit "1."

4. There has been no previous application for the relief requested herein.

5. This Notice of Removal is timely as it is being filed within thirty days of Defendants' receipt of the Complaint. *See* 28 U.S.C. § 1446(b).

6. All Defendants consent to removal of this action.

7. A copy of this Notice of Removal will be filed with the Supreme Court of the State of New York, County of Bronx, and will be served on Plaintiff in accordance with 28 U.S.C. § 1446(d).

8. Under Rule 81.1(b) of the Local Civil Rules for the Southern District of New York, Defendants will forward a copy of all records and proceedings in the Supreme Court of the State of New York, County of Bronx, within 21 days.

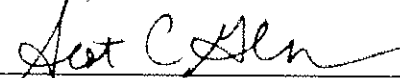
9. Defendants reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, Defendants hereby remove to this Court the action now pending against

them in the Supreme Court of the State of New York, County of Bronx.

Dated: New York, New York
February 24, 2011

MICHAEL A. CARDOZO
Corporation Counsel of The City of New York
Attorney for Defendants
100 Church Street
New York, New York 10007

By: 
SCOT C. GLEASON (SG-4217)
Assistant Corporation Counsel
sgleason@law.nyc.gov
(212) 788-2912

TO: BURNS & HARRIS, ESQS.
Attorneys for Plaintiff
Christopher J. Donadio
233 Broadway, Suite 900
New York, NY 10279
212 393-1000

EXHIBIT

A

AETNA

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index # 301151/11

ROBERT BARLEY

Date Filed:
Plaintiff designates
BRONX COUNTY
as Place of Trial

Plaintiffs,

against

The basis of venue is
Place of Incident

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF CORRECTIONS,
BERNARD B. KERIK, GARY M. LANIGAN,
WILLIAM J. FRASER, MARTIN F. HORN,
JOHN J. ANTONELLI, and
DORA B. SCHIRO, CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

SUMMONS

Defendants

Plaintiff's address
127 Craig Avenue
Staten Island, NY


To the above named Defendant(s):

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 attorney within 20 days after the service of this summons, exclusive of the date of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
February 4, 2011

Yours, etc.

BURNS & HARRIS, ESQS.
Attorneys for Plaintiff(s)

BY: 
CHRISTOPHER J. DONADIO
233 Broadway, Suite 900
New York, NY 10279
212 393-1000

NYC DEPT OF CORRECTION
75-20 ASTORIA BLVD
EAST ELMHURST, NY 11370
LEGAL DIVISION
10 FEB 2011 11 41

BRONX COUNTY
11 FEB -7 PM 1:12

TO:

CITY OF NEW YORK
100 Church Street
New York, NY 10007

NYC DEPARTMENT OF CORRECTIONS
60 Hudson Street
New York, NY 10013

BERNARD B. KERIK
c/o Cumberland Federal Correction Facility
Cumberland, MD

GARY M. LANIGAN
c/o NY Department of Corrections
Whittlesey Road
Trenton, NJ 08625

WILLIAM J. FRASER
411 Beach 138th Street
Apt. 138
Rockaway Park, NY 11694

MARTIN F. HORN
c/o John Jay College of Criminal Justice
899 10th Avenue
New York, NY

JOHN J. ANTONELLI
c/o NYC Department of Corrections
60 Hudson Street
New York, NY 10013

DORA V. SCHIRO
c/o NYC Department of Corrections
~~60 Hudson Street~~
~~New York, NY 10013~~

*75-20 ASTORIA BLVD
ASTORIA, NY*

NYC DEPARTMENT OF HEALTH AND
MENTAL HYGIENE
125 Worth Street
New York, NY 10013

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index #

-----X
ROBERT BARLEY

301151/11

Plaintiffs

VERIFIED
COMPLAINT

Against

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF CORRECTIONS,
BERNARD B. KERIK, GARY M. LANIGAN,
WILLIAM J. FRASER, MARTIN F. HORN,
JOHN J. ANTONELLI, and
DORA B. SCHRIRO, CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

FEB - 7 2011

Defendants
-----X

Plaintiffs, complaining of the Defendants through their attorneys,

BURNS & HARRIS, ESQS., alleges upon information and belief:

JURISDICTION

1. The occurrences which are the subject of this action took place
in the County of Bronx.

THE PARTIES

2. Defendant CITY OF NEW YORK is a municipal corporation
existing under and by virtue of the laws of the State of New York.

3. Defendant CITY OF NEW YORK is a duly constituted municipal
corporation organized and existing under the laws of the State of New York.
At all times relevant hereto, the defendant CITY OF NEW YORK, action
through the NYC Department of Corrections ("DOC") was responsible for the
policy, practice, supervision, implementation and conduct of all DOC matters

and was responsible for the appointment, training, supervision, and conduct of all DOC personnel. In addition, at all relevant times, defendant CITY OF NEW YORK was responsible for enforcing the rules of the DOC, and for ensuring that DOC personnel obeyed the Constitution and laws of the United States and of the State of New York.

4. Defendant BERNARD KERIK was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner BERNARD KERIK is sued in his individual and official capacity.

5. Defendant GARY M. LANIGAN was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner GARY M. LANIGAN is sued in his individual and official capacity.

6. Defendant WILLIAM J. FRASER was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF

CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner WILLIAM J. FRASER is sued in his individual and official capacity.

7. Defendant MARTIN F. HORN was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner MARTIN F. HORN is sued in his individual and official capacity.

8. Defendant JOHN J. ANTONELLI was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner JOHN J. ANTONELLI is sued in his individual and official capacity.

9. Defendant DORA B. SCHRIRO was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under her control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of

New York, City and State of New York. Commissioner DORA B. SCHRIRO is sued in her individual and official capacity.

10. Defendant NEW YORK CITY DEPARTMENT OF CORRECTIONS is an agency of THE CITY OF NEW YORK, responsible for overseeing, organizing, administering and running the City's detention facilities, including RIKERS ISLAND, in which among other people, Corrections Officers are employed. At all times relevant hereto, defendant DOC, together with THE CITY OF NEW YORK, was responsible for the policy, practice, supervision, implementation and conduct of all DOC matters and was responsible for the appointment, training, supervision and conduct of all DOC personnel. In addition, at all relevant times, defendant DOC, together with THE CITY OF NEW YORK, was responsible for enforcing the rules of the DOC, and for ensuring that DOC personnel obeyed the Constitution and laws of the United States and of the State of New York.

11. At all times relevant hereto, Defendant CITY OF NEW YORK operated, maintained, managed, supervised and controlled RIKERS ISLAND LANDFILL and RIKERS ISLAND CORRECTIONAL FACILITY as part of and in conjunction with its municipal functions.

12. That plaintiff claims applicability of CPLR §214-(c)(4).

**FIRST CAUSE OF ACTION:
(POLICY OF NON-FEASANCE IN THE
PROTECTION OF PLAINTIFF'S CIVIL RIGHTS)**

13. This is a Civil Rights action brought pursuant to the United States Constitution, as amended, and the Civil Rights Act of 1871, 42 U.S.C

§1983 and the New York State Constitution and seeks redress for defendants' deprivation, under color of State law, of plaintiff's rights, privileges, and immunities secured by the Constitution and laws of the United States and by the new York State Constitution.

14. That at all times mentioned herein, and from on or about October, 1993 until September, 2007 plaintiff ROBERT BARLEY worked as a Cook at Rikers Island Correctional Facility, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

15. That from on or about October, 1993 until September, 2007, plaintiff ROBERT BARLEY was exposed to carcinogens and/or toxins at and upon said premises.

16. That the plaintiff ROBERT BARLEY was not diagnosed with thyroid cancer until on or about March 1, 2008.

17. That at all times mentioned herein, the defendant **CITY OF NEW YORK** was the owner of premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

18. That at all times mentioned herein, the defendant **CITY OF NEW YORK** operated premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

19. That at all times mentioned herein, the defendant **CITY OF NEW YORK** maintained premises known as RIKERS ISLAND

CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

20. That at all times mentioned herein, the defendant **CITY OF NEW YORK** managed premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

21. That at all times mentioned herein, the defendant **CITY OF NEW YORK** controlled premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

22. That at all times mentioned herein, the defendant **CITY OF NEW YORK** supervised premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

23. That at all times mentioned herein, the defendant **CITY OF NEW YORK** renovated premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

24. That at all times mentioned herein, the defendant **CITY OF NEW YORK** repaired premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

25. That at all times mentioned herein, the defendant **CITY OF NEW YORK** inspected premises known as **RIKERS ISLAND CORRECTIONAL FACILITY**, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

26. That at all times mentioned herein, the defendant **CITY OF NEW YORK** hired contractors at premises known as **RIKERS ISLAND CORRECTIONAL FACILITY**, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

27. At all times mentioned herein, defendants have instituted and are continuing to enforce a policy, practice and custom to cause, permit, allow and require persons legally upon said premises to be exposed to toxic, cancerous substances which are present at Rikers Island, 10-10 Hazen Street, Bronx, NY.

28. Defendants had a policy, practice and custom of causing, permitting, allowing and requiring plaintiff to be exposed to toxic, carcinogenic substances while legally upon said premises.

29. That the deprivation of plaintiff's constitutional rights was the result of the **CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S** custom and/or policy of concealing the known existence of cancer causing toxins present at Riker's Island.

30. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of misrepresenting to class plaintiffs that Riker's Island was a safe and secure work environment.

31. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of depriving life, liberty and the pursuit of happiness to those present on Riker's Island.

32. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of violating the due process rights of those present on Riker's Island.

33. All defendants, THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF CORRECTIONS, BERNARD B. KERIK, GARY M. LANIGAN, WILLIAM J. FRASER, MARTIN F. HORN, JOHN J. ANTONELLI, DORA B. SCHIRO, and THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE acted under pretense and color of state

law and in their individual and official capacities and within the scope of their employment. Said acts by said defendants were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. §1983, and by the Fourth, Fifth, and Fourteenth amendments to the United States Constitution.

34. Exposure of plaintiff to toxins and carcinogens deprive the plaintiff of his Constitutional rights to life, liberty and the pursuit of happiness and substantive and procedural due process under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution.

35. At all times relevant hereto, defendant CITY OF NEW YORK caused, allowed and permitted persons legally upon said premises to be exposed to toxic, cancerous substances which are present at said premises.

36. At all times relevant hereto, defendant CITY OF NEW YORK instituted and continues to enforce a policy, practice and custom causing, permitting, allowing and requiring plaintiff to be exposed to toxic, cancerous substances which are present at the said premises.

37. Each and all of the acts of the defendants alleged herein were done by the defendants, their agents, servants and/or employees, and each of them, not as individuals, but under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New York, the City of New York and the County of Bronx.

38. That from approximately October, 1993 to September, 2007, the plaintiff, **ROBERT BARLEY**, was lawfully and properly present upon the premises mentioned herein.

39. Commencing approximately October, 1993 to September, 2007, plaintiff **ROBERT BARLEY** was exposed to toxic, cancerous substances which are present at said premises.

40. That commencing approximately October, 1993 to September, 2007, and prior and subsequent thereto, the **CITY OF NEW YORK**, in violation of 42 U.S.C. §1983 caused the plaintiff to be injured and damaged in causing, allowing and permitting plaintiff to be exposed to toxic, cancerous substances which are present at the premises mentioned.

41. The **CITY OF NEW YORK**, its agents, servants and/or employees caused, permitted, allowed and required plaintiff to be exposed to toxic, cancerous substances which are present at Riker's Island, Bronx, NY. Upon information and belief, defendants participated in the enforcement of the policy and/or knowingly or recklessly failed to prevent enforcement of the plainly unconstitutional policy.

42. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate supervise and inspect the said premises herein.

43. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair,

renovate, supervise and inspect the said premises in a reasonably safe and suitable condition and repair.

44. As a result of the aforesaid plaintiff **ROBERT BARLEY** was exposed to toxic, cancerous substances which are present at the premises mentioned and thereby deprived of his rights, liberties and freedoms under color of State Law in violation of 42 U.S.C. §1983.

45. As a further result of the deprivation of plaintiff **ROBERT BARLEY's** right to be free from the deprivation of rights guaranteed to him by the Fourth, Fifth and Fourteenth Amendment to the United States Constitution, he was caused to suffer injury and damage both mentally and physically, severe nervous shock and emotional distress and illness.

46. From on or about October, 1993 to 2007 in violation of the rights, privileges and immunities guaranteed to him under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution and under color of State law, the defendant CITY OF NEW YORK caused, permitted, allowed and required plaintiff to be exposed to toxic cancerous substances which are present at said premises, in violation of 42 U.S.C. Section 1983.

47. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

48. That at all times mentioned herein, the defendant CITY OF NEW YORK had a duty to warn persons of the hazardous and dangerous conditions existing at said premises.

49. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to comply with the New York City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

50. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises.

51. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises and were known or should have been known to be present upon said premises.

52. That at all times mentioned herein, said carcinogens and/or toxins were caused, permitted and allowed to be and remain upon said premises.

53. That at various and diverse times from on or about 1993 to the present and for a period of time prior and subsequent thereto, there existed a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins, upon said the premises.

54. That at various and diverse times from 1993 and for a period of time prior and subsequent thereto, the defendants maintained a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

55. That at various and diverse times from 1993 and for a period of time prior and subsequent thereto the defendants, their agents, servants

and/or employees created a dangerous, hazardous and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

56. At all times mentioned herein, it was the duty of the defendants to maintain the premises in a reasonably safe and proper condition and free of dangerous, hazardous, and unsafe conditions, including the presence of carcinogens and/or toxins upon said premises.

57. At all times mentioned herein, it was the duty of the defendants to maintain the premises in a reasonably safe condition for use by members of the general public.

58. That at all times mentioned herein, such culpable conduct was a proximate cause of the plaintiff's serious injuries.

59. That at all times relevant hereto, it was the duty of the defendants their servants, agents, and/or employees to conduct and supervise the maintenance, renovation, inspection, and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

60. That carcinogens and/or toxins were present at said premises, from the time the plaintiff **ROBERT BARLEY** was employed there, which was approximately from October, 1993 until September, 2007.

61. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to operate, maintain, manage, supervise and control the aforesaid premises in a reasonable and safe condition.

62. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

63. That at all times mentioned herein, the defendants, their agents, servants and/or employees failed to warn persons of the hazardous and dangerous conditions existing at said premises.

64. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to comply with the New York City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

65. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to conduct and supervise the maintenance, renovation, inspection and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

66. Although defendants knew or should have known of the fact that toxic cancerous substances were present at the said premises, the defendant **CITY OF NEW YORK** has not taken any steps or made any efforts to halt this course of conduct, to make redress to the plaintiff or other citizens injured thereby.

67. The unlawful and illegal conduct of the defendants, their agents, servants and/or employees to cause, allow and permit the exposure of

plaintiff to toxins and carcinogens deprived the plaintiff of his Constitutional rights to life, liberty and the pursuit of happiness and substantive and procedural due process under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution.

68. That by reason of the foregoing, this plaintiff was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, has suffered and continues to suffer serious and extreme mental and emotional anguish, distress and psychological damages and difficulties, some of which injuries are permanent in nature and duration, and plaintiffs will be permanently caused to suffer pain, inconvenience and other effects of such injuries; plaintiffs incurred and in the future will necessarily incur further hospital and/or medical expenses in an effort to be cured of said injuries; and plaintiffs have suffered and in the future will necessarily suffer additional loss of time and earnings from employment; and plaintiffs will be unable to pursue the usual duties with the same degree of efficiency as prior to this occurrence, all to plaintiffs' great damage.

69. That commencing on or about October, 1993 to September, 2007, in violation of the rights, privileges and immunities guaranteed to him under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and under the color of State law, the defendants acted individually and in concert causing the plaintiff to have been injured and

damaged in an amount exceeding the jurisdictional limit of this Court, to be determined upon the trial of this action.

70. That the negligence of the defendants **CITY OF NEW YORK**, its agents, servants and/or employees consisted of the following: in the negligent, careless and reckless ownership, operation, management, maintenance and control of the aforesaid premises in that they knowingly, and for a long and unreasonable length of time, caused and allowed the aforesaid premises to be maintained in unsafe, improper and unsuitable condition so as to cause carcinogens and/or toxins and harmful substances to be, become and remain at said premises; in failing to provide plaintiff herein with a safe area in which to work; in failing to give warning to the plaintiff of the unlawful, dangerous, hazardous, unsafe and poisonous condition thereof; in hiring inept, incompetent, inadequate, unskilled and insufficient contractors; in permitting, causing and/or allowing a dangerous and hazardous condition to be, remain and exist upon the premises; in causing, allowing and permitting the premises to be, become and remain uninhabitable and unsafe; in causing, allowing and permitting said carcinogens and/or toxins to be and remain upon said premises when it was known or should have been known that they could cause harm to those persons on said premises; in failing to inspect, timely inspect and/or properly inspect the aforesaid premises; in failing to repair, timely repair and/or properly repair and maintain the aforesaid premises although the defendants had notice or should have had notice of the unsafe conditions complained of herein; in negligently and carelessly

repairing and maintaining the premises in such a manner and under such control so as to cause the occurrence complained of herein; in violating statutory obligations; in violating the Health Code and other applicable sections, regulations and statutes under New York State, local and federal law; in providing improper, incompetent and insufficient supervision; in knowingly permitting said carcinogens and/or toxins to remain for an unreasonable period of time; in failing to take the proper and necessary steps to prevent the happening of the occurrences as herein set forth; and in otherwise being negligent and careless in the premises; in depriving plaintiff **ROBERT BARLEY** of rights guaranteed to him by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

71. That as a result of the foregoing, the plaintiff **ROBERT BARLEY** was caused to sustain severe and permanent personal injuries to become sick, sore, lame and disabled, sustained injuries to various portions of his body and mind, and to suffer great pain and anguish in his body and mind.

72. That this action falls within one or more of the exceptions set forth in CPLR Article 16.

73. That by reason of the foregoing, plaintiff **ROBERT BARLEY**, has sustained damages in an amount in excess of the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction, in an amount to be determined upon the trial of this action.


WHEREFORE, plaintiffs demand judgment against the defendants on the defendant in an amount which exceeds the monetary jurisdictional limits

of any and all lower courts which would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action, together with interest and the costs and disbursements of this action, and with interest from the date of this occurrence.

Dated: New York, New York
February 4, 2011

Yours, etc.

BURNS & HARRIS, ESQS.
Attorneys for Plaintiff

BY: 
CHRISTOPHER J. DONADIO
233 Broadway, Suite 900
New York, NY 10279
212 393-1000

RE: Robert Brley

ATTORNEY VERIFICATION

CHRISTOPHER J. DONADIO, ESQ., an attorney duly admitted to practice law in the Courts of the State of New York, shows:

I am the attorney for the plaintiff in the within action and have read the foregoing COMPLAINT the contents thereof; the same is true upon information and belief.

This verification is made by this affirmant and not by said plaintiff because said plaintiff reside(s) in a County other than the County wherein your affirmant maintains her office.

The grounds of affirmant's knowledge and belief are as follows: Conference with clients and notes and records contained in the file maintained in the regular course of business.

The undersigned affirms that the foregoing statements are true under the penalties of perjury.

Dated: New York, New York
February 4, 2011


CHRISTOPHER J. DONADIO

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index #

-----X
ROBERT BARLEY

Plaintiffs

Against

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF CORRECTIONS,
BERNARD B. KERIK, GARY M. LANIGAN,
WILLIAM J. FRASER, MARTIN F. HORN,
JOHN J. ANTONELLI, and
DORA B. SCHRIRO, CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Defendants
-----X

**SUMMONS AND
VERIFIED COMPLAINT**

BURNS & HARRIS, ESQS.
Attorneys for Plaintiff
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233 Broadway, Suite 900
New York, NY 10279
212 393-1000
Fax: 212 267-2110